



# **WOMEN ACCESS TO JUSTICE IN AZERBAIJAN REPORT**

**GENDER ASSOCIATION "SYMMETRY"**

**PARTNERSHIP PROJECT WITH KARAT COALITION**

**DUE TO SUPPORT OF OXFAM NOVIB**



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## Acknowledgements

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## Executive Summary

Within May-November 2011, the Gender Association Symmetry in the frame of international project supported by Karat Coalition launched a six-month assessment project to study access to justice in Azerbaijan. The paper aims to analyse existing gender legislation framework and its implementation as well as legal practices and access to justice women have at national level. The report was prepared mainly through a desk review of domestic laws in Azerbaijan as well as analysis of interviews and focus groups, review of available researches and practices of law and international documents at the national level.

This report is the main result of that assessment project and has been carried out by a partnership of GAS and Regional Network of Women NGOs, "Clean World" organization, Women Crisis Center and others. It consisted of expert interviews, case study and focus groups in order to provide a more detailed view of the problems facing women. The survey was designed and overseen by Karat Coalition and was carried out according to methodology proposed by them.

In total, Gas completed 7 interviews and around 5 case studies. The research results provide an overview of legal problems in the country and of the current operation of the legal system, as well as helping us to illuminate key barriers to justice.

The following problems were identified as key women facing within our country:

1. Divorce and divorcing process
2. Violent crime / violence in the home
3. Document registration/processing dispute with officials: police, prosecution

As we can see, key problems relate to divorce (defined as divorce where there is major disagreement over children, money or property), document registration and violence in the home are among biggest problems. Our focus groups also highlighted key issues. The focus groups with women drew attention to the prevalence of domestic abuse and the practical hurdles to divorce or separation. They also explained how all of these problems are made worse by documentation issues relating to property and marriage.

People in regions, by contrast, were far more likely to identify social issues as their main problems. This includes issues such as access to employment, education and social services; whilst these are not legal issues, they do have legal components. In spite of these recognized problems, the level of apply to authorities for help or investigation is quite low. It is connected mostly with lack of trust to authorities and effectiveness of initiation of any disputes related to court or police, unwillingness to involve others in solving disputes, poor knowledge of the law and rights, lack of financial and human resources, corruption, structural bias in the legal system.

Therefore, it explains why majority of local people not even look for justice in the first place and even if they seek justice, they may not be able to physically access it. Finally, corruption is the reasons why, even if people seek justice and can physically access the institutions, the outcome may not be fair.

Almost all experts mentioned that local families rarely involve local authorities in family disputes or in case of physical abuse in the home since any discord may bring unwilling rumors and shame upon family.

The second barrier to justice is lack of knowledge and awareness in their rights. The results of the assessment showed that women have a poor understanding of their legal rights, laws and what to do in case of if abuse or violence had place. For instance, many women present statements and problems to Committee on State Security and President Administration. Another barrier to justice according to victims, focus groups and experts extremely expensive legal services of lawyers which rare women can afford in the country.

The regional actors also mentioned that even if there are people in regions who want to use the court system they cannot due to structural difficulties since police and court are available only in large and populated districts. In case of divorce those women who had no official registration of marriage also face problems in the event of separation or in case of disputes over who will bring up child or child allowance. Among the biggest barriers was noted corruption of court and police.

Taken together, this assessment has provided a comprehensive picture of the legal problems facing people in the country and mechanisms that people commonly use to resolve them. This assessment was conducted in Baku and 3 regions: Ganja, Quba, Zagatala.

In the frame of this study we tried to describe complex of problems women, experts and lawyers face with protecting women rights in the country. This report does not aspire to comprehensively capture all of the potential solutions for ensuring access to justice for women. Rather, it identifies a certain agenda for policymakers and civil society actors concerned with rule of law that are feasible in the short-term and are most likely to deliver tangible results. Recommendations summarized here are elaborated in section 6:

- Women NGOs in Azerbaijan should mobilize their efforts to attract attention of donors and government to women rights issues and lobby them to recognize women access to justice problem as a hindrance to the long-term development and sustainability of Azerbaijan.
- Networking between the NGOs working in the field of women rights should be encouraged to ensure that efforts are coordinated and overlap minimized. Increased coordination can provide a more dynamic government and donor advocacy vehicle.
- Capacity Building programs on gender mainstreaming policy development should be initiated for state workers of different rank and fields, especially responsible for the implementation of gender laws to ensure effectiveness of laws and implementation of state programs
- Holistic programs on women access to justice, in collaboration with Government offices, should be implemented to ensure women across all regions of Azerbaijan have the necessary response services, including juridical aid, crisis centers and shelters provision, hotlines, training and awareness programs.
- Exchange with gender data and information among State and civil society sectors should be supported and moderated, particularly reflective of crimes against women and any pursuant judicial actions to allow multi-year tracking of case response, and the change of the status of women in Azerbaijan in general.
- Capacity building and professional trainings on women rights should be delivered for Relevant Government offices, members of the police force and other workers of judiciary system to raise their attention, emphasize their role and increase responsibility to issues relevant to implementation of gender laws and encourage them to be proactive in cooperation with civil society actors and community members.
- Available information and data relevant to women rights violations should be widely disseminated to assist NGOs, government and other major players in Azerbaijan to conceptualize the scope of the problems and effectively response to them.
- Donors should pay more attention to establishment and sustainability of women crisis centers and shelters providing free juridical aid. Otherwise, without these centers implementation of gender laws will not be sustainable and women would stay unsupported and vulnerable due to lack of other available service providers.
- Awareness raising campaigns explaining essentials of gender laws and other gender concepts should be initiated across all Azerbaijan regions
- Women rights programs including gender monitoring and planning as well as analytical reports writing should be initiated for lawyers and community members and activists
- Lobby government to engage more women in jobs relevant for the implementation of gender laws particularly in police, courts and prosecution offices
- Lobby policy changes and establishment of necessary mechanisms for the implementation of legislation and improvement of women access to justice

- Lobby necessary gender law reforms
- Deliver more women rights trainings for rural women and men
- Provide annual monitoring on availability of justice services for women, their effectiveness and violations of women rights.

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## **Acronyms Used**

FGW: Focus Group Women

GBV: Gender-Based Violence

IDP: Internally Displaced Person

OSCE: Organization for Security and Co-operation in Europe

SPPRED: State Programme on Poverty Reduction and Development

UNDP: United Nations Development Program

UNFPA: United Nations Population Fund

VAW: Violence against Women

GAS-Gender Association Symmetry

SCWI-State Committee on Women Issues

NGO- Non-Governmental Organization

CEDAW-Convention on Elimination of all forms discrimination against of women

OP-Optional Protocol to CEDAW

OSI-Open Society Institute

## Introduction:

KARAT finds it important to learn more about the reasons for which the mechanisms provided by the Optional Protocol to the CEDAW Convention are underused by the victims of discrimination and women's NGOs in the Region. KARAT intends, in cooperation with its partner organizations in the countries of the Region, to explore the barriers that prevent women from using and/or exhausting the domestic legal remedies in selected areas of women's rights violations. Basing on the analyses of the cases depicting women's experience and of the national laws and practices, the potential solutions leading to improving women's access to justice will be explored and the adequate recommendations formulated.

The knowledge gained during the process will be shared with the women's human rights advocates at international and national level, including the members of the CEDAW Committees and other human rights bodies. It will be used to draw their attention to the need for actions and changes aimed at making the admissibility criteria for the communications submitted to the human rights bodies more realistic for the women to meet. The States should be held accountable for introducing policies and measures that would improve women's access to justice at national level. The comprehensive recommendations from the CEDAW Committee and other human rights bodies that would name States' obligations in this area might significantly contribute to changing the situation also through providing the women's organizations and other civil society actors with tools to advocate and lobby for empowering women to use the domestic and international legal remedies.

Overall goal: To improve women's ability to claim their rights by promoting gender perspective regarding access to justice and by advocating for measures that empower women to use all available domestic legal remedies and international human rights mechanisms.

KARAT's initiative on women's access to justice is a part of the project focused on the implementation of CEDAW in five countries in the Region (2010-2012). The idea of it emerged as a follow-up to KARAT's project of 2008-2009 aimed at promoting the Optional Protocol to CEDAW in eight countries in the Region. The experience then gained led to the conclusion that more attention should be given to the conditionings determining women's access to justice at national level as it strongly influences the access to the international human rights mechanisms. Therefore KARAT and its partners intend to conduct a pilot study that shall depict women's real ability to use the laws and procedures within the domestic justice system. Due to the limited resources and narrow time frame the study will be confined to only some areas of women's rights violations – the areas defined individually by the project partner organizations in Azerbaijan, Kyrgyzstan, Poland, Tajikistan and Uzbekistan<sup>1</sup>.

The study does not aspire to provide the full view of women's access to justice in the project countries. Instead it aims at highlighting the need for the gender sensitive approach to the issue (and thus also to the reality of exhausting domestic legal remedies by women) through using the exemplary analyses of women's experience in the areas of women's rights violations where their ability to protect and claim the rights through legal measures is seriously limited mainly due to their subordinate and vulnerable status within their societies.

The organizations coordinating the project implementation at national level are the following:

Azerbaijan – Azerbaijan Gender Association “Symmetry”; Kyrgyzstan – Forum of Women's NGOs of Kyrgyzstan; Poland – KARAT Coalition; Tajikistan – Public Foundation “Panorama”; Uzbekistan – “Generation of the Future”.

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<sup>1</sup> Although Tajikistan and Uzbekistan have not ratified the Optional Protocol to CEDAW yet, the issue of women's access to domestic legal remedies, and consequently to international human rights bodies (e.g. Human Rights Committee), is equally important to address.

#### THE SCOPE OF ACTIVITIES ON THE PROJECT:

1. Identifying the areas of women's human rights violations – one for each project country – in which women's access to justice will be explored (*areas of concern*).
2. Documenting the gender dimension of women's access to justice (including the reasons for not using the legal system) in the selected critical areas of women's human rights violations.
3. Developing the recommendations and the proposals for possible solutions and policies aimed at empowering women to use domestic legal remedies in order to claim their rights.
4. Advocating and lobbying for improving women's access to justice at national and international level
5. Sharing the expertise on access to justice

#### Content of the report

The first part of this report, explains methodological tools group of experts used during research. The second part of this paper is based on overall observation of problems existing at national level, their forms and influence on women status in the country. It describes socio-cultural, religious and other barriers women face with in the country. It discusses how, at what level women access justice and how legal and social conditions influence on their decisions.

Analysis of qualitative results of the research chapter has been written from a legal perspective, there is much to learn for all gender advocates. Lawyers and judicial officials can learn about the international legal framework to which Azerbaijan has committed, and about its obligations. Judges and court officials in particular will benefit from this discourse as they are part of the state party and are duty-bearers by themselves. Moreover, gender advocates in government and civil society, law makers and law drafters can use this analysis of efficiency of existing gender legislation and its impact on women's rights status at national level for further improvements of legislation and implementation mechanisms. Further in the report, particularly in the part reflecting barriers women have accessing justice, we provide gender advocates with essential information, share opinions of women and experts about legal practices and offer practical solutions to the challenges women face with accessing justice or dealing with national laws. The report makes neither prescriptions nor solutions, but present resource material and recommendations for stakeholders to draw from and build upon to address the most pervasive of women problems, limitation of their access to justice.

#### Methodology

Qualitative methods were employed for data collection during this research. A literature review of written research and documentation on gender and women access to justice in Azerbaijan was conducted. Interviews were held with employees, experts from state and NGOs significant to the assessment topic. Women's focus group sessions were conducted with regional women using scenarios for topic presentation followed by a semiformal question and answer period for each scenario. The research had three parts: a legal expertise, Interviews with experts and victims of violence, and focus groups. The investigation of these experiences was combined with an analysis of the laws and expert interviews in order to generate a deeper understanding of why the barriers to justice exist. Available research and documentation on gender in Azerbaijan was collected and reviewed to determine nature and scope of assessments and activities undertaken to date.

Expert interviews were conducted throughout the assessment design and implementation process from June to October 2011 and covered review of 2 laws on gender: Equal Rights Opportunities and Domestic Violence law and analysis of interviews allowed measuring a level of awareness and access to justice among local population. In July 2011, initial interviews with NGOs have been conducted. Interviewees were asked to give their impression on the scope of and need for further areas of intervention, challenges and opportunities, as well as their own experiences accessing justice or advocating for the rights of other women. Interviews varied between individuals depending on the type of organization they represented and the level of their involvement in the issue.

Discussions with NGO representatives provided a picture of existing NGO activity in the legal field and helped to understand the whole spectrum of problems and barriers. Legal experts were pointing out on invisible for ordinary people problems helping to understand the general context of legal structure, challenges, advantages existing in the legal system and legislation in the country. Focus group locations were chosen based on Symmetry's and other NGOs experience. Women



from the selected regions were invited to attend discussions regarding women's access to justice issues. Focus groups were originally envisioned as age segregated (18 – 45) to ensure that women of almost all ages express their opinions. Focus groups and interviews with victims provided us with an opportunity to look in more detail at issues and categories of women who would not be well represented in the assessment. With the help of Regional Network of women NGOs, the GAS organized focus groups with rural women and NGOs in each of the regions.

## Statement of Problem

Azerbaijan has a total population of 8,016,200<sup>12</sup> people<sup>2</sup>. Women make up 51.1%<sup>3</sup> of the population in total. Much of the data collected by the government is not sex disaggregated and data sets specifically pertaining to women and women's issues are difficult to locate. However, the following highlights basic information available regarding women in Azerbaijan. In general, women and men have equal access to education and have similar literacy levels, although women are more inclined to the humanitarian, medical or educational schools and university programs and are less likely than their male counterparts to attend post-graduate education. Women make up 45%<sup>4</sup> of the non-agricultural labor force. However, employed women tend to gravitate towards the more acceptable health and education sector which remunerate historically below the national average. In addition, women often earn up to 45%<sup>5</sup> less than men in the same jobs. Women have low employment rates in the political sphere, with only 2% of government ministries headed by women and women holding only 11%<sup>6</sup> of the seats in parliament. Women have an average lifespan of 75.2 years with a lifetime fertility rate of approximately 2.17 children per woman. Whilst the average fertility rates are dropping in all age groups, the fertility rate of women aged 15 – 19 has increased twofold. The most widely used form of birth control is induced abortion. Government statistics put the abortion rates at 7 per 1000 women, but a recent study found the rate to be much higher at 116 per 1000<sup>8</sup> women with approximately three abortions to each live birth nationally. In 2003, there were 100,245 births registered with the government, of these 9275 were born to single women or women with no marriage registration. According to Azeri legislation rape is illegal and carries a maximum 15-year prison sentence. The government reported 35 rapes during 2009. The government reported 16 cases of rape or attempted rape brought against 15 persons and a further 48 cases of gender-based violence against 40 individuals<sup>9</sup>. Most rape victims reportedly knew their assailants but did not report incidents because of fear and shame.

There are no laws on spousal abuse or specific laws on spousal rape, although these crimes could be prosecuted under other sections of the criminal code if a spouse complained. Violence against women, including domestic violence, continued to be a problem. In rural areas women had no effective recourse against assaults by their husbands or others.

There few government-sponsored programs for victims of rape or domestic violence but their number is not sufficient for all women in the country. Beside, according to experts' interviews there is little information about activities of these centers and programs and if they are effective. In Baku a women's crisis center operated by the Institute for Peace and Democracy provided free medical, psychological, and legal assistance to women. The center also worked on a number of projects funded by international donors to combat gender-based violence and trafficking in persons in the Caucasus region. Representatives of the institute regularly appeared on popular television talk shows to discuss women's issues. Another center working for victims of violence and trafficking organized by Clean World NGO working either financial support exists or not. The law prohibits sexual harassment; however, the government rarely enforced the prohibition. According to NGO

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<sup>2</sup> Republic of Azerbaijan, *State Programme on Poverty Reduction and Economic Development*, Baku, 2003.

<sup>3</sup> Ibid

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> UNDP, Human Development Report, 2003

<sup>7</sup> UNDP, HDR

<sup>8</sup> USAID Reproductive Health Report, 2001

<sup>9</sup> Ministry of Justice

information the sexual harassment cases widely spread across the country, however due to unwillingness of most part of victims to involve others in such kind of cases there are no registered complaints in any of official organizations. Couples and individuals have the right to decide freely the number, spacing, and timing of their children. However, since there is a gender-detecting ultrasound technology which allows knowing future sex of a baby many families following gender stereotypes existing in the society come to the decision to end pregnancies that could lead to the birth of a girl. Women who chose to give birth to girls often suffer prejudice and humiliation, not to mention the financial burden of providing a dowry when their daughters get married. Those who make decision on abortion of girl fetus often do that by force of their husbands. Contraception is widely available, but demographic surveys showed low levels of use. Skilled attendance during childbirth was accessible, as was prenatal care and essential obstetric and postpartum care. According to estimates compiled by international organizations, the maternal mortality rate was approximately 38 deaths per 100,000 live births in 2008. Women and men had equal access to the diagnosis and treatment for sexually transmitted infections, including HIV. However, patriarchal norms based on cultural, historical, and socioeconomic factors, in some cases limited women's reproductive rights. Due to growing religious tendencies across all regions of Azerbaijan some parents were keeping their girls at home and not sending them to school as soon as they reach teenager age responding to these kinds of facts the Ministry of Education ban wearing of hijab at schools and universities.

State Committee on Women Issues as well as international and local NGOs reported a growing problem with early/child marriage. They stated that statistical data was unavailable from governmental agencies. SCWI reported that the problem had spread from the southern and northern regions to the entire country. According to national legislation early marriages could be prosecuted on the basis of Articles 34 of the constitution and Articles 152 and 153 of the criminal code, but no cases have been prosecuted. Recently, media announced forthcoming amendments to criminal code that would appoint certain punishment for forced marriage. According to NGO findings rural-area girls are marrying in the eight and ninth grades. Girls marrying in religious marriage contracts (kabin or kabin-nama) evaded governmental bodies and the laws cited above and were not entitled to recognition of status in case of divorce.

Statutory rape is prohibited by law and defined as "the sexual relations or other actions of sexual nature, committed by a person who has reached 18, with a person who has not reached 16" and is punishable by up to three years' imprisonment. The law states that a girl can marry at the age of 17 and with the local authority's permission at the age of 16. The law further states that a boy can marry at the age of 18. In 2002 the Caucasus Muslim Board issued a fitva (fatwa) that stated 18 as the marriage age, but the fitva failed to have much effect on the religious marriages of kabin. Local NGOs working in the field of labor claimed that discrimination on gender base increased a lot during past 5 years. Pregnant women or women with families are the first victims of staff decreasing processes. Moreover, NGOs mentioned that women-workers in most industries are largely unaware of their rights and afraid of retribution if they initiated complaints. This was especially true for all women workers in the public and private sectors.

According to Article 25.2 of the constitution of the Azerbaijan Republic, all members of the nation, both men and women, shall receive equal protection under the legal system and enjoy all human, political, economic, social and cultural rights. Despite the fact that the constitution treats all individuals equally, the governing legal frameworks do not provide women with equality and justice. One of the most prevailing factors, which impede the realization of the rights of women, is the traditions that follow the rigid gender stereotypes. For instance, a man may prefer to murder his wife rather than endure a refuse to live with him. Likewise, a woman may opt to commit suicide or murder her husband to avoid the "shameful" divorce.

The corruption of the government officials also plays a large role, and, consequently, women in unfavorable situations prove to be even more helpless. Corruption comes into play when investigatory and judicial organs help those who are willing to pay larger sums of money for "justice". In this sense, the problem of the protection of women rights is a part of a wider problem, a problem which stems from the lawlessness of the country, generated by the corruption and the lack of surveillance of the governmental apparatus.

Reflecting on spectrum of problems mentioned above we came up with an idea to study the realities women face with applying to Azerbaijani legal system. Our objective was to analyse experiences of ordinary women who had been involved in the penal system, as well as hear opinions of judges, police, workers, attorneys, claimants and NGO activists regarding obstacles and opportunities they have in their work with women issues and type of problems women have accessing justice, in order to understand both the integration of Azeri law in the justice system and the challenges involved in accessing justice for women in Azerbaijan.

We do hope that this study will contribute to the formation of gender-sensitive legal frameworks that are responsive to the needs and interests of women in Azerbaijan and which will, in turn, increase the legitimate participation of the female population.

## **Findings of the research**

### **I. Analysis of the legislative framework**

Since participation of State and NGO representatives in Beijing and Beijing+5 meetings, the Azerbaijan Republic has improved many national laws to increase compliance with the UN and European treaties. Azerbaijan ratified the Convention on the Elimination of all forms of Discrimination against Women (CEDAW, adopted by the United Nations General Assembly in 1979) in 10 July 1995, and joined the Optional Protocol to the Convention in 1999.

To date, the Azerbaijan Government has prepared 3 regular papers (second report was combined second and third report) on the implementation of the Convention (in 1996, 2007 and 2009 respectively). The reports were compiled by special force teams of government representatives. In addition, non-governmental actors drafted several alternative reports on CEDAW in 2007 and 2009. In 2009, a number of alternative reports were presented to CEDAW on behalf of different NGOs. As revealed in comments on the 2009 report below, the Committee expressed concern about the absence of law on domestic violence, lack of integration of gender equality concept in national legislation, unequal marriage age, low representation of women in decision-making, the prevalence of gender stereotypes, the status of rural women, sexual minorities, the expansion of violent practices against women connected with growth of early and forced marriages.

Azerbaijan is further committed to address the issue of gender-based discrimination and violence against women according to Clause 25.2 of National Constitution, which state that citizens of Azerbaijan are subject to equal rights and opportunities irrespective of gender. Clause 148 of National Constitution assures that International agreements and documents are essential part of national legislation. Therefore, legislation system of Azerbaijan Republic allows applying CEDAW if there is no any law regulating the concerns related to women reflected in the convention.

The national law of the Azerbaijan “On gender equality ensuring” (2010) and further the “Law on Prevention of Domestic Violence” (22 June 2010) envisages also such definitions as gender, gender equality, equal rights and opportunities, gender based discrimination such as sexual harassment, limitation of rights on gender base, equal remuneration, domestic violence, victim of DV, differentiate domestic violence on physical, psychological, economical, sexual; measures to prevent DV, crisis centers, protective orders.

The principle of gender equality is affirmed not only in the Law on Enforcement of Gender Equality but also in several other legal provisions. For example, the Criminal Code, under Article 154, sanctions violations of the principle of equality of citizens when their rights and legal interests are harmed including acts of discrimination on the basis of gender. However, the Law on Enforcement of Gender Equality does not contain a definition of discrimination in line with article 1 of the Convention encompassing both direct and indirect discrimination, and extending to acts of discrimination by public and private actors in accordance with article 2.

Article 3.2 of the Law “On enforcement of gender equality” provides for the adoption of temporary special measures aimed at ensuring the equal social status of men and women. However the government has not adopted specific measures to accelerate de facto equality between men and women. As a result, women remain significantly underrepresented in political life and other decision-making positions.

The Constitution of Azerbaijan provides for equal rights for men and women to enter into marriage and to establish a family. Article 17 (1) of the Constitution states: “Family as a basic element of society is under special protection of the State.” According to article 34 of the Constitution, “(1) Everyone has the right to marry on reaching the age specified by legislation. (2) Marriages shall be concluded voluntary. Nobody should be forced into marriages. (3) Family and marriage are protected by the State. However, some of the provisions of the Law on Enforcement of Gender Equality described as measures of

“positive discrimination” are in fact discriminatory in this regard and are violating CEDAW. For example, different ages for marriage of men and women (18 years and 17 years respectively).

Other discriminatory provisions include: different retirement ages for women and men; imposition of different sentences and imprisonment regimes based on a person's gender; compulsory military service prescribed by the law exclusively for men; paternity leave, specific work or services which can be performed only by women or by men. An important source of information on the scale of violence comes from the sectoral statistics of bodies such as the NGOs, judiciary, and the offices of the public prosecutor.

Maternity, paternity and childhood are protected by the law. The State provides support to large families. (4) Rights of wife and husband are equal. Care and education of children constitute both right and responsibility of parents.”In reality though, decisions such as the choice of the family name and the place of residence are generally patriarchal. In case of divorce, women and men have equal rights, also regarding the responsibility for safeguarding their children. However, there is no legislation regarding the rights of unmarried couples. This includes questions concerning the partition of property. Bigamy and polygamy were punishable in Azerbaijan under the old Criminal Code; however, these articles have since been removed. The cases of polygamy (usually bigamy) are wide-spread among Azeri male migrants who often have one family in Azerbaijan and one somewhere in the Community of Independent States (CIS). Sometimes, such marriages in Azerbaijan are registered by the mosques, and that creates the problems in the cases of broken marriages.

According to article 42 of the Constitution of Azerbaijan, women and men have equal rights to education. Article 3 of the Law of Education reconfirms this right. According to opinion of regional Azeri NGOs girls in Azerbaijan are subjected to greater limitations in their freedom of movement than boys. One of the consequences of this situation is that in rural areas girls attend school less frequently than boys, especially if the school is far from their homes.

Legislation is in place to protect workers with family responsibilities, which while supporting women also, serves to reinforce traditional gender stereotypes. Benefits and leave related to child care and child birth are generous for those enrolled in social insurance schemes and family allowances provide a safety net for those who are not insured. However, they are in general only available to fathers if the mother is unable to look after the children, for example as a result of death, imprisonment or hospitalization in a mental institution. Increasing support with childcare can shift the burden of care from women and enable greater participation in the labour market. More children in Azerbaijan are attending pre-primary school, although lack of access to state provided facilities and the high cost of private pre-schools limit access for many people. Azerbaijan has ratified a number of international standards to promote equal opportunity and treatment in employment including the Equal Remuneration Convention, 1951 (No.100) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Today, women make up almost half of the labour force, there is a quota system in place to encourage employment of disabled people and regular migrant workers are granted broad based protection. However, a number of challenges remain to be addressed. The gender wage gap is large at 57 per cent and it is grown more. At the same time, the labour market is heavily gender segregated, despite women and men’s almost equal educational attainment, with women tending to work in low wage sectors and not move far up the pay ladder. The proportion of women in executive positions has stagnated at around ten per cent over the last decade.<sup>10</sup>

Article 3.2 of the Law “On enforcement of gender equality” provides for special protection of women during pregnancy, childbirth and nursing. It specifically provides for requirements for safety at work aimed at protecting women's health and special programs have been established for the protection of women's reproductive health. However, other provisions within this article, although aimed at protecting women who bring up children, are in fact discriminatory. For example, women who have 3 and more children and have cared for them until they are 8 years old can claim a pension at 45 years. This reinforces stereotypes concerning the role of women and should be reformed to apply to both sexes.

The “Complex Program of the Republic on combating daily violence in democratic society” was approved by the Cabinet of Ministers of Azerbaijan Republic with the order dated 25 January, 2007, envisages elaboration of strategic plans on every

<sup>10</sup> Decent Work in Azerbaijan, ILO, November 2011

sphere in order to eliminate domestic violence, gender and other type of inequality and cruelty in the society; working out proposals on elaborating law on protection of women from violence against them, as well as laws regulating the realization of CEDAW. The Complex Program also envisages organization of social rehabilitation for refugee and IDP women and children subjected to recurring violence under conditions of forced displacement and increased cases of domestic violence, organization of retraining courses in order to reduce unemployment rate among women, determination of criteria of violence against women, elaboration of academic programs in universities on equality and especially on violence against women and etc. The Republic of Azerbaijan has joined the Council of Europe Campaign to Combat Violence against Women, including Domestic Violence in November 29, 2006 and since have expressed its commitment to the reduction of violence against women including domestic violence through reasonable measures such as strengthening legislative base, conducting supportive measures for victims of violence, raising awareness of all strata of society.

As a result of the purposeful policy of Azerbaijani Government, a special budget has been allocated for activities conducted on prevention of and fight against women. So, Azerbaijan is strongly committed to reduce violence against women and children after the end of the Council of Europe Campaign as well. The outcomes of the side event organized by the Council of Europe together with Permanent Representative of the Republic of Azerbaijan to the United Nations in the framework of the 52<sup>nd</sup> session of the Commission on the Status of Women on “Gender Equality Standards and Mechanisms in Europe: financing and effective functioning” showed that, this policy is essential for Azerbaijan for further defining major goals in provision of gender equality as well as combating violence against women. The Project had been implemented within 20 months in 2009 and covered all the regions of Azerbaijan. The goals of the Project were:

- Creation of additional opportunities for women to use their rights;
- Relevant materials;
- Raising awareness on trafficking and early marriages in secondary schools;
- Broadcasting awareness-raising TV or radio programmes;
- Working out strategy on services for victims of gender-based violence;
- Improvement of cooperation mechanisms between gender focal points in state organizations etc.

Among major achievements of this project are:

- Evaluation of Legal framework available to combat gender based violence
- Defined gaps and inconsistencies in existing legislation.

One of the crucial steps of the Government of the Republic of Azerbaijan in elimination of domestic violence is adaptation of Law “On prevention of domestic violence”. The Draft Law was drafted by local and international experts and submitted to the National Parliament for consideration. The Law thoroughly describes the issues like protection and rehabilitation of victims of violence, punishment of perpetrators etc. It has been broadly discussed between parliamentarians, experts from governmental and non-governmental and international organizations.

The law on DV defines domestic violence as any intentional act of one member of the family that infringes the legal rights and freedoms of another family member, ex-partners, relatives living together or close relatives doing physical, sexual, economical, psychological harms and moral damage, or constituting a threat of physical or psychological harm. The law specifies mechanisms of provisional and judicial guarding orders, thereby providing both direct protections of victims of domestic violence, as well as acting as a warning to persons who threaten the use of violence. Besides, the law on domestic violence envisages the following rehabilitation measures to victims of DV: protect confidentiality, collection of statistical data and information, free of charge rehabilitation in state crisis centers, juridical and medical aid, assistance in professional occupation, in changes of professional occupation, assistance in collection of necessary documents for social protection and access of social protection, provision with shelter from 2 up to 3 months differing from age of victim. Police, prosecution offices, certain local authority organs, state committee on family, women and children issues, state statistical office and etc are responsible organs for the implementation of the law. According to this law the following preventive measures and punishment to be applied to abusers: short and long-term provisional orders \*from 30 up to 180 days, written warning, fine and in case of criminal cases punishment according to criminal code. The law on social and legal protection from domestic violence was the second gender-oriented law adopted in Azerbaijan. This law was the first document prepared according to CEDAW concept and understanding of VAW problem. However, some of its articles raise questions about implementation and monitoring mechanisms, punishment and responsibility of different state agencies for implementation of this law. These

documents indicate that, amongst other activities, the SCWI will ensure that information is disseminated on women's issues; women subjected to domestic violence are provided medical, legal and psychological consultation and support; and programs for the protection of girls and young women are initiated. It is noted in these documents that the implementation of state activities will likely be heavily supported through the activities of government and NGOs.

Regardless of the good intention, there is a fear that the majority of government activities regarding women's issues have so far been mere rhetoric. In response to the initial report of States Parties submitted by Azerbaijan to the United Nations Committee on the Elimination of Discrimination against Women, the Committee expressed a concern regarding the "discrepancies between *de jure* and *de facto* equality for women" and "insufficient effort to assess and combat violence against women". The Committee recommended close collaboration with NGOs to forward gender awareness activities and initialize violence prevention and response programs. The same recommendation found it place in the law on domestic violence; however, how these recommendations will work is quite uncertain since there is no action plan on implementation of the law and certain description of responsible organs and punishment mechanisms, particularly regarding orders. There are also no indicators of economical and psychological violence among approved indicators of the State Statistical Office. The SCWI is not very active in promoting VAW law and prevention public service awareness campaigns. Although there are SCWI documents and decrees specific to this issue, they have not been well disseminated to the general population. Government research specific to VAW is either not available or has not been conducted. Additionally, statistics regarding the status of women in Azerbaijan are primarily demographic and lack substance.

Beside of law, some provisions of criminal code also may be applied in this regard, for example: General provision on physical violence in the Criminal Code, Article 125 which cities that threats, cruel treatment or systematic humiliation leading to suicide or to an attempted suicide of a materially, officially or in any other way dependant person is punishable by imprisonment from 3 to 7 years. Articles 126, 127 and 128 of the Criminal Code deal with different degrees of deliberate infliction of bodily harm resulting in different degrees of health disorders and disabilities. Article 133 deals with the infliction of physical or psychological suffering by systematic beatings or by violent acts. These provisions do not take into account the special relation and the interdependence between the victim and the perpetrators of domestic violence, and, thus, their special needs. Moreover, besides article 125, which deals with psychological violence related suicide or attempted suicide, psychological violence is not taken into consideration.

National legislation envisaged punishment for crimes like rape contained provisions envisaging protection of women against all kinds of violence. The Criminal Code of the Republic of Azerbaijan also prescribes punishment for violent behaviour of sexual nature. Recent years in connection with increasing attention to the issues of protection of women's rights, violence against women and other issues, legislation is being improved at this direction. Mainstreaming of these issues to the legislative acts facilitated to better understand the scope and seriousness of the problem. Because of the cross-cutting character of violence against women, they are broadly reflected in legislative acts tackling other problems. There is no specific article on marital rape or rape of a partner in the Criminal Code. Social attitudes toward rape within marriage indicate that many people do not consider it a crime.

According to article 149 (1) of the Criminal Code, rape, sexual intercourse by using force or by threats involving the use of force towards the victim or third persons or by using the helpless state of a victim, is punishable by imprisonment for a period of 4 to 8 years. According to article 149 (2), if the rape was committed by a group of persons; if it has lead to a venereal disease; if the victim was under the age of 18 and this was clear for the rapist; or if the victim was threatened to be killed or to be caused grievous bodily harm or the rape was committed with special cruelty; if the rape was committed repeatedly, the rape is punishable by imprisonment for a period from 5 to 10 years. According to article 149 (3) a rape, which has resulted in death of a victim, or has infected the victim with HIV, or has been committed against a person under the age of 14, is punishable by imprisonment for a period of 8 to 15 years. According to article 152 of the Criminal Code, the age of sexual consent is 16.

The kidnapping is punishable, by the Article 144 of the Criminal Code of Azerbaijan Republic; the underage victims of kidnappings are to be the most severely punished. The disturbance of the sexual inviolability of woman is also punished according to the Articles 149-153 of the Criminal Code of Azerbaijan Republic.

There are also a number of specific measures in the legal framework of the Azerbaijan Republic contribute to the government's commitments to address violence against women: Importantly, the Criminal Code of the Azerbaijan Republic specifies punishment for the following crimes:

- Clause 106: Slavery/Recruiting people for exploitation
- Clause 108: Sexual Violence
- Clause 108-1: Compulsory pregnancy
- Clause 109: Discrimination
- Clause 144: Kidnapping of the person
- Clause 148: Insult
- Clause 149. Rape
- Clause 150. Violent actions of sexual nature
- Clause 151. Coercion into actions of sexual nature
- Clause 152. Sexual relations and other actions of sexual nature with the person who has not reached of age 16
- Clause 164. Infringement of labor rights of a pregnant woman or woman who has children at age of three
- Clause 171. Involving of minor to prostitution, or commitment of immoral actions
- Clause 243. Involving to prostitution

In addition to the legal framework, an important aspect of national policy to combat violence against women is the collection of official data and statistics. Numerous multilevel consultations and training programmes involving the participation of law enforcement bodies, civil society organizations, and international agencies (such as OSI, UNFPA, UNIFEM and others) have been held in this regard. One outcome of these activities has been the inclusion of indicators for violence against women and children into the data collection of the NSC "Women and Men in the Azerbaijan Republic".

1. The number of officially registered crimes against women and minors, including beatings, rapes, and coercion to marriage.
2. The number of appeals to crisis centers, courts and other specialized institutions.

On 31 March of 2006 Supreme Court confirmed necessity to apply essentials of European Court on Human Rights during court processes. National Plan of Action on protection of human rights was approved by the Decree of the President of the country in December 28, 2006. The Plan of Action envisages strengthening fight violence against women including domestic violence provision of legal protection, compensation, rehabilitation, medical and psychological assistance of victims of violence, conduction of wide-scaled awareness raising activities among population. National Plan of Action on Family and Women's Issues was prepared by the national experts – representatives of governmental, non-governmental and international organizations. The Action Plan is expected to be adopted at the end of the next year. There is a separate chapter dedicated to the issues of prevention of domestic violence, violence against women and early marriages in the Plan of Action. The Chapter envisages prevention of cases of domestic violence and violence against women, to detect such cases timely, institution of criminal proceedings against offenders, intensifying measures on restoration of victim's rights, improvement of legal protection and socio-psychological rehabilitation of victims of violence, conduction of research on reasons and factors favourable for violence, education of professionals for rehabilitation of victims of violence and for ensuring preventive work with offenders, raising awareness of population on reasons and consequences of the violence against women.

Azerbaijan is a party to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others and since 31 May 1996, to the Convention against Transnational Organized Crime as well as to the additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, since December 12, 2000. After long years of denying the problem of trafficking, on 6 May 2004 Azerbaijan adopted "The National Action Plan for the Suppression of Human Trafficking". Consequently, at least 8 laws and regulations against trafficking were adopted which

criminalized it as an offence. In particular the Law No.274 “On the suppression of trafficking in human beings” was approved on 4 August 2005. The main department responsible for the implementation of this legislation is within the Ministry of Internal Affairs. Trafficking in human beings is sanctioned within the Criminal Code under Articles 1441(Trafficking in persons), 1442 (Forced labor), 3161(Spreading of confidential information about a victim of trafficking in persons). Articles 144 (kidnapping), 145 (illegal deprivation of liberty), 149 (rape), 150 (forcible acts of sexual nature) can also be applied in some cases. Prostitution is not considered a crime and is punished as an administrative offence under Article 308 of the Code of Administrative Offences. The penalty is a fine. As an additional punishment, female prostitutes can be forcibly placed in clinics to treat venereal diseases. Avoiding medical treatment of AIDS and venereal diseases is also punishable by fine according to Articles 163 of the Code. The premeditated infection of others with these diseases is punishable under Articles 139 and 140 of Criminal Code. The exploitation of prostitution is punishable under the Criminal Code, Articles 243 (involvement into prostitution) and 244 (maintenance of brothels).

In order to support the realization of the Presidential Decrees, Orders issued on women’s issues, the Government of Azerbaijan develops state programs mainstreaming gender component. The State Program on Poverty Reduction and Sustainable Development (2008-2015) fully incorporates gender component into the Program. The issues of increasing of women’s participation in the society, combating violence against women, including domestic violence, prevention of early marriages and enlightenment of population in the field of gender issues are also mainstreamed to the Program. The main provisions of the Program on combating domestic violence are working out National Plan of Action and Law on fight against domestic violence, raising awareness on the problem among population etc. There is no precise statistics on domestic violence. Women and children subjected to violence do not report about violence cases because of social and psychological reasons. At result, very few information is officially registered about cases of domestic violence. The absence of official data constitutes a serious hindrance for an efficient argumentation concerning the importance of combating the problem. For this purpose, under the overall leadership and guidance of the UNFPA Area Office and national partners a monitoring and evaluation system will be set up that will ensure effective and timely action information sharing, reporting and harmonization of indicators.

## **II. Analysis of barriers for women applying to justice**

Access to justice is one of the integral elements of the right to a fair trial provided for in Article 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms. Following the case law of the European Court of Human Rights the right to a fair trial holds a prominent place in a democratic society. However, it will make no sense if access to a court is denied.

The right to access to justice in Azerbaijan was prescribed in the document of the highest legally binding nature, which is the Constitution. The Basic Law guarantees state protection of human rights and freedoms, and the right to a judicial remedy and to qualified legal assistance. The effectiveness of the court remedy is based on the implementation of each of the abovementioned rights as well as on having a sufficient number of judges and courts, and a simplified and differentiated judicial procedure. The efficient functioning of the judiciary is also of utmost importance as far as access to justice is concerned.

The Azerbaijani judiciary has been profoundly reformed in association with the Council of Europe in order for individuals to enjoy easy access to courts and the efficiency of the administration of justice to be increased. A crucial point of the reform towards achieving modernisation and greater accessibility of the judicial system was the establishment of six regional courts of appeal instead of one country-wide appellate instance, expanding the network of specialised courts, and a fifty percent increase in the number of judges and of staff working in courts. Meanwhile, specific focus was placed on measures to strengthen juridical independence and to raise public confidence in the courts. To that end, transparent and effective screening procedures for judges were developed and implemented in order for the most worthy judicial candidates to be selected, and the remuneration of judges was also considerably increased. Efficient measures were taken to achieve greater transparency and openness in the judicial process, to prevent *red tape* and other obstacles in courts, and to improve the quality of legal aid provided to individuals as well as to raise public awareness of procedural rights. There is no doubt that an effective and independent judiciary, statutory and procedural human rights guarantees, clear and consistently applied



legislation are the major background requirements without which a failure to ensure equal access to justice for everyone would result. The provision of qualified and effective legal assistance to those concerned is also of importance.

The Constitution of the Republic of Azerbaijan while providing for the right to qualified legal assistance stipulates that it should be provided free of charge. In practice, Free State legal aid is usually provided in cases where involvement of a legal counsel is mandatory. Vulnerable groups, such as women, migrants and children having serious problems faced with problems rarely can get full access to justice even in cases if there is domestic legislation.

The Law of the Republic of Azerbaijan On Equal Rights and Opportunities provides equal rights and opportunities for both women and men. It prohibits all forms of discriminations based on gender. Thus, the majority of women, in particular those coming from disadvantaged backgrounds, including refugees and -internally displaced persons (IDPs), lack proper awareness of their rights to remedies and legal assistance to which they are entitled. Women also face difficulties while trying to initiate criminal proceedings by themselves. Often there are numerous obstacles to overcome, such as the absence of a mechanism for free pre-trial legal assistance or aid during civil proceedings etc. From our perspective, a wide range of coordinated measures is needed in order to resolve the abovementioned and concomitant problems regarding access to justice of the groups concerned. These are the development and implementation of national programs on the protection of women's rights, the prevention of domestic violence, raising awareness, legal education and training as well as improvement of mechanisms regarding independent access to courts.

A National Action Plan on the Protection of Human Rights, which is currently being implemented, specifically underlines the rights of women, in the enforcement of which a key role is played by the State Committee on women's issues. Alongside this, a newly adopted national concept of state support to non-governmental organisations has afforded priority to programs directed towards increase the legal knowledge of the population, and on the protection and development of women. In order to provide effective access to justice it is also crucial to revise a number of traditional notions and practices as well as to establish new international legal standards.

There is necessity of drafting international instruments to secure some procedural and other safeguards related to access to justice with the focus on vulnerable groups, particularly women and improving instruments on independent initiation of legal actions and providing professional legal aid. Implementing a continuous monitoring of women's rights and a development of new evaluation mechanisms on the effectiveness of international standards aiming at their further improvement are also deemed to be important.

According to the police and NGO statistic a number of apply to both with different cases of violence were following:

- Divorce
- Disputes over property after divorce
- Disputes over children during the divorce and after
- Violence at home

All of above-mentioned problems are noted as biggest problems women face with at national level, particularly in regions. However, due to the lack of the systematic data collection regarding women in Azerbaijan obtaining information regarding violence against women is challenging. The difficulty in obtaining concrete information regarding violence is compounded by the perceived shame involved with public discussion of these topics.

Domestic violence with all its varieties and reproductive health issues and concerns are not well known, understood, rarely spoken about. However, emerging women issues raised by civil society and further supported and promoted by the state slowly reach different groups of the population and brings results.

Nowadays, people recognize problems of selective abortions, early marriages, and violence against women and widely discuss them among each other. However, common approach to women concerns and issues in regions are to feign ignorance, particularly about women's sexual health. It happens because there are still many Azerbaijani women and men

having never been exposed to or educated on violence against women. However, to date, several studies of various NGOs and international agencies have been provided fairly substantial data regarding violence against women.

According to the State official data in 2010, 35.6% of women declared themselves as victims of one or another form of violence, 3500 of them applied to police for investigation of violence cases. In 2009 the police registered 107 criminal cases which concerned with murder of women or girls. NGOs statistic shows 872 inquires of women with cases concerned with violence for help to crisis centers during 2010 year, 20% of which end up with divorce or official investigation. During 2010 year, 109 women stayed in shelters and 50 women in 2011. Women may stay in this shelter from 3-90 days. The shelter exists mainly due to efforts of Clean World NGO's staff and has financial support of different donors from time to time. A Hot Line opened by the support of OSCE registers 60-68 calls monthly and all of them concerned with different cases of violence.

According to previous researches conducted by Symmetry approximately 45% of female respondents were victims of violence with 59% of the violence occurring in the home, 36% perpetrated by the husband. Other perpetrators indicated in the Symmetry study include brothers, parents, and relatives of the husband. Regardless of statistics indicating that psychological, physical and sexual violence is occurring in Azerbaijan, women are unlikely to report it. Most women in violent situations consider domestic violence 'normal' and do not perceive a need to seek assistance. Social stigma, shame and dependence on the husband and his family for economic support also severely restrict a woman's perceived ability to report. The lack of policewomen, protection and support provided by the police, in general, medical investigation procedure and judicial process further hinders a woman's ability to report. This, combined with the widely distributed stereotypes, economical dependence and the fear of shame make reporting almost non-existent.

In our expert interviews, domestic violence and equitable divorce settlement were highlighted as major problems and as access to justice issues in Azerbaijan. For that reason, we built a range of questions into our questionnaire to tackle these issues and conducted focus groups with women from women crisis centers. We also asked same questions focus group participants in regions. Unsurprisingly, many of victims of domestic abuse in crisis centers pointed out violence in families as one of major problems women face in the country. Commonly, women have been abused not only by close family members but also by different relatives from both sides such as husband, mother in law, sisters and brother in law, cousins, fathers and mothers, uncles and aunts.

The results of our assessment showed that domestic abuse is not restricted only to poor or low income families but affect families with "no financial problems" as well. Most part of interviewed by us victim women and NGO members highlighted cheating, lack of children and disputes over property and children as major reasons for family abuse. They also mentioned that highlighted reasons are just consequences of those reasons which are hidden and rarely lay on surface and recognized as key leading to low status of women in families and society among them are low level of education among women, increasing economical dependence of women, changing urban culture and prevalence of traditional stereotypes, unemployment, changing of traditional understanding of roles among women and men.

All of our interviewers mentioned about growing number of women abused in families and with them barriers in access of justice. It was clear from many of the interviews that because women were trapped by difficult circumstances, their husbands and families felt emboldened to treat them as they pleased, without fear of retribution or loss.

## **1. Legal Education, Assistance and Services**

According to NGO interviews number of state services related to VAW are not enough and poorly equipped to provide security and justice for survivors of violence. The police force has undergone minimal training on violence against women, which was included as a topic to the educational curricula of the Police Academy. Hundreds of lawyers, policemen and prosecutors have been passing through training and other educational and capacity building programs of international and local NGOs, including big project on gender empowerment of police, ODIHR, OSCE, OSI, ABA CEELI and UN Agencies. Despite this police are largely unable to provide support and security to survivors who come forward or initiate conversation with women-victims of violence. Additionally, domestic violence law have not been reflected in other related to implementation of the first one laws and there remain gaps between the legal codes for the protection of women and the

prosecution of crimes of violence against women, particularly with respect to domestic violence. Many of the laws for women are specifically in regards to pregnant women as a special demographic, as opposed to women in general. Unfortunately, statistics regarding cases reported to the police regarding VAW as compared to cases successfully prosecuted are not readily available. But it is generally believed that women do not perceive the government as able to provide the security or judicial retribution needed through the police or legal system. A formidable hindrance to seeking justice is that domestic violence crimes not resulting in major physical injury are prosecuted at the local government level. There is no guarantee of the confidentiality that may exist in a court located in a regional center, and the only punishment is the levy of a small fine to the perpetrator. Non-payment of the fine results in jail time, but there is no evidence that this process is sought after by women for perceived minor abuses.

State health care is fairly available through any of the state-run clinics in the larger cities and towns. However, most medical employees are not trained on how to handle cases of violence against women, are not prepared to initiate conversations with women who present with signs of domestic violence, and are not able to diagnose early signs of violence and assist families in the initial stages of violence prevention. Additionally, state clinics are required to report to the police any suspicious injuries that present at the clinic, thereby making anonymous applications to government health services virtually impossible.

This requirement severely impacts on whether or not a woman will honestly report incidences of abuse to her doctor.

Additionally, women in smaller villages may not even have adequate access to health services even if they wanted to seek services for injuries from violence.

There is currently only one known center opened up by the state providing psycho-social services in response to VAW. It was opened in Lenkoran. However, according to NGO opinion the work of this center is not efficient or known at local level. Due to the formal approach to women rights issues receiving from state, many women NGOs began working in VAW prevention and involving in research or awareness raising campaigns. Initiatives have primarily been limited to Baku, with no concrete prevention and response activities established in the regions. In general, more focus has been on awareness raising campaigns than on other initiatives, but results of our research shows that women in the regions have rarely been involved in the action, known about violence against women or any information related to women rights. There are 6 most accessible services for confidential legal assistance besides directly applying to a lawyer are through the Women Crisis Center, Crisis Center for Victims of Trafficking coordinated by Clean World Organization, Azerbaijan Young Lawyers Association, Praxis, Oil Workers Human Rights Protection Union and Women Rights Protection Organization by D. Aliyeva. Three of them have telephone hotlines and legal consultants on staff to offer advice to women.

Unfortunately, the lawyers of these centers cannot apply to court for their clients. Alternatively, the Center of Legal Assistance to Migrants has provided court assistance to women who have been subjected to violence though it is not specifically established to do so.

To date there is a lack of legal service provision *specifically* for women survivors of violence that is easily accessible, tangible and affordable, and that allows for advice, consultation, and subsequent legal support through the court process.

Inconsistent training for the police has occurred over the last few years, primarily provided by Symmetry and UNFPA. There are no permanently working shelters in Azerbaijan for women who need to escape from a violent situation. The Women Crisis Center and Crisis Center for Trafficked women are attempting to offer women stay in the center from 3 up to 90 days but their capacity is very much limited because of unstable financial support. They also have an agreement with the State Family and Planning Center on specialized gynecological services that are available to see women who present at centers since doctors are not licensed to see women at the Crisis Centers and have to observe patients at the hospital where they practices. There is some concern that women applying to state health clinics are not assured anonymous consultation due to the legal requirement of police reporting. For example, the following case reflects how usually abusers use the situation in personal purposes:

*"My Husband pushed me to buy a cow since a family budget was on dispose of my parents. The whole family depended from them. They did not agree on this kind of expense since I was 8 months pregnant and we would need money in future. The husband beaten me and started to threat with a knife and insult that I am pregnant from molla. I am attending musk. He beaten and raped me, his mother saw everything but did not interfere. I had early birth and my child born with numerous traumas and without one eye and died after 2 days. My parents applied to the police and police according to procedure had sent both of us for medical expertise to the hospital. In the hospital they did not accept me as a victim of violence and contrary he was recognized as insane. None believed to his sickness since earlier before he made his military service. However, the police closed the case without any further investigation."* Solmaz, 25 years old, Lenkoran

According to the opinion of local NGOs after application to the police victim have been always sent to the hospital for the medical observation and at the same time call abuser to police. Within that time abuser and his family members have time to solve “the problem” in hospital.

There are only few NGOs exist that offer direct psychological assistance to survivors of violence against women, and it is not clear on the qualifications, experience or expertise of many of those providing these services. However, it is evidenced that women utilize them. The Women Crisis Center has a psychologist on staff. The majority of the complaints were in regards to “problems with husband”, “result of rape” and divorce. There no centers that would offer services to men, women, and children, as well as offer referrals for women to medical and legal services. There is a lack of available qualified and trained psychological service providers in Azerbaijan in general. Although there are psychologists and social workers in the country, most received their education many years ago and never practice or had little experience on social work, particularly on the special needs of women survivors of violence. However, even if services are available rare women know where and how to access them. Besides, due to lack of donor support number of crisis centers and their activities decreasing and become less efficient.

## **2. Legal and other obstacles women face with during and after divorce**

Connected to the problem of abuse were the difficulties that women would face if they tried to separate from husbands. More or less all experts and focus group participants agreed that the hurdles to divorce are cultural, practical and legal. The first hurdle is that if you are not registered as married then you have no legal rights as a wife and so cannot get a divorce. This is a big problem in rural areas because many women do not tend to ask for legal documents and often not feel that they will need them in future.

*“Parents forced Parvana to marry with her cousin when she was 16 years old. They lived in a village in Marneuli, Georgia (where mostly azeri population live). The marriage was registered neither in official registration office nor by a molla. After the marriage they moved to Baku and lived in rented flat. She worked in the kindergarten and all her salary had been spending on food, he collected his salary on a new flat. She tried to live him with 2 children for several times but all the time her parents would stop her. He beaten her, suffered from alcoholism, at night time he would punish her making to stay on knees in a corner of the room and threaten to kill. He cheated her and even would bring women to house and make her to service them. When he bought an apartment he registered it on his name. His sister provoked scandals and her son beaten Parvana several times. Her parents suggested her to suffer since divorced woman always a target of public ostracism. After a next beat she tried to make a suicide. She managed to survive. However, when her brother tried to explain him anything he made an attempt to kill both, Parvana and her brother. They managed to run. After this they applied to police. The police did not send her to the hospital. They just arrested her husband for 3 days and with the warning let him go. The police did not open any criminal case. She managed to take her son but daughter still live with the father. She cannot get anything from the property since there is no official registration and live in very hard situation and permanent fear for her daughter and herself.” Parvana, 35 years old, Baku*

If one is legally married then the main problem of separating and divorcing a husband is a combination of social stigma and economic constraints. The first reason why abused women stay with their husbands, according to the victims, is that there is huge social pressure to do so. A second reason is fear. Since women do not feel protected by the law or believe in justice, mostly they don't have enough financial means to initiate and go through divorce process, the threats made by abusive husbands seem believable, have no support of own families and society. The third reason is economic. According to all of the focus groups, child support is extremely hard to get.

Similarly, while women are entitled to half of communal property on divorce it is relatively easy for men to avoid relinquishing this communal property. In the absence of guarantees of income or property the only hope for a woman leaving her husband is if she can get work, but as NGO statistic shows it is harder for regional woman to get work as they are generally not very well educated or have problems with registration and living in the city where the most part of jobs concentrated.

*“ My husband was pursued me with an idea to have a baby, however, after 10 years of marriage we did not manage to have it. I had several medical observations and treatments after which doctor assured us that we may have it but all in vain. My*

*husband never went through any check up he was sure that this was my problem. His relatives also hunted me and my parents with this idea and insulted us several times. He started to cheat and I have finally gave up of marriage. We divorced and court divided our flat on two, one room for me and another for him. My ex-husband is a prosecutor. He and his family said us to refuse from the flat, otherwise, they promised us to show a "life". I could not sale the flat since I needed his agreement. They started to come and beat me, insult and laugh. My ex-husband started to bring women and make sex loudly. Once when he left the home his sister came and beat me it was a last drop. I don't remember what exactly happened but I took vodka and spit it on some of home staff and burn it then I left the house. The house burnt. I remember that men neighbors tried to take a key and insulted me when women would support and understand. All heard about my problem. My husband called a police and psychiatric aid. I had medical observation and recognized normal but in affected condition that time my husband warned me if I want refuse from the flat he would jail me. My parents insisted to refuse and unfortunately, I had no other chance. I refused and signed all documents. Now I live with parents and teach in school. The criminal case was closed." Irana, 40 years old, live in Baku.*

The same problems of rights to child support and property also make life difficult for deserted wives. Another problem is traditional attitude towards divorced women as to creation of second grade as it was cited by one of our victims. All these is a trap for local women which have to prefer unlucky marriage to liberated life with a big load of responsibilities and public involvement in overall discussions of all pros and cons they had in family.

*"for me to participate at wedding is a torture...I am usually given the most invisible and bad place near by the door, people usually start conversations about wrong marriages and fault of women in divorce...we always guilty! Even if like in my case husband left me with a 3 months child at his parents place so I had to look after my kid and also his Mom. He did not give me a divorce I never asked but in 2 months after his trip to Ukraine I found out that he is already officially married there...how it was happened none knows. I was taken everything and have to survive myself. Women afraid divorced women since they may attract attention of their husbands that's why I never look around at weddings. Men look on us like on object for adventure...this is destiny of divorced women. I understand women who try to save marriage when you have husband none can offend you and your parents also feel good about you." Peri, 45 years old, doctor, lives in Baku*

### **3. Brief Summary of challenges women face accessing justice**

As it was mentioned before there are following problems preventing women from realization of their rights among them are:

- Unwillingness to involve in legal process and lack of trust in legal system and law
- Lack of legal knowledge and awareness in their rights
- Lack of financial resources
- Practical hurdles to using the courts
- Corruption

Among other reasons are:

- Lack of professional trainings for public lawyers, police and other governmental bodies
- Lack of information about public juridical service for women
- Police cannot enter a house if there is not official permission of court or registration of criminal case
- Lack of solidarity among women NGOs
- Limited financial support of civil society initiatives
- Fear in front of abuser and his relatives
- Lack of numerous cases which positively ended with punishment
- Lack of compensation to the victims of violence
- Lack of women in police system
- Fear of public ostracism
- The government has not undertaken adequate measures to eliminate gender discrimination;
- International standards and norms are not yet sufficiently implemented in legal practice;
- State has not reviewed its legislation according to Equal Rights and Opportunities and Domestic Violence and elaborated effective mechanisms to implement them;

- There are no national action plan and allocated budget to implement gender laws and acts
- Domestic violence law has unclear description of responsible for the implementation organs and punishment mechanisms, particularly regarding orders.
- There are no indicators of economical and psychological violence among approved indicators of State Statistical Committee;
- Government officials, legislators and legal professionals are often unaware of antidiscrimination provisions in national and international law;
- There is little understanding of the concepts of “gender”, “gender discrimination”, “gender equality” and “gender based violence” among legal professionals and general public;
- The government supports the stereotyped notion about primary female childrearing role;
- Judges, legislators, government officials, lawyers, jurists and the general public largely perceive domestic violence as a private matter;
- The State does not provide sufficient legal services for victims of gender-based violence and other related issues and does not offer the comprehensive assistance that is required;
- The number of victims receiving legal aid is very low;
- High law schools gender curricula requires improvement
- There is lacking in collecting gender statistic and database in judiciary system, conducting gender examination and gender research of court practice.
- There is a lack of legal service provision *specifically* for women survivors of violence that is easily accessible, tangible and affordable, and that allows for advice, consultation, and subsequent legal support through the court process.
- There are no permanently working shelters in Azerbaijan for women who need to escape from a violent situation.
- Women applying to state health clinics are not assured anonymous consultation due to the legal requirement of police reporting;
- There is no guarantee of the confidentiality that may exist in a court
- There are only few NGOs exist that offer direct psychological assistance to survivors of violence against women, and it is not clear on the qualifications, experience or expertise of many of those providing these services
- Women rarely apply to courts, police due to fear of public rumors, lack of financial sources, lack of awareness in their rights and how to access justice at national level as well as practical hurdles to using courts and corruption;
- There are lack of information about available public juridical service for women
- There are lack of women in police system, particularly working with domestic violence issues

The unwillingness to involve in the legal process is partly a function of lack of trust in the system that results from corruption and structural biases in the system. Poor knowledge of the law probably reflects the irrelevance of the court system for most people. Lack of resources both discourages lawyers from starting legal practices in the regions and makes new and existent practices less reliable. Unwillingness to involve in the process and lack of knowledge make it unlikely that people try to become involved with the formal legal system. Lack of money means that even if people want to initiate a process they often cannot do so. Finally, corruption and structural biases mean that even if people overcome the earlier hurdles, the outcome may not be just.

*“Husband started to cheat and I started to dispute with him. He started to beat and threat me “ I will trip you as a thief up and put into a jail. I will broke your hands and legs and take children. I was beaten, face in blood when my father and uncle found me. My uncle called a police after my husband slammed into uncle’s house. The police accepted a statement but did not undertake any further actions. They would feed us with promises. After six months the police closed a case since my husband worked in KGB. They also warned my uncle that he may object to anyone if he does not like anything.” Rena, 28 years old, mother of 2 children, lives in Baku.*

#### 4. Structural biases in the legal system

Analysis of interviews with legal advisors of crisis centers, victims, police workers and lawyers gave us some useful and practical insights into the operation of the legal system and the way that the population feels about it. However, in addition to these issues there are some reports produced by local human rights and international NGOs highlighting problems over access to justice that result from the structure of the system. These problems can lead to lack of trust or to systematic biases even if they are not noticed by the people who are trying to use the system. However, they are clearly important because they might provide insights into how better access to justice can be provided. Below we will highlight concerns mostly mentioned in interviews: The first structural barrier to justice is the overall bias in the system in favor of the prosecutor. The prosecutor and investigator set the terms of the investigation and have significant influence on the measures of pre-trial restraint and interrogation. Though the person being investigated has a right to a lawyer, that right is not always exercised for a range of reasons. Even when it is, if the defense lawyer is appointed by the state then they will be appointed by the investigator, who is often responsible for signing the paperwork necessary to secure payment. Also, state lawyers may change during the course of one case and at different parts of the process. Besides, the police have extremely low investigatory skills and so rely heavily on interrogation of witnesses as the basis for any case. In case of domestic violence it is generally expected that couple will be reconcile. For instance, after the police get violence case if there is no criminal concern inside they try to get together both parties and reconcile them. Another barrier for the police investigating a DV case is difficulties they have to enter a house even if they get a call informing them about home based violence. If there is no criminal case they have to apply to a court to get a permission to enter a house. Often due to this small procedure the police loose hours or days and women their lives. According to the opinion of civil society actors and victims there are lack of the appropriate skills on the part of judges, defense lawyers and prosecutors necessary to investigate DV cases and also lack of professional skills how to behave with victims. In order to increase the trust in this institution, a comprehensive training program is needed for all criminal justice professionals in Azerbaijan and engagement of more women in police system and court is required.

#### 5. Documentation

Problems relating to documentation are a considerable barrier to justice across the country.

This reflects the high documentation requirements for social assistance and social service provision as well as the documentation required to access justice.

Three forms of documentation were specifically mentioned during our different enquiries. The first was the housing registration document. This document is used to control internal migration, as it requires people to be officially registered as resident in one place and so essentially requires permission for movement. This creates a problem when interacting with the government. For example, if one wants to gain social services, get service from hospital or go to court. This obviously creates a problem if that person does not have registration or they are registered in the wrong place.

The second documentation issue that emerged during our research was marriage registration. According to Family Code you need to have official marriage ceremony in order to have a marriage that is recognized by the state. This has profound implications for what would happen in the event of a divorce, as women who are not formally married would have no rights to property or child support. Clearly, formal registration does not solve access to justice issues in domestic situations, but it is a necessary first step.

Connected to this, a persistent documentation issue that emerged in our focus groups with women in each of the regions was the ease with which men could abuse documentation requirements in order to avoid their responsibilities in the event of divorce. In particular, the child support payments that men are required to pay are related to their income, but many women said that it is extremely easy for men to avoid this by paying to have documents produced apparently proving that they earn very small salaries. Similarly, in order to avoid division of property, men can register their assets under the name of another member of the family.

Of course, these are difficult issues. In a situation where most couples live alongside their extended families, simple divisions of property may not be fair. Similarly, where incomes are small and much work occurs informally or outside of the country, it is difficult to get access to accurate information on earnings or to compel fathers to pay for the support of their children after a separation. However, it is clearly essential, if women are to gain access to justice and to create disincentives for domestic abuse or abandonment, that women are not trapped by material circumstances and thus forced to stay in difficult or even violent situations.

The first set of issues focuses on the disparate impacts that delivering justice has on women and men and the substantive areas where women are marginalized from the justice process, including property and inheritance, family law, gender-based violence (GBV). A second set of issues surrounds women's participation in the justice sector and barriers to women's access to justice, including procedural problems that inhibit equitable functioning of the justice sector.

Furthermore, many systematic and pervasive violations of women's human rights are perpetrated by women's family members. While most men suffer human rights abuses at the hands of state or public institutions, women who suffer rights abuses tend to do so in their own homes, at the hands of family members. Thus, unfair access to services, counsel and adjudication, and the enforcement of discriminatory marriage, divorce and family law render women unprotected in the very sphere where they are most likely to suffer human rights abuses.

### **Conclusions:**

Analysis of the assessment results shows that women access to justice in Azerbaijan is a big and actual concern. Although the government promote the belief in equality of men and women, power differentials, acceptance of existence of psychological, physical and, to some degree, sexual violence, implementation of adopted laws, plans and international mechanisms is still insufficient and formal. Both the State and civil society sector response to women rights issues and all related to availability juridical aid and justice bear spontaneous character, stay uncoordinated, has limited resources and uncertainty all around. The adoption of law and some recent developments in legislation and police as well as awareness raising are encouraging. The existence of legal and crisis centers organized by NGOs and state assist in resolution of women problems, however, their number and capacities are limited financially and geographically. The capacity of civil society actors and state workers including lawyers and police working in the field is require professional trainings particularly related to gender and women issues. Donor activity in this area remains minimal and mostly women access to justice seen as a cross-cutting issue in the framework of access to justice or human rights projects. Lack of options for women in need relegate women to the tolerate/divorce options and lack of community mobilization encourages the continuance of victim blaming and harmful family coping mechanisms. Interviews and focus groups data indicate regular occurrences of violence against women, limited access their have to legislation mechanisms and justice. Lack of free legal aid and protection, unwillingness to involve others, particularly state organs concerned with fear of ostracism, public rumors, high level of corruption, structural barriers of legislation system and low level of awareness of women rights among women at national level are occurring in the assessment areas.

There remains an enormous gap prevention and response activities in all sectors: community mobilization, medical response, legal response, psychosocial response, and self-reliance (financial empowerment) activities for women. Due to minimal problem recognition and acknowledgement, women in Azerbaijan continue to have limited access to justice, have limited availability of relevant and timely services or opportunities for different type of aids. Without a concerted effort by all actors to address this problem, it is unlikely to change and every single day in Azerbaijan, women will continue have unsolved problems and stay as one of marginalized group of population.

### **Recommendations:**

Based on the findings of the assessment, the following is recommended to improve access of women to justice in Azerbaijan:

#### **General recommendations**

- Integrate gender perspective as a cross-cutting issue into all programs related to justice systems;
- Invite gender experts to attend the work groups and expert meetings to help integrate the gender perspective into national legislation;



- Promote establishing better linkages between social, educational, medical and legal services, federal and municipal authorities, NGOs, experts, academics, and general public on the one hand and courts, advocates and jurists on the other hand
- Develop community cooperation of local professionals worked in the field of gender-related issues, including domestic violence prevention and intervention, and legal, education, social and health care, to coordinate and collaborate all national efforts on implementing gender considerations;
- Cooperate and collaborate at the regional levels with relevant entities to prevent violence against women and to promote measures to effectively bring perpetrators to justice, through mechanisms of international cooperation and assistance in accordance with national law.
- Capacity Building programs on gender mainstreaming policy development should be initiated for state workers of different rank and fields, especially responsible for the implementation of gender laws to ensure effectiveness of laws and implementation of state programs
- Holistic programs on women access to justice, in collaboration with Government offices, should be implemented to ensure women across all regions of Azerbaijan have the necessary response services, including juridical aid, crisis centers and shelters provision, hotlines, training and awareness programs.
- Exchange with gender data and information among State and civil society sectors should be supported and moderated, particularly reflective of crimes against women and any pursuant judicial actions to allow multi-year tracking of case response, and the change of the status of women in Azerbaijan in general.
- Capacity building and professional trainings on women rights should be delivered for Relevant Government offices, members of the police force and other workers of judiciary system to raise their attention, emphasize their role and increase responsibility to issues relevant to implementation of gender laws and encourage them to be proactive in cooperation with civil society actors and community members.
- Available information and data relevant to women rights violations should be widely disseminated to assist NGOs, government and other major players in Azerbaijan to conceptualize the scope of the problems and effectively response to them.
- Donors should pay more attention to establishment and sustainability of women crisis centers and shelters providing free juridical aid. Otherwise, without these centers implementation of gender laws will not be sustainable and women would stay unsupported and vulnerable due to lack of other available service providers.
- Awareness raising campaigns explaining essentials of gender laws and other gender concepts should be initiated across all Azerbaijan regions
- Women rights programs including gender monitoring and planning as well as analytical reports writing should be initiated for lawyers and community members and activists
- Lobby government to engage more women in jobs relevant for the implementation of gender laws particularly in police, courts and prosecution offices
- Lobby policy changes and establishment of necessary mechanisms for the implementation of legislation and improvement of women access to justice
- Lobby necessary gender law reforms

- Deliver more women rights trainings for rural women and men
- Provide annual monitoring on availability of justice services for women, their effectiveness and violations of women rights.
- Women NGOs in Azerbaijan should mobilize their efforts to attract attention of donors and government to women rights issues and lobby them to recognize women access to justice problem as a hindrance to the long-term development and sustainability of Azerbaijan.
- Networking between the NGOs working in the field of women rights should be encouraged to ensure that efforts are coordinated and overlap minimized. Increased coordination can provide a more dynamic government and donor advocacy vehicle.
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