Discriminatory Laws Undermining Women’s Rights
IN-DEPTH ANALYSIS

Discriminatory Laws Undermining Women’s Rights

ABSTRACT

This paper provides insight into the current situation and recent trends in the abolition or reform of discriminatory laws undermining women's rights in countries outside the European Union (EU). The paper aims to provide a nuanced understanding of processes through which legal reforms take place. Among the factors that have proven to facilitate legal reform are the ratification of international human rights treaties, feminist activism, legal and public advocacy by women’s rights and other human rights non-governmental organisations (NGOs), political dialogue, and increased women's representation in decision-making processes. Incremental steps supported by the EU towards the abolition of discriminatory laws across all legal categories, EU engagement with a broad range of stakeholders at both national and local levels, programmes supporting the gathering of gender-disaggregated data across all sectors and the publicising of data to draw attention to gender inequality in law and practice, among others, can all contribute towards successful reform of discriminatory laws. Striking the right balance between funding programmes that mainstream gender and funding dedicated to gender-targeted programmes, together with the increased use of country gender profiles, are essential in order to achieve quality legal reforms.
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<th>Abbreviation</th>
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<tr>
<td>BDPfA</td>
<td>Beijing Declaration and Platform for Action</td>
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<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination Against Women</td>
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<td>CDSA</td>
<td>Comprehensive Democracy Support Approach</td>
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<td>CGP</td>
<td>Country Gender Profile</td>
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<td>CoE</td>
<td>Council of Europe</td>
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<td>CSO</td>
<td>Civil Society Organisation</td>
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<td>DCI</td>
<td>Development Cooperation Instrument</td>
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<td>DEG</td>
<td>Democracy Support and Election Coordination Group</td>
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<td>DG</td>
<td>Directorate General</td>
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<td>EaP</td>
<td>Eastern Partnership</td>
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<td>EC</td>
<td>European Commission</td>
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<td>EDF</td>
<td>European Development Fund</td>
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<td>EIDHR</td>
<td>European Instrument for Democracy and Human Rights</td>
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<td>ENI</td>
<td>European Neighbourhood Instrument</td>
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<td>EU</td>
<td>European Union</td>
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<td>EUD</td>
<td>European Union Delegation</td>
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<td>EP</td>
<td>European Parliament</td>
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<td>GAP</td>
<td>Gender Action Plan</td>
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<td>GBV</td>
<td>Gender-based Violence</td>
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<td>GSP</td>
<td>Generalised System of Preferences</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>IcSP</td>
<td>Instrument contributing to Stability and Peace</td>
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<tr>
<td>IPA</td>
<td>Instrument for Pre-Accession</td>
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<td>IPU</td>
<td>Inter-Parliamentary Union</td>
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<tr>
<td>Istanbul Convention</td>
<td>Council of Europe Convention on preventing and combating violence against women and domestic violence</td>
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<td>HRD</td>
<td>Human Rights Dialogue</td>
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<tr>
<td>LGBTI</td>
<td>Lesbian, gay, bisexual, transgender/transsexual and intersex</td>
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<tr>
<td>NDICI</td>
<td>Neighbourhood, Development and International Cooperation Instrument</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<tr>
<td>RBA</td>
<td>Rights Based Approach</td>
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<tr>
<td>SDG</td>
<td>Sustainable Development Goals</td>
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<td>SRHR</td>
<td>Sexual and reproductive health and rights</td>
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<td>UN Women</td>
<td>United Nations Entity for Gender Equality and the Empowerment of Women</td>
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UNICEF  United Nations Children’s Fund
UNODC  United Nations Office on Drugs and Crime
VAWG  Violence against Women and Girls
Executive summary

This paper has been requested by the European Parliament’s Subcommittee on Human Rights (DROI) to provide insight into the current situation and recent trends in the abolition or reform of discriminatory laws undermining women’s rights in countries outside the European Union (EU). The paper addresses factors relevant for successful reform processes and obstacles in the path of reform, analyses the performance of the EU’s policies and instruments, and presents case studies from four countries – Bangladesh, The Gambia, Tunisia and Ukraine.

At a time where an increasing number of countries across the world are taking illiberal stances, the EU needs to continue its strong support for reform of laws that discriminate against women. The EU has numerous tools at its disposal to support gender equality through political dialogues and bilateral cooperation, as well as direct support to women’s organisations. The most effective approach for the EU to take to support the reform of laws that discriminate against women is to apply a combination of measures: political dialogue, public advocacy, support for women’s rights and other like-minded organisations, engagement with a broad range of stakeholders at national and local levels, and targeted programmatic support informed by gender analysis and making use of gender-disaggregated data.

Discriminatory family and personal status laws, including inheritance laws, are the most difficult area in which to secure reform. Even though equality between men and women should be promoted in all sectors, the reality in many countries is that reform of personal status laws may be difficult if not impossible to achieve in the short to medium term. In such contexts, it is legitimate to support incremental steps towards the eventual abolition of discriminatory laws and policies. In many countries, legal frameworks for combating gender-based violence are either yet to be established or need to be strengthened. While legal protection of women’s civil and political rights has improved significantly over the past few decades, the trend in legislative reforms on, among others, freedom of movement and citizenship suggests that progress may have now plateaued. Girls’ development, education and economic opportunities continue to be affected by discriminatory marriage laws permitting girls to marry earlier than boys. Labour laws in many countries continue to be influenced by social norms where men are considered to be the primary economic provider for the family. There is also an overrepresentation of women in the informal sector, where there are no protections against harassment or discriminatory practices.

Factors that support the elimination of discriminatory elements in law include the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and other international standards, increased women’s representation in elected office, research and advocacy by women’s rights and other civil society organisations, strategic litigation and awareness raising. Among these factors, feminist activism has been one of the key factors in driving law reform. The increased representation of women in elected office can often, but does not by itself, lead to gender-sensitive legal reform processes in all areas where existing laws undermine women’s rights. For the EU, the focus in programming should therefore include provision of technical support to parliamentary committees and Ministries to advance legal reform processes.

Given the central role that women’s rights organisations play in successful legal reform – from building an evidence base, to analysing and raising the problems with existing laws, and campaigning for change – the EU should continue to intensify its capacities to support women’s groups in countries where the space for human rights advocacy is shrinking. This includes developing strategic responses to cover the different stages of the closing space.

1 The focus of the paper is on those countries that are recipients of European development assistance / cooperation.
2 Feminist activism and women’s rights activism are treated as synonyms throughout the study. According to the Oxford definition, feminist activism is the advocacy of women’s rights on the ground of the equality of the sexes.
It is a sound strategy to engage with a broad range of stakeholders at both national and local levels in order to achieve effective and durable reform of gender-discriminatory laws. There are risks involved in only engaging with those women’s rights NGOs and other actors that are champions of gender equality, as they are vulnerable to being portrayed by conservative opponents of the reforms as ‘foreign agents’, working against the so-called ‘national interest’. It is important to also engage with the public at large, with community groups that are either neutral or yet to be convinced of the value of the reform, and with those ministries and agencies responsible for application of the law once adopted. Otherwise, reforms may not be sustainable in the longer term, or may not be effectively implemented.

European Union Delegations (EUDs) rarely engage with representatives of customary or religious systems in their advocacy for the reform of discriminatory laws. While caution may sometimes be the best approach, there is potential for the EU to engage with non-traditional dialogue partners, drawing attention to examples from countries with similar cultural or religious traditions where reforms were successfully achieved.

It is vital for the EU to continue to support the gathering of gender-disaggregated data across all sectors to raise awareness of the impact that discriminatory laws have on women’s and girls’ lives. Where the difficulty in gathering data is due to a lack of national capacity, programmes should also support capacity-development within the National Statistics Bureau and in relevant Ministries and other public authorities. Support for the improved collection of disaggregated data also assists partner countries to measure progress towards achievement of the Sustainable Development Goals (SDGs).

The EU and its Member States must also strive to ensure that their own actions in the domestic sphere are consistent with human rights standards. Where problems with the implementation of human rights are revealed through e.g. international human rights treaty body reporting processes, EU Member States should take effective measures to address the issues identified. Compliance by EU Member States with international human rights obligations helps to strengthen the position of both the EU and its Member States in human rights dialogue and cooperation with third countries.

The EU can fund targeted actions by civil society organisations (CSOs) for the advancement of gender equality through thematic instruments such as the European Instrument for Democracy and Human Rights (EIDHR). But this kind of support should be complementary to, rather than a substitute for support for reform of discriminatory laws through bilateral cooperation instruments. The EIDHR should primarily be utilised for law reform advocacy in situations where the issues are too sensitive to be addressed directly through bilateral cooperation.

The increased use of gender analysis, including the EU’s own country gender profiles, is essential in order to achieve quality legal reforms. EU delegations (EUDs) should always make use of country gender profiles when designing law reform – and other (legal) development – programmes. National partners, academia, think-tanks and women’s organisations should be consulted in the preparation of gender analyses and gender equality programmes, and should also have roles in the monitoring of such programmes. Gender analyses should also be taken into account in the development and monitoring of trade agreements and the Generalised System of Preferences (GSP), GSP+ and Everything but Arms (EBA) arrangements.

Ratification and incorporation of the CEDAW into domestic law has been an important force for change in many countries. Periodic reporting obligations allow governments and other stakeholders to focus fresh on the treaty obligations and to evaluate progress over time. The EU can utilise benchmarks for progress in implementation of CEDAW and other relevant international commitments by beneficiaries of the GSP scheme and GSP+ and EBA arrangements as additional tools to advance gender equality in law.

The European Parliament’s (EP) capacity building tool, centred around peer-to-peer exchanges between MEPs and MPs from third country parliaments, represents an important added value to the European Commission’s development cooperation and financial assistance. Where EU actors on the ground believe
that reaching out to the legislative on a peer-to-peer basis could have the potential to advance the gender equality law agenda, the EP should be consulted and informed.

The ability of the EP to contribute directly to reform of laws that discriminate against women through the democracy support activities and through inter-parliamentary assemblies and delegations becomes greater where there is more in-depth technical knowledge of the legislative issues under discussion. Therefore, it is crucial that the European Commission (EC) share its technical knowledge on gender equality issues in third countries with MEPs – including the country gender profiles. This will enable the EP to go from generalities to specifics in its engagements on gender equality in law with third countries’ parliaments. Given the EP’s limited resources to engage in democracy support activities, the EP’s inter-parliamentary delegations and participation in parliamentary assemblies will remain an important channel for its engagement in gender equality in law, especially in countries with less fertile ground for reform.

European laws and policies in this area represent examples of good practice that can inspire parliamentarians in third countries. When discussing gender equality issues in inter-parliamentary exchanges, MEPs should engage with parliamentary counterparts on the full range of legal categories where women face discrimination.

The EU and its Member States’ commitments to gender equality, gender mainstreaming and the incorporation of a rights based approach in its development assistance can have a significant impact in third countries, by drawing the attention of local stakeholders to the relevance of gender issues, and to the untapped potential of an increased focus on gender equality to improve overall development outcomes, including progress towards achievement of the SDGs.

The binary definition of gender in the EU’s Gender Action Plan (GAP II) addresses individuals who identify exclusively as either male or female. This should be reviewed in the development of GAP III so that the instrument is better in line with, among others, the case-law of the European Court of Human Rights (ECtHR) and the CEDAW Committee’s understanding of gender equality and of the scope of prohibited discrimination under Article 2 of the Convention.

GAP III should also prioritise more regular analysis, not only of quantitative, but also of qualitative results. The current GAP II’s monitoring reports do not allow for an impact analysis of EU policies and investments related to gender equality in partner countries and leave open questions as regards the EU’s choice of objectives, the results of activities, the quality of delivery, likely long-term effects, as well as potential risks and benefits. Furthermore, yearly GAP reviews do not reflect the degree to which the GAP has aligned with the policies of partner countries and how the EU policies and programmes on gender equality were received by them. The future GAP should include more frequent evaluations with results flowing into the yearly monitoring mechanism.
Introduction

In the four decades since the adoption of the UN Convention on the Elimination of Discrimination against Women (CEDAW), substantial progress has been made globally at tackling gender discrimination in law\(^1\). Nonetheless, legal gaps and discriminatory laws continue to exist, affecting and intruding in all aspects of women’s lives. It is estimated that at the current rate of progress it will take two centuries to achieve formal gender equality worldwide (OECD, 2019a). With around half of countries limiting the professions that women can enter and a third of countries having gaps concerning women’s full participation in public life, much progress remains to be made (OECD, 2019a; UN Women, 2019a). Regional differences are also notable, with some regions, for example South Asia and Sub-Saharan Africa, continuing to make steady progress towards closing gender gaps, whereas in others, in particular East Asia and the Pacific and North America, progress in recent years has been very slow. Female genital mutilation (FGM) is still not prohibited in all countries where it is traditionally practiced, and the current progress made in adopting and implementing anti-FGM laws is insufficient in view of the global scope of the problem (UNICEF, 2016). In some countries the number of minors who are getting married is increasing rather than decreasing (World Bank, 2015; Feser, 2017). Every day 137 women on average are killed by an intimate partner or family member (UNODC, 2018). Furthermore, less than half of all countries have laws in place that mandate equal remuneration for work of equal value (World Bank, 2020).

Women may be subject to legal discrimination on the basis of their sex and gender. Gender refers to socially constructed identities, attributes and roles for women and men and the cultural meaning imposed by society on biological differences\(^4\).

Laws that discriminate against women prevent them from realising their full potential and impede the realisation of gender equality. When women and girls can live free from discrimination, with laws that protect their human rights, the whole society benefits.

This study aims to provide a nuanced understanding of processes through which legal reforms take place. Known factors that have proven to facilitate legal reform include legal advocacy and dialogue, feminist activism\(^5\), the ratification of international human rights instruments on women’s rights and gender equality, and women’s representation in decision-making processes. The study will present in more detail the aforementioned factors and how they can bring about change. It explores the interplay between legal reform processes, strategic litigation and feminist activism, as well as the implementation of EU human rights policies and financing instruments in support of law reform processes in third countries. Each section will also consider the ways in which the EU could utilise this knowledge to further advance pro-women’s rights law reform agendas.

Four country case studies will also be presented: Tunisia, The Gambia, Bangladesh and Ukraine. These case studies will examine both successes and ongoing challenges in efforts to reform legislation that discriminates against women, with a view to illustrating the strengths and weaknesses of the EU’s existing operational framework.

This study addresses the following five key questions:

- What is the current situation, and what are the recent trends in the reform of discriminatory laws in countries outside the EU?

\(^{1}\) While gender discrimination also encompasses persons who are transgendered and non-binary, this study only focuses on discrimination against girls and women.

\(^{4}\) CEDAW General Recommendation on women’s access to justice, 23 July 2015; at para. 7

\(^{5}\) Feminist activism and women’s rights activism are treated as synonyms throughout the study. According to the Oxford definition, feminist activism is the advocacy of women’s rights on the ground of the equality of the sexes.
• What explains successful reforms, i.e. the elimination of discriminatory elements in law?
• What are the key obstacles in the path of reform?
• What has been the performance of the EU’s instruments, including best practices?
• How can the performance of the EU’s instruments be further enhanced?

Although the focus of this study is on reform of discriminatory laws (i.e. reform of instances of formal discrimination) rather than on combatting discrimination between men and women in practice (substantive discrimination), the authors wish to note that the concept of gender equality needs to be preserved in its entirety and that formal and actual gender equality cannot ultimately be considered in isolation from each other. Placing undue emphasis on formal equality of opportunity rather than equality in practice can risk leading to situations where, for example, states do not allocate sufficient resources to realise substantive gender equality in practice, on the basis that accessing legal rights and entitlements is a matter of a women’s individual responsibility. Furthermore, in order to alter the conditions that prevent women from reaching substantive equality, governments may also need to take active measures such as gender mainstreaming, the implementation of gender quotas or other social policy interventions. In general, we do not address such measures in this study, except where they are relevant for an understanding of the operating context in, for example, the country case studies.

Methodology

The research method for this study comprises an extensive literature review, together with information gathered from ca. 25 semi-structured interviews with experts from EU Institutions (DG NEAR, DG DEVCO, EEAS, EUDs, EP), international organisations and civil society organisations (CSOs).

The first step was to identify processes through which legal reforms take place through a comprehensive review of relevant studies, evaluations and reports. On the basis of this review, the most prominent practices for eliminating discriminatory laws were identified and examined in greater detail. An overview of different categories in law relevant for gender discrimination and of discriminatory laws per geographical area was established by systematically reviewing the most recent policy reports and academic literature. In addition, recent global developments with respect to discriminatory laws, the international human rights framework regarding non-discrimination of women, and international initiatives to accelerate reform of discriminatory laws were studied. Furthermore, EU policies and financing instruments to address discrimination in law were assessed. These findings are also reflected upon in the four case studies.

One of the challenges in preparing a report of this kind is to provide a balanced overview of the ways in which the application of the EU’s policy and human rights framework, including EU development assistance, can contribute to law reform processes in third countries. Attribution and causation are always difficult, and particularly so in domestic legislative reform processes with multiple stakeholders involved. Given that aid flows are not broken down to specific support for gender equality law reform processes, it is extremely difficult to identify the relevant EU assistance in this area. It is therefore beyond the ability of this study to quantify the precise extent of the EU’s impact on specific law reform processes. This could be the subject of a further study. Instead, drawing on the available literature and on the opinions of experts and practitioners within the EU institutions and elsewhere, we have reached some general conclusions about the value of the various instruments and made recommendations on how the EU’s actions in support of reform of laws that discriminate against women can be made more effective in future. The European Commission will publish two external evaluations in 2020 on its work on gender equality and the Gender Action Plan (GAP) which will provide further analysis of the EU’s impact on the ground.
1 International standards on women’s rights and gender equality

1.1 UN and regional treaties on discrimination against women and gender equality

There is a sizeable corpus of international treaties, declarations and programmes for action on discrimination against women and gender equality, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Beijing Declaration and Platform for Action (BDPfA), the Declaration on the Elimination of Violence against Women, and the Vienna Declaration and Programme of Action. At the regional level treaties include the Inter-American Convention on the Eradication of Violence against Women (Organisation of American States), the Maputo Protocol on the Rights of Women in Africa (African Union), and the Istanbul Convention on preventing and combating violence against women and domestic violence (Council of Europe). The principle of gender equality is central to the UN Sustainable Development Goals, both as one of the goals themselves, but also as a cross-cutting element, either explicitly or implicitly, for the achievement of all 17 goals.
The 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) provides a comprehensive framework where gender inequality is understood to be the result of discrimination against women. Under the CEDAW the State has the obligation to take all necessary steps to ensure that women enjoy equality in their daily lives. CEDAW defines discrimination and the range of steps that states must take to eliminate it, and it affirms women’s rights in specific areas.

Governments are obliged to report to the CEDAW Committee on the current status of legislation in their country, which then provides recommendations. The Optional Protocol to the CEDAW (OP-CEDAW) establishes complaint and inquiry mechanisms for the Convention whereby parties to the Protocol allow the CEDAW Committee to hear complaints from individuals or inquire into grave or systematic violations of the Convention.
1.2 Recent International initiatives and campaigns on discrimination against women in Law

The 1995 United Nations Fourth World Conference on Women in Beijing resulted in the adoption of the Beijing Declaration and Platform for Action (BDPfA). It called for strong and specific commitments by governments and other institutions to take action in 12 areas, including health, violence against women and girls (VAWG), the world economy, the environment, and decision-making. Among the commitments of this comprehensive roadmap was to revoke any remaining laws that discriminate on the basis of sex. The Platform provides a blueprint for women’s empowerment that is clear and actionable. In addition, it provides the first global commitment to gender mainstreaming as the methodology by which women’s empowerment will be achieved. Progress and challenges on their implementation are discussed each year at the Committee on the Status of Women. The impact of the Beijing Platform on CEDAW was evident in the significant increase of State Party objections to reservations made to CEDAW by other State Parties both around the time of the Beijing Conference and after it (Neuwirth, 2005). During the 1990s, the number of States objecting to reservations made by other States upon ratification of CEDAW doubled, and by the beginning of the 2000s, tripled. Many countries then began withdrawing reservations that they had made to CEDAW at the time of ratification, among them Jamaica, the Republic of Korea and Turkey (ibid.).

In September 2015, the 2030 Agenda for Sustainable Development, incorporating the 17 Sustainable Development Goals (SDGs), was adopted by the UN General Assembly by consensus. SDG 5, ‘achieving gender equality and empowering all women and girls’, comprises 9 targets and 14 indicators. SDG 5 sets specific objectives for the establishment of legal frameworks to end discrimination; VAWG; harmful practices such as child marriage and FGM; unpaid care and domestic work; participation and leadership in public life; sexual and reproductive health and reproductive rights; and, economic rights. The achievement of gender equality is also a precondition for the achievement of numerous other SDG goals and targets, e.g. SDG 10 (reduced Inequalities), target 10.3:

‘Ensure equal opportunity and reduce inequalities of outcome, including through eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and actions in this regard’.

To mark the 25th anniversary of the adoption of the BDPfA in 2020, the UN Commission on the Status of Women (CSW) will undertake a global assessment of the implementation of the BDPfA to date, and UN Member States have been requested to carry out similar reviews at national level. The discussions surrounding the anniversary declaration, as discussed further below, express concerns that the global consensus on gender equality is now under threat. The report of the Expert Group submitted to the 64th Session of the CSW in December 2019 warns that a quarter of a century after the adoption of the BDPfA, its vision has been eroded, in large part, by revived inter-state rivalry and global anti-feminist mobilisation by conservative forces.6

In recent years, many international and regional bodies have launched fresh initiatives to draw attention to persisting gender inequality in law.

In 2014, the UNHCR launched a 10-year global campaign to end statelessness. One of the actions of this global campaign relates to gender discrimination in nationality laws with the goal that all States have nationality laws which treat women and men equally with regard to conferral of nationality to their children and with regard to the acquisition, change and retention of nationality.

In 2017, the UN, together with the EU launched the Spotlight Initiative, a global, multi-year partnership to eliminate all forms of violence against women and girls by 2030. Under this initiative laws to prevent

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violence and discrimination are promoted through advocacy at all levels of government, technical assistance and capacity building, and active participation by women.

In 2019, UN Women, the African Union, the Commonwealth, the Inter-Parliamentary Union, the Organisation Internationale de la Francophonie, and the Secretaría General Ibero-Americana launched a joint strategy: “Equality in law for women and girls by 2030: A multi-stakeholder strategy for accelerated action”. An evaluation to be conducted in 2024 will serve as a basis of reporting on lessons learned and promising practices and will feed into various processes such as periodic reviews of the BPfA, and the High-level Political Forum for follow-up and review of the 2030 Agenda for Sustainable Development.

In March 2020, the international INGO Equality Now, together with UN Women and nine other organisations from around the world, launched a Global Campaign for Equality in Family Law. The campaign aims to help deliver full equality for women and girls by achieving legal equality in the home. It will draw attention to the global impact of discriminatory family laws concerned with marriage, divorce, custody of children and other laws that affect family life.

At regional level, the Council of Europe’s Gender Equality Strategy (2018-2023) is committed to addressing discrimination in law. The African Union’s campaign to ending child marriage includes the adoption of a General Comment and a Common Position; the appointment of a Special Rapporteur, and the compendium of the minimum age of marriage provisions and related exceptions. The Economic Community of West African States – in its 2015 Abidjan Declaration on the Eradication of Statelessness – commits member states to promoting gender-equal nationality laws. In 2018, the League of Arab States endorsed a declaration with a call to all member states to enact reforms to uphold gender equal nationality rights and to remove reservations to Article 9 of CEDAW. In the Pacific region, the new Pacific Partnership to End Violence Against Women and Girls brings together governments, CSOs, and communities to promote equality in law for women and girls by 2030. In Latin America and the Caribbean, the Secretaría General Iberoamericana is working with UN Women to address discriminatory laws and has explored examples of reforms. Within the Organisation Internationale de la Francophonie’s strategy adopted in 2018, governments are committed to review and modify laws, regulations, policies and practices of a discriminatory nature or effect against women and girls. The G7 Gender Equality Advisory Council’s 2019 report calls on governments to guarantee financing to both eliminate discriminatory laws and implement progressive legislative frameworks.

2 Legal context and categories

Laws can discriminate directly or indirectly. Direct discrimination refers to laws that are explicitly discriminatory against a particular group of people; that is, the discriminatory aspect is clear from the words of the provision or provisions in question. Indirect discrimination occurs where laws are formally neutral but in practice have a disproportionately negative impact on a particular group. Instances of indirectly discriminatory laws are often not identified until after a law has been adopted and the discriminatory nature of a particular provision becomes apparent in implementation.

For the purposes of this study, we have chosen to focus on the following five legal subject areas:

(i) Laws related to the enjoyment of civil and political rights;
(ii) Laws regulating access to employment, economic opportunities and financial resources;

7 Campaign supported by Equality Now, UN Women, Musawah, Act Church of Sweden, Femnet, Muslim for Progressive Values, Solidarity for African Women’s Rights, Women’s Learning Partnership and CLADEM. Launch event online at: https://www.equalitynow.org/global_campaign_for_equality_in_family_law_webinar
(iii) Laws regulating family life, including inheritance rights;
(iv) Laws related to physical integrity; and
(v) Laws which affect the rights of girls

Taken together these five areas encompass most if not all of the types of laws which discriminate against women, thereby undermining the realisation of women’s rights.

2.1 Civil and political rights

This area includes laws that have an impact on the right to freedom of movement, laws regulating nationality and citizenship (including the ability to pass on nationality and / or citizenship rights to one’s children), the ability to vote or to stand for public office, any quota systems established to ensure at least a minimum percentage of female members of parliament, and laws on access to justice.

There is a broad international framework of standards that enshrine the rights of women to participate in public life, including the Universal Declaration of Human Rights, the ICCPR, the CEDAW, the Beijing Declaration and Platform for Action (BDPfA), the Declaration on the Elimination of Violence against Women, the Vienna Declaration and Programme of Action, and various other conventions, declarations and recommendations of international and regional bodies. Article 7 of CEDAW obliges States to take all appropriate measures to eliminate discrimination against women in the political and public life. The political and public life of a country encompasses the exercise of legislative, judicial, executive and administrative powers, also including the activities of civil society, political parties, trade unions, professional or industry associations, women’s organisations, and others.

As regards quota systems, article 4 of CEDAW permits the use of temporary special measures, but it does not oblige States to introduce quotas. Therefore, the absence of a quota in the Electoral law or other relevant legislation does not constitute a discriminatory law per se, as affirmative action measures are not compulsory. However, the global trend is towards expecting States to take positive measures in relation to representation of women and men in legislative bodies.

As regards nationality laws, Article 9 of the CEDAW states that women shall have equal rights with men to acquire, change or retain their nationality, and also equal rights in respect of their child’s nationality. The CEDAW Committee recommends reform of nationality laws to enable women to transmit their nationality to their children and to their foreign spouse on an equal basis with men. Nationality laws that restrict women’s ability to pass citizenship to their children or a foreign spouse can result in denial of access to education and health services and also create the risk of statelessness. Also, women who lose their nationality of birth upon marriage face bigger challenges when trying to leave abusive marriages or in claiming child custody.

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8 A Council of Europe Resolution from 2016 on ‘Assessing the Impact of Measures to Improve women’s political representation’ stipulates that the low levels of women among members of parliament hinder the representative nature of elected bodies and stresses that “it is time to step up efforts in order to address this issue. Whenever Member States review their regulations governing elections, they should adopt measures to promote the participation of women that are able to have both a significant impact and be sustainable in the longer term.” (Par 1); “The Assembly supports the principle of gender parity, which represents a further step beyond positive measures and the ultimate goal in political representation. Consistent enforcement of such a principle requires the State to go beyond positive measures and ensure equal representation of women and men in elected bodies and other institutions at all levels” (Par 16); Council of Europe Parliamentary Assembly, Resolution 2111 (2016), on Assessing the impact of measures to improve women’s political representation.

9 Committee on the Elimination of Discrimination against Women (2014), General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women.
2.2 Access to employment, economic opportunities and financial resources

This category includes laws concerning access to and terms and conditions of employment, including provisions related to maternity and family leave and laws mandating equal remuneration for work of equal value, laws regulating the operation of specific professional groups or workplaces, and laws that may place restrictions on the rights of women to engage in business or entrepreneurial activity and / or to own or dispose of property or land.

In line with international standards, labour laws should be gender neutral and protect the health and safety of both men and women equally. Most workplace restrictions that apply only to women contradict women’s rights to freely choose employment, as guaranteed by article 3 of CEDAW. Labour laws should ensure the rights of women to choose the type of work they want without discrimination. While it is reasonable to restrict pregnant women’s participation in some roles based on medical evidence of risk to the mother or the foetus, restrictions prohibiting all women from participating in work roles are discriminatory. Furthermore, existing disparities between men and women’s pay discourage many women from participating in the formal labour market. While equal pay for equal work is legally guaranteed in most national labour laws, wage inequalities for women remain the common experience. The ILO Equal Remuneration Convention (No. 100) requires equal pay for work of equal value, even if it is a different type of work. Laws that apply this definition guarantee greater equality because they account for types of jobs that are mostly done by women and which traditionally have been poorly paid. The ILO Convention on Discrimination in respect of Employment and Occupation or Discrimination (ILO Convention No. 111) requires states to enable legislation which prohibits all discrimination and exclusion on any basis including of sex in employment and repeal legislation that is not based on equal opportunities. ILO Convention No. 183 on Maternity Protection requests governments to put in place 14 weeks of paid maternity leave schemes.

Women’s rights to land ownership and control over land are determining factors in women’s living conditions especially in rural economies. It secures women’s and their children’s daily survival, economic security and physical safety. Article 14.2. of the CEDAW Convention requests States to undertake all appropriate measures to eliminate discrimination against rural women, and to guarantee their enjoyment of adequate living conditions including adequate housing. Furthermore, CEDAW article 16.1 requests States to undertake all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family, and in particular to ensure the same rights for spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property.

2.3 Family law, including laws on inheritance

Family law encompasses laws on marriage, including provisions on minimum age and the right to freely choose a marriage partner, inheritance laws, obedience laws, laws governing divorce and property settlements, and child custody and maintenance payments. In some countries these laws are known as ‘personal status’ codes. Family laws have impacts that go well beyond the private sphere and have a crucial influence on all aspects of a woman’s life including opportunities to work, travel, access finance, pursue education and participate in leadership positions including in the judiciary and politics.

Of all legal categories, discriminatory provisions in family law are the most difficult to reform, because they often reflect embedded customs and belief structures in society that are reinforced by traditional political and religious authorities, and which may also continue to enjoy considerable popular support.

CEDAW Article 16 provides that States must take all appropriate measures to ensure equality of men and women in marriage, including equal rights to enter into marriage with free and full consent, equal rights and responsibilities during marriage and divorce, and equal rights with regard to guardianship of children.
and in respect of the ownership of property. As far as inheritance laws are concerned, CEDAW requires the adoption of laws that ensure equal treatment of surviving females and males and the criminalisation of property dispossession of widows by relatives of a deceased husband. As regards economic aspects during the marriage, the CEDAW Committee’s General Recommendation on article 16 stresses that laws should provide for both spouses’ equal access to the marital property and equal legal capacity to manage it (10). The right of women to own, acquire, manage, administer and enjoy separate or non-marital property should be equal to that of men. Regarding financial consequences upon dissolution of relationships, the General Recommendation emphasises that opportunities for husbands to avoid financial obligations towards their wives should be eliminated, compensation for the contributions made by the wife to family economic well-being during the marriages should be provided for, and different standards of fault for wives than for husbands, such as requiring proof of greater infidelity by a husband than by a wife as a basis for divorce, should be eliminated. The guiding principle should be that the economic advantages and disadvantages related to the relationship and its dissolution should be borne equally by both parties and that the division of roles during the spouse’s life together should not result in detrimental economic consequences for either party.

2.4 Physical integrity

Laws related to physical integrity include laws concerning access to health services, women’s sexual and reproductive health and rights (SRHR), and laws for combatting domestic violence and gender-based violence against women and girls, including femicide.

Article 4 of the UN Declaration on the Elimination of Violence against Women provides that States should develop legal sanctions to punish and redress the wrongs caused to female victims of violence. Victims should receive access to justice and effective remedies for harm suffered. Gender-based violence (GBV) against women constitutes discrimination under article 1 of CEDAW. CEDAW General Recommendation No. 35 recognises that the prohibition of gender-based violence has become a norm of international customary law. It defines different levels of liability of the State for acts and omissions committed by its agents or those acting under its authority - in the territory of the State or abroad- and for failing to act with due diligence to prevent violence at the hands of private individuals and companies, protect women and girls from it, and ensure access to remedies for survivors. The recommendation calls for the repeal of all laws and policies that directly and indirectly excuse, condone and facilitate violence11. Accordingly, State Parties to the Convention have an obligation to work towards the elimination of GBV, including by reviewing existing legislation and adopting laws to effectively combat GBV and provide redress for victims. The Convention provides that any existing norms of religious, customary, indigenous and community justice systems are to be harmonised with the standards of the CEDAW and that all laws that constitute discrimination against women, including those which cause, promote or justify gender-based violence or perpetuate impunity for such acts, are to be repealed.

The unique gender dynamics of domestic violence require a legal acknowledgment that women are disproportionately impacted by violence in the private sphere. The United Nations Handbook for Legislation on Violence against Women (2010) has recommended that legislation on GBV should be comprehensive and multidisciplinary, criminalising all forms of violence against women, and encompassing issues of prevention, protection, survivor empowerment and support (health, economic, social, psychological), as well as adequate punishment of perpetrators and availability of remedies for

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11 Committee on the Elimination of Discrimination against Women (2017), General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19.
survivors. The UN Handbook stressed that many laws on violence against women have focused primarily on criminalisation and called on States to move their legal frameworks beyond this limited approach to make effective use of a range of areas of the law, including civil, criminal, administrative and constitutional law, and address prevention of violence, and protection and support of survivors. However, not all countries have adopted stand-alone legislation, and some penal codes of the MENA region allow for violence in cases it is to discipline spouses or children or in cases where no ‘serious harm’ is caused.

The right to SRHR includes other rights, such as the right to health, the right to family planning, equal access to services, freedom from violence, the right to life (the right not to die from preventable, pregnancy-related causes or from child birth), and the right to physical integrity (the right to control one’s own body, among others). On reproductive rights, CEDAW guarantees women’s equal rights in deciding freely and responsibly on the number and spacing of their children and access to the information, education and means to enable them to exercise these rights. Women’s right to education also includes access to educational information and advice on family planning (CEDAW Article 10). The Beijing Platform for Action states that women have a right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.

As the legal framework covering physical integrity continues to evolve, it is increasingly being recognised that the phenomenon of sexual extortion (or sextortion) is not adequately addressed in many existing anti-corruption or GBV laws. The International Association of Women Judges defines sextortion as: “The abuse of power to obtain a sexual benefit or advantage. Sextortion is a form of corruption in which sex, rather than money, is the currency of the bribe.” There is a growing case for ensuring that the legal frameworks for GBV, workplace harassment and / or anti-corruption are reviewed so as to ensure that instances of sextortion are properly identified and addressed by the criminal justice system. This study will not analyse laws on sextortion further because no legal definition and framework have yet been established.

2.5 Laws that discriminate against girls

In human rights implementation status reports, challenges in girls’ rights protection are often grouped together with either women, or with boys; i.e., focusing on the rights of children in general. This lack of a special girls’ rights lens can lead to the specific challenges faced by girls being overlooked. There is a strong need for approaches that consider gender equality in relation to children as well as to adults, because girls risk facing double marginalisation due to their gender and age. Certain religious and customary rules - often based on values that are incompatible with gender equality standards and international child rights - discriminate against girls and undermine the realisation of their rights.

In this study, laws that discriminate against girls constitute a separate category due to the fact that girl-children face certain problems that are different from those of women. This category comprises discriminatory laws on the minimum age of marriage, sentencing of juvenile offenders and girl’s right to education.

Articles 16(1) and (2) of CEDAW call for all states to eliminate discriminatory laws related to marriage and family relations. Everyone should be granted the same rights to enter into marriage and to freely choose their spouse. CEDAW outlines that a minimum legal age must be set and that all marriages should be

12 Handbook for Legislation on Violence against Women, Department of Economic and Social Affairs Division for the Advancement of Women, United Nations, 2010.
15 Quoted in TI Study, 2020, p.7.
registered. Child marriages shall not have legal effect. Forced or child marriages are violations of the ICCPR and the Child Rights Convention (CRC) respectively.

Girls’ rights to education are protected in various international and regional conventions. CEDAW calls for states to take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights to education.

3 Global state of play as per category of law

3.1 Civil and Political rights

Women’s freedom of movement is limited by both discriminatory legislation and customary law in more than 50 countries and almost no reforms addressing this issue have taken place in recent years. In one in four countries, women are still not legally allowed to travel by themselves, and in 45 countries, women cannot legally apply for a passport or travel outside the country in the same way as men. Even when laws are not explicitly discriminatory, in many countries customary or traditional practices jeopardise women’s rights in practice (OECD, 2019a pp.152-154).

As regards laws on nationality, traditional views of men as the head of household still fuel discriminatory laws that assign the father’s nationality to his children. Laws that restrict women’s rights to pass on their nationality can take many forms. Women may for instance lose their nationality upon marrying a foreigner, or women who lost their nationality through marriage cannot regain it after divorce (Egypt, Iraq). Worldwide, 25 countries have nationality laws that deny women the right to confer nationality on their children on an equal basis with men. The majority of these States are in the Middle East and North Africa (12 countries) and Sub-Saharan Africa (6 countries). Around 50 countries have nationality laws with some gender-discriminatory provisions, such as denying women the right to confer nationality on foreign spouses, or the right to acquire, change, or retain their own nationality on an equal basis with men. A growing number of countries have taken action to achieve gender equality in nationality laws. In recent years, reform has been undertaken in Kenya (2010), Tunisia (2010), Yemen (2010), Senegal (2013), Suriname (2014), Madagascar (2017), and Sierra Leone (2006, 2017). However, since 2014, only three countries have amended discriminatory provisions in this area (Niger, Brazil and Ecuador) (OECD 2019a pp.145-147).

Nearly all countries grant women the right to vote or to stand for public office. Electoral quotas have gained international support, even though their introduction has been controversial in some countries, where they were criticised as being discriminatory against men and undermining a merit-based selection system. The success of gender quotas is influenced by cultural attitudes, and the nature of the parliamentary environment itself. Quotas or other special measures to ensure gender-balanced representation in elected public offices were established in 104 countries at national, and in 93 countries at local level (OECD, 2019a). The best performer of a gender balanced parliament is Nicaragua, where 46% of the members of parliament are women.

Women’s access to justice can be denied or inhibited due to the existence of discriminatory legal or quasi-legal frameworks for the administration of justice. In those countries where traditional (village) or religious justice forums operate either as an explicit part of the overall justice system, or with the de facto consent of the State, women do not always have the same rights as men to bring cases, to be present at or to speak during the proceedings. They may also be subject to discrimination in the adjudication of disputes and enforcement of decisions.

Reviewing the effects of discriminatory legislation on access to justice is crucial, as women’s justice needs are often different from men due to higher levels of poverty and power dynamics in the family and community. The specific needs of women and girls are recognised in the procedural rules in civil, criminal
and family courts in 61 countries worldwide. In 48 countries, a woman's testimony does not carry the same evidentiary weight as a man in some types of court proceedings. In 53 countries customary, religious or traditional practices or laws discriminate against women's legal rights to provide testimony, sue or hold office (OECD 2019a, pp.154-156). According to the World Justice Project, 53% of women have reported experiencing a legal problem within the last two years. However, only 13% turned to an authority or third party to help resolve the problem.  

3.2 Access to employment, economic opportunities and financial resources

In many countries, laws affecting women's legal capacity and ability to work, and laws related to conditions of employment are defined by social norms based on a male-breadwinner scheme. Still in 24 countries, women need to have the permission of their husbands to choose a profession or work (OECD, 2019a). Nearly 90 countries prohibit women from entering certain professions and in 51 countries women cannot work the same night hours as men (OECD 2019a, p.134).

Most governments have paid maternity leave schemes in place, but roughly half of the countries worldwide offer 14 weeks of paid leave, as provided for in ILO Convention Nr 183. Most countries also protect women's employment security by law when mothers are on maternity leave, but only 26% of the countries ranked by the OECD's SIGI index 2019 prohibit employers from asking about a women's intention to have children. Paid paternity leave is granted to fathers in 91 countries (OECD, 2019a, pp.135-136).


As regards equal pay, some 82% of countries ranked by the OECD’s SIGI index 2019 have introduced legislation on equal remuneration for work of equal value. In addition, 90% of countries prohibit discrimination in employment based on sex. However, only 27 countries legally require companies to report on how they pay women and men and only 20 of these countries impose penalties in case of gender discrimination in recruitment and promotion (OECD, 2019a, p.134).

Women’s legal rights to own, use and manage property continue to be restricted in many countries. Only 42% of countries grant equality in asset rights in law and practice. In 34 countries husbands are entitled to solely administer and dispose of marital property. Women’s equal right to property after divorce or separation is restricted in 29% of countries (OECD 2019a, p.125).

Most countries worldwide grant equal access to formal financial services. The legal frameworks of only three countries (Chad, Guinea Bissau, Niger) do not allow women to open a bank account. However, customary, traditional or religious laws in 33 countries discriminate against women’s right to open a bank account. Almost all countries grant women’s equal access to credit (OECD 2019a, p.130).

3.3 Family law

Countries worldwide continue to have multiple legal systems in which different personal status laws apply to individuals on the basis of ethnicity or religion. Some countries also have a civil legal code that may apply in prescribed circumstances or by choice. In some countries, however, individuals may have no choice as to the application of identity-based personal status laws. The notion of a seemingly personal or

private sphere, at home or related to the family, has long justified that less attention is paid to wrongdoings that pertain to the private life (Lippert-Rasmussen, 2013).

In 40 countries, the man is recognised as the sole head of household (mainly Western and Middle Africa and Western Asia). In 27 countries, women are required by law to obey their husbands. (OECD 2019a, p.76). Legal consequences for women that fail to obey their husbands are foreseen in 16 countries. Women’s authority over her children is restricted by law in 34 countries (OECD, 2019a, p.76). As regards divorce, in 28 countries, women do not have the same right as men to initiate divorce procedures. In 44 countries, there are different requirements for women to finalise a divorce (primarily countries in Western and Southern Asia, Western and Northern Africa). In 32 countries women are not allowed to remarry within a specified period of time after divorce (OECD 2019a, pp. 81-82).

As regards women’s inheritance rights, only 44 countries grant women and men the same rights in law and practice. Discriminatory legal inheritance rights are most common in countries in Africa and Asia. Disinheriting of the surviving spouse is still commonplace in almost 100 countries where there are contradictory and/or non-uniform legal regimes governing inheritance rights, including statutory, customary, and religious laws allowing simultaneous applications of different legal systems (OECD 2019a, p.86). In many cases, amending civil laws will not effectively address the problem of discrimination against women, as inheritance issues may in practice be governed by customary law (OECD 2019a, p.86). Women’s rights to inherit their husband’s property is denied under customary, religious or traditional laws in 102 countries worldwide; and in 103 countries property dispossession is not a crime (OECD 2019a, p.87).

3.4 Physical integrity

Violence against women and girls is a universal problem and stands out in the OECD’s Social Institutions and Gender Index (SIGI) 2019 Global Report 17 (OECD 2019a) as an issue where progress appears to have stalled in recent years. State practice suggests that the prohibition of gender-based violence against women has evolved into a principle of customary international law, which has also been recognised by the CEDAW General Recommendation No. 35 on gender-based violence 18. However, in many countries, legislation addressing GBV against women is non-existent, inadequate or poorly implemented 19. The erosion of the legal frameworks to eliminate GBV are often justified in the name of tradition, culture, religion or fundamentalist ideology and lead to a culture of impunity.

In many countries, existing laws on GBV are deficient: either they fail to include specific provisions for investigation, prosecution and punishment of the perpetrator, fail to provide protection and support services for survivors, do not address physical, sexual, psychological and economic violence, and/or the definition of sexual harassment does not cover the workplace, educational and sporting establishments, public spaces and cyber harassment. Furthermore, in circa 40 countries penalties for GBV are reduced in certain circumstances, e.g. in cases of marital rape (OECD 2019a, p.99). In 70 countries worldwide, perpetrators of sexual harassment do not face criminal charges, and in 11 countries rapists can escape prosecution if they marry their victim (OECD, 2019a, p.99). While sexual harassment is still not a criminal offence in 57 countries, 15 countries have implemented legal reforms to address this issue over the past five years 20. Finally, while the phenomenon of gender-biased sex selection has been declining in some countries, it is still very evident in others, most notably in Armenia, Azerbaijan, China, India, and Vietnam.

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17 OECD Social Institutions and Gender Index 2019 Global Report – ‘Transforming Challenges into Opportunities’
18 Committee on the Elimination of Discrimination against Women (2017), General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19.
19 CEDAW recommendation 2017, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19.
Discriminatory Laws Undermining Women’s Rights

There are an estimated 1.5 million new ‘missing women’ worldwide each year due to the continuing practice of sex-selective abortion (OECD 2019a, p.106).

In recent years, there has been a trend to outlaw the practice of FGM/C in African and Middle Eastern countries, where FGM/C is concentrated. Twenty-four countries in Africa and the Middle East have recently prohibited FGM/C by law or constitutional decree. Legislation prohibiting FGM/C has also been adopted in 33 countries on other continents, to protect girls and women with origins in practising countries.

According to the OHCHR, women’s lives are affected by discriminatory law and practices concerning their health throughout their life cycle (OHCHR, 2016). This discrimination is most prevalent when it comes to safeguarding women’s sexual and reproductive rights. Globally, the trend has been to liberalise abortion laws, as the public health implications of restrictive policies have become increasingly recognised, but serious setbacks have also taken place (Fine et al, 2017; Cook, Dickens, 2003). In its General Comment No. 36 (2018) on article 6 of the ICCPR, the UN Human Rights Committee stresses that “States parties must provide safe, legal and effective access to abortion where the life and health of the pregnant woman or girl is at risk, and where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or is not viable” (2018). The General Comment also underlines that State Parties “should not take measures such as criminalising pregnancies by unmarried women or apply criminal sanctions against women and girls undergoing abortion or against medical service providers assisting them in doing so, since taking such measures compel women and girls to resort to unsafe abortion”. It also asks States parties to “effectively protect the lives of women and girls against the mental and physical health risks associated with unsafe abortions.”

There are currently 26 countries worldwide with laws prohibiting abortion in all circumstances. In recent years several states in the US have passed laws restricting access to abortion, including in Alabama where the Human Life Protection Act 2019, the entry into effect of which is currently on hold pending the outcome of a Federal Court appeal, imposes an almost total abortion ban. Other examples include El Salvador and Nicaragua, which have amended their penal codes over the past 25 years to remove all exceptions to the general prohibition against abortion (Mayall & Fine, 2014). In both countries, the religious opposition plays a role in stigmatising abortions. These developments have been accompanied by restrictions on the funding of civil society organisations, which have traditionally advocated for the liberalisation process. Htun and Weldon found that the debate concerning legislative change in this category is, like in the case of family law, very much guided by support and objection from doctrines (Htun, Weldon, 2018). The World Health Organisation (WHO) reports that 25 million unsafe abortions are still carried out each year.

3.5 Laws that discriminate against girls

Over the past 25 years there has been a significant decline globally in the percentage of people marrying before they turn 18, from 25 down to 20.8 percent. Nevertheless, 18% of women currently aged 20 to 49 years were married before the age of 18, and 3% of women currently aged 20 to 49 years were married before the age of 15, with large variations between countries. Forced and child marriages continue to be prohibited in some countries.

23 For more details, see for example NY Times, Rebecca Lai (2019): “Abortion Bans: 9 States Have Passed Bills to Limit the Procedure This Year,” updated 29 May 2019; and Associated Press, Kim Chandler, 29 October 2019, ‘Federal judge blocks Alabama’s strict abortion ban’
commonplace in rural areas in some countries. In many Arab States, national laws do not affect the validity of a religious marriage and families can arrange marriages of children without risk of legal sanction. penalties (UNWomen, 2019c).

A few examples of discriminatory marriage laws, by no means exhaustive, are provided in the following paragraphs. Almost one in four countries worldwide continue to allow girls to be married with parental consent at a younger age than boys25.

Niger has the highest rate of child marriage in the world, and although the legal minimum age to marry is 15 for girls and 18 for boys, the majority of marriages in the country are in fact arranged in accordance with customary traditions. In the Philippines and southernmost Muslim majority provinces of Thailand, Muslim girls may marry already when they reach puberty and have their first menstrual cycle while the legal age of marriage for Muslim boys is 15. In civil law, the legal age for both sexes is 17 years in Thailand and 18 years in the Philippines. In Malaysia the minimum legal age is set at 18 for boys and 16 for girls, and early marriage can serve as a way to avoid sentencing for statutory rape. However, under the parallel Muslim legal system, Muslim Malaysian girls younger than 16 can get married with approval from the Sharia court. Similarly, in Iran, the courts - or alternatively fathers - may grant permission for girls to marry under the age of 13, which is the minimum legal age. By comparison Iranian law sets the minimum age of marriage for boys at 15. Other countries with discriminatory marriage laws include Afghanistan, Burkina Faso, Syria, Sudan, Seychelles, Gabon, Cameroon, DRC and Cameroon (ACPF, 2019). Further, according to a UN report, early marriage has become a coping strategy for many Syrian refugees during the ongoing civil war (UN, 2016).

In some countries the minimum legal age at which girls may consent to sex is lower for girls than for boys (Ince, 2016; UNICEF, 2016). For example, while the age of sexual consent for girls in DR Congo and Angola is 14 and 16 years respectively, it is 18 for boys in both countries (UNFPA, 2017).

Iran is the only country in the world which prescribes different ages of criminal responsibility for juvenile offenders in death penalty cases on the basis of sex – 13 years for boys and just 9 years for girls. (In Saudi Arabia, the law previously allowed judges a discretion – based on an assessment of the maturity of the juvenile offender at the time the offence was committed – in determination of sentences in death penalty cases (International Bar Association, 2018). But on 27 April 2020, Saudi Arabia announced that it would no longer impose the death penalty on juvenile offenders26.

In relation to the child’s right to education, the equal enjoyment of the right is most often compromised by related factors such as the greater likelihood of girl children marrying at an early age, due at least in part to the continued existence of discriminatory marriage laws. However, girls are discriminated against explicitly in cases of pregnancy in some countries. At least Equatorial Guinea and Tanzania continue to maintain laws banning pregnant girls from attending school (HRW, 2019a). In 2018 and again in 2020, the World Bank postponed granting loans to Tanzania due to the discriminatory ban for pregnant girls27. Beyond these laws, other countries have enacted policies that are equally discriminating, including unreasonable readmission criteria that mainly apply to girls after childbirth (OHCHR, 2017b). The trend is that laws and practices concerning the exclusion of pregnant girls from school are being revoked. Until very recently Sierra Leone had a law prohibiting pregnant girls from attending school, which was enforced through checking girls for signs of pregnancy. In 2019, women's rights organisation Equality Now, together

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with a coalition of CSOs, filed a case in the ECOWAS Court of Justice which resulted in Sierra Leone being ordered to revoke the ban in December 2019 (Equality Now, 2019b; Amnesty International, 2019b). Other related reforms have taken place over the past two years in Burundi, Mozambique and Zimbabwe (HRW, 2019b).

4 Recent developments in law reform

4.1 Global state of play of legal reform toward gender equality

Over 2.5 billion women and girls around the world are affected by discriminatory laws and the lack of legal protections, often in multiple ways (McKinsey Global Institute, 2015). This is despite the fact that at least 191 constitutions include provisions on equality and non-discrimination and 189 countries have ratified CEDAW. A sizeable number of States have made reservations to CEDAW with respect to articles 2, the obligation to eliminate all forms of discrimination against women, as well as article 16, on the equality of men and women in marriage and family relations (OHCHR, 2019). Despite steady progress in many parts of the world, the World Bank found that 56 countries did not make any reforms to improve formal legal equality between men and women in the areas of employment and access to economic opportunities over the past decade (World Bank, 2019b). Still today, 104 countries have laws preventing women from working in specific jobs and in 18 economies, husbands can legally prevent their wives from working (World Bank, 2019a).

<table>
<thead>
<tr>
<th>Number of countries where laws grant equality</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>183</td>
<td>countries grant equal right to open bank accounts</td>
</tr>
<tr>
<td>155</td>
<td>countries have laws addressing domestic violence</td>
</tr>
<tr>
<td>147</td>
<td>countries give equal inheritance rights to boys and girls</td>
</tr>
<tr>
<td>140</td>
<td>countries have laws that prohibit sexual harassment at the workplace</td>
</tr>
<tr>
<td>88</td>
<td>countries have equal pay laws</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Number of countries where discriminatory laws persist</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>36</td>
<td>countries where women cannot apply for a passport in the same way as men</td>
</tr>
<tr>
<td>48</td>
<td>countries where women cannot obtain a judgment of divorce in the same way as men</td>
</tr>
<tr>
<td>72</td>
<td>countries where women do not have the same rights to remarry as men</td>
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<tr>
<td>74</td>
<td>countries where women are not able to work in the same industries as men</td>
</tr>
<tr>
<td>75</td>
<td>countries do not provide paid maternity leave of at least 14 weeks</td>
</tr>
<tr>
<td>85</td>
<td>countries where childcare is not accounted for in pension benefits</td>
</tr>
</tbody>
</table>


Table 2: Overview of global status for reform of laws that discriminate against women

28 UN Women, Global Gender Equality Constitutional Database. Available here: https://constitutions.unwomen.org/en
The number of states with laws combating domestic violence was only 106 in 2010 but as of 2020 155 countries have now adopted such laws. The following countries are among the most recent to enact new legislation on domestic violence, all of them for the first time: Armenia, Burkina Faso, Djibouti, Eswatini, Liberia, Morocco, Tunisia and the United Arab Emirates. As discussed later in the report, the adoption of legislation on GBV in Armenia was an explicit condition for the granting of EU budgetary support.

Although 140 countries have passed laws that prohibit sexual harassment at the workplace as of 2020, a clear increase from 107 in 2010, not all have introduced provisions for civil remedies or criminal penalties. Countries like Argentina, Bangladesh, Chile and Moldova have laws against sexual harassment but without criminal penalties or civil remedies for victims harassment. In practice, the absence of sanctions or remedies linked to the law tends to act a disincentive for women to report cases of harassment to the authorities.

In 2014, UNHCR launched a campaign to end statelessness by 2024. Nationality laws that discriminate against women are among the primary causes behind statelessness. Looking back at the global situation, sixty years ago, the majority of countries had nationality laws that discriminated against women (UNHCR, 2018). Today, there are still 25 countries that do not grant mothers the same rights as fathers to confer their nationality on their children. Twelve of these countries are in the Middle East and North Africa, while six are found in Sub-Saharan Africa. The number of countries that restrict women’s ability to acquire, retain or change their nationality, and to confer nationality to their spouses, is much greater: around 50 countries.

In many countries where civil law has been reformed, customary and religious laws continue to be applied despite conflict between the provisions of these laws and formal legislation. Equality may be guaranteed before the law, but there are cases – like the case study countries Bangladesh and Gambia – where discriminatory, customary laws take priority when it comes to personal status or family law. The elimination of discriminatory religious or customary laws has proven difficult. This is due to several reasons, including that civil law may be associated with colonial rule and the perceived marginalisation effect that this has on minority groups who feel like they are forced to make a choice between women’s and cultural rights (Ndulo, 2011; UN Women, 2019c).

4.2 Regional trends

This chapter will explore the current situation with respect to reform of gender-discriminatory laws in different regions of the world. The regional groupings are the same as those used in the World Bank’s Women Business and the Law (WBL) index, which analyses laws affecting women’s participation in economic life and in the workplace. The WBL index covers the following indicators: mobility, workplace, pay, marriage, parenthood, entrepreneurship, assets and pension. The index is generally very comprehensive, but a few limitations need to be noted. Since it is focused on women’s economic participation, it does not address e.g. political rights, laws on reproductive rights or laws that affect girl children, such as laws that prescribe different minimum marriage ages for boys and girls.

In addition to the WBL index, this chapter will refer to the OECD’s Social Institutions and Gender Index (SIGI), published once every five years, which looks at discrimination in the areas of family, civil liberties,
physical integrity and access to financial resources. The SIGI Index does not focus exclusively on discriminatory laws, as the WBL index does, but also looks at social norms and practices.

### 4.2.1 Sub-Saharan Africa

According to the 2019 SIGI report, African countries made the greatest progress towards closing the gender equality gap in the five years between 2014 and 2019 (OECD, 2019a). Of the 15 countries which adopted laws against domestic violence during the five-year period, 10 of them were in Africa. Further, the great improvements of Sub-Saharan countries are also evident in the World Bank’s publication “Women, business and the law 2019 – a Decade”. With somewhat overlapping indicators, the World Bank concluded that countries in Sub-Saharan Africa had made the most progress during the 10-year period 2009 – 2018 in reforming laws related to **gender-based violence**. The high performance of Sub-Saharan countries is partially explained by the fact that there are many countries in the region, but also by the large room for improvement that existed at the start of the period under consideration.

However, women’s and girls’ rights remain particularly vulnerable in states with ongoing conflicts and political instability. For example, Sudan, Guinea-Bissau, Congo (Brazzaville) and Somalia all score very low on gender equality indicators35.

The statistics show that more than a third of women between 20-24 years in the region are married before they turn 18 years of age (UN Women, 2019c). According to the NGO Girls Not Brides, 18 of 20 countries with the highest prevalence of child marriage are in Africa. Amendments raising the minimum age for marriage do not often result in significant improvements in the lives of girls, as customary and religious laws take precedence in many communities. In addition, laws may come with loopholes that allow for younger persons to get married with parental consent. Angola, Equatorial Guinea, Sudan and Eritrea still have legal provisions that require girls to marry their abuser (ACPF, 2019). Another issue pertaining to marriage is that of **obedience laws**, still in force in Equatorial Guinea, Gabon, Mali, Mauritania and Sudan37.

Girl’s and women’s right to **physical integrity** is compromised by female genital mutilation (FGM), which continues to be widely practiced in many Sub-Saharan countries. At the time of writing, it has not yet been criminalised in Chad, Liberia, Mali, Sierra Leone, Sudan or Somalia. According to statistics from Somalia, more than 90% of girls and women are affected (ACPF, 2019). Further, 18 countries in Sub-Saharan Africa have not yet adopted laws on domestic violence38.

Most countries have very restrictive abortion laws and in Mauritania, Senegal, Gabon, and Congo (Brazzaville) abortion is completely prohibited. The situation for disabled girls and women as regards sexual and reproductive rights is of particular concern. Several countries, including Kenya, have laws that allow for performing forced abortions on persons with intellectual or psychosocial disabilities (ACPF, 2019).

There is also much room for improvement in relation to securing women’s legal **rights to decent employment** and economic empowerment. 21 out of 46 countries in the region maintain restrictions of some kind on where or when women are permitted to work39.

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38 ibid.
Concerning **women’s civil and political rights**, 30 countries in Sub-Saharan Africa retain nationality laws that discriminate on the basis of gender. Furthermore, circa one third of countries in the region deny women equal rights to confer nationality to their children.\(^{40}\)

Finally, regarding **women’s rights to movement**, 13 out of the 46 Sub-Saharan nations have different requirements for women and men when applying for a passport and 19 countries have stricter requirements for women when choosing where to live (World Bank, Women, Business and the Law dataset).

Sub-Saharan Africa countries have made extensive use of gender quotas to increase the number of female political representatives. The regional average for women’s representation in parliament is 24%\(^{41}\).

### 4.2.2 Middle East and North Africa region

Profound gender inequalities persist in many countries in the Middle East and North Africa (MENA) region, the Gulf countries in particular. Women in this region face significantly more legal obstacles relative to men than in other parts of the world. In line with the global tendency, most discrimination is present in **family law and personal status law** (Dalacoura, 2019). The region is characterised by strong cultural rules that constrain women’s participation in public life and impose the role of obedience upon women (UN Women, 2019c). The variation between areas in the Middle East is broad: legal discrimination against women in Turkey and Israel has greatly decreased while Yemen as well as the West Bank and Gaza are lagging behind. In Muslim majority countries, more conservative interpretations of Islamic law are associated with more explicit legal discrimination, while progressive interpretations have brought improvements in gender equality (Dalacoura, 2019). Many states’ constitutions provide that Sharia is a source of legislation, sometimes even the principal source. Most countries maintain a hybrid legal system combining formal legal codes with Sharia, which makes the legal context complex and multi-layered. Furthermore, the majority of countries in the region maintain reservations to CEDAW relating to the consistency of national laws and policies with Sharia principles.

Over the past 10 years, there has been a trend towards constitutional reforms in the region addressing human rights and gender equality, and most national constitutions now recognise the gender equality principle. However, the constitutions in Jordan, Kuwait, Lebanon and Saudi Arabia still lack provisions guaranteeing equality between men and women (UNDP, 2019). In many countries, personal status matters continue to be decided by religious courts according to Islamic laws, even if those are in conflict with general equality and non-discrimination principles in the constitution.

Regarding **women’s political and civil rights**, the majority of countries in the region maintain some form of legal restrictions on women’s mobility; more than half restrict women from traveling outside their homes or choosing where to live freely in the same way as a man. Similarly, more than half of the countries in the region retain guardianship laws that require a married woman to obey her husband.\(^{42}\) The average representation of women in national parliaments in the region is 16.8 percent\(^ {43}\).

The right to abortion is very restricted in most countries, especially in Egypt and Iraq, and many women receive prison sentences for terminating pregnancies. Although FGM is banned in the countries most affected, it still continues to be widespread among girls in e.g. Djibouti and Egypt. As regards **violence against women**, only half of the countries in the region (10 out of 20), have adopted laws on domestic violence\(^ {44}\). Legal protection is even weaker with respect to addressing sexual violence as a form of

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\(^{40}\) The Global Campaign for Equal Nationality Rights website. Available here: [https://equalnationalityrights.org](https://equalnationalityrights.org)

\(^{41}\) IPU, 1 January 2019, Available here: [http://archive.ipu.org/wmn-e/world.htm](http://archive.ipu.org/wmn-e/world.htm)


\(^{44}\) Ibid.
domestic violence (World Bank, 2018). In some countries, rape is specifically defined in the penal code so as to exclude instances of marital rape, e.g. in Egypt, Lebanon and Syria. In Iraq, the Penal Code provides for the right of husbands to discipline their wives. In Libya, the Penal Code provides that a man who beats his wife, daughter or sister without causing serious harm when he finds her in the act of committing adultery or unlawful sexual intercourse shall not be punished (UNDP, 2019).

During 2019, Saudi Arabia enacted reforms to several gender-discriminatory laws. This led (among other things) to its score on the World Bank’s Women, Business and the Law index increasing from 38.1 to 70.6, the highest score for any country in the region. It should be noted, however, that Saudi Arabia continues to score well below the regional average on other international indexes that assess outcomes rather than legal framework, e.g. the World Economic Forum’s Gender Equality Index. Over the past 10 years, the country has made several reforms to its guardianship laws (although they have not yet been fully abolished), and introduced employment discrimination protection. At the same time, numerous women’s rights activists advocating for women’s legal equality have been imprisoned or placed under house arrest, and women do not yet enjoy legal equality in the area of political rights.

Although child marriage is clearly on the decline in the region and the legal minimum age for boys and girls has been harmonised in most countries in the region (with the exception of Iran that sets the age limit for girls at 13) practically all countries still allow girls to marry younger than the minimum legal age with parental and judicial consent. The practice of customary marriages outside the formal legal system also remains commonplace, particularly in rural areas. Since child marriage is not criminalised, both early marriages and children born to these unions often go unreported (NCCM Child Rights Observatory, 2018).

4.2.3 Latin America and the Caribbean

Family law is the legal field in Latin America and the Caribbean where discriminatory laws against women are most widespread. Despite many promising reforms, the rate of child marriages across the region has remained more or less the same over the last 25 years. In 2015, Ecuador and Panama set the legal age at 18 having previously permitted girls to marry two years before boys. Further, Costa Rica and Honduras adopted laws prohibiting marriage under the age of 18 in 2017 (Garcés and Vega, 2016). The legal reform in Guatemala was two-phased: child marriage was outlawed in 2015 but a loophole in the Civil Code still allowed for girls to marry at the age of 16. It was not until 2017 that the minimum age of marriage was set at 18 without exceptions. Similarly, Honduras and El Salvador established a minimum age of marriage of 18 without exceptions in 2017. Civil society and UN Women were active in pushing for these reforms in Central American parliaments (UN Women, 2017a). More recently, in 2019, Brazil banned child marriage for under 16-year-olds, at the same time revoking the previous exceptions to the law of pregnancy or to avoid sentencing for statutory rape. Notwithstanding these changes, girls in most countries in the region are still allowed to marry before they turn 18 with civil judge authorisation or parental permission. For example, in Colombia girls older than 12 and boys older than 14 can marry with parental permission (OECD, 2019a).

Legal developments concerning women’s physical integrity are mixed. While legislation on violence against women has advanced, with the Convention of Belém do Pará having been ratified by 32 of 33 LAC states, abortion remains illegal in all circumstances in 4 countries and is accessible only under limited conditions in a further 22 countries. Three of the five countries worldwide that prohibit abortion under any circumstances - even in cases of rape, incest, or if a mother’s life is in danger - are countries in Latin America and Caribbean (El Salvador, the Dominican Republic, and Nicaragua; note that Chile reformed its

47 Human rights standards do not require all restrictions on abortions to be banned. This is merely an indicative figure to gain an understanding of the political context in the region.
law in 2017: Law 21.030, published on 23 September 2017, regulates the decriminalisation of the voluntary interruption of pregnancy on three specific grounds: danger to the life of the mother; embryo or fetus suffering from a pathology incompatible with life outside the uterus; and pregnancy resulting from rape).

Women’s reproductive rights are a politically charged subject throughout the region. An important difference between the European and the Inter-American Convention on Human Rights lies in the definition of the beginning of life. While the European Convention on Human Rights is silent on this issue, the Inter-American Convention on Human Rights defines life from the moment of conception, which has implications for the legal protection of women’s reproductive rights in the region.

There are also notable legal gaps in the area of women’s economic empowerment. 22 of 32 countries in the region do not have a law guaranteeing equal pay for work of equal value. In addition, 9 countries place restrictions on the industries in which women may work. In the majority of Caribbean countries protection of pregnant workers is weak or non-existent, and parental leave is not regulated in the law. There has been little progress in this regard over the past decade (World Bank, 2019a). In addition, 20 out of 33 Latin American and Caribbean countries do not provide paid maternity leave of at least 14 weeks, the minimum standard established under ILO Convention 183.

Women’s right to land and non-land assets is protected by law, and even in the constitutions of five countries in the region (OECD, 2014). However, discriminatory customs restricting women’s ownership of land continue to be practiced in some countries, especially within indigenous communities. Further, most countries do not have laws on protection against discrimination in access to financial services, such as credit.

Over half of the 32 countries in the region have introduced gender quotas by law to promote women’s political participation, including Venezuela and Chile in 2015. But the large majority of these countries are Latin American rather than Caribbean (OECD, 2019).

4.2.4 East Asia & Pacific

Conflicts between provisions of civil, customary and religious legal systems are common in many countries in the region. Customary laws and practices may lead to different rights and entitlements to land for men and women, despite the existence of non-discriminatory formal laws. Malaysia, Indonesia, the Philippines and Singapore all have plural legal systems that discriminate against Muslim women in inheritance, divorce, and child custody and maintenance arrangements. Furthermore, Brunei, the Marshall Islands, Palau and Tonga do not guarantee sons’ and daughters’ equal inheritance rights.

The prevalence of harmful practices such as early marriage of girls is lower in this region than others but common in some countries, e.g. in Lao PDR where 37 % of girls marry before they have turned 18. Various ethnic groups in the country maintain discriminatory customary practices that allow for forced marriage and statutory rape (UNDP, 2011).

Over the past decade, the regional focus has been on establishing and strengthening gender-based violence laws. Today, only Micronesia and Myanmar do not have laws on domestic violence. The average regional score for this indicator in the World Bank’s Women, Business and the Law study rose by more than 5 points between 2009 and 2019 (World Bank, 2019a). The region can loosely be divided into a handful of top reformers and a group of countries where progress towards formal gender equality is slow or has stalled. Taiwan, Hong Kong and Lao PDR score highest in the East Asia and Pacific region on the WBL index.
while Brunei and Malaysia perform worst. In addition to the above-mentioned countries, progress has been very slow in the following countries: Micronesia, Marshall Islands, Palau, Papua New Guinea, Solomon Islands, Tonga and Vanuatu. Cambodia and Indonesia have also failed to make progress over the past decade. On the other hand, Timor-Leste’s and Samoa’s scores on the WBL Index have risen from 53.1 to 83.1 and from 54.4 to 80 respectively over the past 10 years, surpassing the regional average of 75.2 and accounting for the largest single-country improvements overall.

Much remains to be done in regard to reform of laws regulating women’s economic opportunities. Only five out of 25 countries in the region mandate equal remuneration for work of equal value. Paid maternity leave of at least 14 weeks is not available to women in 16 out of 25 countries, and 11 countries do not prohibit the dismissal of pregnant women. Further, 22 out of 25 countries do not take into account periods of absence due to childcare in the calculation of pension benefits.\(^2\)

In terms of women’s civil and political rights, three countries in the region still discriminate against mothers by preventing them from conferring nationality on their children: Brunei, Kiribati and Malaysia. In addition, Singapore and the Solomon Islands have discriminatory laws regarding women’s ability to acquire, change and retain their nationality, and to confer nationality to spouses. Women’s political representation in national parliaments is slightly up from 2014, when the regional average was at 18.6 % to 20.5 % in 2019.\(^3\)

While there has been considerable progress overall in the region, recent developments in Brunei illustrate just how quickly existing legal entitlements and protections can be scaled back. Brunei enacted a Sharia Penal Code in 2019, which according to the UN has a disproportionate negative impact on women and girls (UNFPA, 2019). Among others, the Code contains provisions criminalising the instruction of children in religions other than Islam, prescribes the sentences of stoning for crimes of adultery and sodomy, and public whipping for abortion.

In Malaysia, some steps have been taken towards legislating against sexual harassment and child marriage, but the reform has stalled. A Gender Equality Bill was first proposed and debated more than 10 years ago but is yet to be adopted (Lim, 2019). Along with Brunei, Malaysia is the only country in the region that retains a legal provision obliging a married woman to obey her husband.

4.2.5 Europe (outside the EU) & Central Asia

Central Asia and Europe is among the highest performing regions both in the WBL and SIGI indexes. However, discriminatory social norms are deeply rooted in some countries and the persistent preference for sons is evident in the phenomenon of missing girls, especially in the Caucasus. Customary laws that discriminate against women continue to be applied in some countries in the areas of family law and laws concerning physical integrity. Women do not have equal rights to file for divorce under customary systems in operation in some communities in Armenia, Azerbaijan, Georgia, Mongolia, Tajikistan, Turkmenistan and Uzbekistan. Further, customary inheritance laws applied in Armenia, Georgia, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan discriminate against girls and widows (OECD, 2019b). Across the region, the rate of prevalence of child marriage is 8 %, and all countries, except Turkmenistan, retain legal exceptions allowing girls to marry younger than boys.

Seven further countries in the region introduced laws on domestic violence over the last decade, leaving Russia and Uzbekistan as the only two countries yet to adopt a domestic violence law. A draft law was recently introduced to parliament in Russia but it falls short of international standards in the area. Laws on


sexual harassment have not yet been adopted in Armenia, Belarus, Kazakhstan, Russia, Tajikistan and Uzbekistan. Furthermore, an analysis on the quality of existing laws on VAW has identified serious gaps in many instances, including in how the law addresses rape and abuse within the family unit (Equality Now, 2019a). Most existing laws on sexual violence are not in compliance with the provisions of CEDAW or the Istanbul Convention. There are large variations between the laws as regards scope of operation and the way in which they address consent and coercion. Further, most criminal codes in the region allow for exemption from prosecution in statutory rape cases, either through reconciliation between the perpetrator and the victim, bail or procedural bargaining (ibid.).

Laws and statistics on employment and entrepreneurship also have significant disparities between men and women in the economic domain. Women are not allowed to work in the same industries as men in 12 countries; Azerbaijan, Belarus, Bosnia and Herzegovina, Kazakhstan, Kyrgyz Republic, Montenegro, North Macedonia, Russia, Tajikistan, Turkey, Ukraine and Uzbekistan.

Women’s civil and political rights, including the right to access to justice, citizenship and participation in politics are protected by law in all countries in the region. Eight countries have measures in place to promote women’s equal representation in politics (OECD 2019b). Women’s representation has increased from around 25% in 2014 to 29% in 2019.

4.2.6 South Asia

The lives of girls and women in the region are negatively affected by religious family law, child marriage, unequal inheritance laws and stereotypical gender roles where girls are seen as being dependent on men and responsible for management of all household affairs (UNDP, 2016). Son preference is common in countries the region, and in addition to discrimination based on gender, many girls and women in the region face intersectional discrimination on the basis of caste.

Bangladesh, Pakistan and in particular Afghanistan all have very low scores on the WBL index, with little prospect of significant improvement to the existing legal framework in the short to medium term (World Bank, 2020). In more than half of the South Asian countries, sons and daughters do not have equal inheritance rights, and only Bhutan and Nepal have laws in place mandating equal remuneration for work of equal value. Nepal’s progress over the past decade is worthy of note, with its score on the WBL index increasing from 49.4 in 2010 to 73.8 in 2020. Despite this progress, there are deep and persisting inequalities in the Nepalese caste system. Further, Nepal is among the few remaining countries in the world that discriminate against women in their ability to confer nationality on their children and spouses. Women’s ability to acquire, retain or change their nationality is also restricted in Nepal. In addition to Nepal, Pakistan and Bangladesh also have discriminatory nationality laws.

As to girls’ rights, discriminatory religious laws and customary practices continue to be widely applied in relation to marriage, with one in two girls in the region marrying before they turn 18. While the legal minimum marriage age is already lower for girls in many countries, religious statutes and customary laws which apply to members of particular religious communities allow parents to consent to even lower ages to marry off their daughters (Center for Reproductive Rights, 2014). Traditions and customs often take precedence over personal consent, leaving affected girls with no choice with most marriages being

55 Ibid.
58 UNICEF, Gender Equality in South Asia: https://www.unicef.org/rosa/what-we-do/gender-equality
planned by parents or relatives (OECD, 2019e). Forced marriages of girls abducted from religious minority families are not uncommon in some countries (OECD, 2019f).

Further, the rights of married women remain limited. In Afghanistan, married women are obliged by law to obey their husbands in sexual matters under the Shi’a Personal Status law (OECD, 2019e). Sri Lanka does not yet recognise marital rape as a criminal offence (OHCHR, 2017c). Most countries in the region have discriminatory laws concerning the right to divorce. Regarding physical integrity, women’s reproductive rights are further limited by restrictive abortion laws in Afghanistan, Bangladesh, Bhutan and Sri Lanka. Approximately 20% of MPs in parliaments across the region are women, below the global average of 25%, but in Sri Lanka the figure is just 5%.

5

Factors facilitating change

Given the inherent cultural, political and situational differences that exist around the world and that are present in different legal bodies, there is no harmonised understanding of how to identify and investigate good practices, particularly in the context of the elimination of discrimination against women’ (OHCHR, 2017a, p. 5 B. 15). For this reason, programmes need to be adapted to the local context (IDLO, 2019). Furthermore, researchers face methodological challenges in attempting to isolate the precise factors that trigger legal reform in specific contexts.

Nevertheless, some broader conclusions can be drawn from a comparative study of 70 states over three decades on the factors that underpin legislative change in favour of women. Htun and Weldon are able to ascribe different logics behind state action related to different types of women’s right issues (Htun & Weldon, 2018). The three logics identified describe how the broad range of laws on women’s rights conform to different policy logics and are championed by different actors for varying ends.

Firstly, the authors identify that achievements toward the elimination of violence against women have been linked to a logic of ‘status politics’, referring to the aim of addressing discrimination originating in the devaluation of people who identify with a specific group, and ultimately transforming the group’s status. In this context the idea is applicable to how feminist movements and international agreements have advanced the acknowledgement of women as a specific ‘status group’. Through campaigning and mobilising societal action, feminist movements have successfully managed to challenge the historical social order, where women have been treated as a lower status group. Such actions demanding legislative reform have been the main trigger behind government action on violence against women (Weldon, 2002).

Achieving equality in the workplace is another issue where developments have been linked to the increasing recognition, globally and at national level, of women as a status group.

As discussed above, family law is the legal field which is most difficult to reform and where legal pluralism is most common (UN Women, 2019c). Strong institutional presence of religious authorities has been linked to slower progress in family law reforms. The variation between states does not lie in differences in religion but in how institutionalised religion is in society (Htun and Weldon, 2013a). Changes in family law, as well as issues relating to health and reproductive rights, tend to be motivated by a logic that Htun and Weldon call ‘doctrinal politics’, as the themes touching upon the historic domain of religious doctrine are debated and often resolved in a manner that reflects the historical relationship between state and religion. Feminist movements’ challenges to these policy areas essentially challenge this relationship and for this reason reform efforts are often perceived by traditionalists as a threat to the entire religious and state system.

60 IPU, 2019: https://www.ipu.org/parliament/BD and https://www.ipu.org/parliament/LK
The third and final logic, identified by Htun and Weldon is that of ‘class politics’, which works through expanding redistribution practices and promoting equality between social classes. This logic has played a key role in improving family leave policies, an essential component in women's equality in employment. Progressive social policies and female legislators have had a positive association with issues that fall under class politics.

In order to understand how the process of elimination or reform of discriminatory laws is related to social change, it is useful to combine insights from research on how legal consciousness is shaped with findings identifying the broad drivers of normative change. Legal consciousness, defined as “participation in the production of legal meanings, cannot be understood independently of its role in the collective construction of legality, or the rule of law” (Silbey, 2008). From a broader theoretical perspective, legal reform is understood to be the product or outcome of a change in people's legal consciousness; that is, legal reform towards eliminating discrimination is the result of a change in people's understanding of the notion of legal equality. Ideally, such a change in legal consciousness would occur at the societal level, since change from the top may result in resentment or even violence against women if prevailing social beliefs are not taken into account (Chiongson et al. 2011). Legal reforms that are not accompanied by or undertaken in response to social change tend to be poorly enforced or overridden by existing customary laws.

Gender norms underlie people's perceptions of legal equality, and the process of changing existing social norms is complex. Where change does take place it is likely to be due to a combination of factors. Research has identified the following factors as being central to shaping social norms around gender: education, economic change, introduction of and exposure to new ideas, and political and social mobilisation (ODI, 2014). Women's increased agency, which is facilitated through these factors, e.g. by increased opportunities to employment and education, allows women to question unfavourable norms and challenge traditional identities (Muñoz et al. 2012).

Achieving meaningful legal reform that is accompanied by social transformation is not a given, although top-down reforms may serve well in creating a momentum for social change. The importance of people's agency in transforming society is evident in guiding policy documents and strategies that emphasise the role of local women in driving change. Ideally, local women themselves will act as agents for change, be it as legislators, lawyers or community activists.

This chapter will describe in more detail how recommendations from women lawyers and legal experts, advocacy by women's movements, and women’s representation in decision-making have proven successful in advancing reform toward gender equality.

As regards labour rights, economic and labour market needs may accelerate the abolition of discriminatory laws. In countries where restrictions that prohibited women from entering certain professions have been lifted, the reasons have often been related to labour shortages in male-dominated industries or to the recognised economic benefits of higher female labour force participation.

5.1 Women’s representation in national parliaments and at local level

Women remain underrepresented in all aspects of political life, including elected office. The global average of women’s representation in parliament in 2019 was just 24.5%61. Increased women’s political representation has been shown to have a positive effect on the removal of discriminatory laws (Hallward-Driemeier et al. 2013). The cases of Costa Rica, North Macedonia, Spain, Rwanda and Nepal, among others, demonstrate how the introduction of quotas for elected women legislators were followed by broader legal reforms expanding women’s rights (UN Women, 2011). In addition, women's caucuses have effectively

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61 Inter-Parliamentary Union, Situation as of 1st October 2019: [http://archive.ipu.org/wmn-e/world.htm](http://archive.ipu.org/wmn-e/world.htm)
advanced women’s interests in many countries, including in Burundi and the Republic of Côte d’Ivoire. In both countries, the IPU responded to a request for technical support to drive a gender equality agenda in parliament; helping to establish a women’s caucus in Côte d’Ivoire and to support reforms advancing women’s rights in both.

Attitudes and behaviour of female legislators tend to differ from their male counterparts. However, differences seem to be more apparent in specific policy issues rather than across all areas of legislative development. In particular, female legislators have different priorities than men when it comes to issues related to women, children and family. This is evident both in what female legislators declare as their preferences and where they act as sponsors of legislation (Schwindt-Bayer, 2006; Dodson and Carroll 1991; Thomas and Welch 1991; Swers 2002). Female legislators have particularly been associated with the adoption of more generous family leave policies, sex equality in family law, and increased equality in laws related to the workplace (Htun & Weldon, 2018).

On the other hand, women’s increased representation has not been proven to trigger early action on all key women’s rights issues. In the case of violence against women, the percentage of parliamentary seats held by women did not correlate to an increase in government responsiveness (Htun & Weldon, 2018). This also appears to be the case with reform of reproductive rights. Rather than simply increasing the number of female MPs it has been acknowledged that women also need to hold positions in ministries responsible for development of policy in these areas (Annesley et al. 2013). It has also been found that in policy issues where there is a convergence between women’s rights and the interests of a particular social class, such as funding in the area of reproductive rights, feminist movements have been able to rely more on left-wing parties than on female representatives per se (Htun & Weldon, 2018). This may be due to the fact that not all female MPs hold progressive positions on women’s rights issues. Furthermore, despite their presence in parliament, female MPs may not always have the necessary political agency to facilitate change, or they could face other insurmountable barriers such as deeply entrenched cultural norms (UN Women & Others, 2018).

In addition to the highest decision-making level, women’s representation also needs to be advanced in local government. Initiatives supporting women’s participation in politics and in particular, the presence of women in local or rural governance, have been demonstrated to have positive impacts on gender justice and equality (OHCHR, 2017a, p. 8 C36).

5.2 Advocacy by women’s organisations

A body of literature exists that delineates the complex relationship between feminist activism and legal reform. Feminist movements are known to be key catalysts of change in legal reforms advancing women’s rights. According to UN Women, changes to discriminatory family laws are often the result of persistent advocacy by women’s right organisations (UN Women, 2019). They articulate group consciousness and work tirelessly to form public opinion. To demonstrate just how central the role of feminist movements has been, a study across 70 countries found that feminist activism was the key factor in driving policy change and that legislation on violence against women was most progressive in those countries where feminist movements were strongest (Htun & Weldon, 2013b). In a similar manner, another study on family laws covering 70 countries found that autonomous women’s movements are associated with the adoption of more egalitarian family laws (Htun and Weldon, 2011). Recent triumphs for women’s rights activists in the field of reproductive rights include Ireland’s decision to legalise abortion.

Many people interviewed in connection with this study have emphasised the crucial role that women’s rights organisations have had on advancing gender equality. The CEDAW Committee has also
highlighted their role regarding the elimination of gender-based violence against women, noting that their activities have had a profound social and political impact, contributing to the recognition of gender-based violence against women as a human rights violation and to the adoption of laws and policies to address it.

In the Arab States of Morocco, Tunisia, Jordan and Lebanon, rape-exonerating laws were successfully abolished due to concerted CSO action. Each of these countries had articles in their respective penal codes ten years ago or less allowing a rapist to marry his victim to avoid prosecution. In Morocco and Tunisia, protests were sparked by cases where the court had authorised the marriages of 16 and 13-year-old girls to the men who had raped them. Women’s rights activists formed coalitions with CSOs and organised protests to draw the attention of the public and decision-makers to the issue. In Lebanon the campaigns against similar legal provisions were headed by the NGO ‘ABAAD Resource Centre for Gender Equality’ together with the UN Women country office. In addition, UN Women helped organise a dialogue between Jordanian and Moroccan parliamentarians to exchange good practices, leading ultimately to abolition of the rape-exonerating provisions in both countries (UNDP, 2019). These successful reforms demonstrate not only the important role of women’s rights activists in protesting against discriminatory laws, but also how international institutions can partner with, and strengthen the message of women’s movements.

UN Women and the INGO Equality Now emphasise the supportive role of the media in highlighting and advocating for efforts by local organisations. For example in 2016, when Turkey was considering a ‘marry your victim’ bill that would have allowed rapists to go unpunished, pressure from the media led to the bill being withdrawn from parliament. Unfortunately, a second attempt at introducing this bill to parliament has been initiated in early 2020 (The Guardian, 2020).

5.2.1 Technical Knowledge in Women’s Legal Advocacy

Technical knowledge, such as legal or scientific expertise used by political representatives, has also played an important role in the effectiveness of advancing gender equality legislation (Diaz and Marin, 2013). As the trend in constitutional reform processes has developed toward a more open and participatory approach, input from women lawyers, activists and academics has become more common. Their involvement has resulted in an increase in the number of gender equality provisions in constitutions around the world (UN Women, 2017b; Flores and Made, 2014). UN Women has also been active in providing technical assistance in this area, for example in Zimbabwe, where it supported the work of a women’s rights lobby group drafting revised constitutional provisions (UN Women, 2013).

In Colombia, experienced feminist lawyers were able to make significant contributions to legislation on transitional justice and violence against women (Diaz and Marin, 2013). Another interesting example is from Tunisia, where a well-organised network of women’s rights organisations which had already been active for several decades was able to mobilise considerable public support for reform during and after the Jasmine Revolution. Women lawyers and constitutional experts played a substantial role in advocating for specific gender equal provisions during the democratic transition and in the drafting of the new constitution. Women constituted 30% of the committee of legal experts which, among other things, presented a draft electoral law introducing vertical parity on party lists. Women lawyers who provided governance training sessions for women in the constituent assembly also used the opportunity to promote legal provisions advancing gender equality (Tamaru et al. 2018).

62 OHCHR (2017) General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19
64 Interview with representative from Equality Now, 22.01.2020
5.3 Awareness raising, preparation of thematic studies and the use of statistics

Awareness of discriminatory laws can be raised through various means, such as presenting studies and data, as well as providing peer-to-peer advice. Studies can play a significant role in drawing public attention to discrimination against women. Evidence in the form of prevalence rates of violence against women helped in mobilising Member States of the World Health Assembly and UN General Assembly, among others, to pay attention to the issue and to change policies both on the international and national level.

Experts interviewed from UN Women, UNICEF, the IPU, DG DEVCO and DG NEAR all attest to the importance of statistics and high-quality evidence in achieving law reform. The difference between the Millennium Development Goals (MDG) from 2000 and the Sustainable Development Goals (SDG) from 2015 demonstrates how much the availability of evidence can affect the gender equality realisation agenda. Whereas the MDGs called for governments to promote gender equality, they overlooked issues such as violence against women, sexual and reproductive rights, harmful traditional practices like child marriage and FGM, and access to assets and land. The SDGs on the other hand set clear targets and demand concrete action through the elimination of violence and all forms of discrimination against women. On the MDG’s omission of issues such as violence against women, experts point to difficulties in measuring types and extent of VAW. WHO’s publication in 2013 of its first systematic study on the prevalence of VAW globally was an important step forward in this respect. Thanks to the greater availability of statistical data, issues previously underprioritised have become more visible in the agendas of international organisations.

This was also the case in Ghana, where a law on domestic violence was passed in 2007. National studies based on surveys with local women revealed the extent of domestic violence against women in the country, directing attention to Ghana’s failure to comply with its international treaty obligations (Manuh and Dwamena-Aboagye in Al-Shamani, 2013). Similarly, statistical studies were used in Uganda and the Solomon Islands to influence policy dialogue on violence against women and girls.

Utilisation of statistics can provide a means to address otherwise sensitive issues. In 2009, the results of a national statistical survey on violence against women and children conducted in the Solomon Islands prompted the Government to adopt a national policy and action plan to combat the problem. The findings from the data gathered were so compelling that they allowed the Ministry of Women, Youth, Children and Family Affairs to pursue the necessary dialogue with other areas of Government. The national policy and action plan outline the legislation that needs to be reformed in order to fulfil the Solomon Islands’ international commitments (Government of Solomon Islands, 2016).

Despite the importance of data in addressing aspects of structural discrimination, producing sex disaggregated data remains a big challenge in many countries, according to experts from DG DEVCO and DG NEAR. As discussed further in section G.2 below, EU development assistance and cooperation can play an important role in improving the data collection capacity of partner countries.

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65 Interviews with representatives from UN Women HQ New York, 23.01.2020; IPU 31.01.2020; UNICEF 04.02.2020; DG DEVCO 22.01.2020 & 29.01.2020; DG NEAR 29.01.2020
66 See for example: Thompson Reuters Foundation (2013) Violence against women—the missing millennium development goal. Lisa Anderson, 26 September 2013
67 Interview with representative from UNICEF, 04.02.2020.
68 Interview with representatives from DG DEVCO, 22.01.2020; DG NEAR 29.01.2020
As discussed above, evidence may also be presented in the form of peer-to-peer advice. This approach entails MPs from countries that have already carried out legal reforms on gender equality sharing experiences with MPs from other countries who wish to carry out similar reforms.

Further, evidence on the human cost of discrimination can be a powerful means of mobilising support of MPs for law reform. Parliamentary hearings where survivors of violence and harmful traditional practices share their stories are used to create a link between discriminatory laws and their impact in society. Each of these approaches have been used by the IPU in various countries to support the reform of discriminatory legislation.

Different stakeholders will inevitably have different levels of interest in the process of legal reform. The rationale or evidence that speaks to them varies. Therefore, it has proven useful to design a variety of actions and responses addressing the needs of different stakeholders.

5.4 Strategic litigation and court rulings

Judicial action has been an essential element in many countries in efforts to overturn discriminatory laws and further the realisation of women’s rights. Public interest litigation, the process of lawyers seeking to generate legal change through the obtaining of court judgments declaring certain provisions in the existing law to be e.g. discriminatory or unconstitutional has helped in drawing attention to the need for reform of specific laws that undermine women’s rights. In numerous cases, strategic litigation has made a critical difference in guaranteeing equal rights for girls and women.

Examples of instances where such processes proved successful include discriminatory adultery laws being struck down by the constitutional courts in Guatemala, Uganda and South Korea. Similarly, discriminatory nationality laws were revoked by courts in Botswana, Sudan and the USA. The legal grounds for all of these rulings were national constitutional equality guarantees together with the principles of equality and non-discrimination from international human rights treaties.

In India, women’s rights groups successfully filed public interest litigation to enforce the constitutional rights of working women. Another case, which involved the gang rape of a social worker while she was at work, led to the development of the ‘Vishaka Guidelines on Sexual Harassment in the Workplace’ and subsequently to the adoption of the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act 2013, the first law of its kind in India.

In Africa there have been several recent court rulings striking down discriminatory legal provisions on grounds of unconstitutionality. In Tanzania, the Supreme Court upheld an earlier High Court ruling that a law prescribing differing minimum ages for boys and girls to marry was discriminatory. And in West Africa, the regional ECOWAS court held that a legal ban on pregnant girls attending school in Sierra Leone was unlawful discrimination.

However, in some countries public interest litigation may not be an effective tool to achieve socially progressive reform, particularly if the judicial system is biased or inaccessible to the citizens. Even if the Supreme Court proves to be a key ally in eliminating gender discriminating laws, the tiered structure of the judicial system, the cost of litigation, the relatively low percentage of female judges and lawyers, and the low levels of education of judges - especially in lower instance courts - in some countries, may all act as barriers to achieving reform through judicial means.

69 See for example: IPU (2017) Working with Benin’s National Assembly on legislative drafting.
70 Interview with representative from IPU 31.01.2020.
71 Interview with representative from IPU 31.01.2020.
5.5 Governments in transition, post-conflict reforms

Transitional justice processes can provide an opportunity both to address past violations against women and to reform laws and legal systems so as to provide better guarantees for equality and non-discrimination in civil, political, economic and social life. Post-conflict settings have in many instances successfully led to increased women’s political participation and to advances in women’s rights protection. For example, in Sub-Saharan Africa, women’s representation in parliament is higher and gender equality laws are more common in post-conflict countries than in countries that have not experienced civil conflict (UN Women, 2011). It must be kept in mind however, that post-conflict states are likely to have comparatively fragile public institutions, which may affect the quality of implementation of new laws. Gains made during the initial post-conflict period, where there are strong incentives for the administration to adopt gender-sensitive laws, may not survive in the medium to long-term unless they are adequately embedded into the social fabric. The Guatemalan peace accords from 1996 are a good example of the challenges involved. While various legislative measures advancing women’s rights were adopted at the time, the promise of increased women’s political participation is still to be fulfilled. Further, more recent changes to the electoral laws were passed without provisions for quotas increasing the number of female or indigenous candidates.72

Many Arab States, including Morocco, Libya, Tunisia, Egypt, and Yemen, have recent experience of transitional justice processes. Women’s movements in these countries have played a crucial role in lobbying for the inclusion of women’s equality laws in reform packages (Chaban, 2018). In 2014, the constitution of Egypt was amended in connection with the transitional justice process, which created a window for the inclusion of provisions on gender equality and non-discrimination. Similarly, discussions on a new Yemeni constitution held by the National Dialogue Conference concluded that gender equality ought to be recognised in the constitution and gender quotas introduced for election to parliament (ESCWA, 2019).

Several African countries are currently engaged in the process of constitutional reform following long periods of authoritarian rule. In The Gambia a transitional justice process has drawn attention, among other things, to women’s experiences of the Yahyah Jammeh dictatorship and to the need to reform discriminatory laws and customary practices in the areas of marriage, property and inheritance rights (ICTJ, 2019) (see also the case study below).

Successful examples of reform in connection with transition processes include the adoption of a gender equality law in Sierra Leone and the drafting of the 2013 Constitution of Zimbabwe. In Sierra Leone, recommendations from the Truth and Reconciliation Commission resulted in the passing of three women’s rights laws (UN Women, 2015). In Zimbabwe the move to a multi-party system was accompanied by the adoption of a new constitution containing strong gender equality and women’s rights provisions (Flores and Made, 2014).

In Latin America, the transition to democracy in Ecuador (2008) and Bolivia (2009) also led to women’s rights-friendly constitutional reforms. Women’s rights organisations were active in the reform process in both countries (Celorio, 2012).

5.6 Impact of adoption of international standards

The adoption of international agreements on combatting discrimination against women and gender equality has had a major impact on national law- and policymaking. States that have ratified CEDAW and other relevant treaties have taken on obligations involving, among others, to reform existing domestic

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72 NDI, Historic Reform is a Big Step Forward for Guatemalan Democracy. Published on May 20, 2016. Available here: https://www ndi org/Guatemala LEPP Reform story
legal frameworks in accordance with the requirements of the Convention. National and international advocacy by women’s and other human rights organisations have drawn public attention to the principles of the Convention and to the work of the CEDAW Committee and to the comparative performance of different countries in fulfilling their commitments.

For CSOs the periodic reporting process provides an opportunity to engage with the government and the treaty body during the preparation and presentation of the report, and to draw public attention to the Committee’s concluding observations and recommendations. CEDAW and regional conventions are often invoked by CSOs in domestic policy discussions. The international human rights framework provides them an opportunity to hold their governments to account. Case studies on the CEDAW reporting cycle have shown that in addition to submitting shadow reports, many CSOs have been present at CEDAW sessions to brief the Committee on priority issues, which has improved the quality of the Committee’s dialogue with State Parties to the Convention and enable them to formulate more specific and detailed recommendations.

Researchers have stressed, however, that the impact of CEDAW has not been immediate and policy changes have been introduced at varying speeds in different countries. In many cases change was only observed over a number of reporting cycles. The first CEDAW Impact Study (2000) concluded that more progress was documented in the passing of new legislation than with repealing existing discriminatory laws. A World Bank study on women’s property rights, on the other hand, showed that the pace of legal reforms in the area of protection of women’s rights was double as fast in the five years following a State’s ratification of CEDAW, compared to the fifteen years prior to ratification (Hallward-Driemeier et al. 2013).

6 Key obstacles, underlying causes for the persistence of discriminatory laws and the EU’s potential role

6.1 Poverty and lack of funding

One of the main factors holding back progress on reform of laws that discriminate against women is poverty. Many countries lack the means or resources to carry out reforms. The potential for impact of providing additional resources is evident in the legislative reforms undertaken in many countries in Sub-Saharan Africa since 1990 and in the continued comparatively poor performance of small island States in the Pacific (World Bank, 2019). Furthermore, poverty is often linked to security concerns that take precedence over equality and non-discrimination issues on the national agenda. Governments that are preoccupied with security issues often fail to see gender equality as part of the solution.

Lack of funding also affects the capacity of CSOs to lobby for pro-women’s rights legislative reform or to consolidate and protect reforms already adopted against attacks by the opponents of gender equality. In interviews conducted for this study, Latin America was identified as a region where previously achieved reforms are under threat, particularly in the area of sexual and reproductive rights. Development funding in the region has significantly decreased, with the US government cutting all funding for organisations that counsel women on abortion, and USAID ‘graduating’ target countries from family planning assistance where the local situation is said to have ‘improved’74. With the US withdrawal from sexual and reproductive

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73 Byrnes, Andrew, Freeman, Marsha (2012), The Impact of the CEDAW Convention: Paths to Equality University of New South Wales Faculty of Law Research Series.
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rights development assistance in Latin America, the role of the EU in supporting women’s rights initiatives in the region is more important than ever75.

6.2 Discriminatory traditions, customs and religious practices

Resistance to change is particularly strong in patriarchal society and communities. Laws that are linked to social and cultural rights, including reproductive rights, are the most difficult to reform because they are often considered central to the social, cultural and religious traditions of the communities in which they are practiced. These traditional laws may even date back several hundreds of years. They are administered and defined by conservative religious and customary institutions that seek to maintain the status quo. Traditional authorities may also fear losing powers that have been acquired over many centuries, even if the acquisition and maintenance of these powers has involved the subjugation of women.

CSOs advocating for women’s rights may be obliged or choose to practice self-censorship when dealing with traditional institutions. For example, CSOs in Bhutan are said to be reluctant to raise issues around women’s rights that are considered by the government to be sensitive (US Department of State, 2017). The rationale behind such a balancing act is to advance specific causes where CSOs see a potential for improving the existing situations, rather than working on issues where progress is not considered possible at the present time and which may jeopardise working relationships with local authorities.

Understanding the existing system and reasons for why traditional authorities or institutions operate as they do is crucial. One must understand the specificities of the given context in order to propose or facilitate meaningful change. The role of education is also fundamental. The Ghanaian proverb “if you educate a boy, you educate an individual, but if you educate a girl, you educate a whole society” was cited in this context by a representative from UN Women76. Beyond education, it is also important to engage with people at all levels of decision-making. Community-based organisations can raise awareness of the problem of discrimination and propose alternatives that will improve women’s and girls’ lives. But it is also important to include representatives of traditional institutions in reform processes if they are to succeed77. It is especially important to advocate for women’s participation in religious and customary institutions. When women become involved in decision-making processes and have the ability to shape the agenda of institutions, they tend to function differently. Therefore, experts interviewed recommended prioritising capacity building and support to advance the political representation of women in local government and on village or community councils78.

Evidence on how EU development cooperation/programmes in bilateral contexts deal with religious and traditional leaders is mixed. According to an expert from DG DEVCO, the EC includes traditional and religious leaders in its stakeholder analyses for EU programs. Actions within relevant projects also engage / involve the participation of religious and traditional leaders, not only formal governments79. Other experts interviewed saw challenges in how and with what degree of consistency the EC reaches out to religious and conservative groups. Engagement with religious leaders was also identified as an area where more work could be done80.

6.3 Harassment and violence against women in politics

Violence against women in politics is a very real threat to efforts to reform laws that discriminate against women81, but more evidence on its impact is needed. Different forms of psychological and physical

75 Interview with representative from UNICEF Innocenti Office of Research, 04.02.2020
76 Interview with representative from UN Women HQ in New York, 23.01.2020
77 Interview with representative from GAP Gender Support Service (DEVCO B1), 29.01.2020
78 Interview with representative TL Support Desk on RBA/GM to Devco B1, 20.01.2020
79 Interview with representative from DG DEVCO, 22.01.2020
80 Interview with representatives from EU Delegation in Tunisia, 24.02.2020
81 Interview with representative from IPU, 31.01.2020
violence are directed at feminist parliamentarians in attempts to intimidate or marginalise them. All over the world, female politicians are the targets of violent or hate speech on social media. A study by the IPU covering female MPs from 39 countries and five continents found that incidents of sexism and acts of violence are widespread. 81.8 percent of respondents in the study said that they had experienced psychological violence because of their work in parliament. Further, 60.5 percent reported that they believe the acts were strongly motivated by positions they had taken on certain issues, in particular on women’s rights. One Asian MP recounted how women parliamentarians were called prostitutes and were subjected to demeaning comments throughout the debate on an equality law (IPU, 2016). Violence and psychological pressure against women in politics could be addressed by the EU through supporting measures to respond to violence and sexist language in the media, an issue which GAP II does not address.\(^{82}\)

6.4 Conservative pushback against gender equality / women’s equality

The recent rise of conservative populism has strengthened old and fostered new alliances between countries that seek to challenge the global movement for gender equality or to justify the continued existence of certain discriminatory laws and practices undermining women’s rights. Conservative populism takes many forms, and political or social groups in different countries may have little culturally or socially in common with each other. What they share is the view that certain social, cultural and/or religious traditions are distinct from and superior to international human rights law.\(^{83}\) Alliances of conservative countries tend to re-enforce each other in international forums, undermining development cooperation efforts and multilateral mechanisms put in place to further the realisation of women’s human rights. For example, during the negotiations on the outcome document of the sixty-third session of the UN Commission on the Status of Women (CSW) in 2019, the United States joined several other countries, including Saudi Arabia and Malaysia, in proposing that the gathering should merely ‘take note of’ rather than ‘reaffirm’ the BDPfA, and in suggesting to remove language calling for gender-responsive human rights protections (Gramer and Lynch C., 2019).

As discussed above, the report of the Expert Group to the 64th Session of the UN Commission on the Status of Women expert group similarly notes the formation of alliances among conservative groups that are questioning the value of multilateralism and the universality of human rights, withdrawing funding to institutions that e.g. advocate for women’s reproductive rights. Two of the strategies employed by these groups are anti-gender equality rhetoric and the delegitimisation of organisations working for women’s empowerment (CSW, 2019).

At the domestic level, progress on women’s rights has stalled in various countries following the election of populist leaders, both outside and inside the EU. In 2018, Brazil’s newly elected President Jair Bolsonaro abolished the Human Rights Ministry and appointed an evangelical pastor and well-known critic of feminism and women’s reproductive rights, Damares Alves, as Minister for Women, the Family and Human Rights. Alves has called for the complete prohibition of abortion in Brazil, which already has a very restrictive legal framework in place. In the United States, the Trump Administration has limited access to contraceptives for hundreds of thousands of women by eliminating employers’ obligation to include coverage for birth control in their employee health care insurance (Cardín, 2018). In addition, the administration has made it more difficult to launch investigations into allegations of rape on college campuses by requiring ‘clear and convincing evidence’ to initiate any formal inquiry (US Dept. of Education, 2017).

\(^{82}\) Interview with representative from the EU Delegation in Albania, 20.02.2020

\(^{83}\) Interview with representative TL Support Desk on RBA/GM to Devco B1, 20.01.2020
Against a background where an increasing number of countries across the world are taking illiberal stances and previously-won human rights protections are threatened, the EU needs to continue its strong support for reform of laws that discriminate against women and prevent them from participating in society on an equal basis with men. To counter the backsliding of gender equality rights and norms, EU support for organisations against conservative forces must be strengthened and sustained. The global backlash against gender equality and women and girls’ rights is likely to continue in the coming years. Therefore, strong support for gender equality as a key principle underlying all EU policies and programmes will continue to be crucial.

7 EU Human rights and gender equality policies and tools and their challenges

7.1 The EU human rights policy framework

The promotion and protection of human rights and gender equality is a priority for the EU in its relations with third countries. In the Lisbon Treaty, human rights and democracy as well as equality between women and men are considered as core EU foreign policy goals. The EU is committed to advancing equal participation of women in policy, governance and electoral processes at all levels. 

Targeted financing of projects and programmes, gender mainstreaming and the rights-based approach (RBA) are the principal methods through which EC development programmes pursue the EU’s longstanding legal and political commitments to gender equality and the promotion and protection of human rights. They are also central to the EU’s approach to supporting the achievement of the Sustainable Development Goals. This is made clear in the New European Consensus on Development:

‘15. Gender equality is at the core of the EU’s values and is enshrined in its legal and political framework. It is vital for achieving the SDGs and cuts across the whole 2030 Agenda. The EU and its Member States will promote women’s and girls’ rights, gender equality, the empowerment of women and girls and their protection as a priority across all areas of action.

16. The EU and its Member States will implement a rights-based approach to development cooperation, encompassing all human rights. They will promote inclusion and participation, non-discrimination, equality and equity, transparency and accountability. The EU and its Member States will continue to play a key role in ensuring that no-one is left behind, wherever people live and regardless of ethnicity, gender, age, disability, religion or beliefs, sexual orientation and gender identity, migration status or other factors. This approach includes addressing the multiple discriminations face by vulnerable people and marginalised groups.’

Both gender mainstreaming and RBA address gender equality and non-discrimination, principles of international human rights law which the Member States and the EU’s development partners have committed to incorporating in their domestic law and implementing in practice.

Specific measures to promote human rights are detailed in the EU Strategic Framework on Human Rights and Democracy, which was adopted in 2012, and the related Action Plan, of which the latest edition covering 2020-2024 has been proposed in March 2020. The EU has also developed guidelines on priority human rights themes, including on violence against women and girls and on non-discrimination. While

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84 Council conclusions on Gender in Development, doc. 9241/15, 26 May 2015
85 The New European Consensus on Development ‘Our World, Our Dignity, Our Future’ joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the European Commission, 7th June 2017
not legally binding, they provide guidance for EU institutions and Member States to advocate for human rights in third countries.

One important way to adapt the EU human rights guidelines and priorities to a specific country is through the so-called human rights and democracy country strategies that are prepared by the EUDs and EU Missions in third countries. These identify key strategic priorities for the EU, define long- and short-term key objectives, and set out concrete actions to advance human rights and democracy in a specific country over a period of three years. According to the EU’s 2018 annual human rights report, 125 country strategies were fully updated for 2016-2020, and all included gender equality as one of the main priorities, or as an underlying priority. Among these strategies, women’s rights, together with other topics (democracy, the rights of the child, civil society) was the topic with highest prominence after rule of law. These human rights country strategies can be an essential tool in ensuring policy consistency and in preparing high level visits and political dialogues.

In a global context with a dramatic change in the global balance of power, as well as a serious decline of human rights and democracy as shared values of universal scope, it has become increasingly challenging for the EU to secure concrete impact on the ground. As some emerging countries with an increasing economic and political relevance sometimes have a different understanding of human rights and gender equality, the legitimacy of the EU to promote its human rights and democracy agenda internationally is sometimes brought into question by the opponents of gender equality.

Some scholars have stressed the limitations of the EU’s human rights policies and the distance between the EU’s rhetorical proclamations and their capacity to have a significant impact on the democratisation processes taking place in partner countries. In addition, differences between the EU’s political priorities and the interests of individual EU Member States in specific country contexts can risk weakening the EU’s human rights and gender equality policy framework. According to an assessment of EU policies towards Egypt, classical security interests have been privileged over human rights, even though human rights actions were among the stated priorities of the EU’s policies towards Egypt. Gomez et al. have argued that it becomes challenging for EU Members States to act with one voice when their strategic interests are at stake. However, the political backing of Member States is an essential ingredient of effective EU action in the field of human rights and gender equality.

Another reason why the EU’s impact in the area of human rights in its external relations may be open to challenge relates to respect for human rights standards within the EU Member States. Universal Periodic Review (UPR) reports for EU Member States have drawn attention to shortcomings in the protection of human rights of minorities, of Roma/Sinti, child rights, and the rights of migrants and asylum-seekers.

On the other hand, the new EC President Ursula von der Leyen has declared gender equality one of the new EC’s priorities including a new anti-discrimination **acquis** to be introduced. In ‘A Union of Equality’, President von der Leyen describes several new anti-discrimination law reform initiatives, as well as plans to implement some provisions of the Istanbul Convention even if its accession remains blocked in the

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68 Gómez Isa, Felipe et al. (2016), Challenges to the Effectiveness of EU Human Rights and Democratisation Policies, Frame, European Commission.
69 Ibid.
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Council. In the same document, the new President stressed that the European Gender Strategy will make the principle of equal pay for equal work a founding principle and will systematically address the way laws impact the decisions women take throughout their lives. Furthermore, the EC President declared that the new EC will introduce binding pay-transparency measures and that she will seek to build a majority to unblock the Directive on women on boards. Giving priority to gender equality internally will give the EU increased credibility in all its engagement with third countries.

Discussions have been ongoing for some years about the need for the EU to enrich its communication on human rights with showcasing and human rights story telling. In this regard, the new ‘Good Human Rights Stories’ initiative offers an important vehicle for drawing attention to successful human rights outcomes from EU human rights programmes and projects. This initiative – which is planned to be an important element in the new human rights action plan as well as the new GAP – seeks to promote a positive narrative on specific human rights stories.

The EU has numerous policies and tools at its disposal to support gender equality through political and policy dialogues and bilateral cooperation, including through direct support to women’s organisations. Some of the existing EU human rights tools, strategies and policies will be tackled in the following sub-chapters. These will include EU human rights dialogues, the EU financing instruments, and the role of trade agreements. The role of the European Parliament in promoting gender equality in law will also be addressed in a separate sub-chapter. Although it was not possible within the framework of this study to conduct original empirical research, the experience from the field suggests that the most effective approach to reform of laws that discriminate against women is a combination of effective policy dialogue and targeted programmatic support.

7.1.1 The EU Gender Action Plan (GAP)

The adoption and implementation of the EU Gender Action Plan 2010-2015 (GAP I), followed by GAP II (2016-2020), has been the most important initiative undertaken by the EU to promote and further the achievement of gender equality in third countries. The GAP was developed with a view to closing the gap between the EU’s policy and operational-level actions in support of gender equality. The GAP II provides the framework for the EC, the EEAS and the EU Member States in their approach to gender equality through external action. It pursues a three-pronged approach, combining a) political and policy dialogues with partner countries, b) gender mainstreaming and c) targeted actions. Its implementation is mandatory for all EU external relations, and a yearly report, drawing on annual monitoring and reporting, documents progress achieved. The GAP II has four thematic priorities: (i) ensuring girls’ and women’s physical and psychological integrity; (ii) promoting the economic and social rights/empowerment of girls and women; (iii) strengthening girls’ and women’s voice and participation; and (iv) shifting the EC services’ and the EEAS’ institutional culture to more effectively deliver on EU commitments. A new element in GAP II is that a gender analysis is being done systematically for all new EU development actions, such as projects, and bilateral and regional programming. Furthermore, Country Gender Profiles (CGP) are undertaken in order to obtain a comprehensive gender analysis of the situation of women and men in a country, which should be used to guide cooperation programming. Based on the results of the CGP of partner countries, the EU, together with Member States, can determine priorities to be addressed in the countries. The GAP functions as a roadmap for the EU on how to fund and promote gender equality in partner countries. Furthermore, it allows for coordination between the EC, the EEAS and Member States.

Being highly focused on a quantitative assessment of programmes and activities, the GAP II’s monitoring reports do not allow for an impact analysis of EU policies and investments related to gender equality in partner countries. The lack of a qualitative analysis leaves open questions as regards the EU’s choice of objectives, the results of activities, the quality of delivery, likely long-term effects, as well as potential risks.

and benefits. The future GAP would benefit from more frequent evaluations with results flowing into the yearly monitoring mechanism.

Another important factor not taken into account in the yearly GAP reviews is the degree to which the GAP has aligned with the policies of partner countries and how the promotion of gender equality was received by partner countries. Interview partners for this study have confirmed that the level of local ownership of the GAP differs from country to country. Some gender focal points from EUDs have stressed that many indicators of the GAP reporting are less relevant for countries in the Eastern Partnership (EaP) and enlargement countries. The revision of indicators for GAP III should keep in mind the different needs of varying country contexts, including countries that are more conducive to addressing gender equality and where the EU supports national reforms, and is less project based.

The European Parliament adopted in 2018 an implementation report on the GAP II where it called on the European Commission to examine the reasons why certain thematic objectives and priority areas are more often taken into consideration by EU delegations, with greater progress being achieved. The EP report also stressed that the link between trade and gender is not sufficiently addressed at present. Another issue highlighted by the EP was the importance of increasing the involvement of CSOs and other local stakeholders such as human rights, health, or environmental actors in EUD development programmes and communication activities, as such cooperation will contribute to improving the visibility and implementation of GAP II, thereby increasing public accountability as regards progress on gender equality. The EP also pointed to the need not just for sound gender mainstreaming policies, but also for reports on specific practical actions – particularly in sensitive areas such as sexual and reproductive health.

The GAP II does not address gender equality in law separately, but provides an important opportunity to advance gender equality in law through the country gender profiles that EUDs are required to prepare for each partner country. The objective of these gender profiles is to identify key issues to be addressed, to assess a country’s legal and political context with respect to gender equality, and to define, in a participatory manner, how international cooperation can support strengthening and/or implementation of a country’s gender equality policies. According to several reports, the country gender profiles (CGPs) have proved to be a highly useful tool for identifying priority areas and target groups that require EU support and in the design of new programmes and projects. Interview partners have stressed, however, that many EUDs have not yet prepared CGPs. In the absence of a central portal through which gender profiles can be accessed, it was not possible to assess how many EUDs are still lacking a gender profile and to what extent the legal context on gender equality is addressed in the existing ones. This indicates that the EU needs to significantly improve its future communication tools on the GAP. However, this will be challenging, as partner countries can decide whether or not they agree to the CGP being published. Gender experts interviewed for this study have stressed that it is often not the lack of political will that hampers law reform in gender equality, but the lack of proper assessment tools and capacities to engage in law reform. In this respect, the EU’s country gender profiles required under the GAP can be a critical assessment tool. Therefore, the CGPs should always include an assessment of the quality of the legal framework on gender equality, and not only a list of the mere existence - or absence - of relevant laws. Such an assessment would provide for potential opportunities for the EU to engage in support to partner countries to improve gender equality in law. The gender profiles that were accessible to the research team of this study showed no coherence between different countries; some focused more than others on the legal context. In its implementation report on GAP II, the European Parliament encouraged the rapid completion of a CGP for all countries that have not yet prepared one. The EP also encouraged the EU to explore possibilities for sharing, managing and updating gender analyses in a more systematic manner in order to help improve

93 Gender country profiles of Kosovo, Serbia, Syria, Morocco.
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Further, the EP encouraged the Commission and EEAS not to limit gender analysis to obvious policy fields like education and maternal health, but to also consider it in fields which are currently wrongly considered to be gender-neutral, notably agriculture, climate and energy. It also called on the EC to share the gender country profiles in all background briefings for delegations of the Parliament to third countries 94.

An issue repeatedly mentioned by many interview partners was the lack of disaggregated data in many third countries. The EC requires disaggregated data for the indicators in log frames, but according to the experts interviewed, the reality is that disaggregated data is very often not available. Therefore, in some of its programmes, the EC tries to enhance capacities of national statistical institutions. Further, one of the Spotlight Initiative’s actions is aimed at improving statistics, but it is mainly focused on violence against women and traditional harmful practices. Even though the EU already often supports governments in developing better measures to collect statistics, the EC should consider putting an increased emphasis on this issue in the future GAP.

EU development assistance and cooperation can also play an important role in raising awareness of the effects of intersectional legal discrimination experienced by, among others, women and girls with disabilities. Women are more likely to be disabled than men, particularly in low and middle income countries 95. While there is increasing global focus on the need for gender-disaggregated data, there has been less attention given to the need to gather data on people with disabilities. According to experts interviewed 96, there is still a tendency to treat disability rights as a niche issue, to be addressed in stand-alone thematic programmes or small grants to disability rights NGOs, rather than as a cross-cutting issue for mainstreaming in all programmes. As a State Party to the UN Convention on the Rights of Persons with Disabilities, the EU should collect disaggregated data on persons with disabilities across all sectors 97.

The GAP implementation reports to date have shown that the EU has invested substantial resources to support gender equality in third countries. However, the recent trend in some countries of illiberal governments placing in question or reversing gender equality reforms achieved over the past few decades 98 requires continued EU strategies that advance gender equality. According to the UN Women Group of Experts to the upcoming session of the Women’s Commission this backlash of gender equality can contribute to the erosion of rights whereby formal gender equality laws are weakened and legal protections for patriarchal gender models are strengthened. The EU institutions and EU Member States need to elaborate strategies within the future GAP against conservative forces that are trying to undermine democratic principles, mechanisms and institutions that uphold gender equality. In order to elaborate meaningful strategies for the most challenging contexts, the EU needs to improve the assessment of the impact of its policies and investments on gender equality in partner countries, as well as the level of local ownership of its policies and strategies in the partner countries.

Experts interviewed for this study have stressed the need for the EU to move beyond the binary definition of gender in GAP II. The case-law of the European Court of Human Rights is increasingly focusing on a non-

96 Interview with EUD Armenia February 2020
binary definition of gender that encompasses persons who are transgendered and non-binary. Scholars and NGOs have increasingly criticised the binary definition of gender for failing to capture the diversity of women and the range of their experiences and for not recognising the complexity of discriminatory practices. Some have argued that the CEDAW could be applied to provide protection for women who are discriminated against because of their sexual orientation. Applying a broader definition of gender in GAP III would bring the tool better in line with the CEDAW Committee’s understanding of gender equality and of the scope of prohibited discrimination under Article 2 of the Convention.

7.2 EU Human rights dialogues and other EU political and policy dialogues

EU human rights dialogues (HRD) allow for a regular exchange on gender equality challenges with third countries. The EU currently holds human rights dialogues (HRD) with more than forty countries.

The “EU Guidelines on human rights dialogues with third countries” define women’s rights as a priority issue which should be included on the agenda for every dialogue. According to the GAP II implementation reports, the EEAS has indeed included a gender dimension in all its political dialogues since 2018. The impact of the HRD on gender equality in law will vary significantly from context to context, depending on the openness and democracy standards in the respective country. A 2016 case study on the EU-Moroccan HRD concluded that the EU took a cautious approach on issues that touched upon religious values such as abortion and gender discrimination in order to avoid placing the dialogue at risk. The same case study showed that the Council of Europe has been bolder than the EU in dealing with human rights issues in its relations with Morocco.

Interviewees for this study have confirmed that the general principle pursued by the EEAS in its HRD is to take a sensitive approach that ensures the continuation of the dialogue with partner countries, even in challenging contexts. In the framework of consultations for the new EU Human Rights and Democracy strategy and action plan that is to be endorsed by the Council in 2020, CSOs have asked the EU to ensure that its HRD lead to clear results, raising sensitive issues at the highest level. However, striking the balance between addressing sensitive issues and avoiding putting the continuation of HRD with challenging partners under risk is not an easy task. Case studies highlighted that questioning the human


101 Under the scope of this study and given the confidential nature of the EU’s HRD, it has not been possible to assess their concrete impact on gender equality in law in third countries.


105 Interview with representative from EEAS, 10.02.2020 and 14.10.2020.

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The rights situation within partner countries was regarded by Morocco, China and India as challenging the principle of State sovereignty and non-interference in other States. Each of these countries expressed general dissatisfaction with the EU's involvement in their own domestic affairs.107

HRD are not the only type of political dialogue that the EU conducts with partner countries. Often, HRD take place in the context of broader EU external policy mechanisms that are connected to other types of dialogue, which include policy dialogues on sectoral policies, and which can also address more technical and implementation dimensions. Multiple forms of dialogue provide a good opportunity to interconnect gender equality through different channels, enhancing the possibilities to continue the debate about certain issues that might have been halted in one forum by moving it to other fora.

Political and policy dialogues are one of the three specific approaches to be implemented in the framework of the EU Gender Action Plan (GAP)108. The GAP aims to place the promotion of gender equality as a systematic topic on the agenda of political and policy dialogues. An evaluation on GAP I concluded that political and policy dialogues were insufficiently informed by gender analysis and CSOs were not engaged regularly109. As a consequence, there was not a sufficient understanding of the context in which dialogues were conducted. Another study from the MENA region confirmed the same problem, that the EU is not addressing equality problems that are locally identified and that it disregards available needs assessments (Ghosheh, 2019). Following this, engagement with women’s CSOs and national gender equality mechanisms has increased110, and GAP II reporting templates were modified to provide more detailed accounts on the substance of political and policy dialogues. The most recent annual reviews of GAP implementation point to a commitment to consistency and the involvement of a broad base of participants in dialogues.111 Since 2018, the EEAS and EC have integrated a gender dimension in all policy dialogues.112 Policy dialogues took place in most countries, with gender equality and human rights on the agenda. Violence against women and girls was the topic most often discussed, followed by the gender dimensions of other issues, such as governance and justice, decent work, trafficking and social protection. These formal and informal dialogues enabled EU actors to raise issues which are particularly sensitive in certain countries, such as child marriage, female genital mutilation and teenage pregnancy. The development of the Spotlight Initiative on gender-based violence113 also provided key opportunities for high-level dialogue. A Sida study, “Evaluation of Policy Dialogue as an Instrument - the case of Gender Equality” concluded that it has been an effective tool, particularly as regards revising gender-specific laws and policies. Many organisations and institutions, including the EC and the OECD DAC Network on Gender Equality have written extensively on concrete entry points and opportunities for promoting gender equality in policy dialogues.114 A key takeaway from the Sida study is that a combination of factors contribute to successful policy dialogues, such as the timeliness, commitment of leadership, a broad participation base and consistency of key messages (SIDA, 2015).

108 Definition on policy dialogue provided by DAC Network on Gender Equality; “All dialogue that aims to influence development outcomes towards achieving gender equality and women’s rights can be considered policy dialogue” (DAC, 2013).
111 EU Gender Action Plan II, Annual Implementation Plan 2017, 2018
112 Ibid. 2018.
113 The Spotlight Initiative is a global, multi-year partnership between EU and UN to eliminate all forms of violence against women and girls by 2030.
114 Gender equality, women’s empowerment and development effectiveness: Issues Brief 7: Policy and political dialogue on gender equality and women’s empowerment at the country level, DAC Network on Gender Equality, October 2013; The EU resource package: Tools to advance the 2030 sustainable development agenda and gender equality, How to advance gender equality in political and policy dialogue, Tool 1.1 http://eugender.itcilio.org/.
One conclusion to be drawn from available evidence is that when engaging on gender equality in political and policy dialogue, it is important that the EU consults and involves local women’s organisations at all stages of the process. Policy dialogues targeting legislators and political decision-makers have proven to be an effective tool for advancing legal reform, but the relevance of the advanced policy is dependent on the involvement of local CSOs. All forms of intervention are known to be more successful when they are tailored appropriately to the context and both resources and time are sustained over a longer period.

7.3 EU financing instruments

The EU offers financial support to third countries through programmes and projects that promote human rights protection and gender equality worldwide through bilateral and regional cooperation, and through thematic instruments, such as the EIDHR. Measuring the relevance and impact of EU financing instruments that were used to address gender discrimination in law is extremely difficult. There is no comprehensive information available about the instruments that were used to tackle gender equality in law in third countries. The evaluation of policies and instruments is generally limited and focussed on specific instruments; and thematic evaluations are not undertaken based on a systematic cycle. Identifying funding tools is difficult because the statistical information on aid flows is normally not broken down to allow a specific selection of support for abolition of discriminatory laws. The Commission itself has recognised in its Joint Staff Working Document on the GAP II that the EU’s financial investment in gender equality has not been systematically measured. The European Parliament, in its implementation report on the GAP II, has called on the European Commission to promote evidence-based decision-making in order to use the available financial resources more efficiently and effectively and has requested a report from the EC to determine exactly how much funding has been specifically committed to gender mainstreaming and to identify the most noteworthy goals achieved. The EC will publish two external evaluations in 2020 of its work on gender equality / the impact of GAP II, which should provide valuable further insight on the subject.

Gender equality can be promoted through the EU’s financing instruments dealing with human rights, including the Development Cooperation Instrument (DCI), the Instrument contributing to Stability and Peace (IsSP), the Instrument for Pre-Accession (IPA), the European Neighbourhood Instrument (ENI) and the European Development Fund (EDF). Further, the EU has committed itself to implementing a rights-based approach to development (RBA), encompassing all human rights (see above).

The proposed new regulation for the next multiannual financial framework (2021-2027), establishing the Neighbourhood, Development and International Cooperation Instrument (NDICI) – for which interinstitutional negotiations were still ongoing at the time of drafting - will bring with it a major restructuring of the Union’s external action instruments, by merging ten regulations, one decision and one extra-budgetary fund based on an inter-governmental agreement into a single new regulation. According to the Proposal for the NDICIC, gender equality is applicable as a general principle to the whole instrument. The proposal stresses that actions under the new regulation are expected to contribute 20%
of the Official Development Assistance funded under the regulation to social inclusion and human development, including gender equality and women’s empowerment. The proposal foresees that gender equality can be addressed under geographic as well as thematic programmes\textsuperscript{119}.

In 2019, the EP agreed to accept a single instrument, but proposed to make gender equality and women’s and girl’s rights a significant objective in at least 85\% of ODA-funded programmes, as well as to increase the financial allocation for human rights and democracy activities, and to introduce gender mainstreaming targets, the earmarking of certain financial allocations, and the suspension of assistance in case of human rights violations\textsuperscript{120}.

The EU and its Member States’ commitment to mainstream gender in its development assistance can have a significant impact in third countries. It can help drawing the attention of local stakeholders to the relevance of gender issues, and to the untapped potential of an increased focus on gender equality to improve overall development outcomes, including progress towards the achievement of the Sustainable Development Goals (SDGs). Some interview partners have stressed concerns that the EU’s increased attention on mainstreaming could lead to a situation where targeted actions are not sufficiently covered. It is important that the EC strikes the right balance between funding programmes directed to mainstreaming gender and funding dedicated to gender-targeted programmes, given that both elements are necessary.

Two forms of EU financial support for gender equality reforms will be described in more detail below, as they are also relevant to the case studies below: Regional cooperation in partnership with regional organisations, and the aid modality of budget support.

\subsection*{7.3.1 EU regional cooperation programmes: the case of partnership with the Council of Europe}

EU regional cooperation complements bilateral EU assistance by addressing regional challenges where common approaches are needed, shared resources are concerned, and partners seek to move towards more integrated economies. One example of regional cooperation where gender equality in law is addressed in the Southern Neighbourhood countries is the ‘South Programme’, focusing on human rights, rule of law, and democratic governance. This programme, which is implemented by the Council of Europe (CoE), has set combating violence against women as a clear priority, and special attention has been given to the promotion of the Istanbul Convention and CoE standards on combating violence against women. In Tunisia, the CoE played an important role for the drafting of the Law on the elimination of violence against women, whose provisions were inspired by the Istanbul Convention. Partner countries were also supported in their accession to CoE instruments and networks and in the harmonisation of legislation with European standards.

The cooperation between the EU and the CoE in the area of discrimination and gender equality is addressed mainly through regional programmes (‘Horizontal Facility’ for Western Balkans and Turkey, ‘Partnership for Good Governance’ for the Eastern Neighbourhood and ‘South Programme’ for the Southern Neighbourhood). For the EU’s external actions in the enlargement and neighbourhood countries in the area of gender equality, the CoE is a strategic partner of high importance. The CoE’s combination of

\textsuperscript{119} According to the NDCIC proposal, gender equality features under the pillars of “Good governance, democracy, rule of law and human rights” and “Poverty eradication, fight against inequalities and human development”. The latter includes “promoting the protection and fulfilment of women’s and girls’ rights, including economic, labour and social rights, and sexual and reproductive health and rights, and preventing sexual and gender-based violence in all forms. Gender-based violence is also an area of action under the so-called rapid response actions in a “situation posing a threat to democracy, law and order, the protection of human rights and fundamental freedoms, or the security and safety of individuals, in particular those exposed to gender-based violence in situations of instability”.

using standard-setting through its Conventions, monitoring through its monitoring bodies and their reporting, and the CoE technical assistance altogether display a unique added value to EU policies and instruments in supporting significant reforms in third countries. The harmonisation of legislation with CoE standards provides an important tool for countries that are open to adherence with European Convention standards, even for countries that are not CoE member States. The methodology of the CoE monitoring mechanisms can even be used for non-members to assess the country’s situation in key areas and to formulate recommendations in line with European legislation. It is quite remarkable that in September 2019, a non-CoE member state such as Tunisia asked to accede to the Istanbul Convention.

7.3.2 Conditionalities under budget support programmes

Gender equality is a core dimension under budget support, which is one of the core modalities of EU bilateral cooperation. It involves direct financial transfers to the national treasury of partner countries engaging in sustainable development reforms. Financial disbursements are conditional on policy dialogue, positive assessment of performance, public financial management, macro-economic stability, and transparency. In 2018, budget support disbursements accounted for 18% of all EU development aid, with Sub-Saharan Africa remaining the largest recipient in volume (41%), followed by neighbourhood countries (22%), Asia (21%), Latin America (6%), the Caribbean (3%), Western Balkans (3%) overseas countries and territories (3%) and the Pacific (1%)121.

In budget support programmes, gender equality is addressed through dialogue on policies, performance measurement and capacity development122. Nearly half of the programmes approved between 2014 and 2018 contributed mainly or significantly to SDG 5. During the design of budget support programmes, the gender sensitivity of countries’ policies is assessed. In addition to policy dialogue, performance indicators are encouraged within variable tranches to reflect this priority and to encourage additional effort from countries. This is notably true in social sectors, for which sex-disaggregated indicators are used and for which results can be observed. Budget support programmes related to gender equality have been implemented in a number of countries123; however, most of them were not focused on law reform.

Assessments by interviewed experts on whether budget support has been conducive for gender equality and a means for promoting legal reform have been mixed124. Morocco benefited from a dedicated budget support programme on gender equality, and gender had been taken into account in other budget support programmes on social protection, justice and health. In its Special Report on Morocco, the European Court of Auditors (CoA) concluded that the added value and ability of the budget support instrument to support reforms in Morocco was limited due to suboptimal focus, weak indicator design, insufficient monitoring and results assessment. The CoA stated that there was no evidence that budget support had supported the effective implementation of reforms and criticised that despite the mixed results of the 2012-2016 budget support programme on gender equality, a new programme was launched for 2018-2020125.

Applying conditionality - such as budget support disbursements against the achievement of indicators - can be problematic in countries where discriminatory laws against women are difficult to challenge due to the power of cultural, religious and / or patriarchal traditions. On the other hand, conditionality can be a useful tool for law reform in gender equality where the political context has changed e.g. after a change of government or in a post-conflict setting. It is important that programming take into consideration that conditionality in EU’s financial assistance can only put pressure on governments, but not on other actors

121 https://ec.europa.eu/international-partnerships/budget-support_en
123 Ibid.
125 European Court of Auditors, Special Report EU support to Morocco - Limited results so far, 2019.
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of high relevance for democratisation processes like civil society, political parties, public administration, parliaments, religious communities, or the judiciary.

7.4 EU support to CSOs and the European Instrument for Democracy and Human Rights

Civil society organisations (CSOs) can be a crucial driver in the advancement of gender equality. Consultations with women’s organisations and civil society enable the EU to understand gender equality issues on the ground, and to identify effective strategies and approaches. Support to CSOs is provided via different channels of EU funding. One of the main instruments with global coverage is the EIDHR, which provides direct financial support to CSOs to stimulate the development and consolidation of democracy, the rule of law, and respect for human rights and fundamental freedoms. The EIDHR aims to “provide assistance to the development and consolidation of democracy and the rule of law and of respect for all human rights and fundamental freedoms.”

EIDHR programming and implementation take place independently of governments and other public authorities and are managed exclusively by the EC or by EUDs in the recipient country. The ability to operate without the need for consent of host governments is an important asset of this instrument. It allows the EU to focus on sensitive issues and difficult situations, using innovative approaches and cooperating directly with isolated or marginalised CSOs. However, reports on the EU’s external financing show that the EIDHR is increasingly used as an instrument to fund ‘generic’ CSO human rights activities, including in relatively democratic environments. The mid-term evaluation on the EIDHR stressed that EUDs need to be encouraged to maximise the unique features of the EIDHR to fund human rights and democracy when these, and the CSOs working on them, are most at risk, leaving support for less sensitive issues to be covered by other instruments. The evaluation recommends further that Headquarters find ways to encourage and support EUDs to make better use of the EIDHR’s unique features to address the shrinking space for civil society and to support human rights and democracy where they are most at risk. Due to the increasing tendency to channel funding for equality and non-discrimination activities through the EIDHR in conducive environments, existing possibilities for bilateral cooperation in such conducive situations are not always fully explored. The EIDHR is a specific human rights promotion instrument, but it should never be the only mechanism through which the EU seeks to promote equality and non-discrimination in its development cooperation, even in difficult operating contexts. The successor to the EIDHR should focus on a more restrictive mandate aiming to prioritise CSOs in countries where democratic space is being narrowed. It is precisely in contexts where democratic space is shrinking that the instrument adds value by allowing the EU - and organisations working on e.g. women's legal equality and non-discrimination - to continue to address this issue without the necessity for government involvement.

126 Civil Society Organisations can also be supported through bilateral cooperation, such as the Civil Society Facility under IPA, the Neighbourhood Civil Society Facility under ENI, or the Support under the DCI for Civil Society Organisations and Local Authorities.
For actions in the area of legal reforms on gender equality this means that the EIDHR should be applied in countries where democratic space needs protection and women’s organisations need support to address laws on sensitive gender issues. In the context of a growing authoritarian backlash against human rights and democracy promotion activities, the EU increasingly finds itself in a difficult position when trying to support the initiatives of CSOs working on sensitive issues. While in many countries the EU is relatively free to work with CSOs, in countries such as China and Egypt the capacity of the EU to select CSOs to work with is more limited. The EU risks either not financing projects of these organisations at all or only funding projects addressing less controversial issues.

The EU has adapted its tools to improve its capacity to respond to shrinking space. The EU’s use of sub-granting - whereby the EU channels funds to mainstream NGOs, which transfer money on to smaller bodies or activists - has increased in recent years, which enables the EU to fund the work of small CSOs outside capital cities.

The EC also supports the European Endowment for Democracy (EED) financially, aiming to fund those organisations and individuals it cannot reach via traditional instruments, through direct grant-making to organisations and activists that work to promote human rights through specific flexible procedures. The so-called Rapid Response Mechanism that has been created as one component of the EaP Civil Society Facility is another valuable tool that allows for funding procedures in situations of shrinking space that require an immediate advocacy response by activists.

Even though the EU has developed a good menu of tools to increase the flexibility of its instruments, CSOs still express concerns regarding the lack of flexibility and accessibility of EU financing instruments for civil society. The EU funding modalities for CSOs are for short periods and they oblige the organisations to constantly compete amongst each other for new funding. This may allow CSOs to survive, but not to grow or expand their activities. The fact that the EU modalities do not allow for core funding of CSOs has been described as one of their shortcomings by an EUD gender expert.

Despite the recognised role of many CSOs in tackling discrimination issues, an external evaluation of GAP II points to evidence from 2016 showing that CSOs are not often involved in producing Gender Analysis Studies, which are used to inform the design of action documents. The engagement of civil society is also at an insufficient level in the implementation of GAP II (CONCORD, 2018). This issue merits serious attention, because CSOs play a central role in legal reform – from building evidence for the need to act, to analysing and raising the problems with existing laws, as well as campaigning for change. The gender analysis study commissioned by the EUD in Kosovo and prepared by a Kosovan women’s rights coalition is a good example of a mutually beneficial partnership between the EU and civil society.

A successful case from Armenia illustrates how EU support to CSOs working on equality and non-discrimination can positively impact on law reform processes. In Armenia, the EUD together with the Coalition of CSOs on Violence against Women identified a need for updating the Action Plan on Domestic Violence and developing legislation on GBV. This resulted in budget support conditions and targeted capacity-building efforts. The initial law was adopted in 2017 but following the Velvet Revolution in April 2018 and the election of a new reform-minded government, the opportunity has arisen to revisit the law and to make amendments so that it is fully in accordance with international standards and good practice. The CSO coalition, which receives programme support from the EUD, has developed detailed recommendations for review of the law and has an ongoing, productive dialogue with the Ministry of Social Affairs, as well as with the Ministry of Health and the Armenian Police Service, which have implementation
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Some conclusions can be drawn from the available evidence as regards the future EU policy. The EU should continue putting efforts into developing a strategic and operational response to address the issue of closing space, e.g. increase its support in ‘trialogues’ between the EU, governments and CSOs and develop participatory monitoring mechanisms when implementing operations. The EU should also react accordingly in its future funding instruments to the changes occurring in civic activism, such as increasing informal activism. Furthermore, the EU should also consider engaging with the parts of civil society with which it has a less natural affinity, including with nationalist or religious groups where it is possible to do so without crossing ‘red lines’ of respect for democracy and peaceful accommodation of differing points of view in society. While cooperation with religious leaders, organisations and communities can encourage gender-sensitive interpretations of religious rules and empower marginalised voices, there is also the risk of reinforcing patriarchal structures that are opposed to gender equality. Cooperating with religious actors bears both potential benefits and risks. Even where the inclusion of women’s voices is pronounced, there is no guarantee against patriarchal interpretations.

The current geographical and thematic instruments come with specific features that complement each other. This complementarity should be retained within the different pillars of the future external financing instrument NDICI. The EU needs to make sure that the changes in the external financing instruments will not result in a de-prioritisation of civil society support. According to the EC proposal under which the EIDHR will be absorbed, 1.5 billion euros will be dedicated specifically to CSOs and the same amount for human rights and democracy. Given that according to the EC proposal most of the budget will be provided for the geographic pillar (EUR 68 billion out of a total EUR 89.2 billion), it will be important to introduce windows for gender equality and CSOs under geographical cooperation. Furthermore, the basic elements of the EIDHR - such as its added value to be implemented independently from governments - should be retained under the new NDICI.

7.5 EU trade agreements, GSP and GSP+

In addition to the EU human rights policies and financial support, the EU can use human rights clauses in trade agreements (and cooperation and association agreements) with countries outside the EU as a tool to further gender equality in law. Bilateral trade agreements between the EU and third countries or regional organisations include a human rights clause defining respect for human rights as an ‘essential element’. Non-compliance can be addressed through reducing or suspending cooperation. Since 2008, EU trade agreements include a new basis for cooperation in the form of sustainable development chapters. GSP and especially GSP+ schemes can also be used to achieve reform of women-discriminatory laws. Countries that are granted GSP+ are required to ensure the effective implementation of 27 international conventions on human and labour rights, environmental protection and good governance.

A 2016 EP study found that attention to gender equality is limited in EU trade policies. This is reflected in the lack of systematic gender analysis in impact assessments. Even though it is widely known that different groups of women and men are differently affected by trade agreements, gender analysis of trade policies remain limited. The EP study suggests that a better understanding of gender dynamics associated with trade agreements is necessary in order to ensure gender-equitable trade outcomes. A 2015 EP in-depth analysis stressed that the analysis of the impact of trade on women in third countries has been

controversial. On the one hand, it has been argued that trade liberalisation helps bring women into paid employment and results in higher incomes and increases economic independence. On the other hand, there are also concerns about the impact of EU trade on women in third countries, in particular the impact on decent work, wages, including gender wage gaps. An EP Implementation Assessment Study stressed that the GAP II does not address in specific terms the link between trade and gender, despite being the overarching EU strategy for promoting gender equality and women’s empowerment in third countries. The study also pointed out that the impact of trade on women was also not included in the sustainability impact assessments that had been completed by the European Commission.

In order for GSP+ to be an effective tool for e.g. reform of women-discriminatory laws, the list of issues (‘scorecard’) and indicators for satisfactory progress need to be sufficiently precisely formulated. ‘Adoption of an anti-discrimination law’, or ‘improved implementation of the child marriage law’ are not sufficiently precise indicators. There should also be more public transparency around the indicators and GSP+ progress reports, so that it is possible for CSOs and other national stakeholders to monitor progress and hold the national government or even the EU to account where appropriate. Transparency and accountability are core human rights principles that the EU has committed itself to promote as part of its implementation of a rights-based approach to development cooperation.

### 7.6 The European Parliament’s role in promoting gender equality in law in third countries

The European Parliament (EP) oversees and assesses the implementation of EU instruments in the field of human rights and democracy. It holds the European Commission and the Council accountable for their activities in this area. Every year, the EP adopts a resolution on human rights and democracy in the world and the EU’s policy on the matter, analysing the main challenges and achievements of the EU’s approach to democracy support and making recommendations for the future. The EP has also followed closely the implementation of the GAP through reports and resolutions (see reference to EP’s implementation report on GAP II in the sub-chapter on GAP II).

In addition, the EP has developed a range of tools for engaging directly in global democracy support. Through programmes of capacity building for parliaments, the EP supports parliamentary work in countries outside the EU, including strengthening the institutional capacity of parliaments through conferences, seminars, joint training programmes and study visits, as well as fellowships for staff. Furthermore, the EP regularly has the opportunity to engage members of parliaments from third countries in dialogue through its involvement in parliamentary assemblies and inter-parliamentary delegations.

The EP’s Democracy Support and Election Coordination Group (DEG) is responsible for coordinating the democracy support activities of the EP. Some of the work streams of the Comprehensive Democracy Support Approach (CDSA) - that encompasses election observation, parliamentary support for capacity building, human rights actions, and mediation and dialogue – are relevant to the EP’s role in promoting gender equality in law in third countries. These include parliamentary capacity-building activities, human rights actions, and the Young Political Leaders programme. The human rights actions aim to increase awareness among parliamentarians from third countries, to help them to mainstream human rights into legislation, to build networks with human rights defenders, and to support civil society representatives in dialogue with national parliaments.

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A recent EP Study on the EP democracy support activities identified the MEPs’ political perspective and approach as the EP’s distinct comparative advantage, together with the MEPs’ understanding of how the functioning of parliament facilitates a democratic political process, including through consensus building. This ability of MEPs to work with their peers in other parliaments gives them a comparative advantage in dialogue and exchange on issues related to gender equality in law. Furthermore, the EP brings political leverage to its activities, including through the involvement of political parties and their networks.\textsuperscript{136}

The EP’s capacity building tool, centred around peer-to-peer exchanges between MEPs and MPs from third country parliaments, represents an important added value to the European Commission’s development cooperation and financial assistance. The EUDs should always consider the EP’s comparative advantage when engaging on law reform processes in third countries. Where EU actors on the ground believe that reaching out to the legislative on a peer-to-peer basis could have the potential to advance the gender equality law agenda, the EP should be consulted and informed.

It must nevertheless be kept in mind that the resources of the EP to engage in democracy support in third countries are and will remain limited. The EP’s inter-parliamentary delegations and participation in parliamentary assemblies will therefore remain an important channel for its engagement in gender equality in law, especially in countries with less fertile ground for reform.

The ability of the EP to contribute directly to reform of laws that discriminate against women through the democracy support activities of the DEG and through inter-parliamentary assemblies and delegations becomes greater where there is more in-depth technical knowledge of the legislative issues under discussion. Therefore, it is crucial that the European Commission always shares its technical knowledge on gender equality issues in third countries with MEPs – including the Country Gender Profiles. This will enable the EP to go from generalities to specifics in their engagements on gender equality in law with third countries’ parliaments.

8 Case studies

8.1 Tunisia

Tunisia has a long and proud tradition of feminist activism. The founding leader of Tunisia, President Habib Bourguiba, considered the emancipation of women as a precondition for successful development of the country. This policy of ‘State-supported feminism’ was continued by his successor, President Zine el Abidine Ben Ali.

The principle of equality between men and women was enshrined in the first Tunisian constitution in 1956. The Personal Status law adopted at independence was one of the most progressive in the Arab world, prohibiting polygamy and renunciation, requiring the consent of both parties to a marriage, and granting women the right to request divorce. Tunisian women gained access to birth control in 1962 and abortion on request was legalised in Tunisia in 1973, the first Muslim country to do so.

Tunisia ratified CEDAW in 1985 and the Maputo Protocol to the African Charter in 2018. Tunisia withdrew all specific reservations made on ratification to the CEDAW in 2014, but continues to maintain a general declaration that it will not take any action or adopt any law in accordance with the requirements of the Convention, where such a decision would conflict with the Constitutional provision that the religion of the country is Islam.

Considerable efforts have been made since the Jasmine Revolution in 2011 to improve the legal framework for protection of women’s rights and for combating discrimination and inequality.

A landmark study by the Ministry of Women’s Center for Research, Studies, Documentation and Information on Women (CREDIF), published in 2016, analysed all existing Tunisian legislation from a gender perspective. Since the study was published, several laws have been amended and new laws introduced: the groundbreaking 2017 Law on Violence against Women; the abolition of the law that a Muslim woman could not marry a non-Muslim man; the abolition of the offence of adultery; and the inclusion in the criminal code of the offence of sex with a minor.

The Law on Violence against Women recognises five forms of violence against women: physical, psychological, sexual, economic and political. Concurrent with the adoption of this law, the much-criticised article 227 of the Criminal Code was abolished, a provision that had allowed rapists to avoid legal consequences for their actions if they married their victims. The EUD in Tunisia supported the development and adoption of the VAW Law through a variety of different means: research funding; capacity-building support to the Ministry of Women; training to various Parliamentary entities; CSO grants; and raising the matter with the government in policy dialogue.

In 2017, then President Beji Caid Essebi established the Committee on Individual Freedoms and Equality (COLIBE) with a mandate to prepare a report identifying necessary legal reforms in order to ensure compliance with the 2014 Constitution and with Tunisia’s international human rights obligations. The Committee’s comprehensive report, which was published in June 2018, includes a recommendation to elaborate a code on individual freedom and rights, as well as a framework law on anti-discrimination.

Some Tunisian CSOs do not support having such a stand-alone law on discrimination separate to the penal, civil and other codes. They fear that this will create legislative overlaps, with the result that implementation of new anti-discrimination provisions will be poor.

Women’s CSOs are campaigning for reforms of both the law on inheritance and the law on family, under which the husband / father is considered the head of the household. The right to inheritance is governed by the Personal Status Code but it essentially follows Sharia law principles, under which daughters are only entitled to inherit half as much as sons, and female surviving spouses are entitled to inherit only half as much as male surviving spouses.

In the OECD’s Social Institutions and Gender Index (2019), which examines formal and informal laws, social norms and practices, Tunisia performs poorly in the dimension discrimination in the family with a score of 80 out of 100 (in this index, a higher score means a higher level of discrimination).

Both inheritance and family law reform divide opinion in society. Particularly in rural areas there is strong support, amongst both men and women, for maintaining the status quo. Discriminatory family and inheritance laws are the most difficult to reform because they are embedded in traditional economic power structures and social and religious beliefs. There is also a deeply ingrained cultural tradition in Tunisian society, especially in rural areas, that men (fathers, husbands, brothers) take care of women’s economic needs. Surveys have shown that the majority of Tunisians, including a majority of women, are opposed to reform of the inheritance law. Advocates for reform have drawn support from some Islamic scholars who argue that there is nothing in the Koran against full equality between women and men.

Following the 2018 local government elections, women now make up 47 % of local council positions. This result was achieved following the adoption of the 2016 Electoral Law, which included the principles of both horizontal (equal numbers of men and women at the head of party lists) and vertical parity (alternation of male and female candidates down the party lists). At the national level, however, only compliance with the principle of vertical parity is required. Many parties that selected female head candidates in 2014 chose to select only male head candidates for the October 2019 elections. As a result, the percentage of female
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Deputies has decreased from 36 to 23% in the new parliament. Women’s rights activists fear that the fight for gender equality will suffer as a result.

While the adoption of the Law on the Eradication of Violence against Women in 2017 was justly celebrated, women’s inequality in the economic sphere also needs to be addressed in law and practice. Only 50% of Tunisians of working age are employed in the formal sector, and the percentage of women working in the informal sector is probably much higher than 50%. These women, together with female domestic workers, do not have any legal protection at present against discriminatory or illegal employment practices.

In the World Bank’s Business, Women and the Law study (2020), which measures formal (legal) discrimination against women in employment and economic opportunities, Tunisia received an overall score of 70 out of 100 (where a score of 100 indicates full legal equality between men and women). Of the eight indicators measured in the study, Tunisia scores lowest for the indicators ‘pay’ and ‘assets.’ As regards ‘pay’, while there are still some discriminatory provisions in the Labour Code, the data used in the 2020 study may not be completely up to date. For example, there is in fact a provision in the 2017 Law on VAW and DV guaranteeing equal remuneration for work of equal value. In relation to ‘assets’, Tunisia loses points because of its inheritance laws and because the law does not provide for the valuation of non-monetary contributions in marriage. UNDP is currently finalising a large study on unpaid marital contributions of Tunisian women, which should provide valuable data to support future legal reform in this area.

Advocacy efforts are ongoing to abolish article 230 of the penal code criminalising homosexuality, another one of the recommendations from the COLIBE report. Abolition of article 230 is one of the indicators for the EU’s Justice Sector Reform budget support programme.

Notable developments achieved with support from the EU have been the inclusion of gender perspectives in the Law on Decentralisation and in the 2019 organic budget law. The EU also promotes gender equality through engagement with the government and civil society on the Universal Periodic Review process, including support for CSOs in the preparation of alternative reports to the Human Rights Council. The implementation of the GAP and the incorporation of a gender perspective in all cooperation assistance programmes, across all sectors, is another means by which the EU promotes gender equality in society.

The EU provides 80% of the financing for ‘Ensuring sustainable governance and human rights in the Southern Mediterranean Programme’ (South Programme III) (2018-20), a programme implemented by the Council of Europe, promoting the framework of the Istanbul Convention as a model for effectively combating VAW and DV. Remarkably, one of the outcomes of this project has been a formal request from the Government of Tunisia to accede to the Convention.

The EP has a substantial ongoing cooperation with the Tunisian Parliament. Several joint activities have taken place in Tunisia in recent years, including a regional parliamentary conference ‘Maghreb on the move: from criminalisation of violence against women to implementation’ in Tunis in 2016. The EP’s DEG has two dedicated projects that it is currently offering to the Tunisian Parliament, to promote a more inclusive and equal society through gender equality: (i) support for the empowerment of women, in particular women parliamentarians, under the Simone Veil programme; and (ii) activities in support of the implementation of the Law on the Eradication of Violence against Women, in particular on victims’ access to justice, both at local and national level – related to the Parliament’s monitoring role on the implementation of the adopted laws. Tunisia has also been selected by the EP as a priority country for assistance during the current parliamentary term through the Comprehensive Democracy Support Approach (CDSA). An initial fact-finding mission visited the country in February 2020 and further missions were planned for March-April but have been postponed due to the COVID-19 crisis.

The case of Tunisia is one of best practice in an environment where there is fertile ground for reform and extensive cooperation at bilateral level and as part of the Southern Neighbourhood policy. A high level of
technical knowledge and commitment among staff from relevant EU institutions facilitates effective support to Tunisian efforts to reform gender-discriminatory laws.

Joint efforts between the EU (as principal financial contributor), the Council of Europe and various UN agencies (implementing agencies with specialist knowledge of relevant international legal frameworks) are a good and sensible approach.

The EP has been steadily building relationships with counterparts from the Tunisian Parliament and other Tunisian institutions and organisations in recent years, and this augurs well for the planned new programme of support to be developed during 2020. The involvement of the EP gives the EU an additional means through which to promote reform of discriminatory laws. While there are other international actors supporting the Parliament, the EU has influence because of Tunisia’s geographical proximity and the strong economic and social ties that exist between Tunisia and the European countries.

8.2 The Gambia

The Gambia has a pluralistic legal system, consisting of three elements: laws adopted by Parliament and interpreted by Court applying the English common law tradition, customary law applied by village councils, and Sharia law applied by the cadi court system (Ogbuitepu, 2019). For the majority Muslim population, Sharia law regulates family, marriage, child custody and inheritance matters. With parallel legal systems, Parliamentary laws that provide for equality between men and women coexist with customary and religious laws that discriminate against women and girls, leading to a lack of legal certainty and the perpetuation of harmful practices (OECD, 2019d).

The Gambia ratified the CEDAW without reservations in 1993 and the Maputo Protocol to the African Charter, also without reservations, in 2005. Over the past decade, Gambia has enacted several laws to give effect to the provisions of these two treaties in Gambia law: the 2010 Women’s Act, the 2013 Sexual Offences Act, an amendment to the Women’s Act prohibiting and criminalising the practice of female genital mutilation (FGM) in 2015, and the criminalisation of child marriage in 2016 (OECD, 2019d).

In their Concluding Comments to the Combined 4th and 5th Periodic Reports of The Gambia on implementation of the CEDAW (2015), the CEDAW Committee expressed concern that the existing legislative framework does not prohibit marital rape, and that the general prohibition on discrimination in the Constitution does not apply in respect of adoption, marriage, divorce, burial and devolution of property upon death. In fact, some of the discriminatory provisions in Gambian customary and religious law have been re-enacted in the Women’s Act. There is no lower age limit for marriage in Islamic tradition, and customary and religious leaders continue to support child marriage traditions (OECD, 2014; OECD, 2019d). Furthermore, crimes such as domestic violence and rape are not subject to sanctions in many traditional communities, and therefore go unreported in official statistics (OECD, 2019d).

According to a 2014 study prepared by the INGO Legal Action Worldwide137, the Gambian Sexual Offences Act lacks comprehensive definitions of domestic and sexual violence, and does not adequately provide for protection, assistance and support to victims. One positive element noted is that the law was developed through a consultative process with customary and religious leaders.

In the World Bank’s Women, Business and the Law study (2020), which measures formal discrimination against women in employment and economic opportunities, The Gambia’s ranking was 74.4 out of a maximum possible score of 100, an increase of more than 10 percentage points in the 10 years since 2009. This improvement was largely due to the adoption of the Women’s Act and the inclusion of child marriage in the Penal Code, as discussed above. Of the eight indicators measured in the study, The Gambia performs

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worst in relation to equality in the workplace, access to economic assets (including inheritance rights), and in laws regulating rights to maternity and parental leave. The Gambia has not yet adopted a law on sexual harassment in the workplace, and there are no civil remedies or criminal sanctions for sexual harassment in employment.

In the OECD’s Social Institutions and Gender Index (2019), which examines formal and informal laws, social norms and practices, The Gambia performs worst in relation to the dimension ‘discrimination in the family’, with a score of 88 out of 100 (in this index, a higher score means a higher level of discrimination). As discussed above, the general prohibition on discrimination in the existing Constitution from 1996 does not apply to personal status laws, including laws on marriage, divorce and inheritance, which are governed, depending on the particular community, by Sharia or customary law or a combination of both (OECD, 2019d).

The change of government in The Gambia following the December 2016 elections has created a window of opportunity to reform its existing legal framework. The current President was elected on a platform of respect for human rights and the rule of law. The establishment of the Ministry of Women’s Affairs in 2019 was also a demonstration of the new government’s commitment to advance gender equality. In political dialogue and in its public communications the EU has called for strengthened enforcement of the legal prohibitions on child marriage and FGM. With significant support from the EU, the government has embarked on a legal reform programme which is expected to strengthen women’s rights across a range of legal fields. A series of reform proposals were expected to have been presented to the National Assembly at the end of 2019, but completion of the reform package has been delayed.

At present just five of the 58 National Assembly members are women, of which two are directly appointed by the Executive. The total percentage of female National Assembly members (elected and appointed) is currently just 8.6%. The new draft Constitution, which is expected to be put to a referendum in November 2020, replaces the existing system of Presidential nominees to the National Assembly where, in addition to 53 single-member constituencies, 14 women are to be elected (two from each administrative area) and two persons with disabilities. Further, political parties will in the future be required to propose at least 10% youth candidates on their electoral lists for National Assembly elections.

The Gambia’s new National Development Plan (NDP), which was devised with the assistance of the UN, is SDG-compatible and in full alignment with the EU’s development objectives in terms of (i) climate change and environment sensitiveness, (ii) gender equality and women’s empowerment and (iii) inclusiveness.

UN Women has selected The Gambia as a priority country of its newly launched strategy for accelerated action on Equality in Law for Women and Girls by 2030. A mapping of existing laws negatively affecting women’s rights has been commissioned and is expected to be launched in May 2020.

Yet The Gambia continues to suffer from low economic empowerment of women, low representation of women in decision-making position, limited gender-sensitive policies and inadequate capacity at all levels to mainstream gender perspectives and apply gender analysis skills.

There is a strong focus on gender equality in EU policy dialogue with the Government and in all modalities of development assistance. Gender-equality related performance is one of the indicators for disbursement of the variable tranche under the EU’s budget support programme. In 2019, this indicator was not satisfied due to a lack of government action towards the establishment and commence of operations of the planned Women’s Development Fund (WDF). This was considered a wake-up call to the Government. Establishment of the WDF continues to be the indicator for 2020, and for 2021 the indicator is to adopt legislation requiring political parties to propose at least 30% female candidates on electoral lists. If the law is passed by July 2021, it will enter into force before the next National Assembly elections.

Under the EIDHR, the EUD is currently funding a project implemented by the INGO Article 19, which provides capacity-building support to the Parliamentary Subcommittee on Human Rights, including on
gender-sensitive legislation. A delegation from the Gambian Parliament also visited the EP in the previous legislature.\textsuperscript{138}

The EU arguably does not have as much capacity to influence the legislative reform agenda in The Gambia as it does for countries closer to Europe, especially those countries in the Neighbourhood and the Western Balkans that have made specific commitments to incorporate European norms in their own legislation. Nevertheless, the EU and the Member States are major development partners to the government of The Gambia and can exercise significant influence, as demonstrated by the withholding of the variable tranche under the EU budget support programme in 2019 due to the non-establishment of the planned Women’s Development Fund.

8.3 Bangladesh

Bangladesh has a pluralistic legal system, comprised of two elements: a) laws adopted by Parliament and subject to interpretation from time to time by the Courts, which apply uniformly to all, and b) personal status laws governing marriage and family life, including inheritance, which differ according to Muslim, Christian and Hindu traditions, and are officially recognised by article 152 of the Constitution. Some but not all these laws have been codified into national legislation.

Personal status laws are very difficult to change because of the power of embedded customs and religious traditions. Feminist groups and human rights NGOs in Bangladesh have campaigned for many years for the reform of personal status laws which discriminate against women or which disadvantage them economically compared to their brothers and spouses. Muslim women do not have the same rights to obtain a judgment of divorce or to remarry as men, do not receive an equal share of the assets of the marriage in the event of divorce, and are only entitled to half as much inheritance as their male siblings.

Bangladesh ratified CEDAW in 1984 but maintains reservations to articles 2 (the general prohibition against discrimination), 13(a) (elimination of discrimination in the area of family benefits), 16(1)(c) (equal rights and responsibilities for women and men in marriage and divorce) and 16(1)(f) (equal rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children). The CEDAW Committee has called on those States Parties who have made reservations to these provisions to consider removing them:

“Removal or modification of reservations, particularly to articles 2 and 16, would indicate a State party's determination to remove all barriers to women’s full equality and its commitment to ensuring that women are able to participate fully in all aspects of public and private life without fear of discrimination or recrimination.”

Bangladesh women’s rights NGOs continue to call for Bangladesh to withdraw its reservations to CEDAW, arguing that so long as the country does not accept the prohibitions against discrimination, the Convention has ‘referral value only and has little legislative value in it.’\textsuperscript{139}

The Women’s National Development Policy from 2011, which called for full legislative equality between men and women, including reform of the inheritance laws, was opposed by a national coalition of Islamic scholars. One of the options for reform of gender-discriminatory customary traditional practices is to adopt a unified national Family Code, but this has also been opposed by some organisations representing the minority Hindu population, who argue that the adoption of secular practices will threaten their cultural identity (Nazneen in Al-Sharmani, 2013).

\textsuperscript{138} The EUD would welcome a continuation of this exchange, but the EP Democracy Support and Election Coordination Group (DEG) has only limited resources for bilateral cooperation and has therefore made a strategic decision to prioritise a limited number of countries and regions (among them the African Parliament) in order to maximise the potential impact of its support.

Bangladesh has one of the highest rates of child marriage worldwide (45% of all girls under 18 years of age are married) and the world’s highest marriage rate for girls under 15 years (UNICEF, 2014). The Child Marriage (Cessation) Law adopted in 2017 has some good elements, but also a very problematic one, a much-criticised provision allowing for underage marriage with the permission of her parents in ‘special circumstances’, where a girl has become pregnant accidentally or illegally, in order to ‘protect the girl’s honour’. The law also differentiates between men and women on the basis of age: men under 21 years and women under 18 years are considered minors for the purposes of the Law. Further, as it is overwhelmingly girls who marry early, this law is discriminatory in practice, perpetuating existing inequalities between boys and girls in access to education, vocational training and opportunities for economic advancement (Begum, 2019). In practice, the law is not applied in any event in many Muslim and Hindu communities, where religious laws and traditions permitting girls to marry at puberty continue to be followed instead.

In the OECD’s Social Institutions and Gender Index (2019), which examines formal and informal laws, social norms and practices, Bangladesh performs worst in relation to the dimensions ‘discrimination in the family’, with a score of 83 out of 100, ‘restricted access to productive and financial resources, with a score of 52/100, and ‘restricted civil liberties’, with a score of 47/100 (in this index, a higher score means a higher level of discrimination). Overall, Bangladesh is assessed as having a very high level of discrimination, ranking within the bottom 10% of all 120 countries assessed.

A proposal for a framework Law on Anti-discrimination was developed in 2014 by the Bangladesh Law Commission. The initial draft has been reviewed several times by the Human Rights Commission and the Legal Affairs and Human Rights Committee of the Parliament. A sticking point in the discussions has been whether to include LGBTI persons within the scope of the Law. If adopted the law will strengthen the formal legal framework for the protection of women’s rights. The EU supported advocacy efforts for the adoption of the law through its Dalit empowerment programme, which ended in 2018.

The Domestic Violence (Prevention and Protection) Act was adopted in 2010 but it has not been effectively implemented (Huda, 2016). Domestic violence is commonly considered to be a private matter, which leads to a reluctance by police officers to intervene and is one of the reasons why victims rarely seek help. A survey conducted in 2014 by CARE Bangladesh found that both men and women believe a husband has the right to physically punish his wife.

In 2008, the Supreme Court of Bangladesh issued guidelines against sexual harassment in employment, including a requirement that all workplaces and educational institutions establish anti-harassment units. Twelve years later, very few workplaces have taken measures to comply with this ruling; neither has the Parliament adopted legislation on harassment in the workplace, as called for by civil society groups, or amended the civil and penal codes to provide civil remedies and criminal penalties in cases of sexual harassment.

Bangladeshi women face significant legal discrimination in employment and access to economic resources. Bangladesh’s rating on the World Bank’s Women, Business and the Law study improved only marginally in the 10 years between 2010 and 2020. It performs poorest in relation to the indicators pay, parenthood, marriage, assets and pension. Bangladesh has ratified ILO Convention 100 and there is a provision in the Labour Act (2009) providing equal pay for work of equal value, but compliance with the law in the private sector is poor. Dismissal of pregnant employees is not prohibited by law.

Periods of absence due to childcare are not accounted for in the calculation of pension benefits. Legal protections against discrimination in the workplace do not apply, even in principle, to the very overwhelming majority of Bangladeshis employed in the informal sector, where women are also over-
represented. National experts have called for the establishment of a legal framework to protect the rights of women in informal employment, including domestic workers 140.

The EUD in Bangladesh has an ongoing political dialogue with the Government, Members of Parliament and senior officials on women’s rights and gender equality issues. The EUD also provides support for, and participates in civil society-led advocacy events. It has a current project, implemented by grassroots CSOs, to increase awareness of the Domestic Violence Act. Within the framework of GSP / Everything but Arms (EBA), the EU initially focused on improving Bangladesh’s compliance with ILO Conventions, hereunder ILO Conventions 100 on Equal Remuneration and 111 on Non-Discrimination, which stands to benefit employment conditions for women working in the garments sector. More recently the scope of the cooperation has been extended to include several key human rights concerns.

Bangladesh is one of three GSP / EBA beneficiary countries with which the EU has an ‘enhanced engagement’, due to the gravity of breaches of core human rights and labour rights standards in the country, as testified by reports from the UN, the ILO and civil society. Bangladesh is by far the most important beneficiary of the EU’s EBA arrangements. The EU is Bangladesh’s largest trading partner. Within the framework of the EBA, Bangladesh is required to address seven specific issues regarding respect of human and labour rights. None of these seven issues concern protection of women’s rights; they are in fact gender-blind, perhaps because the development of the EBA scheme was not informed by a gender analysis,

Reform of gender-discriminatory laws and practices being so difficult to achieve in Bangladesh, it can also be difficult to identify examples of good practice. The EU has for many years raised its concerns in political dialogue about Bangladesh’s maintenance of reservations to the CEDAW and the existence of laws and embedded practices that discriminate against women in all aspects of their lives. EU development cooperation has supported efforts by civil society and women’s rights organisations to promote relevant law reform initiatives such as the draft framework Anti-Discrimination Law. The EU clearly does not have the same political or institutional leverage in relation to Bangladesh that it has for countries with closer political and institutional ties to Europe.

Considerable untapped potential nevertheless exists for the EU to promote the reform of Bangladeshi laws that discriminate against women through the EBA enhanced engagement process. The EU could e.g. call for Bangladesh to ratify the new ILO Convention 190 on Violence and Harassment or to adopt national legislation giving effect to the 2008 Supreme Court judgment on harassment in the workplace discussed above.

8.4 Ukraine

Ukraine has made considerable progress towards the achievement of equality in law between men and women since gaining independence in 1991. In the OECD’s Social Institutions and Gender Index (2019), which examines formal and informal laws, institutions and practices, Ukraine was classified as having a low overall level of gender discrimination, with an overall score of 21 out of 100 (countries that score below 20 are classified as having very low levels of discrimination). In fact, Ukraine ranks higher on the SIGI Index than several EU Member States.

Ukraine’s poorest result in the SIGI (2019) was for the dimension ‘restricted civil liberties’ where it scored 29/100, largely due to the comparatively low percentage (12%) of female Deputies in the Ukrainian Parliament. Following the parliament elections held in July 2019, the number of female Deputies has now


141 Brussels, 10.2.2020 SWD (2020) 19 final, Joint Staff Working Document, Report on EU Enhanced Engagement with three Everything but Arms beneficiary countries: Bangladesh, Cambodia and Myanmar; at p.6
increased to 87 (or 20.5% of the total), which is a record for the country. Furthermore, the new Electoral Code, adopted in December 2019, increases the minimum quota for women’s representation on party lists to 40%. The new law entered into force on 1 January 2020, so will apply to the local elections scheduled for autumn 2020.

In the 10 years between 2010 and 2020 Ukraine advanced from 73.18 to 78.75 out of 100 on the World Bank’s Women, Business and the Law study, which measures formal legal equality between men and women in employment and economic opportunities (in this study, a ranking of 100 indicates that full legal equality between men and women). Ukraine’s overall ranking in the 2020 study is pulled down by scores of 0/100 for the indicator ‘pay’ and 50/100 for the indicator ‘pension’. According to the study the Labour Code prohibits women’s employment in certain industries and in jobs that are considered hazardous or arduous. The study is, however, incorrect in concluding that there is no provision in Ukrainian law guaranteeing equal remuneration for work of equal value. There is in fact such a guarantee in article 17 of the Law on Ensuring Equal Rights and Opportunities of Women and Men (2005). The problem is not the lack of a legal guarantee, but the lack of an effective wages control mechanism (many employees receive part or all of their salary as cash in hand) and of legislation / an adjudicative mechanism by which employees can claim their rights to equal pay.

In late December 2019, the government submitted a new Labour Law to Parliament for consideration. Ukrainian trade unions and international observers criticised the draft law and other draft laws submitted by individual MPs for weakening existing labour and social protection guarantees, including reduced maternity protection. The European Trade Union Confederation pledged to raise the issue with the EC and EP on the basis that the draft law breaches the EU-Ukraine Association Agreement. In response, the government has now withdrawn the draft law and is engaging in consultations with labour market partners. It is unclear at the time of writing if, or in what form the draft law will be resubmitted to the Parliament.

Along with several other Eastern European countries (among them Armenia, Azerbaijan, Hungary and Poland), Ukraine has signed but not ratified the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention). Ratification is opposed by some parties in the Parliament and by various religious and social organisations. The opposition to the Istanbul Convention is based on misunderstandings about the use of the terms ‘gender’ and ‘gender equality’ and on false claims that ratification of the Convention will be a ‘Trojan Horse’, obliging Member States to adopt legislation on same sex relationships or transgender rights. In a January 2020 interview the leader of the governing Servant of the People Party, MP Mr. Aleksandr Kornienko, was quoted as saying that given the opposition of the Ukrainian Orthodox Church, the prospects for ratification of the Convention remain very low.

Ukrainian laws on domestic violence, violence against women and sexual harassment in the workplace reflect good international practice. Amendments were recently made to the Criminal Code and the Criminal Procedure Code, as well as to the Law on Domestic Violence. These amendments are in effect incorporating some of the provisions of the Istanbul Convention into Ukrainian law. According to the EUD in Ukraine, the government has taken a pragmatic approach, implementing some provisions from the Convention in order to provide better safeguards for women in the areas of VAWG and DV, while ratification of the Convention itself remains on hold.


The EU has a close coordination with the Council of Europe on alignment between Ukrainian law and regional legal norms, hereunder implementation of the principle of non-discrimination in the European Convention on Human Rights and ratification of the Istanbul Convention. In political dialogue with the Government, the EU’s consistent message is that ratification of the Istanbul Convention is important because the Convention is a complete package, not just a series of stand-alone provisions. At the same time, it must be acknowledged that the planned ratification of the Convention by the EU is also currently blocked in the Council of Ministers. If the EU were to ratify the Convention, it would strengthen the ability of EUDs, particularly in those countries with which the EU has partnership agreements, to advocate for ratification of the Convention in political dialogue.

The EP has a strong and active bilateral relationship with the Ukrainian Parliament. Ukraine is one of six EP Democracy Support and Election Coordination Group (DEG) priority countries and regions. There is also a ‘Ukraine support group’ of ca. 30 independent experts who can provide technical inputs to MEPs on a range of thematic issues. This ability to obtain detailed information on the legislative issues being enhances the credibility of the EP in its interactions with Ukrainian counterparts. There has been an extensive engagement on the Istanbul Convention ever since its first came onto the radar of the Ukrainian Parliament. This engagement has taken the form of dialogue and clarification of key concepts at bilateral level and in meetings of the Euronest Parliamentary Assembly, and a visit by representatives of Ukrainian religious authorities to a session of the EP in Strasbourg.

Similar to Tunisia (see case study above), Ukraine is a country where there is fertile ground for reform and cooperation on gender equality at bilateral level and as part of the EaP. For Ukraine too, the EU is coordinating with and providing funding for human rights and rule of law programmes implemented by Council of Europe, among them the programme ‘Women’s Access to Justice: delivering on the Istanbul Protocol and other European gender equality standards in the EaP countries (2019-21).

The EU has significant ability to influence legal reform processes in Ukraine by virtue of its extensive institutional and legal cooperation with Ukraine at bilateral and multilateral levels and the deepening economic ties between Ukraine and Europe (the EU has been Ukraine largest trading partner since 2015). The bilateral cooperation between the EP and the Ukrainian Parliament is an additional means through which the EU can engage in dialogue and share technical expertise and best practices in reform of discriminatory laws and in the application of a specific gender lens in law-making. High levels of knowledge and technical expertise displayed by staff from the EU Delegation, the EEAS and the EP also contribute to making Ukraine an example of good EU practice. Relevant EU institutions should remember to keep each other informed and, where appropriate, to include each other in activities with Ukrainian counterparts addressing women’s equality in law.

9 Conclusions and recommendations

9.1 Conclusions

Europe can be justly proud of its global leadership role in the development and implementation of gender-equal laws, policies and practices. European laws and policies in this area represent examples of good practice that can inspire parliamentarians and law reform advocates in third countries.

At a time where an increasing number of countries across the world are taking illiberal stances, the EU needs to continue its strong support for reform of laws that discriminate against women. The EU has numerous tools at its disposal to support gender equality through policy dialogues and bilateral cooperation, as well as direct support to women’s organisations.
The most effective approach for the EU to take to support the reform of laws that discriminate against women is to apply a combination of measures: political dialogue, public advocacy, support for women's rights and other like-minded organisations, engagement with a broad range of stakeholders at national and local levels, and targeted programmatic support informed by gender analysis and making use of gender-disaggregated data.

The EU and Member States’ commitments to gender equality, gender mainstreaming and to the application of a RBA in its development assistance can have a very significant impact in third countries, by drawing the attention of local stakeholders to the relevance of human rights and gender issues in all aspects of society, and to the potential of an increased focus on human rights and gender equality to improve overall development outcomes, including in progress towards the achievement of the SDGs.

The EP’s capacity building / democracy support tool, centred around peer-to-peer exchanges between MEPs and MPs from third country parliaments, represents an important added value to the European Union’s development cooperation and financial assistance. For the current parliamentary period, the EP has sensibly chosen to prioritise this support to a small number of countries where the potential for impact is particularly high. For other countries, especially for those beyond the Western Balkans and the Southern and Eastern Neighbourhood, inter-parliamentary delegations and participation in parliamentary assemblies will remain the primary channel for bilateral engagement on gender equality in law.

This study finds that discriminatory family and personal status laws, including inheritance laws, are the most difficult area in which to secure reform. Even though, equality between men and women should be promoted in all sectors, the reality in many countries is that reform of personal status laws may be difficult if not impossible to achieve in the short to medium term. In such contexts, it is legitimate to support incremental steps towards the eventual abolition of discriminatory laws and policies. In many countries, legal frameworks for combating gender-based violence are either yet to be established or need to be strengthened. While legal protection of women’s civil and political rights has improved significantly over the past few decades, the trend in legislative reforms on, among others, freedom of movement and citizenship suggests that progress may have now plateaued. Girls’ development, education and economic opportunities continue to be affected by discriminatory marriage laws permitting girls to marry earlier than boys. Labour laws in many countries continue to be influenced by social norms where men are considered to be the primary economic provider for the family. There is also an overrepresentation of women in the informal sector, where there are no protections against harassment or discriminatory practices.

Factors that support the elimination of discriminatory elements in law include increased women’s representation in elected office, advocacy by women’s organisations, awareness raising, strategic litigation, and the ratification of CEDAW and other international standards. Among these factors, feminist activism, together with data collection, research and advocacy work by women’s rights and other civil society organisations, have been key factors in driving law reform. The ratification and incorporation into national law of CEDAW by a large majority of countries worldwide has constituted an important force for change. Periodic reporting obligations lead governments and other stakeholders to focus afresh on the treaty obligations and to evaluate progress. However, the impact of CEDAW has not been immediate; policy changes have been introduced at varying pace and over a number of reporting cycles.

The increased representation of women in elected office can often, but does not in itself, lead to gender-sensitive legal reform processes in all areas where existing laws undermine women’s rights. For the EU, the focus in programming should therefore include provisions of technical support to parliamentary committees and Ministries to advance legal reform processes.
9.2 Recommendations for the EU Member States and the European Institutions

- Although equality between men and women should be promoted in all sectors and at all levels of society, the reality in many countries is that reform of family and personal status laws, including laws on inheritance, may be difficult if not impossible to achieve in the short to medium term. In such cases, it is legitimate for the EU to support incremental steps towards the eventual complete abolition of discriminatory laws and policies.

- Support by the EC and the Member States for the achievement of the SDGs in third countries is also support for the achievement of gender equality and the empowerment of women and girls. Many SDG targets and indicators are linked to the undertaking of relevant measures, including ratification of relevant instruments and adoption of legislation with a view to eliminating restrictions against women’s access to public services and equal participation in society. The European Commission and Member States should also support global campaigns for reform of laws that discriminate against women, such as the UN Women-led multi-stakeholder strategy ‘Equality in law for women and girls by 2030’, and the ‘Global Campaign for Equality in Family Law’, led by the INGO Equality Now with the participation of UN Women and leading women’s rights and equality NGOs from around the world.

- It is a sound strategy to engage with a broad range of stakeholders at both national and local levels in order to achieve effective and durable reform of gender-discriminatory laws. There are risks involved in only engaging with those women’s rights NGOs and like-minded actors that are champions of the reform, as they may become exposed as recipients of international donor support and be susceptible in some contexts to criticisms that they are not working in the national interest. It is important to also engage the public at large and with community or religious groups that are either neutral or yet to be convinced of the value of the reform. It may even be necessary to engage specific public institutions; for example, law enforcement agencies in the case of a new law to combat domestic violence. Otherwise, there is a danger that reforms may not be sustainable in the longer term, or that new laws will not be effectively implemented.

- EUDs rarely if ever engage with representatives of customary or religious systems in their public advocacy for the reform of discriminatory personal status or inheritance laws. While caution may in some circumstances be the best approach, we believe there is potential for the EU to be more active in public dialogue and to engage with non-traditional dialogue partners. The EP has a good practice example of engagement with religious leaders from its democracy support activities in Ukraine.

- It is vital for the EU to continue to support the gathering of gender-disaggregated data across all sectors to raise awareness of the impact that discriminatory laws have on women’s and girls’ lives. For a variety of reasons, many EU programmes and projects still do not systematically gather gender-disaggregated data. Statistics can provide powerful arguments in favour of law reform. Where the difficulty in gathering data is due to a lack of national capacity, programmes should also support capacity development within the National Statistics Bureau and in relevant Ministries and other public authorities. Support for the improved collection of disaggregated data also assists partner countries to measure progress towards the achievement of the SDGs. We recommend that GAP III should place more focus in its indicators on collection and analysis of statistics.

- European development assistance and cooperation can also play an important role in drawing attention to the effects of intersectional legal discrimination experienced by, among others, women and girls with disabilities. As a State Party to the UN Convention on the Rights of Persons with Disabilities, the EU should also collect disaggregated data on persons with disabilities in all programmes across all sectors.
The EU and Member States should also strive to ensure that their own actions in the domestic sphere are consistent with equality and human rights standards and good practice. Where problems with the implementation of human rights commitments are revealed through e.g. international human rights treaty body reporting processes, Member States should consider recommendations carefully and take effective measures to remedy the problems identified. In a world where an increasing number of states are questioning the value of multilateral cooperation, compliance by EU Member States with international human rights obligations helps to strengthen the position of both the EU and its Member States in human rights dialogue and cooperation with third countries.

9.3 Recommendations for the European Commission and the EEAS

- The EC needs to strike the right balance between funding programmes directed to mainstreaming gender and funding dedicated to gender-targeted programmes, given that both elements are necessary. Some interview partners have stressed concern that the increased attention on mainstreaming could lead to a situation where targeted actions are not sufficiently covered.

- The EU can fund targeted actions by CSOs for the advancement of gender equality through thematic instruments such as the EIDHR. But this kind of support should be complementary to, rather than a substitute for support for reform of discriminatory laws through bilateral cooperation instruments. The EIDHR should primarily be utilised for law reform advocacy in situations where the issues are too sensitive to be addressed directly through bilateral cooperation. There is still a tendency in some EUDs to pursue human rights objectives primarily through the EIDHR rather than embedding human rights implementation, including the reform of women-discriminatory laws and practices, into all development programmes. As the world’s largest development aid donor, the EU has the ability to influence structural and legislative reform processes relevant to the realisation of women’s rights in many countries.

- The binary definition of gender in GAP II addresses individuals who identify exclusively as either male or female. This should be reviewed in the development of GAP III so that the instrument is better in line with, among others, the case-law of the ECtHR and the CEDAW Committee’s understanding of gender equality and of the scope of prohibited discrimination under Article 2 of the Convention.

- Increased use of country gender profiles (which are in fact obligatory under GAP II) is essential in order to achieve quality legal reforms. EUDs should always make use of gender analysis when developing law reform and other development programmes. National partners, academia, think tanks, and women’s organisations should be consulted in the preparation of country gender analyses and gender equality programmes. They should also have roles in the monitoring of EU-financed activities and programmes on gender equality. If a country gender analysis is not prepared in-house by the EUD it is good practice to make use of local expertise in the country in question.

- The use of human rights clauses in agreements with countries outside the EU are a valuable additional tool to further gender equality in law, especially in countries beyond the Neighbourhood and the Western Balkans where the EU may not have the same ability to influence legislative developments.

- EU trade relations can also be used to achieve reform of women-discriminatory laws. Gender analyses should be taken into account in the development and monitoring of GSP schemes, GSP plus in particular, and trade agreements and specifically their sustainable development chapters. If not, gendered forms of discrimination in the workplace will almost certainly be overlooked in the list of priority issues to be addressed by the beneficiary or partner countries. Furthermore, indicators for GSP monitoring need to be sufficiently precisely formulated. ‘Adoption of an anti-discrimination law’, or ‘improved implementation of the child marriage law’ are not sufficiently precise indicators. There should also be more public transparency around the indicators and GSP progress reports.
Women's rights and equality NGOs play a central role in successful legal reform – from building evidence for the need to act, to analysing and raising the problems with existing laws, and campaigning for change. Women's rights organisations, like other NGOs, are coming under pressure in country contexts where space for human rights and democracy promotion activities is shrinking. The EU should therefore continue to intensify its capacities to support women’s groups and human rights organisations in countries where space for democracy and human rights is shrinking. This includes developing strategic responses and tools to cover the different stages of the closing space, including prevention, early actions, and emergency actions. Where possible, trialogues between EU, local governments and civil society should be increased.

The increased representation of women in elected office can often, but does not of itself lead to more women-friendly legal reform processes or better policies for women’s rights in all areas of concern. For the EU, the focus in programming must not only be directed to supporting the introduction of legal quotas, where relevant, to increase the number of women in parliament, but also to providing capacity building and technical assistance to parliaments in third countries with a view to advancing progressive law reform processes.

EUDs and the EEAS should always consider the EP’s comparative advantage when engaging on law reform processes in third countries. Where EU actors on the ground believe that reaching out to the legislative on a peer-to-peer basis could have the potential to advance the gender equality law agenda, the EP should be consulted and informed. MEPs can also speak more freely than officials in political dialogue and this may prove useful in some situations.

The ability of the EP to contribute directly to reform of laws that discriminate against women through the democracy support activities and through inter-parliamentary assemblies and delegations becomes greater where there is more in-depth technical knowledge of the legislative issues under discussion. Therefore, it is crucial that the EC share information on gender equality issues in third countries with MEPs – including the Country Gender Profiles. This will enable the EP to go from generalities to specifics in its engagements on gender equality in law with third countries’ parliaments.

9.4 Recommendations for the European Parliament

The EP has the opportunity unparalleled amongst EU institutions to engage directly with parliamentarians in third countries. Therefore, it should make full use of the tools at its disposal (capacity building / democracy support activities, inter-parliamentary delegations and participation in parliamentary assemblies) to systematically support reform of laws that discriminate against women, complementary to EC programmes and EEAS political dialogue.

When discussing gender equality issues in inter-Parliamentary exchanges, MEPs should be aware of and engage with parliamentary counterparts on the full range of legal categories where women face discrimination.

This study has shown the crucial role that women’s rights and other human rights groups have played for gender equality law reform, as well as their added value for assessing issues of concern for equal rights of women on the ground. Therefore, MEPs should always engage with women’s rights groups and other relevant CSOs when undertaking missions to third countries.

The EP’s engagement with representatives of religious organisations from Ukraine around the principle of gender equality and ratification of the Istanbul Convention is a good practice that could be replicated in other countries.
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10 References


Committee on the Elimination of Discrimination against Women (2014), General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women.

Committee on the Elimination of Discrimination against Women (2017), General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19.


Council of Europe Parliamentary Assembly, Resolution 2111 (2016), on Assessing the impact of measures to improve women’s political representation.


European Commission (2016), Challenges to the Effectiveness of EU Human Rights and Democratisation Policies, large-Scale FP7 Collaborative Project.


European Court of Auditors (2019), Special Report EU support to Morocco - Limited results so far.


Equality Now (2020), “Marital rape is not a crime in India. It needs to be.” Published on January 31, 2020. Available here: https://www.equalitynow.org/marital_rape_is_not_a_crime_in_india_it_needs_to_be
Discriminatory Laws Undermining Women's Rights


Garcés and Vega (2016) Reforming the legislation on the age of marriage: Successful experiences and lessons learned from Latin America and the Caribbean.


Hallward-Driemeier, Tazeen Hasan and Anca Bogdana Rusu (2013) Women’s Legal Rights over 50 Years: Progress, Stagnation or Regression?


OECD (2019c) DRAFT BACKGROUND NOTE Promoting Gender Equality in Eurasia - Better Policies for Women’s Economic Empowerment.


OHCHR (2017b) Realisation of the equal enjoyment of the right to education by every girl, 2017.

OHCHR (2017c), “UN Committee to review Sri Lanka’s record on women’s rights”, Published on February 15, 2017.

OHCHR (2017d) General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19.


United Nations (2010), Handbook for Legislation on Violence against Women, Department of Economic and Social Affairs Division for the Advancement of Women.


UN Office on Drugs and Crime (2018), Global Study on Homicide – Gender-related killing of women and girls, Vienna.


Youngs, Richards (2020), New Directions for EU Civil Society Support, Lessons from Turkey, the Western Balkans, and Eastern Europe, Carnegie Europe.