**Working Group on discrimination against women in law and in practice**

**Questionnaire on good practices**

In accordance with its mandate, the UN Working Group on the issue of discrimination against women in law and practice has developed this questionnaire to gather information on “good practices” in eliminating discrimination and empowering women for its next thematic report. Given the centrality of the law to the Working Group’s mandate, the report will focus on the processes by which laws that support women’s equality and enjoyment of human rights come into being and are implemented in ways that support women’s enjoyment of their human rights and fundamental freedoms.

The questionnaire intends to solicit information on how a specific law aimed at addressing discrimination against women and promoting women’s substantive equality has come into being, was effectively implemented (I), and what impacts the law has had for women on the ground (II).

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) clearly establishes State obligation to respect, protect and fulfill women’s human rights, ensuring the de facto enjoyment of those rights by women. CEDAW’s framework is founded on the principle of substantive equality, which requires States to take active measures to not only eliminate laws and practices that directly discriminate against women, but to create an environment in which women’s rights can be fulfilled. Good practices in the promotion of women’s human rights thus require a holistic approach that addresses both the causes and consequences of discrimination, and aim at social transformation.

Recognizing the aspiration of the Working Group to better understand the processes and elements which contribute to build “good practices” in legislation and its implementation the Working Group requests that you provide detailed information on at least **one law** adopted in a State that has been successfully implemented in that it has had a notably substantial impact on eliminating discrimination against women in the specific area related to that law and has enhanced women’s enjoyment of their human rights in your national context, such that you consider it a “good practice.” Processes of substantive change often take place over a period of many years, so the law need not be new: this survey should focus on a law whose impact has been substantiated and the impacts of which are still being seen.

The Working Group wishes to thank all stakeholders for responding to this questionnaire **by 12 September 2016.**

**Questionnaire**

**For the following sections, please provide information about a law that has been selected as an exemplary case study of a “good practice” in eliminating discrimination and empowering women in your national context.**

**I. Identification of a law that has eliminated or substantially reduced discrimination and supported women’s empowerment.**

*Background Information on the Law*

1. Name/Title of the Legislation: Protection against Discrimination Act (PaDA.)

2. Date the law passed and came into force:

*Passed: 30.09.2003; came into force: 01.01.2004*

3. Was it a new law or an amendment of an existing law?

New ( x ) Amendment ( )

 If it was an amendment of an existing law, please providing name/title of existing law and any pertinent information here:

4. Is the legislation focused specifically on discrimination against women/gender equality, or is it part of a larger piece of legislation (i.e. Labour law with provisions around gender)? Please explain.

The legislation introduces a general prohibition of discrimination on 19 protected grounds including “gender”. Therefore it is not focused specifically on discrimination against women.

5. Please provide a summary of the content of the law, its preamble or explanatory note, policy measures, dissemination and implementation regulations, and provisions for access to justice, as well a link to where all these can be found online.

PaDA states:

Article 1

 This Act shall regulate the protection against all forms of discrimination and shall contribute to its prevention.

Article 2

 The purpose of this Act shall be to ensure to every person the right to:

 1. equality before the act;

 2. equal treatment and opportunities for participation in public life;

 3. effective protection against discrimination.

Article 3

 (1) This Act shall protect against discrimination all natural persons in the territory of the Republic of Bulgaria.

 (2) Associations of natural persons, as well as legal persons, shall benefit from the rights under this Act when they are discriminated against on the grounds referred to in Article 4 (1) regarding their members or the persons employed by them.

Article 50

 Proceedings before the Commission shall be instituted on:

 1. a complaint by the aggrieved persons;

 2. the initiative of the Commission;

 3. tip-offs from natural and legal persons, state and municipal authorities.

 The Act covers protection when exercising the right to work, education and training and other rights by introducing a complete ban on discrimination for all persons. The law also creates a specialized body - Commission for Protection against Discrimination, which monitors its implementation.

Link: <http://www.kzd-nondiscrimination.com/layout/index.php/layout-over-40-positions/normativni-dokumenti/zakon-za-zashtita-ot-diskriminacia>

 6. When was the first draft of this law introduced, and when was it adopted (please specify dates of first draft and adoption?

*Passed: 30.09.2003; came into force: 01.01.2004*

*The Law’s Compliance with CEDAW*

7. In your view, does the law in question place a positive duty on the State to achieve substantive equality for women?

Yes ( x ) No ( )

 If yes, please explain:

PaDA:

Article 10

 In the exercise of their powers, the state authorities and the local government authorities shall be obliged to take all possible and necessary measures to achieve the aims of this Act.

Article 11

 (1) (Amended, SG No. 69/2008) The bodies of state power, the public bodies and the bodies of local self-government shall take measures within the meaning given by Items 13 and 14 of Article 7 (1), where this is necessary for achievement of the purposes of this Act.

 (2) (Amended, SG No. 69/2008) The bodies of state power, the public bodies and the bodies of local self-government shall take priority measures within the meaning given by Items 13 and 14 of Article 7 (1) to equalize the opportunities of persons who are victims of multiple discrimination.

Article 24

 (1) The employer shall be obliged, prior to employment, where this is necessary to achieve the aims of this Act, to encourage persons of a less represented gender or ethnic groups to apply to perform a given job or occupy a given position.

 (2) The employer shall be obliged, other things being equal, to encourage the vocational development and participation of factory and office workers of a given gender or ethnic group where it is less represented among the factory or office workers performing a given j Article 39

 (1) (Amended, SG No. 68/2006) If the applicants for occupation of a position in the administration of the state and local bodies are of the same standard as regards the requirements for the relevant position, the applicant of the under-represented sex shall be appointed.

 (2) (New, SG No. 68/2006) If there are any specific circumstances regarding the applicant of the same standard belonging to the over- represented sex other than the requirements for the position, the said applicant shall be appointed unless this would discriminate against the applicant of the under-represented sex.

 (3) (Renumbered from Paragraph (2), amended and supplemented, SG No. 68/2006) Paragraphs (1) and (2) shall furthermore apply to the selection of participants in, or members of, boards, expert working groups, governing, advisory or other bodies, except where those participants are elected or appointed on the basis of competitive examination or holding a given position.

Article 7 (1) It shall not constitute discrimination:

……….

19. (new, SG No. 58/2012, effective 1.08.2012) the difference of treatment of persons in the taking measures, aimed at initiatives, exclusively or primarily encouraging entrepreneurship among women in cases, where they are the gender under-represented or for preventing or compensating of disadvantages in their professional careers.

8. Does the law contain a definition of discrimination that is in accord with Article 1 of CEDAW?

Yes ( x ) No ( )

 If yes, please direct us to the section of the pertinent document. If not, please indicate if that definition is enshrined already in the constitution or charter of rights.

**Article 4**

 (1) (Supplemented, SG No. 70/2004) Any direct or indirect discrimination on grounds of gender, race, nationality, ethnicity, human genome, citizenship, origin, religion or belief, education, convictions, political affiliation, personal or social status, disability, age, sexual orientation, marital status, property status, or on any other grounds established by law or by an international treaty to which the Republic of Bulgaria is a party, shall be banned.

 (2) Direct discrimination shall be any less favourable treatment of a person on the grounds referred to in Paragraph (1), than the treatment another person is receiving, received, or would receive in comparable similar circumstances.

 (3) Indirect discrimination shall be putting a person, on the grounds referred to in Paragraph (1), in a less favourable position compared to other persons through an apparently neutral provision, criterion or practice, unless the said provision, criterion or practice is objectively justified in view of a legal aim and the means of achieving this aim are appropriate and necessary.

Article 5

 Harassment on the grounds referred to in Article 4 (1), sexual harassment, incitement to discrimination, persecution and racial segregation, as well as the building and maintenance of an architectural environment hampering the access to public places of people with disabilities shall be considered discrimination.

Article 7

 (1) It shall not constitute discrimination:

 1. to treat persons differently on the basis of their citizenship or of persons without citizenship where this is provided for by a law or an international treaty to which the Republic of Bulgaria is a party;

 2. to treat persons differently on the basis of a characteristic relating to any of the grounds referred to in Article 4 (1), when the said characteristic, by the nature of a particular occupation or activity, or of the conditions in which it is performed, constitutes a genuine and determining occupational requirement, the aim is legal and the requirement does not exceed what is necessary for its achievement;

 3. to treat persons differently on the basis of religion, belief or gender in relation to an occupation performed in religious institutions or organisations when, by reason of the nature of the occupation or the conditions in which it is performed, the religion, belief or gender constitutes a genuine and determining occupational requirement in view of the character of the institution or organisation, where the aim is legal and the requirement does not exceed what is necessary for its achievement;

 4. to treat persons differently on the basis of religion, belief or gender in religious education or training, including training or education for the purpose of performing an occupation referred to in Item 3;

 5. to set requirements for minimum age, work experience or length of service in employment procedures or in granting certain job-related privileges, provided that this is objectively justified for attaining a legal aim and the means for attaining it do not exceed what is necessary;

 6. to set a maximum age requirement for employment connected with the need for training in order to occupy the respective position or with the need for a reasonable time limit for occupying the position before retirement, where this is objectively justified for attaining a legal aim and the means for its attainment do not exceed what is necessary;

 7. (amended, SG No. 103/2009, effective 29.12.2009) the special protection of pregnant women, women in an advanced stage of in vitro treatment and mothers, established by law, unless they have waived enjoyment of this protection and has notified the employer in writing of this waiver;

 8. the age requirements and the requirements for length of labour or office work set by the law for the purposes of retirement security;

 9. (supplemented, SG No. 68/2006) the measures and programme under the Employment Promotion Act;

 10. to treat differently persons with disabilities in conducting training and acquiring education for satisfying specific educational needs aimed at equalizing their opportunities;

 11. to set minimum and maximum age requirements for access to training and education, where this is objectively justified for achieving a legal aim in view of the nature of the training or education, or the conditions in which it is conducted, and the means for achieving this aim do not exceed what is necessary;

 12. (new, SG No. 69/2008) establishing the maximum age of eligibility to receive a loan under the Student and Doctoral Candidate Loans Act;

 13. (renumbered from Item 12, SG No. 69/2008) the measures in the field of education and training to ensure balanced participation of women and men, as far and for as long as such measures are necessary;

 14. (renumbered from Item 13, SG No. 69/2008) the special measures benefiting persons or groups of persons placed at a disadvantage on the grounds referred to in Article 4 (1), where intended to equalize their opportunities, as far and for as long as such measures are necessary;

 15. (renumbered from Item 14, SG No. 69/2008) the special protection accorded to parentless children, minors, single parents and persons with disabilities, where so provided for by law;

 16. (renumbered from Item 15, SG No. 69/2008) the measures for protection of the originality and identity of persons belonging to ethnic, religious or linguistic minorities, and of their right to maintain and develop their culture, to profess and practise their religion, or to use their language, whether individually or jointly with the rest of the members of their group;

 17. (renumbered from Item 16, SG No. 69/2008) the measures in the field of education and training ensuring the participation of persons belonging to ethnic minorities, as far and for as long as such measures are necessary;

 18. (new, SG No. 100/2007, renumbered from Item 17, SG No. 69/2008) the difference of treatment of persons in providing goods or services intended exclusively or mainly for one of the sexes, when the grounds for such difference are a legitimate objective and the means for achieving such objective are appropriate and necessary;

 19. (new, SG No. 58/2012, effective 1.08.2012) the difference of treatment of persons in the taking measures, aimed at initiatives, exclusively or primarily encouraging entrepreneurship among women in cases, where they are the gender under-reprersented or for preventing or compensating of disadvantages in their professional carreers.

 (2) The list of activities in which gender is a genuine and determining occupational requirement as per Item 2 of Paragraph (1) shall be established by:

 1. an ordinance of the Minister of Labour and Social Policy, in consultation with the minister of Interior. This list shall be duly updated as changes occur in labour conditions and shall be revised at least once every three years;

 2. (amended, SG No. 23/2011, effective 22.03.2011) an ordinance of the Minister of Defence concerning the activities and positions while in military service in the armed forces.

§ 1. For the purposes of this Act:

 1. (Supplemented, SG No. 58/2012, effective 1.08.2012) "Harassment" shall be any unwanted physical, verbal or other conduct on the grounds referred to in Article 4 (1), which has the purpose or effect of violating the dignity of a person and of creating a hostile, degrading, humiliating, offensive or intimidating environment.

 2. (Supplemented, SG No. 58/2012, effective 1.08.2012) "Sexual harassment" shall be any unwanted physical, verbal or other conduct of a sexual nature which violates the dignity or honour and creates a hostile, degrading, offensive, humiliating or intimidating environment and, in particular, where refusal to accept such conduct or the compulsion thereto may influence the taking of decisions affecting the person.

 3. "Persecution" shall mean:

 a) less favourable treatment of a person who has taken, or is assumed to have taken or will take, action in defence against discrimination;

 b) less favourable treatment of a person when a person connected with him/her has taken, or is assumed to have taken or will take, actions for protection against discrimination;

 c) less favourable treatment of a person who has refused to discriminate.

9. Does the law’s definition of discrimination include and define both direct and indirect discrimination?

Yes ( x ) No ( )

 If yes, please explain: The provisions are listed in the previous question – Article 4

10. How has the Constitution supported the process of adoption and implementation of the law? Does the Constitution have an equality and non-discrimination provision?

Preamble of the Constitution of the Republic of Bulgaria:

We, the National Representatives of the Seventh Grand National Assembly, aspiring to express the will of the Bulgarian people, **Declaring our loyalty to the universal human values of liberty, peace, humanism, equality, justice and tolerance**;**Elevating to the rank of paramount principle the rights of the human person and the dignity and security thereof**; Aware of our irrevocable duty to safeguard the national and state unity of Bulgaria, Hereby proclaim our determination to create a democratic, law-governed and social state, wherefor we adopt the present constitution

…..

Article 6. (1) All persons are born free and equal in dignity and rights.

(2) All citizens shall be equal before the law. Neither abridgement of rights nor any privileges whatsoever shall be admissible on the basis of race, nationality, ethnic identity, sex, origin, religion, education, convictions, political affiliation, personal and social status, or property status.

11. Does the law contain provisions that address discrimination against women from an intersectional perspective, taking into account a diversity of women’s social identities, statuses and experiences?

 Yes ( x ) No ( )

 If yes, please explain which social identities, statuses and/or intersectional factors are explicitly noted in the law:

 The Protection against Discrimination Act introduced the concept of "multiple discrimination", which is discrimination based on more than one protected grounds and fully reflects the intersectional approach. There is no limit to the number and combinations of protected grounds, on which a complaint can be filed.

12. Whom of the following are bound by the law?

 The State Yes ( x ) No ( )

Public Authorities/Bodies Yes ( x ) No ( )

Civil society organisations Yes ( x ) No ( )

Private companies Yes ( x ) No ( )

Individuals Yes ( x ) No ( )

**II. How the law came into being and was implemented**

1. What was the impetus for the development of this law (i.e. social movement activism, political platform, a Supreme Court ruling, an egregious case of discrimination, constitutional reform…)?

The Protection against Discrimination Act came into force in order to fulfill the international commitments of the Republic of Bulgaria regarding legislative prohibition of discrimination on various grounds and the building of a national mechanism for prevention of and protection from discrimination.
The objective of the law is to transpose into the national legal standards a number of anti-discrimination directives of the Council of the European Union, including Directive 2000/43 / EC (Race Directive), Directive 2000/78 / EC (Framework Directive), Directive 2002 / 73 / EC (Directive on the principle of equal treatment for men and women) and Directive 2010/41 / EU of the European Parliament and the Council (Directive on implementing the principle of equal treatment between men and women engaged in self-employment).

2. Were there any conditions in the political context that made it possible for this law to be developed and adopted at the time that it was (i.e. a particular political party in power, a conflict/post-conflict situation, a recent ratification of an HR instrument, etc.)?

Yes ( x ) No ( )

If yes, please explain:

3. What actors were consulted and how were they consulted in the law’s development and formulation? Check all that apply, and, where possible, provide names of involved individuals, agencies, organizations, etc.

Legal Experts/scholars (please specify) ( ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Government Ministries ( ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NHRI ( ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NGOs/CSOs ( ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Other social groups (specify) ( ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

4. Was there opposition to the law?

Yes ( ) No ( x )

If yes, please explain from whom and why, and how it was addressed:

6. Were there other laws that needed to be reformed in order to enact this law?

Yes ( ) No ( x )

If yes, please list and explain:

7. Were any international human rights treaties or mechanisms referenced in the law’s creation?

Yes ( x ) No ( )

If yes, please list and explain:

8. Did any international/regional/national human rights mechanism issue recommendations to the State in regard to amendment or formulation of this law, or regarding effective implementation? If yes, was this recommendation formulated prior, during or after the adoption of the law?

Yes ( x ) No ( )

If yes, please list and explain:

In its legislative recommendations in the regular monitoring report for Bulgaria for 2014 the European Commission against Racism and Intolerance (ECRI) recommends that the Bulgarian authorities amend the Anti-discrimination Act to include gender identity as a ground of discrimination. Although not directly related to the Protection against Discrimination Act (PaDA), another relevant recommendation related to the international standards for protection against discrimination, which merits special attention and is also reflected in the Fifth report on Bulgaria, adopted on 19 June 2014, concerns the inclusion of sexual orientation and gender identity in all the Articles of the Criminal Code addressing hate speech and hate crime (Articles 162, 163, 131 and 116).

Related to the effective implementation of national equality legislation is also the fact that in the months of May and October 2011 the International coordination committee and the Accreditation subcommittee for national human rights institutions (NHRIs) with the UN High Commissioner for Human Rights (UNHCHR) reviewed the application of the Bulgarian Commission for Protection against Discrimination for accreditation as a national human rights institution. In a detailed statement in response to the consideration of CPD’s application, the UN Subcommittee recognized the achievements of CPD as a human rights institution well established in the protection against discrimination and the promotion of equality and made recommendations for strengthening CPD’s independence through providing adequate resources for the Commission as a necessary measure to ensure the effective implementation of the PaDA. Similar recommendations again in the context of the UN international legal mechanisms are reflected in the Second National Report of Bulgaria to the Council of Human Rights (HRC) as part of the Universal Periodic Review of Human Rights. During the defense of Bulgaria on May 7, 2015, 75 countries participated in the interactive dialogue through individual statements and had received 182 recommendations. Eight recommendations were made directly to the CPD as the only independent state body supervising the implementation and observance of PaDA. and other national laws governing equal treatment. Of these, more than two thirds (six of the eight recommendations) concern ensuring the effective implementation of national legislation to protect the equality of treatment by ensuring the effective functioning of the Commission for Protection against Discrimination.

9. What measures to support implementation were built into the law or developed immediately after (and as a result of) its passing? This could include such measures as budgetary and resource allocation, monitoring mechanisms, data collection, impact measurement mechanisms, independent monitoring, etc. Please list and explain, providing any relevant documents.

The PaDA created a special equality body – the Commission for Protection against Discrimination.

The Commission for Protection against Discrimination, is an independent specialised state body for prevention of discrimination, protection against discrimination and ensuring equal opportunities. The Commission exercises control over the implementation of, and compliance with the PaDA or other Acts regulating equal treatment. The Commission is a public-financed legal person with a head office in Sofia and is a budget authoriser by delegation.

10. How was the law made accessible to the public? Did it include formal training on the new law for all stakeholders involved? Were specific groups of women targeted for these activities? Who was involved in these initiatives, and where did the funding come from? Please answer in detail.

 The Commission for Protection against Discrimination carries out prevention activities raising awareness on anti-discrimination issues. Throughout its existence (since 2005), the Commission annually held roundtables and trainings for various stakeholders (judges, prosecutors, educators, unions, employers, etc.). The Commission has its own website, which regularly publishes various information related to discrimination. The Commission provides independent assistance to victims of discrimination and a specific provision in the PADA. obliges all employers and heads of educational institutions to put in an accessible location the text of the law, as well as all the provisions of the internal rules relating to protection against discrimination. (Art. 22 and Art. 30 of PADA). Funding comes from the budget of the CPD, as well as projects for European funding programs.

11. Have there been any barriers to the law’s full and successful implementation?

Yes ( x ) No ( )

If yes, please explain the barriers and how they were/are being addressed:

The CPD constantly experiences a shortage of financial resources for exercising its powers and implementation of various activities.

12. What kinds of roles are being carried out by civil society/women’s organizations in supporting the implementation and impact of the law? How are these activities being financed?

 NGOs and civil society organizations have the right under PADA. to report violations of the same law and thus to initiate proceedings. Also, these organizations join as an interested party a pending legal action in the proceedings before the Commission, thereby assisting victims to exercise their rights. The proceedings before the Commission are free of charge.

**III. The impacts that the law has had for women on the ground**

1. Did the adoption of the law result in the creation of any policies?

Yes ( x ) No ( )

If yes, please list and explain:

Experts from the CPD participate in various working groups on policy formation and creating new legislation. A recent example is the working group for the creation of a Law on equality between men and women which was adopted and entered into force in 2016.

It is also important to note that according to article 47 of the PaDA:

Article 47

 The Commission for Protection against Discrimination shall:

…………..

4. issue mandatory directions for compliance with this or other Acts regulating equal treatment;

 5. appeal against administrative acts decreed in contravention of this or other Acts regulating equal treatment, bring action in court and join as a concerned party in proceedings instituted under this or other Acts regulating equal treatment;

 6. make proposals and recommendations to the state and municipal authorities to discontinue discrimination practices and revoke their acts issued in violation of this or other Acts regulating equal treatment;

8. issue opinions on the conformity of draft statutory act with the legislation on prevention of discrimination, as well as recommendations for adoption, revocation, amendment and supplementing of statutory acts;

10. conduct independent research into discrimination;

 11. publish independent reports and make recommendations on all matters relating to discrimination;

2. Have court cases/decisions resulted from the law? Has this data been systematically collected? If so, please provide details about the number of cases, convictions, decisions made.

 According to the PADA. CPD is a quasi-judicial body and therefore makes decisions and penalizes violators. All the decisions of the CPD are available and the number of decisions on every protected ground are published annually in the annual reports of the CPD, which is then published on the Commission website: [www.kzd-nondiscrimination.bg](http://www.kzd-nondiscrimination.bg)

3. What specific and measurable outcomes showing the impact of the law on society and on women’s enjoyment of their rights have been recorded as a result of the adoption and implementation of the law? How have these been monitored and by whom?

 The creation of the CPD allows women to exercise their rights and these rights to be guaranteed. Over the years, the number of complaints received and initiated proceedings by the CPD noted a constant trend of growth.

4. Are there other impacts of the law that have been observed?

Yes ( x ) No ( )

If yes, please list and explain what they are, as well as monitoring mechanisms used to observe and/or measure those impacts:

Since the establishment of the CPD the number of complaints received annually increases due to the increasing popularity of the CPD and public awareness. This is partly due to the significant number of awareness raising initiatives (trainings, round tables, media appearances) which the CPD carries out as well as the inter-institutional cooperation on both national and international levels.

5. What mechanisms have been set up to review and assess the implementation of the law?

The law creates a specialized body - the Commission for Protection against Discrimination
The Commission for Protection against Discrimination is an independent specialized state body for prevention of discrimination, protection against discrimination and ensuring equal opportunities. The Commission monitors the implementation and compliance with the PaDA or other laws governing equal treatment.

6. Is there data on how the law has affected some groups of women differently (i.e. based on race, ethnicity, religion, social class, age, etc.)?

Yes ( ) No ( x )

If yes, please explain the differential impacts and provide any relevant documents.

7. Has there been independent monitoring of the law?

Yes ( ) No ( x )

Please provide information.