
Warsaw, 1 July 2021

Opinion-Nr.: GEND-MKD/413/2021 [JB]

OPINION ON THE DRAFT LAW ON GENDER EQUALITY

NORTH MACEDONIA

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Based on an official English translation of the Draft Law provided by the Ministry of Labour and Social Policy of the Republic of North Macedonia.



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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

The Draft Law on Gender Equality aims to further mainstream gender equality awareness and activities within the majority of public institutions, including the Assembly and the executive, at both central and local levels. A number of gender equality bodies established by the current Equal Opportunities Law have been retained, notably the Committee on Gender Equality within the Assembly and gender coordinators/advisors within ministries, other public administration bodies, and bodies of local self-government. At the same time, the Draft Law introduces several new bodies that should, if established properly and with the requisite resources and training, help enhance the effectiveness of gender equality activities in the public and private spheres.

Most importantly, the Draft Law foresees a new Secretariat for Gender Equality established by the Government, which would take over the role of coordinating and overseeing the implementation of the Draft Law from the Ministry for Labour and Social Policy, which has this role under the current Law. While this is a welcome step in principle, the relevant provisions of the Draft Law should further clarify the role and competences of this Secretariat, in particular in relation to other newly created bodies such as the Resource Centre for Gender Responsive Policy Making and Budgeting and the National Coordination Body for Gender Equality. Further clarity on certain terminology used, as well as the scope of the Draft Law and competences of the already existing gender equality bodies would provide greater legal certainty.

More specifically, and in addition to what is stated above, OSCE/ODIHR makes the following recommendations to further enhance the effectiveness of the Draft Law:

- A. to clarify the scope of the Draft Law under Articles 1 and 2, particularly the term “all spheres of social living”; [par 21] further, to review, clarify and enhance the definition of the term “discrimination” under Article 4 of the Draft Law; [pars 22-24]
- B. with respect to measures for gender equality:
 1. to consider indicating in the Draft Law the timeframe within which the rulebook under Article 7 par 2 (and other rulebooks) should be adopted; [par 25]
 2. to consider revising Article 9 on temporary measures, expanding their application not only to enhance equality between men and women, but also to cover gender-based discrimination and violence; [par 26]
 3. to introduce a monitoring mechanism for permanent and temporary measures to assess whether they are working in practice; [par 27]
- C. to supplement Articles 13 and 14 relating to the Assembly’s Committee on Gender Equality by clarifying the meaning of the principle of balanced participation, to be taken into account with respect to the composition of parliamentary working bodies according to Article 13 par 4, reviewing and

- enhancing the list of competences of the Committee under Article 14 par 2; [pars 34-36]
- D. as regards the newly established bodies for gender equality within the executive:
1. to clarify where the Secretariat, created under Article 24, will be situated and provide sufficient funds and training to ensure that it is able to properly fulfil its tasks; [pars 39-40]
 2. to review the role of the Ministry of Labour and Social Policy with respect to reporting in Articles 16 par 4 and 19 par 10; [par 41]
 3. to clearly define the role and competences of the Resource Centre for Gender-Responsive Policy Making and Budgeting under Article 25 and clarify where it will be located within the state administration, and how it will cooperate with the Secretariat and other public bodies; sufficient resources should be provided to ensure the effectiveness of this body; [pars 42-43]
 4. to outline the tasks and competences of the National Coordination Body in Article 26, specify how they differ from those of the Secretariat, and clarify how these two bodies shall cooperate; [pars 46-47]
- E. to add references to the local gender equality committees to the Law on Local Self-Government, clarify the participation in such committees under Article 20 par 2, and foresee regular training sessions for the men and women sitting on the equality committees; [par 49]
- F. to specify the national human rights institutions' (NHRIs) roles as complaints-handling mechanisms in the area of discrimination based on sex, gender or gender identity in the Draft Law, or to include references to the respective laws, ensure that sufficient resources and training are allocated to the NHRIs, and enhance Articles 14, 16 and 19 of the Draft Law by including reference to cooperation with the NHRIs for the relevant gender equality bodies; similar provisions should be introduced for the newly created bodies created by the Draft Law; likewise, to review Articles 22 and 23 to ensure that the monitoring of the media, and the obligations imposed on political parties are compliant with international human rights standards; [pars 52-58]
- G. to re-introduce all possible remedies and complaints mechanisms in the Draft Law, including references to the complaints-handling mechanisms before the NHRIs, assess and consider re-introducing an administrative complaints mechanism under the Draft Law, or to include references to the respective laws. To add safeguards to the judicial proceedings and references to additional elements used in lawsuits under the Anti-Discrimination Law, such as *actio popularis* lawsuits and third party participation, and foresee legal aid for such proceedings, as needed; and to review and provide further detail on sanctions such as different kinds of fines to the Draft Law or make reference to specific rules on misdemeanours applicable in such cases; [pars 59-64] and
- H. to ensure proper and wide-spread public consultations during the next steps of the law-making process and review the Draft Law and ensure that gender-neutral terminology is used throughout. [pars 66-69]

These and additional Recommendations, are included throughout the text of this Opinion, highlighted in bold.

As part of its mandate to assist OSCE participating States in implementing OSCE commitments, the OSCE/ODIHR reviews, upon request, draft and existing legislation to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

TABLE OF CONTENTS

I.	INTRODUCTION	6
II.	SCOPE OF THE OPINION.....	6
I.	LEGAL ANALYSIS AND RECOMMENDATIONS	7
1.	Relevant International Human Rights Standards and OSCE Human Dimension Commitments on Gender Equality	7
2.	Background.....	9
3.	General Provisions of the Draft Law	10
4.	Measures for Gender Equality	11
5.	Entities and Mechanisms Responsible for the Implementation of Gender Equality Measures.....	12
5.1.	<i>Parliamentary Committee for Gender Equality.....</i>	<i>12</i>
5.2.	<i>Gender Equality Bodies within the Executive</i>	<i>14</i>
5.3.	<i>Gender Equality Bodies at the Local Level</i>	<i>16</i>
5.4.	<i>Other Entities Implementing the Law.....</i>	<i>17</i>
6.	Remedies and Sanctions.....	18
7.	Recommendations Related to the Process of Preparing and Adopting the Draft Law	20
7.1.	<i>Impact Assessment and Participatory Approach.....</i>	<i>20</i>
7.2.	<i>Gender-neutral Legal Drafting</i>	<i>21</i>

ANNEX: Draft Law on Gender Equality of North Macedonia

I. INTRODUCTION

1. On 15 March 2021, the Minister of Labour and Social Policy of the Republic of North Macedonia sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) a request for a legal review of the Draft Law on Gender Equality of North Macedonia (hereinafter “the Draft Law”). The Draft Law aims to replace the current Law on Equal Opportunities for Women and Men of 2012 (hereinafter “Equal Opportunities Law”).
2. On 24 March 2021, ODIHR responded to this request, confirming the Office’s readiness to prepare a legal opinion on the compliance of the Draft Law with international human rights standards and OSCE human dimension commitments.
3. This Opinion was prepared in response to the above request. The OSCE/ODIHR conducted this assessment within its mandate as established by the OSCE Action Plan for the Promotion of Gender Equality, which states that “[t]he ODIHR, in co-operation with other international organizations and relevant national bodies and institutions, will assist OSCE participating States in complying with international instruments for the promotion of gender equality and women’s rights, and in reviewing legislation to ensure appropriate legal guarantees for the promotion of gender equality in accordance with OSCE and other commitments”.¹
4. In 2011, OSCE/ODIHR conducted reviews of a previous version of the Equal Opportunities Law of 2006, and a 2011 Draft Law aiming to amend that law.²

II. SCOPE OF THE OPINION

5. The scope of this Opinion covers only the Draft Law submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating gender equality in North Macedonia.
6. The Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on those provisions that require amendments or improvements than on the positive aspects of the Draft Law. The ensuing legal analysis is based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments. The Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field. When referring to national legislation, OSCE/ODIHR does not advocate for any specific country model; it rather focuses on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. Any country example should always be approached with caution since it cannot necessarily be replicated in another country and has always to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.

¹ See *OSCE Action Plan for the Promotion of Gender Equality* adopted by Ministerial Council Decision No. 14/04, MC.DEC/14/04 (2004).

² See OSCE/ODIHR Opinion on the Law on Equal Opportunities for Women and Men of the former Yugoslav Republic of Macedonia of 9 June 2011, and OSCE/ODIHR Opinion on the on the Draft Law on Equal Opportunities for Women and Men of the former Yugoslav Republic of Macedonia of 16 September 2011.

7. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*³ (hereinafter “CEDAW”) and the *2004 OSCE Action Plan for the Promotion of Gender Equality*⁴ and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity perspective.
8. This Opinion is based on an official English translation of the Draft Law provided by the Minister of Labour and Social Policy of North Macedonia, which is attached to this document as an Annex. Errors from translation may result. The Opinion is also available in Macedonian and Albanian. However, the English version remains the only official version of the Opinion.
9. In view of the above, OSCE/ODIHR would like to stress that this Opinion does not prevent OSCE/ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in North Macedonia in the future.

I. LEGAL ANALYSIS AND RECOMMENDATIONS

1. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS ON GENDER EQUALITY

10. Basic international equality standards can be found in generic human rights instruments such as the International Covenant on Civil and Political Rights (hereinafter “the ICCPR”).⁵ Article 26 of the ICCPR states that all persons are equal before the law and that the law shall prohibit any discrimination and guarantee to all persons equal and effective protection from discrimination on any ground, including one’s sex. This principle is also found in the European Convention on Human Rights and Fundamental Freedoms (hereinafter “the ECHR”),⁶ mainly in Article 14, which prohibits discrimination in the enjoyment of the Convention’s other rights on the grounds of, inter alia, a person’s sex, and Protocol 12 to the Convention, which contains a wider stand-alone prohibition of all forms of discrimination.
11. A definition of “discrimination against women” was first adopted in Article 1 of CEDAW, which defines this as any distinction, exclusion, or restriction on the basis of sex, with the effect or purpose to impair or nullify the recognition, enjoyment or exercise by women of human rights in the political, economic, cultural, social, civil or other fields on the same footing as men. States party to CEDAW are held to work towards eliminating discrimination of women in all areas of life, including, inter alia, legal status, political participation, employment, education, healthcare, and family structures (Article 2).
12. The Council of Europe has issued numerous documents on topics related to gender equality, starting with resolution 855 (1986) of the Council of Europe Parliamentary Assembly (hereinafter “PACE”) on the equality between men and women,⁷ which was

³ *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. North Macedonia succeeded to this Convention on 18 January 1994.

⁴ See *OSCE Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), par 32.

⁵ *UN International Covenant on Civil and Political Rights* (ICCPR), adopted by UN General Assembly Resolution 2200A (XXI) of 16 December 1966. The Republic of North Macedonia succeeded to the ICCPR on 18 January 1994.

⁶ The *Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR), signed on 4 November 1950, entered into force on 3 September 1953. The Republic of North Macedonia ratified the ECHR on 10 April 1997.

⁷ Resolution 855(1986) of the Parliamentary Assembly on equality between men and women, adopted on 27 January 1986 at the 21st sitting.

followed by other resolutions or recommendations covering, among others, the equality of rights between men and women,⁸ progress in women's rights,⁹ the situation of women in rural society¹⁰, balanced participation of women and men in political and public decision-making,¹¹ mechanisms to ensure women's decision-making,¹² women's representation in politics through the electoral system,¹³ measures to combat discrimination on grounds of sexual orientation and gender identity,¹⁴ the protection and promotion of the rights of women and girls with disabilities¹⁵ and gender equality and media.¹⁶ More recent recommendations of the Committee of Ministers of the Council of Europe have focused on topics such as gender mainstreaming in sport, gender equality in the audio-visual sector and preventing and combating sexism.¹⁷

13. In addition, as a candidate country to join the European Union (hereinafter "EU"), North Macedonia has and continues to undertake steps to make its legislation compliant with the EU acquis. At the European Union level, there are two main directives (hereinafter "EU Gender Directives") that reflect EU countries' commitments to protecting equality between men and women. These are Council Directive 2004/113/EC on the principle of equal treatment between men and women in the access to and supply of goods and services and Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. Both EU Gender Directives include definitions of discrimination (direct and indirect), including sexual harassment, and stipulate the equality of treatment in the above areas (goods and services, and employment), while also focusing on remedies and enforcement.
14. Of the various OSCE commitments focusing on equal treatment, the Vienna Document is perhaps one of the most specific in stressing that all OSCE participating States commit to ensure human rights and fundamental freedoms to everyone within their territory and subject to their jurisdiction, without distinction of any kind based on such characteristics as, inter alia, a person's sex.¹⁸ This principle is reiterated in a more detailed manner in par 40.4 of the Moscow Concluding Document, where OSCE participating States affirmed their goal to achieve not only *de jure*, but also *de facto* equality of opportunity

⁸ Recommendation 1229 (1994) of the Parliamentary Assembly on equality of rights between men and women, adopted on 24 January 1994 at the 1st sitting.

⁹ Recommendation 1269 (1995) of the Parliamentary Assembly on achieving real progress in women's rights as from 1995, adopted on 27 April 1995 at the 15th sitting.

¹⁰ Recommendation 1321 (1997) of the Parliamentary Assembly on improving the situation of women in rural society, adopted by the Standing Committee on behalf of the Parliamentary Assembly on 19 March 1997.

¹¹ Recommendation CM/Rec(2003)3 of the Committee of Ministers to member states on balanced participation of women and men in political and public decision-making, adopted by the Committee of Ministers on 12 March 2003 at the 831st Meeting of the Ministers' Deputies.

¹² Resolution 1489 (2006) of the Parliamentary Assembly on mechanisms to ensure women's participation in decision-making, adopted by the Standing Committee on behalf of the Parliamentary Assembly on 17 March 2006.

¹³ Recommendation 1899 (2010) of the Parliamentary Assembly on increasing women's representation in politics through the electoral system, adopted on 27 January 2010 at the 6th sitting 19 March 1997.

¹⁴ Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted by the Committee of Ministers on 31 March 2010 at the 1081st Meeting of the Ministers' Deputies.

¹⁵ Recommendation CM/Rec(2012)6 of the Committee of Ministers to member states on measures to combat discrimination on the protection and promotion of the rights of women and girls with disabilities, adopted by the Committee of Ministers on 13 June 2012 at the 1145th Meeting of the Ministers' Deputies.

¹⁶ Recommendation CM/Rec(2013)1 of the Committee of Ministers to member states on gender equality and media, adopted by the Committee of Ministers on 10 July 2013 at the 1176th Meeting of the Ministers' Deputies.

¹⁷ Recommendation CM/Rec(2015)2 of the Committee of Ministers to member states on gender mainstreaming in sport, adopted by the Committee of Ministers on 21 January 2015 at the 1217th Meeting of the Ministers' Deputies; Recommendation CM/Rec(2017)9 of the Committee of Ministers to member states on gender equality in the audiovisual sector, adopted by the Committee of Ministers on 27 September 2017 at the 1295th Meeting of the Ministers' Deputies Recommendation; and Recommendation CM/Rec(2019)1 on preventing and combating sexism, adopted by the Committee of Ministers on 27 March 2019 at the 1342nd meeting of the Ministers' Deputies.

¹⁸ CSCE Concluding Document of Vienna – The Third Follow-Up Meeting, Vienna, 15 January 1989, Questions Relating to Security in Europe, Principles, par 13.8.

between men and women, as well as the promotion of effective measures to that end.¹⁹ In the same Document, OSCE participating States recognized that “true and full equality between men and women is a fundamental aspect of a just and democratic society based on the rule of law”. The OSCE Action Plan for the Promotion of Gender Equality of 2004, in its Chapter IV, also calls on OSCE participating States to develop policies and establish mechanisms to promote and strengthen gender equality, and to comply with the relevant international instruments that they have ratified or acceded to.²⁰ In 2009 in Athens, the OSCE Ministerial Council called on OSCE participating States to, inter alia, consider specific measures to achieve gender balance in all public institutions and consider possible legislative measures to facilitate a more balanced participation of women and men in public life and in decision making.²¹

2. BACKGROUND

15. Over the last decades, North Macedonia has set up a strong legal and policy framework to enhance gender equality in the country.²² Currently,²³ women make up 39,17 per cent of the Assembly, holding 47 out of 120 seats.²⁴ At the same time, a 2020 Manual for Members of Parliament and parliamentary staff published by the OSCE Mission to Skopje²⁵ noted that while gender quotas had helped enhance gender equality in the Assembly and local level councils, women’s representation in other public institutions remained under the 40 per cent target set by the Council of Europe’s Recommendation Rec(2003)3 of the Committee of Ministers to member states on balanced participation of women and men in political and public decision making.²⁶
16. According to Article 9 of the Constitution of North Macedonia, citizens are equal in their freedoms and rights, regardless of, among others, sex, and all citizens are equal before the Constitution and the law. The general principle of equality is reiterated in provisions such as Article 22 on the right to vote, Article 32 on the right to work and free choice of employment and Article 44 on access to education.
17. The 2020 Law on the Prevention and Protection against Discrimination (hereinafter “Anti-Discrimination Law”)²⁷ addresses all forms of discrimination, including on the basis of sex, gender, sexual orientation, and gender identity. The Anti-Discrimination Law established the Committee for Protection against Discrimination as an autonomous and independent complaints body and includes a detailed complaints procedure for anyone believing to have suffered discrimination in various sectors of public or private life. This law likewise provides for other, including judicial, remedies and sanctions.

¹⁹ The Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991, par 40.

²⁰ OSCE Ministerial Council Decision No. 14/04 on the 2004 OSCE Action Plan for the Promotion of Gender Equality of 7 December, 2004, Chapter 4, par 42.

²¹ OSCE Ministerial Council Decision No. 7/09 on Women’s Political Participation in Political and Public Life, adopted on 2 December 2009.

²² OSCE Mission to Skopje, Gender Matters! Manual for Members of Parliament and Parliamentary Staff on Gender Equality and Women’s Empowerment, 2020, p. 18.

²³ Article 64 par 5 of the Electoral Code foresees that at least 40 per cent of candidates in a candidate list for the parliamentary elections (but also local level councils) should be of the underrepresented sex, meaning that “at least one out of every three places shall be reserved for the underrepresented sex, with at least one additional place out of every ten places.”

²⁴ See Interparliamentary Union, Parline – global data on national parliaments, North Macedonia, latest update: October 2020, at https://data.ipu.org/node/171/basic-information?chamber_id=13391.

²⁵ OSCE Mission to Skopje, Gender Matters! Manual for Members of Parliament and Parliamentary Staff on Gender Equality and Women’s Empowerment, 2020, p. 22, emphasizing that in March 2020, senior government appointees included only 5 female members of the Government out of a total of 25, and that, at the local level, there were only 6 female mayors out of 81 local-self-government units.

²⁶ Recommendation CM/Rec(2003)3 of the Committee of Ministers to member states on balanced participation of women and men in political and public decision-making, adopted by the Committee of Ministers on 12 March 2003 at the 831st Meeting of the Ministers’ Deputies.

²⁷ OSCE/ODIHR issued a note on the draft law from 2018, it is available here: [OSCE/ODIHR Comments on the draft Law on Prevention and Protection Against Discrimination of the former Yugoslav Republic of Macedonia](#), 21 February 2018

18. The current Equal Opportunities Law of 2012, last amended in 2015, aims to “establish equal opportunities for women and men in the political, economic, social, educational, cultural, health, civil and any other sphere of the social life”. It outlines different types of measures to ensure such equal opportunities and lists different public and private implementing entities and their obligations under the law. Moreover, the Equal Opportunities Law establishes special bodies to help the respective public entities conduct different strategies and activities to ensure equal opportunities for women and men in their respective spheres of work; thus, the Equal Opportunities Law established a special Committee for Equal Opportunities of Women and Men in the National Assembly (Article 9), an inter-ministerial consultative and advisory group (Article 10), and gender coordinators in ministries and at the local government level (Articles 11 and 14), with the Ministry of Labour and Social Policy taking on a coordinating and oversight role for all public administration bodies, at both the central and local levels (Article 12). Chapter 5 lists the key elements that need to be included in the Government’s Gender Equality Strategy, which is adopted for a period of 8 years.
19. The Equal Opportunities Law likewise outlines, in its Chapter 6, possibilities for “legal protection” of the right to equal treatment of women and men, which include an administrative complaints procedure, as well as references to the complaint procedure before the Ombudsman, the Committee for Protection against Discrimination, and competent courts (Article 20). The Equal Opportunities Law additionally specifies that the Ministry of Labour and Social Policy shall supervise implementation of the law, while inspection supervision is conducted by the State Labour Inspectorate.
20. The Ministry of Labour and Social Policy prepared the current Draft Law, which would, if adopted, replace the Equal Opportunities Law. The main change introduced by this Draft Law relates to the matter of coordination and oversight of implementation of the law. Under the Draft Law, the key role of coordinating and overseeing implementation of the law by the responsible public administration bodies at central and local levels now falls to a special Secretariat established for this purpose by the Government (Article 20), and, with some exceptions, no longer to the Ministry of Labour and Social Protection. The Draft Law further foresees the establishment of a Resource Centre for Gender Responsive Policymaking and Budgeting (Article 25), and of a National Coordination Body for Gender Equality (Article 26), which may be similar to the existing inter-ministerial consultative and advisory group

3. GENERAL PROVISIONS OF THE DRAFT LAW

21. The first chapter of the Draft Law concerns general provisions, which deal with the aim and scope of the Draft Law, as well as definitions, and basic principles of the Draft Law. In Articles 1 and 2, the objective of the Draft Law is described as ensuring gender equality “**in all spheres of social living**”. This term is somewhat vague. It is not clear whether it covers areas of public and private life.²⁸ It is important to define precisely the scope of application of a law, and the type of public or private areas of life that it aims to impact. **Unless the lack of clarity is linked to the English version of the Draft Law, it is recommended to clarify this point.**

²⁸ See, in this context, UN Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28, 16 December 2010, par 25.

22. The term “discrimination” is defined in Article 4 par 21, and largely reflects the definition of discrimination also found in Article 6 of the Anti-Discrimination Law, as well as key elements of the term “discrimination against women” as set out in Article 1 of the CEDAW. **The legal drafters should ensure that this definition is the same in all other relevant legislation as well.** At the same time, the definition in Article 4 par 21 specifies that it covers numerous different aspects of discrimination, including the action of “disabling appropriate adjustment and disabling the accessibility and availability of infrastructure, good and services”. It is not clear what types of behaviour are being described here, nor does this part of the definition appear to be in line with the rest of the definition, which deals with different types of discrimination. **It is recommended to clarify this part of the definition.**
23. The above definition of discrimination also covers harassment and sexual harassment, but the meanings of these two terms are not explained. This marks a change from the current Equal Opportunities Law, which, in Article 4 pars 6 and 7, defines both gender-based harassment and sexual harassment respectively.
24. Given the references to both **harassment and sexual harassment** in the definition of discrimination, **it would be better to define these terms also in the Draft Law, to provide a complete overview of which forms of behaviour are considered to be discriminatory. Consideration may also be given to defining other forms of discrimination mentioned in Article 4 par 21, namely direct and indirect discrimination (both of which are defined in Article 4 pars 4 and 5 of the Equal Opportunities Law), as well as multiple and intersectional discrimination, or refer to relevant provisions in other laws.**

RECOMMENDATION A.

To clarify the scope of the Draft Law under Articles 1 and 2, particularly the term “all spheres of social living”.

To review, clarify and enhance the definition of the term “discrimination” under Article 4 of the Draft Law.

4. MEASURES FOR GENDER EQUALITY

25. Chapter 2 of the Draft Law deals with measures for gender equality within the meaning of Article 7 of the CEDAW. Article 7 differentiates between permanent (Article 8) and temporary measures (Article 9).²⁹ Based on Article 7 par 2, the manner of planning, adoption, implementation, evaluation and monitoring of gender equality measures shall be prescribed by the Government in a rulebook, which shall be applied by all entities and individuals implementing the law. It is noted that there is no information on when the rulebook shall be adopted. **Consideration may be given to clarifying whether the timeline for the adoption of by-laws within 6 months after the Draft Law has been adopted, set out in the transitional and final provisions under Chapter 9 (Article 36), shall apply here as well.**
26. Article 9 describes provisional or temporary measures, which shall be taken to ensure full gender equality until the de facto equality of persons or groups is achieved on the basis of sex, gender and gender identity, provided that the respective distinction

²⁹ See in this context UN Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation No. 25, on article 4, para 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures.

(presumably of a particular group) has a legitimate goal and the means to achieve this goal are proportionate. These include, among others, measures providing services to prevent and protect from violence against women. **With respect to the latter, it is recommended to expand this to cover gender-based violence** in general, given that the temporary measures mentioned in Article 9 are meant to not only further equality between men and women, but also equality of persons or groups on the basis of gender or gender identity.

27. **It would be useful to introduce monitoring mechanism with respect to the above measures**, to assess whether these are working in practice and identify areas that need to be improved.

RECOMMENDATION B.

To consider indicating in the Draft Law the timeframe within which the rulebook under Article 7 par 2 (and other rulebooks) should be adopted.

To consider revising Article 9 on temporary measures, to ensure that such measures are adopted not only to enhance equality between men and women, but also equality for persons or groups on the basis of gender or gender identity.

To introduce a monitoring mechanism for permanent and temporary measures to assess whether they are working in practice.

5. ENTITIES AND MECHANISMS RESPONSIBLE FOR THE IMPLEMENTATION OF GENDER EQUALITY MEASURES

28. The Draft Law generally retains a number of gender equality positions and bodies that already exist to help implement the Equal Opportunities Law, notably the Committee for Gender Equality within the National Assembly, and the gender equality coordinators and their deputies within ministries and other state administration authorities and local self-government units, as well as the gender equality committees within such units.
29. In addition to the above bodies, the Draft Law also establishes new gender equality bodies within the executive to help implement the law, namely the Secretariat for Gender Equality, the Resource Centre for Gender Responsive Policy Making and Budgeting and the National Coordination Body for Gender Equality. This seems to follow recommendations of the UN Committee on Elimination of All Forms of Discrimination against Women (hereinafter “CEDAW Committee”) which reiterated, in its 2018 concluding observations on North Macedonia’s periodic report, that it is essential that states ensure that the CEDAW is applied by public authorities, across all sectors and at all levels.³⁰ The ensuing sub-sections will deal with some of the existing and new bodies in greater detail.

5.1. Parliamentary Committee for Gender Equality

30. Under Article 13 par 1 (6) of the Draft Law, the Assembly shall establish the Committee for Gender Equality as a permanent working body and determine its composition and

³⁰ UN Committee on the Elimination of All Forms of Discrimination against Women, Concluding observations on the sixth periodic report of the former Yugoslav Republic of Macedonia, CEDAW/C/MKD/CO/6, 14 November 2018, par 10.

competences. A similar provision exists in Article 9 par 4 of the current Equal Opportunities Law. According to Article 13 par 4, the Assembly is obliged to apply the principle of balanced participation when determining the composition of its working bodies.

31. Article 14, in its par 1, basically repeats the contents of Article 13 par 1 (6), without providing additional information on possible criteria for the appointment of members to this Committee. **It is thus recommended to either specify such criteria in greater detail in Article 14, or to delete its first paragraph as redundant.**
32. Moreover, it is not clear what exactly the “principle of balanced participation” referenced in Article 13 par 4 refers to, and in particular what kind of balance is meant – political, gender, or both. In general, a diverse and more balanced gender composition within the Committee would be welcome, given that the current and past compositions of the Committee reveal a disproportionately high percentage of women.
33. At the same time, if the principle of balanced participation mentioned in Article 13 par 4 in fact refers to the principle of balanced participation set out in Article 6 par 3, and to the definition of equal representation under Article 4 par 1 (13) then this would mean that all working bodies of the Assembly, including the Committee, would need to achieve and maintain a percentage of men and women that is no less than the percentage of each sex in the total population. It is questionable whether, at least at the moment, achieving this type of quasi-parity of men and women in all working bodies of the Assembly is realistic, and whether it may not be useful to review these different provisions with a view to establishing goals that are somewhat more achievable.
34. Additionally, Article 13 does not contain any criteria that would provide an indication of when such balance would be considered to have been met. **It would be good if this, and the entire matter of balanced participation could be clarified in the Draft Law.**
35. As for the competences of the Committee, it is noted that Article 14 par 2 already provides a comprehensive list of tasks and competences, so that it is not apparent which additional competences the National Assembly would determine based on Article 13 par 1 (6) and Article 14 par 1. **The relevant provisions would benefit from further clarification on that point.**
36. Furthermore, it is noted that Article 9 par 5 of the Equal Opportunities Law provides some additional competences for the Committee, which have not been included in Article 14 par 2 of the Draft Law, namely reviewing draft laws and other regulations adopted by the Assembly, including the budget, for their inclusion of a gender concept. This could of course be seen as falling under the general gender mainstreaming obligation that all public entities are under according to Article 10 par 1. However, **it is suggested, for the sake of completeness, to specifically add review of draft laws to the list of competences of the Committee under Article 14 par 2.**

RECOMMENDATION C.

To clarify the meaning of the principle of balanced participation, to be taken into account with respect to the composition of parliamentary working bodies according to Article 13 par 4.

To review and enhance the list of competences of the Committee under Article 14 par 2.

5.2. Gender Equality Bodies within the Executive

37. As in the current Equal Opportunities Law (Article 11 par 4), Article 16 par 2 of the Draft Law foresees the hiring of special advisors/coordinators on gender equality issues in ministries and state administration authorities. The Draft Law specifies that these shall be full-time posts; according to Article 7 of the 2014 Governmental Decree on Description of Categories and Levels of Job Positions of Administrative Servants, adopted according to Article 22 par 3 of the Law on Administrative Servants, the respective position specified in Draft Law are for managing administrative officers who are independent in the performance of their duties, and who report directly to the secretary of a public institution. This high placement of the position of gender advisor/coordinator aims to ensure that the respective civil servants can effectively fulfil their tasks as expert coordinator in all matters pertaining to the implementation of the law.
38. Article 24 of the Draft Law introduces a new Secretariat for Gender Equality that is to be established by the Government. The main purpose of the Secretariat is to coordinate the work of the Government, and of state administration bodies implementing the law, including bodies of local self-government. It thereby takes on tasks that currently lie with the Ministry of Labour and Social Policy (Article 12 of the Equal Opportunities Law).
39. The creation of such a Secretariat as a special body within the executive to coordinate and monitor the work of all ministries and administrative bodies in relation to promoting gender equality and implementing the law requires necessary legal changes to be made to the internal organization of the executive, and **its place within the executive structure should be made clearer**. The creation of the Secretariat also seems to follow the CEDAW Committee's 2018 recommendation to strengthen the decision-making capacity and authority of the respective coordinating body in North Macedonia (then still the Department for Equal Opportunities within the Ministry for Labour and Social Policy) and consider upgrading it to the ministerial level to effectively operate as the national machinery for the advancement of women.³¹
40. At the same time, **sufficient funds should be allocated to staff this Secretariat with personnel that is highly qualified in the area of gender equality, and to also provide sufficient training on gender equality and mainstreaming to ensure that the coordination of gender equality issues through this new body runs smoothly.**³²
41. If, as specified in Article 24 of the Draft Law, the Secretariat is now the main coordinating and monitoring body in the field of gender equality, it is unclear why, according to Articles 16 par 4 and 19 par 10, the Ministry of Labour and Social Policy should prescribe the form and content of the annual reports that ministries and local self-government units shall submit to the Secretariat under Articles 16 par 1 (9) and 19 par 6. **It would be more consistent with the new approach taken by the Draft Law to have the Secretariat prescribe the form and content of these reports; the respective provisions should be adapted accordingly.**
42. Article 25 of the Draft Law creates a new Resource Centre for Gender-Responsive Policy Making and Budgeting, as a necessary step to ensure that key methodologies and techniques in relation to this type of policymaking and budgeting are promoted and taught within the relevant public bodies. At the same time, **it is important to clearly define the roles and competences of this Resource Centre and the Secretariat to**

³¹ UN Committee on the Elimination of All Forms of Discrimination against Women, Concluding observations on the sixth periodic report of the former Yugoslav Republic of Macedonia, CEDAW/C/MKD/CO/6, 14 November 2018, par 16.

³² As also recommended in: UN Committee on the Elimination of All Forms of Discrimination against Women, Concluding observations on the sixth periodic report of the former Yugoslav Republic of Macedonia, CEDAW/C/MKD/CO/6, 14 November 2018, par 16.

- avoid overlap and conflicting mandates.** For example, it should be clarified which body is responsible for raising awareness and building capacities within the civil service, which are essential elements to making the Draft Law work once adopted.
43. **It is recommended to specify where within the state administration this body will be located, in particular whether it shall be part of the Secretariat or a stand-alone body, and how it will cooperate with the Secretariat and with ministries and other bodies of public administration to ensure that it has enough practical information for its further research.**
 44. Additionally, Article 26 tasks the Government with establishing a National Coordination Body for Gender Equality, which shall, based on par 4 of this provision, include members of civil society organizations, employers' associations, trade unions, and experts, elected following public announcements. The National Coordination Body shall be chaired by the Minister of Labour and Social Policy (Article 26 par 6).
 45. The nature and competences of this body are not specified in Article 26. Based on what is known of its composition, it is assumed that this body is similar to the inter-ministerial consultative and advisory group currently described in Article 10 pars 6-8 of the Equal Opportunities Law. The inter-ministerial consultative and advisory group law is currently tasked with promoting and monitoring the inclusion of gender aspects into the general policies of all public institutions, in cooperation with social partners, as well as with monitoring the progress of harmonizing national legislation with EU legislation, giving directions in the process of preparing the Gender Equality Strategy and monitoring periodical reports from institutions.
 46. To clarify the role to be played by the National Coordination Body, **it would be useful if its tasks and competences would be outlined in Article 26 of the Draft Law. Similarly, this provision should clarify whether, aside from the Minister of Labour and Social Policy, any other civil servants will be part of this body, and if so, who this should be.** Here, it should be borne in mind that currently, functionaries/managerial civil servants take part in the inter-ministerial consultative and advisory group, along with citizens' organizations, employers' associations, experts, representatives of the local self-government, unions and other entities. Moreover, **it would be helpful to specify the different roles played by the National Coordination Body, and the Secretariat, and how these two bodies shall cooperate and coordinate their work. Training modules on different gender equality issues should also be offered to members of this body, both men and women.**
 47. Finally, **Article 26 should indicate whether the Head of the Secretariat, or another member of the Secretariat should also be a member of the National Coordination Body**, which might be useful in terms of coordination between the two bodies.

RECOMMENDATION D.

To clarify where the Secretariat, created under Article 24, will be situated and provide sufficient funds and training to ensure that it is able to properly fulfil its tasks.

To review the role of the Ministry of Labour and Social Policy with respect to reporting in Articles 16 par 4 and 19 par 10.

To clearly define the role and competences of the Resource Centre for Gender-Responsive Policy Making and Budgeting under Article 25 and clarify where it will be located within the state administration, and how it will cooperate with the Secretariat and other public bodies, sufficient resources should be provided to ensure the effectiveness of this body;

To outline the tasks and competences of the National Coordination Body in Article 26, specify how they differ from those of the Secretariat, and clarify how these two bodies shall cooperate.

5.3 Gender Equality Bodies at the Local Level

48. At the local level, Article 19 outlines the competences and tasks of local self-government units under the Draft Law, and also establishes, under its par 8, gender equality advisors/coordinators and their deputies, who shall fulfil similar tasks at the local level as their counterparts in ministries and public administrative bodies at the central level. These types of advisors/coordinators are already included in the current Equal Opportunities Law under Article 14 par 8.
49. In this context, it is noted that in its 2018 concluding observations on North Macedonia's periodic report, the CEDAW Committee had raised concerns regarding the limited effectiveness of the Equal Opportunities Law, in particular at the municipal level.³³ In the Draft Law, Article 20 describes the nature and tasks of the Gender Equality Committee established in each local self-government unit. Similar committees have been established in Article 14 pars 5 and 6 of the current Equal Opportunities Law, and it is welcome that the activities of these bodies are now described in greater detail in the Draft Law, which may help render these bodies more effective. **The Law on Local Self-Government should be amended to reflect the existence of such committees** (unless the relevant draft legislation has already been prepared). Additionally, **it may be helpful to consider regular training sessions for both men and women sitting on these committees on relevant gender equality issues.**
50. Article 20 par 2 indicates that external members, representatives of associations, social partners and others may participate in the work of the committees. **It would, however, be useful to specify in this provision how these external members are selected, and whether they would be permanent members of the committees, or whether they would be invited to certain sessions on an ad hoc basis (and if so, based on which criteria).**

RECOMMENDATION E.

To add references to the local gender equality committees to the Law on Local Self-Government and clarify the participation in such committees under Article 20 par 2.

To foresee regular training sessions for the men and women sitting on the equality committees.

5.4 Other Entities Implementing the Law

51. In addition to the National Assembly and public administration, the Draft Law also describes the roles of the National Human Rights Institutions (hereinafter “NHRIs”), the mass media and political parties in implementing the law, in Articles 21, 22 and 23 respectively. These entities are also mentioned in Articles 12, 16 and 17 of the current Equal Opportunities Law.
52. Under Article 21, the Ombudsman and the Committee for Prevention and Protection from Discrimination are held to “take measures for the prevention and protection of women’s and men’s rights pursuant to law” and shall appoint coordinators and deputy coordinators from their employees for this purpose. As in the case of the current Article 12 of the Equal Opportunities Law, **it may be helpful to also specify the NHRIs’ roles as complaints-handling mechanisms in the area of discrimination based on sex, gender or gender identity, or to include references to the respective laws. Additionally, sufficient resources should be located, and proper training provided to those employees appointed as coordinators and deputy coordinators from the outset**, to ensure that they will be able to fulfil their tasks in an effective and sustainable manner.³⁴
53. Moreover, it is noted that while Article 14 on the Committee on Gender Equality of the National Assembly, and the relevant provisions on the gender equality advisors/coordinators in ministries/public administrative bodies and in local self-government units (Articles 16 and 19) are very specific on cooperation with other bodies, **the NHRIs are not included among these bodies; this should be rectified.**
54. As regards the mass media, Article 22 par 2 specifies that persons should be portrayed in mass media in a “non-offensive, non-derogatory or non-degrading manner, based on sex, gender and gender identity, as well as not to act in the direction of continuing the ideas of inferiority of women or about stereotypical roles of women and men or other stereotypical roles related to sex, gender and gender identity”. The Agency for Audio and Audiovisual Media Services is mentioned as a monitoring body that should review and report on the manner in which men and women are presented and represented in media programme concepts and contents.
55. While this attempt to reduce negative, discriminatory or degrading portrayals of women is positive as such, it is important to ensure that such monitoring will not lead to undue interference or censorship of media. Further, due to the overbroad nature of Article 22 par 2, it is difficult to imagine how this type of provision could be implemented in practice without unduly interfering with the autonomy and freedoms, in particular the freedom of expression, of the media. Thus, for instance, depicting stereotypical roles related to sex, gender and gender identity in media reporting or production may not necessarily have a purpose to degrade or humiliate. It shis also recalled in this context that the European Court of Human Rights has specified that the freedom of expression under Article 10 of the ECHR protects not only “information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also those that offend, shock or disturb”.³⁵ **It is thus recommended to review the above provisions, and revise or delete them to ensure compliance with key international human rights standards.**
56. Article 23 of the Draft Law obliges political parties to monitor and report how women and men are represented in their internal authorities. Political parties are further obliged

³⁴ As also recommended in UN Committee on the Elimination of All Forms of Discrimination against Women, Concluding observations on the sixth periodic report of the former Yugoslav Republic of Macedonia, CEDAW/C/MKD/CO/6, 14 November 2018, par 18.

³⁵ European Court of Human Rights: *Handyside v United Kingdom*, no. 5493/72, judgment of 7 December 1976, par 49 and *Observer and Guardian v the United Kingdom*, no. 13585/88, judgment of 26 November 1991, par 59.

to prepare programmes for the promotion of gender equality, publish them on their websites, and make regular gender audits.

57. Many parties in OSCE participating States and CoE member States have explicitly introduced the possibility or even the duty to introduce special measures to ensure equal opportunities for women and men to participate in party processes. These special measures are not to be regarded as discriminatory.³⁶ Political parties can for instance introduce provisions in their statutes to promote gender equality. These could include, for example, a minimum representation of each sex or women's sections in decision-making structures, electoral lists, nominations and appointments. Moreover, gender equality could be mentioned as a basic value in party statutes, policies and programmes.³⁷
58. While the intention of enhancing gender equality within political parties is also welcome here, it is important that obligations imposed by the legislation, such as mandatory audits, do not unduly encroach upon the autonomy of political parties, which is protected by their right to freedom of association.³⁸ **It is therefore recommended to review this provision, and to ensure compliance of the Draft Law with key freedom of association standards.**

RECOMMENDATION F.

To specify the NHRIs' roles as complaints-handling mechanisms in the area of discrimination based on sex, gender or gender identity in the Draft Law, or to include references to the respective laws; ensure that sufficient resources are allocated to the NHRIs, along with proper training, to ensure that they can fulfil their roles under the Draft Law accordingly.

To enhance Articles 14, 16 and 19 of the Draft Law by including reference to cooperation with the NHRIs for the relevant gender equality bodies; similar provisions should be introduced for the newly created bodies specified in the Draft Law.

To review Articles 22 and 23 to ensure that the monitoring of the media, and the obligations imposed on political parties are compliant with international human rights standards.

6. REMEDIES AND SANCTIONS

59. Chapter 6 of the Draft Law describes the avenues of judicial protection for persons who believe that their rights to equal treatment on the basis of sex, gender and gender identity have been violated (Article 27 par 1). This differs from Article 20 of the current Law on Equal Opportunities, which provides not only judicial remedies, but also an administrative complaints procedure as well as procedures before the Ombudsman and the Committee for Prevention and Protection from Discrimination in such cases.

³⁶ CEDAW Committee, General recommendation No. 23: Political and public life (1997), A/52/38/Rev.1, para. 47, which states that the obligation to eliminate all forms of discrimination in all areas of public and political life include such measures designed to: "Encourage non-governmental organizations and public and political associations to adopt strategies that encourage women's representation and participation in their work."

³⁷ See the Joint Guidelines on Political Party Regulation issued by OSCE/ODIHR and the European Commission for Democracy through Law (Venice Commission) in 2020 (2nd edition), par. 160.

³⁸ See the Joint Guidelines on Political Party Regulation issued by OSCE/ODIHR and the European Commission for Democracy through Law (Venice Commission) in 2020 (2nd edition), which specify that the internal functions and processes of political parties should generally be free from state interference, and that state control over political parties should remain at a minimum (pars 151 and 154).

60. For the sake of completeness, **it is advisable to include possible remedies or complaints mechanisms in the Draft Law and/or make reference to the relevant legislation, as well, include special reference to the complaint mechanisms before the NHRIs.**
61. Moreover, it is unclear why the administrative remedy for complaints about unequal treatment (currently set out in Articles 20-32 of the Law on Equal Opportunities) has been removed, given that it would give public administration bodies the opportunity to remedy potentially discriminatory rules and practices, and could, in that way, also help enhance awareness of gender equality issues within public administration. Moreover, this type of administrative complaints mechanism would also help reduce the number of cases pending before courts. **It is recommended that the relevant stakeholders and decision-makers reassess this question and consider re-introducing an administrative complaints system.**
62. With respect to the judicial remedies described under Chapter 6 of the Draft Law, it is noted that this largely reflects the anti-discrimination lawsuits described in the Anti-Discrimination Law, including the shifting of the burden of proof, which is welcome. **Further safeguards could include some protection or immunity for witnesses working in the respective legal entities and making statements before court on behalf of the victims, as well as general whistle-blower protection clauses.**
63. **At the same time, consideration may be given to adding references to additional elements of these anti-discrimination lawsuits in the Draft Law as well**, such as, e.g., the option of *actio popularis* lawsuits (Article 35 of the Anti-Discrimination Law) and third-party participation in lawsuits (Article 40 of the Anti-Discrimination Law). **Also, the provision of legal aid could, if not provided already, help ensure that rural, low-income or other disadvantaged persons also have access to the proper judicial remedies.**
64. The misdemeanours and related fines described in Article 32 under Chapter 7 of the Draft Law largely relate to the failure of public or other entities to fulfil their requirements relating to the hiring of special advisors/coordinators, or reporting requirements, but do not provide any information on the kinds of fines that entities or persons may be expected to pay if they violate persons' rights to equal treatment under Article 27. Presumably, this is due to the fact that the drafters sought to move all discrimination claims to the Anti-Discrimination Law, but it would appear to be inconsistent to provide for judicial remedies for unequal treatment based on sex, gender or gender identity under Article 27 and then to not provide any information on the types of sanctions that such behaviour might incur. **It would be clearer, and more compatible with principles of legality and foreseeability of legislation, if such fines would be re-introduced to the Draft Law, or if reference could be made to specific rules on misdemeanours applicable in such cases**, rather than the more general references included in Articles 34 and 35 of the Draft Law.

RECOMMENDATION G.

To re-introduce all possible remedies and complaints mechanisms in the Draft Law, including references to the complaints-handling mechanisms before the NHRIs.

To assess and consider re-introducing an administrative complaints mechanism under the Draft Law, or to include references to the respective laws.

To add certain safeguards to the judicial proceedings and references to additional elements used in lawsuits under the Anti-Discrimination Law, such

as *actio popularis* lawsuits and third party participation, and foresee legal aid for such proceedings, as needed.

To review and provide further detail on sanctions such as different kinds of fines in the Draft Law or make reference to specific rules on misdemeanours applicable in such cases.

7. RECOMMENDATIONS RELATED TO THE PROCESS OF PREPARING AND ADOPTING THE DRAFT LAW

7.1. Impact Assessment and Participatory Approach

65. OSCE participating States have committed to ensure that legislation will be “adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability” (1990 Copenhagen Document, para. 5.8).³⁹ Moreover, key commitments specify that “[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives” (1991 Moscow Document, para. 18.1).⁴⁰ The Venice Commission’s Rule of Law Checklist also emphasizes that the public should have a meaningful opportunity to provide input.⁴¹ As specifically recommended in the recent OSCE/ODIHR Preliminary Assessment of the Legislative Process in the Republic of Uzbekistan, “[p]ublic consultations should become a routine feature [and a] meaningful part of every stage of the legislative process, particularly in the Legislative Chamber”.⁴²
66. It is understood that the legal drafters have consulted a number of stakeholders when preparing the Draft Law, including different parts of the executive, as well as the Institute for Human Rights, the Ombudsman, and various civil society organizations. The OSCE Mission to Skopje and the Office of the UN High Commissioner for Human Rights were also consulted. This is a welcome approach that is in line with OSCE commitments.
67. For consultations on draft legislation to be effective, they need to be inclusive and involve consultations and comments by the public, including civil society.⁴³ They should also provide sufficient time to stakeholders to prepare and submit recommendations on draft legislation, while the State should set up an adequate and timely feedback mechanism whereby public authorities should acknowledge and respond to contributions, providing for clear justifications for including or not including certain comments/proposals.⁴⁴ To guarantee effective participation, consultation mechanisms must allow for input at an early stage *and throughout the process*,⁴⁵ meaning not only when the draft is being prepared by relevant ministries but also when it is discussed before parliament (e.g., through the organization of public hearings). While the willingness to organize public consultations throughout the law-making process is welcome, the modalities of public consultations and the question of whether there was an adequate and timely feedback

³⁹ Available at <<http://www.osce.org/fr/odihr/elections/14304>>.

⁴⁰ Available at <<http://www.osce.org/fr/odihr/elections/14310>>.

⁴¹ See Venice Commission, *Rule of Law Checklist*, CDL-AD(2016)007, Part II.A.5.

⁴² See OSCE/ODIHR, *Preliminary Assessment of the Legislative Process in the Republic of Uzbekistan* (11 December 2019), Recommendation N.

⁴³ UN Special Rapporteur on Freedom of Religion or Belief, *2018 Report on the Mission to Uzbekistan*, A/HRC/37/49/Add.2, 22 February 2018, par 101 (b).

⁴⁴ See e.g., *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes* (from the participants to the Civil Society Forum organized by the OSCE/ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015.

⁴⁵ See e.g., *op. cit.* footnote 90, Section II, Sub-Section G on the Right to participate in public affairs (2014 OSCE/ODIHR Guidelines on the Protection of Human Rights Defenders).

mechanism is equally important and determines whether public consultations were or will be effective and inclusive as mentioned above.

68. Given the potential impact of the Draft Law on the equal exercise of human rights and fundamental freedoms for all genders, an in-depth regulatory impact assessment, including on human rights and gender compliance, is essential. This type of impact assessment should contain a proper problem analysis, using evidence-based techniques to identify the most efficient and effective regulatory option.⁴⁶ In the event that such an impact assessment has not yet been conducted, **the legal drafters are encouraged to undertake such an in-depth review, to identify existing problems, and adapt proposed solutions accordingly.**
69. In light of the above, **the public authorities are encouraged to ensure that as the legislative process continues, the Draft Law is subjected to further inclusive, extensive and effective consultations with a wide and varied array of stakeholders from all spheres of public and private life, including civil society (in particular organizations promoting women’s rights), and also representatives of minority communities and disadvantaged groups, offering equal opportunities for women and men of different backgrounds to participate. According to the principles stated above, such consultations should take place in a timely manner, at all stages of the law-making process, including before Parliament. As an important element of good law-making, a consistent monitoring and evaluation system of the implementation of the Law and its impact should also be put in place that would efficiently evaluate the operation and effectiveness of the Draft Law, once adopted.**⁴⁷

7.2. Gender-neutral Legal Drafting

70. It is noted positively that overall, the Draft Law uses gender neutral terminology. However, several provisions still refer to individuals occupying certain official positions or belonging to a certain category using only the male form of a term, which would imply that the position is occupied by a man only. Furthermore, in some cases, the male forms “him/his” are still used instead of “him or her”/“his or her” (see Article 33 of the Draft Law). Established international practice requires legislation to be drafted in a gender neutral/sensitive manner.⁴⁸ It is recommended that, whenever possible, and unless this impression is due to erroneous translation, the reference to post-holders or certain categories of individuals be adapted to use a gender-neutral word. Alternatively, the plural form of the respective noun could be used instead of the singular (e.g., they or their) or it is recommended to use both male and female words, for instance “his/her” or “h0im/her”.⁴⁹

RECOMMENDATION H.

To ensure proper and widespread public consultations during the next steps of the law-making process. To review the Draft Law and ensure that gender-neutral terminology is used throughout.

⁴⁶ See e.g., ODIHR, *Preliminary Assessment of the Legislative Process in the Republic of Uzbekistan* (11 December 2019), Recommendations L and M; and Venice Commission, *Rule of Law Checklist*, CDL-AD(2016)007, Part II.A.5.

⁴⁷ See e.g., OECD, *International Practices on Ex Post Evaluation* (2010).

⁴⁸ See e.g., ODIHR, *Comments on the Law on the Assembly and the Rules of Procedure of the Assembly from a Gender and Diversity Perspective* (2020), pars 105-107; and *Making Laws Work for Women and Men: A Practical Guide to Gender-Sensitive Legislation* (2017), page 63. See also the UN Economic and Social Commission for Western Asia (ESCWA), *Gender-Sensitive Language* (2013); European Parliament, *Resolution on Gender Mainstreaming* (2019); Council of the European Union, *General Secretariat, Inclusive Communication in the GSC* (2018); and European Institute for Gender Equality’s *Toolkit on Gender-sensitive Communication* (2018).

⁴⁹ See e.g., ODIHR, *Report on the Assessment of the Assessment of the Legislative Process in the Republic of Armenia* (October 2014), pars 47-48.

[END OF TEXT]
