Working Group on discrimination against women in law and in practice

Questionnaire on good practices

**Responses by the Principality of Liechtenstein,**

**September 2016**

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: Gender Equality Act

2. Date the law passed and came into force: The law passed on 10 March 1999 and came into force on 5 Mai 1999.

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 law is focusing on discrimination against women and intends to further de facto gender equality, in particular in the working life.

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.

The explanatory note (Art. 1) states, that the law regulates the promotion of de facto equality between women and men (Art. 1 Abs. 1), in particular in the professional life and in the access to goods and services (Art. 1 Abs. 2). This is followed by legal definitions (see also answers to questions 8 and 9).

The second chapter of the law focuses on equality in the professional life. The law is applicable in all employer-employee relationships, private and public. Art. 3 introduces a prohibition of discrimination. Discrimination based on sex or in referring to the civil or family status, pregnancy or maternity is forbidden. Art. 4 stipulates that harassment and sexual harassment are regarded as discrimination based on sex;

The third chapter focuses on the prohibition of discrimination concerning access to goods and services. The chapter refers to the same kind of discriminations as in Chapter two.

The fourth chapter regulates legal protection. The court or the public authorities can prohibit an imminent discrimination or eliminate an existing (Art. 5 Abs. 1 Bst. a-c). Reprisals as a reaction to a complaint regarding discrimination are prohibited (Art. 7a). Art. 10 stipulates the protection of employees against unfair dismissal following a complaint. (Art. 10). Every person affected by a discrimination has a right to compensation (Art. 7b Abs. 1 Bst. a-b and Art. 7c).

Chapter five regulates financial support for programs and counselling services that promote gender equality.

Chapter six focuses on public institutions. Art. 18 established by law the Commission for Equality beween Women and Men, Art. 19 established the Office of Equal Opportunities.

The law can be found online here (German only): <https://www.gesetze.li/lilexprod/ifshowpdf.jsp?lgblid=1999096000&version=4&signed=n&tablesel=0>

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

The first draft of the law was introduced on the 21 January 1998 and adopted on the 10 March 1999.

*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:

As explained in the responses to Chapter I, question 5: Chapter 5 and Chapter 6 of the Gender Equality Act place a positive duty on the State to

a. finance programs and counselling services.

b. establish public institutions with the mandate to further gender equality.

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

Yes ( ) 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.

The Gender Equality Act defines “direct discrimination” and “indirect discrimination. These two definitions do not cover the full extent of the definition in Article 1 of the CEDAW. However Liechtenstein has ratified the CEDAW in 1995 and is bound by the treaty and therefore also accepted the definition of “discrimination” in Article 1 of the CEDAW.

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

Yes ( x ) No ( )

 If yes, please explain:

Article 1a of the Gender Equality Act entails legal definition. Under letter a. the law defines direct discrimination; under letter b. it defines indirect discrimination.

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?

Art. 31 of the Constitution stipulates equality before the law: “All citizens shall be equal before the law...” In 1992 Article 31 was complemented by paragraph 2: “Men and women have equal rights.”

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:

In Article 3 and 4 of the Gender Equality Act, it is specifically mentioned, that women shall not be discriminated based on pregnancy or maternity.

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

 The State Yes ( x ) No ( )

Public Authorities/Bodies Yes ( x ) No ( )

Civil society organizations Yes ( ) No ( x )

Private companies Yes ( x ) No ( )

Individuals Yes ( ) No ( x )

**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 revision of Article 31 of the Constitution was one, but not the only, impetus for the development of this law. (See also answer to Chapter I, Question 10 ; and answer to Question 2 below)

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:

When Liechtenstein entered the European Economic Area (EEA) in 1995 it had to adopt the Acquis of the European Union, including six guidelines, two recommendations and ten resolutions concerning equality and non-discrimination. The guidelines were to implement into the national law. The Gender Equality Act is also a result of the Membership in the EEA.

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.

In Liechtenstein draft laws undergo a public consultation process giving relevant stakeholders, civil society and institutions the possibility to comment the draft. If possible these comments and statements are considered in the development of the law. In the case of the Gender Equality Act the competent authority in the National Administration additionally organised an information event.

Legal Experts/scholars (please specify) ( x ) Court of Justice, Court of Appeal, Chamber of Lawyers

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

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NGOs/CSOs ( x ) Women’s organisations

Other social groups (specify) ( x )

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:

- European Convention on Human Rights:

- Convention on the Elimination of All Forms of Discrimination against Women

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:

Liechtenstein received two recommendations concerning the Gender Equality Act in 2006 (after the adoption of the law) by the Committee on Economic, Social and Cultural Rights. The recommendations were:

7. The Committee welcomes the adoption in 1999 of a Gender Equality Act introducing a shift of the burden of proof to the employer in cases of gender-based discrimination.

26. The Committee encourages the State party to adopt the proposed amendment to the Gender Equality Act extending the shift of the burden of proof to the employer also to cases of sexual harassment.

Liechtenstein reacted on the recommendation No. 26 and revised the Gender Equality Act in 2006 and 2011. Since 2006 the Gender Equality Act prohibits discrimination through sexual harassment at work, the burden of proof for employers in cases of discrimination based on sex was expanded and implemented to include sexual harassment. Special legal claims in the case of workplace discrimination were also defined.

Further Liechtenstein received two recommendations concerning the Gender Equality Act, one in 2007 and one in 2011 (after the adoption of the law) by the Committee on the Elimination of All Forms of Discrimination against Women . The recommendations were:

13. While noting recent revisions to the Gender Equality Act of 1999, pertaining to the equal treatment of men and women in the workplace, as well as its 2006revisions to include definitions of sexual harassment and direct and indirect discrimination in the labour market, the Committee is concerned that its recommendation, made at the occasion of the consideration of Liechtenstein's initial report in 1999 (A/54/38/Rev.l, part 1, para. 160), that the Act not be limited to working life but extend to all spheres of life in order to accelerate equality in both public and private life, was not reflected in the finalization of the Act nor in its subsequent amendments. The Committee is concerned that the limited scope of the Act may lead to diminished attention being paid to eliminating discrimination against women in all other fields covered by the Convention.

11. The Committee particularly urges the State party to place greater emphasis on the Convention in the revision of the Gender Equality Act.

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.

Art. 16 of the Gender Equality Act stipulates that the state can financially support gender equality programs by public or private institutions. Art. 17 regulates the financial support by the state for private institutions which counsel women and men on gender equality issues.

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.

A public campaign was launched in 1999 following the entry into force of the new Gender Equality Act. In the following years there were a number of activities in order to raise awareness of the new provisions and duties, in particular for companies. These included the provision of information and handouts as well as the establishment of an “Equal Opportunities Award”. It has been granted each year since 2000. Alternating annually, either an organization or an enterprise in Liechtenstein is awarded the prize. The objective of the award is to raise awareness of the public for women’s right and for equal opportunities in general and to motivate companies to create conditions that promote gender equality and equal opportunities for all.

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

Yes ( ) No ( )

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

There has been a lot of progress in the past years regarding gender equality in the workplace. However there are challenges – as in most other countries –, in particular regarding the wage inequalities between women and men and the underrepresentation of women in leadership positions, that have to be tackled with further measures, in particular continuing awareness raising and measures that improve conditions for parents to reconcile family and working life.

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?

See response to question 9.

**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:

See also responses to question II 10. The adoption of the law resulted in a variety of new programs and activities in the field of education, equal political representation, women’s networking, domestic violence and harassment as well as the promotion of gender equality in the National Administration. In order to illustrate two examples you will find attached a short report that was submitted by Liechtenstein to the OSCE in March 2016.

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.

Data about court cases/decisions that resulted from the law have not been systematically collected. However in April 2015 a woman sued a company on discrimination grounds referring to the Gender Equality Act. She won the case and got compensation by the company.

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?

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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:

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

The Gender Equality Act provided the legal basis for the Gender Equality Commission and the Office of Equal Opportunity. Both institutions were set up to promote and review the implementation of the Gender Equality Act.

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.

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