

Gender-Based Legislative Review and Oversight

GUIDE FOR KOSOVO ASSEMBLY MEMBERS



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December 2019

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CONTENTS

I.	Introduction.....	4
II.	What is Gender-Sensitive Legislation?.....	7
III.	Preparation of the Assembly for Gender Mainstreaming in Legislation	8
IV.	Steps in Gender-based Legislation Assessment.....	10
	<i>A. Understanding the “nature of legislation” under consideration ..</i>	<i>11</i>
	<i>B. Gender Mainstreaming Assessment.....</i>	<i>11</i>
	<i>C. Gender inclusion in drafting process</i>	<i>13</i>
	<i>D. Gender Impact Assessment.....</i>	<i>14</i>
	<i>E. Propose Gender Mainstreaming Amendments</i>	<i>15</i>
	<i>F. Gender-based Law Assessment Forms</i>	<i>16</i>
V.	Gender Sensitive Budgeting.....	19
	<i>A. Legal Obligation.....</i>	<i>19</i>
	<i>B. Gender Budgeting Method.....</i>	<i>20</i>
VI.	Monitoring the Implementation of Laws for Gender Impact.....	21
	<i>A. Legality and Gender Mainstreaming.....</i>	<i>22</i>
	<i>B. Effectiveness and Gender Mainstreaming.....</i>	<i>23</i>
	<i>C. Form - Law Oversight from Gender Perspective</i>	<i>23</i>
VII.	Annex	26
	<i>A. Assessment of Gender Mainstreaming in the Law on Execution of Penal Sanctions</i>	<i>26</i>

I. INTRODUCTION

Domestic laws regulate the public life. In addition to the power of public policy regulation, they also provide awareness, incentives and advancement of social practices that are deeply embedded in the tradition of a society. Gender-sensitive laws provide such effects on gender equality and inclusion of both sexes in social and economic life. Research shows what a positive role inclusion of both sexes in the economy and in employment plays in the country's economic growth. Likewise, greater involvement of women and men in the social life of a country makes that country more advanced in many aspects of society.

Gender representation in public institutions, whether elected, appointed or administrative, is important. Democracy Plus has previously offered proposals for greater gender inclusion in executive positions. It has also been vocal in defending the gender quota in the Kosovo Assembly and municipal assemblies, in order to achieve the effect of better gender representation. However, gender inclusion in Kosovo legislation through the review, adoption and implementation of laws has a significant effect.

Women and men exert different influences, depending on the functional area: education, health, economics, social welfare etc. Likewise, each area and each law may affect one sex more positively or negatively. On the other hand, historical and social developments may have circumvented one sex, therefore one-area policies through laws can make advances in that direction.

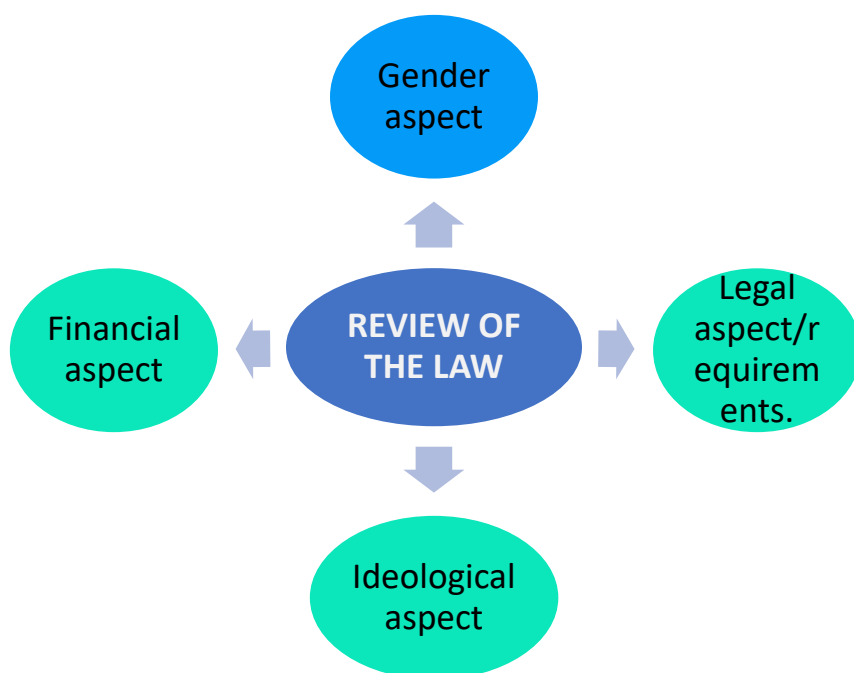
It is very worrying that in Kosovo, the share of one sex in the workforce is only 20.4%¹. So close to 80% of one sex, in this case women, do not actively participate in the labor force and are out of the labor market. But figures are opposite for the male sex, where labor force participation is 59.4%. This is just one of many areas in which one sex dominates significantly over the other.

The reasons for this and other public areas include many factors, including social. Nor can it be said that laws in Kosovo are discriminatory until they produce such effects. However, laws can contribute to greater gender inclusion. Drafting and adoption of gender-sensitive laws can only bring about greater gender mainstreaming in the social, economic and political spheres, if attention is paid to this aspect.

It is essential that MPs and decision makers identify the specific needs and characteristics of the people they need to serve. They also need to consider whether their decisions truly meet the needs and aspirations of the entire population, not just a part of it. Often MPs and other decision-makers are content with the adoption of general laws on gender equality and do not pay attention to having each law gender-sensitive.

¹ Kosovo Agency of Statistics Labor Force Surveys, Q2, 2019. September, 2019.

Government of Kosovo with Better Regulation Strategy 2.0 (2017-2021)² has created the basis for drafting gender sensitive laws. Implementation remains to be seen in the coming years as there are no concrete results yet. Kosovo Assembly reviews and adopts the laws. Laws shall be implemented as adopted by the Assembly of Kosovo. Therefore, this guide is prepared to facilitate the work of Kosovo Assembly Members on gender-related legislation review and to provide suggestions for this institution on review of gender-sensitive laws.



The Assembly of Kosovo has consistently made progress in reviewing laws from the legal/constitutional, substantive/ideological and financial/technical aspects. However, there is plenty of room for improvement in gender-based law review. This guide attempts to contribute to methodologies, suggestions, and tools for gender-based law review. It also seeks to contribute to methodologies and tools for overseeing the implementation of laws from a gender perspective, as overseeing the implementation of laws is the responsibility of the Assembly of Kosovo which needs empowerment.

MPs need to be aware and trained to review laws from gender perspective. The benefits to society, economy and politics are evident. This guide seeks to contribute to the information, awareness and training of MPs to include the gender perspective in the scrutiny of laws before them. However, in order to

²Office of the Prime Minister of the Republic of Kosovo. Better Regulation Strategy 2.0 (2017-2021).http://www.kryeministri-ks.net/repository/docs/Better_Regulation_Strategy_2_0_for_Kosovo_-_ALBANIAN.pdf

perform this task properly, the Assembly of Kosovo needs to be prepared to provide assistance and information on gender sensitive laws. It is also necessary for the Government and institutes for statistics and research to provide relevant gender-disaggregated data in different fields, which will be incorporated into Kosovo legislation.

II. WHAT IS GENDER-SENSITIVE LEGISLATION?

Gender-sensitive legislation does not refer to female sex alone. It is legislation that integrates the dimension of the relationship between female and male for the benefit of both sexes. However, a gender-sensitive law may include targeted actions for women or men in cases where that gender may be most affected or disadvantaged. Gender-sensitive legislation brings greater inclusion and opportunity for both sexes in those areas where one is more favored than the other. The main goal of considering gender perspective in scrutiny and oversight of legislation is to achieve gender equality by making institutions more reflective of the needs, aspirations and experiences of all women and men.

The Assembly of Kosovo may become more gender sensitive by adopting legislation and policies that support the principles of gender equality. Adoption of some specific laws on gender equality is not enough. The introduction of gender mainstreaming in parliamentary practice can be an effective catalyst for social and cultural change in attitudes towards gender equality. The Assembly can and should serve as a role model for society by advocating for gender equality through the adoption of gender-sensitive policies, action plans and operational and support policies.

However, in order to have gender-sensitive legislation, gender mainstreaming should be assessed when scrutinizing, overseeing the implementation of that legislation, and when reforming policies. Gender mainstreaming is a process involving the concerns and experiences of women and men in the design, implementation, monitoring and evaluation of policies and programs in all spheres: politics, economics and society. This so that women and men can benefit equally.

Gender mainstreaming in legislation having gender sensitive legislation include:

Kosovo in figures

- The share of labor force by female aged 15+ is 18.4%, while this percentage among men is 63.3%;
- The unemployment rate is 33.4% for women and 28.5% for men;
- 15.3% of the employees are in the industry sector, while only 1.1% of female are employed in this sector (2011);
- 70.1% of persons who have completed only primary education or have not completed it at all are women (2011);
- Only 17.1% of PhDs are women (2011);
- Average life expectancy for women is 72 years and for men 69 years;
- Smoking rate for women is 8% while for men it is 24% (2017).

- acquire gender-disaggregated and qualitative data on the situation of men and women;
- conduct gender analysis, which highlights the differences between women, men, girls and boys in terms of their relative distribution of resources, opportunities, constraints and power in a given context; and
- establish gender-sensitive monitoring and evaluation mechanisms, including the creation of indicators to assess the extent to which gender equality objectives have been met and the changes achieved in gender relations.

Gender-sensitive legislation shall be developed only by lawmakers with the willingness and ability to integrate the gender perspective into legislation, policy, and oversight. It is therefore extremely important that parliamentarians have the capacity for gender analysis in order to assume their representative, legislative and oversight functions using the 'gender lens'.

III. PREPARATION OF THE ASSEMBLY FOR GENDER MAINSTREAMING IN LEGISLATION

A gender-sensitive Assembly promotes gender equality by taking concrete steps to achieve this objective. Some of the steps that a gender sensitive Assembly should take are:

- gender analysis of laws - the different ways in which the law affects women and men;
- adoption of a gender-sensitive Rules of Procedure - promoting equality between women and men in all its internal organs and structures; and
- implementation of gender budgeting

Gender analysis of laws, or gender impact analysis of laws, goes beyond the sectoral level of analysis and goes into assessing the impact this law will have on women and men, girls and boys. Parliaments may become more gender sensitive by implementing legislation and policies that support the principles of gender equality. The introduction of gender equality and gender mainstreaming legislation can be an effective catalyst for social and cultural change in attitudes towards gender equality. Whereas gender-sensitive budgeting refers not only to expenditures intended for women, but also to an analysis of the entire budget from a gender perspective, including security, health, education, public works, etc. This is in order to ensure that the resulting allocations and impacts respond to the needs of women and men. The Parliament can serve as a role model for society by

advocating for gender equality through implementation of gender-sensitive policies, action plans and operational and support policies.

Drafting of laws with legal sensitivity is a relatively new development and has gained momentum largely after the adoption of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, adopted in December 1979. However, for gender sensitive laws, the Assembly of Kosovo should be prepared to enable and facilitate the work of MPs in this regard. The Inter-Parliamentary Union (IPU) has guidelines on how a Parliament can be prepared to provide opportunities for gender-sensitive legislation and gender-sensitive parliamentary work. It also provides a checklist to make the Parliament more gender-sensitive.

Based on those IPU guidelines, the Assembly of Kosovo does not analyze laws from a gender perspective in a comprehensive way, without measuring the gender impacts that laws have on society. Consequently, the Assembly has not yet been able to develop a check-list to assess legislation from a gender perspective. Similar to the countries in the region, the Assembly of Kosovo has a functioning parliamentary committee (the Committee on Human Rights, Gender Equality, Missing Persons and Petitions), which according to the Rules of Procedure of the Parliament is responsible for monitoring and implementing the principle of gender equality with legislation. This committee has the mandate to oversee the implementation of laws that fall within its scope, and other issues require separate decision of the Assembly. This committee is also the only body responsible for gender equality within the Parliament. In addition to the Parliamentary Committee, there is also an informal women's caucus, which functions effectively, but its mandate is not solely to promote gender equality in the Assembly and in society as a whole. This caucus develops *proposals*, which women MPs then refer to the committees in which they sit, or in sessions, where often such proposals turn into amendments and voted into laws.

The Committee on Human Rights, Gender Equality, Missing Persons and Petitions provides information and advice on gender issues, and information can also be disaggregated by gender. In addition, this Committee has managed to establish very good cooperation with the Government through the Agency for Gender Equality, within the Office of the Prime Minister, as well as with civil society, by inviting them in working groups when drafting laws. It also provides support to the informal women's caucus, which has its own office and assistant.

On paper, there are many laws in Kosovo that ensure gender equality and the inclusion of women in public institutions. In implementation, however, these laws continue to stall. In light of this fact, the Rules of Procedure of the Assembly and the Assembly as a whole, in addition to these laws, do not provide for any specific measure to achieve gender equality - including the Rules of Procedure of the Assembly, which is not gender-sensitive. The Assembly does not have a strategic

plan or action plan that promotes gender equality, and existing strategic plans are not gender sensitive. However, not always a written rule is required to gear practices towards advancing gender equality. The current Rules of Procedure of the Assembly contain no rules regarding the composition of the Presidency of the Assembly or committees on the representation of women. Despite this, in the VII Legislature, the Assembly of Kosovo had a woman vice-parliament speaker, and 5 of the 14 committees were headed by women. The draft regulation, which has not yet been submitted to the Assembly for discussion, does not provide for a woman vice-parliament speaker in the Presidency of the Assembly, as it does not foresee anything for chairing committees.

As for the laws and their amendments, the Committee responsible for Gender Equality has not yet started monitoring the laws that were adopted in the Law on Human Rights in 2015. The goal of this committee is to monitor one or two of these laws during 2020 in order to assess their implementation in practice. Up to date, there has been no change to any law because it has been discriminatory against women or men.

Gender budgeting is one of the key elements that can make the Assembly more gender-sensitive. However, the Assembly of Kosovo has not yet implemented this practice, therefore it has not changed the budgeting process. Although the budget contains budget lines that support institutions, bodies and activities that push forward the agenda of gender equality and the empowerment of women in society, the budget as a whole is not subject to gender analysis. This again focuses on the scope of the committees - while the scope of the Committee on Human Rights, Gender Equality, Missing Persons and Petitions does not include budgeting, so this Commission cannot intervene in this process.

IV. STEPS IN GENDER-BASED LEGISLATION ASSESSMENT

Reviewing the law from a legal/constitutional point of view and from a public policy point of view that aims to implement it is the usual job of an MP. Every MP is engaged in this one way or another. However, in order to assess gender mainstreaming in a law that comes to the Assembly of Kosovo, MPs need to make sure to follow some simple but important steps. Gender-based legislation assessment is an additional dimension of law review. 100% service to the population (to both sexes), makes this dimension as important as the legal and political aspects.

Furthermore, following some steps for gender review of the law will certainly help to better understand the legislation in two other respects. In fact, consideration of the law from gender perspective can be done in parallel with the law review from the legal/constitutional aspect and the public and ideological policy aspect. This is because of the limited time that is available during the legislative process in the

Assembly and in the parliamentary committee where the greatest chunk of work on law review is expected. To make it easier to follow the steps below, this gender review process is also structured with a checklist, which can be found on the following pages, but also through a concrete example of Kosovo legislation in the annexes.

A. Understanding the “nature of legislation” under consideration

Initially, the area of public policy affected by the law under consideration is identified. The legislation may cover the area of: economic development, health, education, justice, security and other areas. At the same time, legislation may affect two or more areas. Classification of the law in the field that helps MPs analyze the field in general and the impact of female and male of the Kosovo population.

This step also needs to be understood whether the legislation under consideration regulates a completely new policy or it is a changing or amending policy. In case of a changing or amending policy, it is certain that the policy so far has produced some gender outcomes. In this case there could be a lot of data available on the gender dimension of this legislation. So the checklist should indicate whether the law A) Regulates a completely new area; B) It is amendment to an earlier law or C) It is a previously regulated field.

The purpose of the law is mainly related to the policy the legislation is intended to address and it is certain that the part of the law listing the purpose does not include the purpose of gender mainstreaming as a result of law implementation (unless the law directly affects gender aspects, such as the law on gender equality or the law on maternity leave). However, understanding the purpose of the law gives an indication of the results that legislation intends to produce in society. Consequently, it is important to analyze the expected results in politics and which will affect gender mainstreaming.

B. Gender Mainstreaming Assessment

After obtaining a good understanding of the nature of the law, its background, and its intended purposes, the next step is to consider the extent of gender mainstreaming. First we need to consider whether the law is directly related to gender. If so, gender mainstreaming is implicit. If not, gender mainstreaming assessment becomes more relevant. Even if not directly related, one should consider whether the Law on Gender Equality affects³ the subject that the legislation under consideration intends to regulate. MPs can go further and

³ Official Gazette of Republic of Kosovo. *Law on Gender Equality*. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10923>

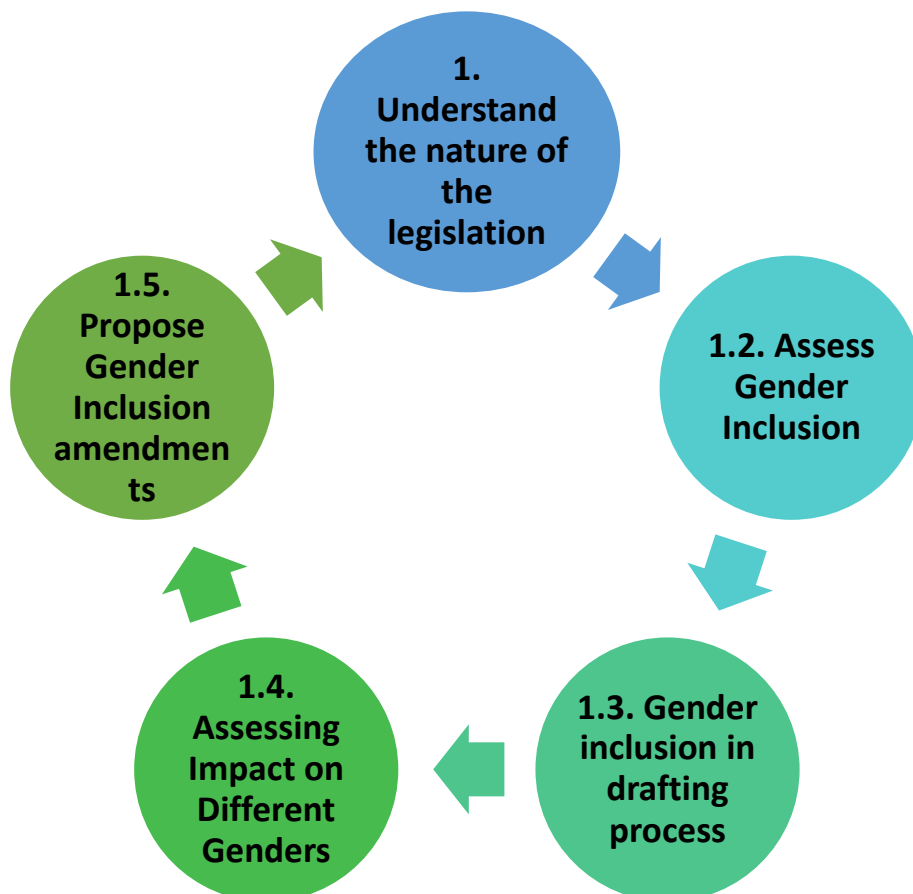
analyze whether international standards affect the subject the considered law intends to regulate. One of the most universal standards is the *Convention on Elimination of All Forms of Discrimination Against Women* adopted by the United Nations General Assembly in 1979⁴. This Convention specifies many practices for the inclusion, non-discrimination and promotion of women in various spheres of public policy.

At this stage it is important to identify whether certain articles of the legislation under consideration specify one sex or one gender aspect in general. This may be an indication that the concerned article may have gender implications in public policy of the law. For example, certain articles of the Law on Execution of Penal Sanctions, which is on the Checklist in Annex 1, affects specific categories, such as: convicted women, pregnant women, convicted men and children of prisoners. Article 52 of that law provides that in a female correctional facility, the health services of pregnant women are provided by a health institution. Whereas article 20.1.4 provides that execution of a sentence of imprisonment can be postponed upon the request of the convicted person until, at the latest, six (6) months from the day of commencement of the postponement of execution, if the wife of the convicted person has three (3) months until the day of giving birth, or if less than six (6) months have elapsed from the day on which she gave birth and there is no other member of the household who would help her. In your gender analysis, these articles may advance the gender aspect or to raise additional questions with the sponsor of the law or the parliamentary review committee.

⁴ Agency on Gender Equality. Convention on Elimination of All Forms of Discrimination Against Women

<http://abgjrksp.inagency.com/assets/cms/uploads/files/Legjislacioni/Konvent%20CEDAW.pdf>

At this stage, it should also be considered whether the law under consideration foresees the establishment of any public institution, public body, administration or official position or even any association or chamber which is governed by other laws. Because these bodies or mechanisms require public resources,



consideration should be given to whether gender equality but also gender promotion are ensured. Furthermore, a law may establish a public fund or allocate state subsidies or assets to the issue that it regulates. In direct public resources, gender mainstreaming and promoting less inclusive gender should be an integral element of that resource public.

C. Gender inclusion in drafting process

When considering the law on gender inclusion, the voices consulted and involved in the process of policy concept and law making should also be assessed. The consultation process can transform the substance of a law into a more gender-sensitive law, but it can also make it more disadvantageous to a gender if the

voices consulted and included were of the same gender. The starting point of this phase is to find out if the law has undergone a gender analysis.

With *Kosovo's Better Regulation Strategy 2.0 (2017-2021)*⁵ drafted by the Office of the Prime Minister, as needed, gender analysis should be incorporated into the Concept Paper of all laws drafted by the Government and evaluated by the Agency for Gender Equality. With the action plan of this strategy, these gender analyzes should start in 2018, after the Agency has developed the instruments for such analysis.

Therefore, at this stage it is important for MPs to find out whether the law contains the gender analysis in the concept paper, whether any assessment of the impact of the law on gender has been made, and whether there were consultations with women's groups, mainly as this sex is often overlooked during policymaking. It should be assessed who has been consulted on this issue and what voices are missing in the consultation. Furthermore, at this stage it should be explored what data is available to assess the policy of the law and whether it is gender disaggregated.

The Kosovo Agency of Statistics is an institution that publishes statistics in different economic, social and demographic areas disaggregated by sex and age. However, there are many other governmental and non-governmental institutes that conduct gender-based surveys and research. When it comes to statistics it is very important to consider whether they are up to date and how reliable they are especially since public policy is expected to be evaluated based on such statistics.

The Assembly of Kosovo within its administration has the Directorate for Research, Library and Archives (DRLA), which conducts specific research at the request of an MP, caucus or parliamentary committee. Because of potential overwhelming work, priority is given to research requests by the parliamentary committee and this may be the path that MPs and members of a parliamentary committee can follow.

D. Gender Impact Assessment

After the first three steps are completed and the substance of the law understood, and when sufficient data is available on issues intended to be regulated and included in the drafting process, it should be assessed how the substance of the legislation affects women and men (of different ages). In doing

⁵Office of the Prime Minister of the Republic of Kosovo. Better Regulation Strategy 2.0 (2017-2021).http://www.kryeministri-ks.net/repository/docs/Better_Regulation_Strategy_2_0_for_Kosovo_-_ALBANIAN.pdf

so, MPs should draw conclusions based on gender. If your conclusions can't be drawn, it means insufficient data were collected.

The questions and answers to be asked about this law when gathering information from the first three steps are: What groups will be affected by amending the law? Can one identify if one gender is most affected by the content of the law and to what extent? Are specific groups of people within each sex more likely to be affected (such as women with disabilities, men of a particular ethnicity or in rural areas), and to what extent? Do certain groups of people face barriers to accessing the service in question?

To assess gender impact more accurately, assessments of gender experts, non-governmental organizations should also be required, including public hearings within the committee or public discussions within the caucus to assess the gender impact of the legislation under consideration. Also, a good and appropriate source would be the caucus of the particular entity, as MPs of other entities may not do the gender review of the law as the ones of the specific entity. The basis for that hearing or discussion may be the aforementioned questions and the Gender Assessment Checklist of Legislation. Furthermore, questions can be prepared for the sponsor of the law, ministry, parliamentary committee or caucus in order to complete the gender assessment data of the law.

E. Propose Gender Mainstreaming Amendments

Once you have studied the substance of the law and have your own assessment of gender impact, the next step in scrutinizing the law is to prepare proposals for the legislation in question in order for the law to affect the different sexes correctly. During the first four steps of completing the Gender Mainstreaming Checklist, it is certain that there many loopholes will emerge in the law that need to be filled from gender perspective. Furthermore, during the first steps there will surely be plenty of ideas for proposals from your own analysis, but also from consultations you may have with others, whether there is the time or willingness to consult outside or within the caucus.

Proposals for amending the law on gender inclusion can be made to provide equal opportunities for the benefit of both sexes. Whether one sex has been discriminated against, or whether a temporary measure is provided for one sex, which faces difficulties in benefiting because of traditional and social reasons. Further, proposals may be for the regulation of the law in order to take into account the needs of the female or the male in providing a service, benefit or even sanction as is the case with the law, which is exemplified in the annex to this guide.

In the area of health, laws may be amended by creating opportunities to access medical services, including family planning. Suitable services for women, if

needed, free of charge, as well as adequate nutrition during childbirth and breast-feeding. In the field of culture, the right to participate in entertaining, sports and all aspects of cultural life. In the area of economic development, fair and possibly favorable access to business subsidies as well as the right and appropriate conditions for women to have access to property, but also to borrowing, or other forms of financial credit. In the field of agriculture, laws should be amended to eliminate discrimination against women in agricultural areas in order to ensure equality between men and women, its participation in rural development and at the same time the advantages it brings.

F. Gender-based Law Assessment Forms

To facilitate gender review of the law and follow the steps outlined above, this guide provides a checklist for gender assessment of legislation. The list or form is divided into five sections according to the five steps mentioned above for reviewing the legislation in gender aspect and lists the most relevant questions for each step. When no data is available, “no data” should be noted. This can serve as a basis for questions to the sponsor of the law to find out whether gender has been taken into account and if so, what is the result. An example of the review of the Law on the Execution of Penal Sanctions, which is in force in Kosovo and is expected to be amended, is provided as an annex at the end of this guide.

FORM A - GENDER ASSESSMENT FOR REVIEWING LEGISLATION			
NATURE OF THE LAW			
Name of the law:			
1.	What area does the law cover?		
2.	Is it amendment of an earlier law, or does the law regulate an entirely new area?		
	<input type="checkbox"/> Area regulated earlier	<input type="checkbox"/> Amendments to the law	<input type="checkbox"/> Completely new area
3.	What is the purpose of the law?		
<ul style="list-style-type: none"> • • 			

GENDER MAINSTREAMING

4.	Is it a law that is directly related to gender issues?	
	<input type="checkbox"/> Yes	<input type="checkbox"/> No
5.	Does the Law on Gender Equality affect the area or subject this law intends to regulate?	
	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6.	Are there certain provisions that specify one gender?	
	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<i>If yes, note articles _____</i>		
7.	Is the law intended to achieve any desired gender outcome?	
	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<ul style="list-style-type: none"> • <u>If YES, name which?</u> <ul style="list-style-type: none"> <input type="checkbox"/> better representation of women; <input type="checkbox"/> improving cultural attitudes; <input type="checkbox"/> improving income equality. • <u>If NO, is it possible to achieve desired gender outcomes in this area?</u> 		
8.	Does the law provide for the establishment of any body/mechanism?	
	<input type="checkbox"/> Public institution;	<input type="checkbox"/> Governing body;
	<input type="checkbox"/> Supervisory body;	<input type="checkbox"/> Official position;
	<input type="checkbox"/> Association/Chamber;	<input type="checkbox"/> Other
<ul style="list-style-type: none"> • <u>In either of these, does the law provide for gender mainstreaming?</u> 		
	<input type="checkbox"/> Yes	<input type="checkbox"/> No

9.	Does the law provide for allocation of public resource?		
<input type="checkbox"/> Public fund;		<input type="checkbox"/> Public subsidy;	
<input type="checkbox"/> State/public property;		<input type="checkbox"/> State/public asset	
<ul style="list-style-type: none"> <u>In either of these, does the law provide for gender mainstreaming?</u> <div> <input type="checkbox"/> Yes <input type="checkbox"/> No </div> 			
INCLUSION IN DRAFTING PROCESS			
10.	What evidence exists to prove that gender considerations have been factored in the decision-making process?		
<input type="checkbox"/> Impact assessment		<input type="checkbox"/> Gender analysis	<input type="checkbox"/> Consultation with women groups
11.	Who has been advised on this issue? Whose voices are missing?		
12.	Is gender-disaggregated data available for the issues under consideration?		
<input type="checkbox"/> Yes		<input type="checkbox"/> No	
<ul style="list-style-type: none"> <u>If yes, are there up-to-date and reliable statistics?</u> 			
ASSESSING IMPACT ON DIFFERENT SEXES			
13.	What groups will be affected by amending the law?		
14.	Can one identify if one sex is more likely to get affected through the amendments of the law and to what extent?		
15.	Are specific groups of people within each sex more likely to be affected (such as women with disabilities, men of a particular ethnicity or in rural areas), and to what extent?		

16.	Do certain groups of people face barriers to accessing the service in question?
17.	How will public get educated on the law? What methods will be used to ensure that men and women have equal access to this information?
18.	If this area has previously been regulated by primary or secondary legislation, what effects has it produced for equal access for women and men?
PROPOSALS FOR AMENDING THE LAW	
<ul style="list-style-type: none"> • _____ • _____ 	

V. GENDER SENSITIVE BUDGETING

A. Legal Obligation

The state budget law is one of the most important laws of a country. Gender budgeting is an essential element of gender sensitive policies. As budget review and approval is the responsibility of the Assembly, gender-sensitive budgeting is a good indicator of how gender-sensitive the policies of the Assembly institution are. Gender budgeting is an approach that aims to include gender perspective in financial policy making and seeks to transform the entire budget process, making it one of the most important processes to ensure gender equality in society. The Law on Gender Equality provides that the inclusion of gender budgeting in all areas, as a necessary tool to guarantee that the principle of gender equality is respected in collecting, distribution and allocation of resources⁶.

This law also foresees institutional mechanisms for gender equality such as the Agency for Gender Equality, relevant gender equality officers in ministries and

⁶ Official Gazette of Republic of Kosovo. *Law on Gender Equality*. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10923>

municipalities, the Ombudsperson and Political Parties. The Agency for Gender Equality, which operates within the Office of the Prime Minister, is an executive agency responsible for the preparation of laws, by-laws, strategies and programs to ensure the integration of gender mainstreaming and gender budgeting. Whereas the Gender Equality Officers in the ministries and municipalities are responsible for gender mainstreaming and budgeting into policy design and implementation.⁷

In addition to these mechanisms, this law on gender budgeting obliges all institutions of the Republic of Kosovo at all levels of legislative, executive, judicial and other public institutions⁸. Consequently, the law also applies for the Kosovo Parliament, which should draft a gender-sensitive budget - analyzing not only expenditures intended for women, but all areas such as: security, health, education, public affairs, etc.

B. Gender Budgeting Method

Gender responsive budgeting does not mean allocating funds for men and women, but providing for the needs and interests of individuals, which are addressed in spending and income policies. Consequently, it also affects the successful implementation of all other policies. Drafting a gender budget includes gender perspective analysis, which means measuring the different ways women and men are impacted by the budget. Gender budgeting enables active and effective addressing of gender-specific concerns and allows not only combating social inequalities, but also enhancing transparency and accountability in the overall budget process.

Depending on the logic that MPs are citizens' representatives and responsible for adopting policies that help eliminate inequalities in society, they should undergo training in order to make an independent gender impact analysis of the budget, instead of using the data provided by the Government alone. Access to information that would help with gender budget analysis should be provided by the parliamentary service, which would collect data from the analysis of independent expert groups, private sector economists and academia. Thus, gender budgeting would be institutionalized, paving the way for the Kosovo Parliament to follow examples from countries that practice this way of budgeting. In some countries gender budgeting is led by Parliamentary Committees, while in the case of South Africa, parliament collaborates with governmental and non-governmental organizations to develop a gender responsive budget.

An example of gender budgeting aimed at advancing women's education and careers is budgeting for childcare programs. Financing childcare and early

⁷ *Ibid*, Chapter II.

⁸ *Ibid*, Article 5.

development programs frees women from the burden of childcare, which prevents them from advancing in education or career. Funding for these programs may focus on places where women's employment is lower, may be aimed at subsidizing daycare for single parents, or for other groups that would benefit from this investment. Gender budgeting helps to better understand the impact of public spending by understanding how resources are allocated between men and women. In order to address the needs of women and men alike, it is very important to develop monitoring methods that measure the impact of the budget on society and the level of gender impact.

The Swedish Parliament has incorporated gender analysis in budgeting since 1988. Since this year, the draft budget that is passed to the Parliament contains a special annex showing the distribution of economic resources between the sexes, and how gender inequalities are expressed economically. This way of analyzing the budget eliminates the possibilities for subjective interpretation of public information, and clearly shows how the budget is designed to combat gender inequalities. For this reason, the Parliamentary Finance Committee is afforded ample time to discuss each item of expenditure and to hold discussions with stakeholders in Parliament, government agencies and civil society. Whereas in Austria, a new practice for institutions performing budget analysis includes their obligation to address gender issues as a separate category of analysis and control. Gender responsive budgeting is done by setting a gender equality objective for each chapter of the budget.

VI. MONITORING THE IMPLEMENTATION OF LAWS FOR GENDER IMPACT

When a law is passed in the Assembly, it must then be put in practice. It would be good practice to oversee the level and manner of implementation of the law two or three years after the adoption. Implementation is carried out by other responsible institutions, which are required to issue secondary acts on enforcement procedures and often implement them according to their interpretation, which may deviate slightly from the scope of the law. However, even law enforcement circumstances may make the law produce effects other than those intended during law drafting and review. In this context, laws and public policies adopted by the Assembly do not always achieve the purpose for which they were adopted, either because of impediments to implementation, the inability of implementing institutions, the negligence of law enforcement institutions or as a result of socio-economic factors in the country. Because of this, the way of implementing the law is often more important than its content.

The Assembly of Kosovo has the responsibility and duty to oversee the implementation of the laws it adopts. Article 65.9 of the Constitution of Kosovo

provides “the Assembly of Republic of Kosovo oversees the work of the Government and other public institutions that report to the Assembly in accordance with the Constitution and the law”. Whereas, the Rules of Procedure of the Assembly of Kosovo, pursuant to Article 73, inter alia provides that each committee, within the scope of its responsibilities, is authorized to supervise the implementation of the law by the Government, respectively by the Ministry. To exercise this authority, the committees review and study the effectiveness of the laws in force within their scope, their implementation, and propose measures for specific cases.

To ensure that the gender aspect is included in overseeing the implementation of a law, MPs should propose that this aspect to be included at the moment when the Parliamentary Committee decides on the oversight of this law. The decision of the parliamentary committee is required for the initiation of the oversight of a law and it establishes a working group to oversee it. MPs and committee members can be part of the working group and ensure that gender is an integral part of overseeing the implementation of that law.

A. Legality and Gender Mainstreaming

In law implementation oversight training, MPs are instructed to adhere to three main principles on which oversight of law implementation by parliamentary committees is based, which oversee laws within the respective fields. Principle of legality: whether the bylaws, decisions and implementing measures of the governing and administrative institutions are in accordance with the Kosovo justice system. (Constitution, laws, decisions of the Constitutional Court, and mandatory international legislation). Principle of suitability: if the law adopted has achieved the objectives during implementation and the measures taken are appropriate to achieve the objectives. The principle of effectiveness: whether the institutional action has been effective, efficient and economical otherwise known as the principle of performance.

However, these three principles can assess the gender impact of law implementation. For the sake of this assessment, the principle of legality may consider whether secondary legislation is gender-sensitive. Secondary legislation is as important as primary legislation because it is part of the policy regulation. As long as it does not conflict with the substance of the law, it has the power of the law. Furthermore, the precise application of articles affecting gender issues directly and indirectly should be assessed. If good work has been done on this part of the law, it should yield effects on gender aspects. In this regard, MPs supervising gender aspect of the law should assess whether that law is implemented in accordance with the Law on Gender Equality and other laws that directly regulate gender equality and non-discrimination.

B. Effectiveness and Gender Mainstreaming

The principle of legality has more to do with the applicability of the law from a technical point of view, if it is implemented as required by law. Whereas the principle of effectiveness and suitability deals with the effects and results produced by that law. Each adopted law has its own goals, therefore the structure of the legislation has a separate section where the sponsor must clearly state the goals of the law. However, when the implementation of a law begins, those goals or objectives may not be partially or fully achieved. The law may also have effects which are totally against those intended. This is because there are various social, economic, financial factors that influence the results that a law produces. However, on the other hand, the law may be poorly drafted to achieve those goals. So it may have been designed in a way that does not foresee many factors in the Kosovo context that may affect the effects of those legal guidelines.

For the sake of assessing the gender aspect of the effectiveness of law enforcement, MPs should consider whether in the course of implementation, the law has achieved the objectives of gender mainstreaming and promoting disadvantaged sex. Next, it must be examined whether the law had any unforeseen gender impact during its implementation. Many laws can produce adverse effects and provide disadvantage to one sex, which may not be anticipated during law drafting and review. These gender impacts can come from provisions that decisively affect gender issues but also from legal provisions that do not specify gender impact. The method of administering the law should also be monitored in this regard, as there may be no gender mainstreaming in the management institutions, which would lead to the circumventing gender sensitivity.

Oversight of the effectiveness of law implementation should be the focus of the selected law where MPs or parliamentary committees shall establish a public fund that provides for the disbursement of public subsidies or public/state assets. Disbursement of funds, subsidies or public assets should consider gender equality or even favoring one sex that has been overlooked by such public benefits.

C. Form - Law Oversight from Gender Perspective

In the process of law oversight, it is recommended to prepare questionnaires for the law enforcement agencies. It raises questions affecting the three principles of applicability of a law mentioned above. MPs may propose questions in these questionnaires that ensure gender perspective in the law oversight process. The checklist below helps raise questions about law enforcement oversight from gender perspective.

FORM B - LAW OVERSIGHT FROM GENDER PERSPECTIVE

APPLICABILITY DURING IMPLEMENTATION

Name of the law:

1.	How long has the law been adopted?
2.	What are the provisions of the law affecting gender issues (direct or indirect)?
2.A	If so, to what extent, in your opinion, have they been able to apply them strictly?
3.	What secondary legislation was issued after the adoption of the law (administrative instruction or decision) and the date when that secondary legislation was issued?
4.	Has there been a gender analysis of secondary legislation?
4.A	If so, to what extent they have been able to apply them strictly?
5.	<i>Is the law being implemented in accordance with the Law on Gender Equality and other laws that directly regulate gender equality and gender non-discrimination?</i>

EFFECTIVENESS DURING IMPLEMENTATION

6.	<i>At what extent the law achieved the objectives of gender mainstreaming and promoting less favored sex?</i>	
7.	Had the law any unforeseen gender impact during its implementation?	
<input type="checkbox"/> Yes		<input type="checkbox"/> No
7.A If so, what kind?		
8.	Did it have any negative effects in disadvantaging either sex?	
<input type="checkbox"/> Yes		<input type="checkbox"/> No

8.A If yes, What social, economic, financial factors affected the outcomes of this law?	
9.	What has been the method of administration in law enforcement? Could it have led to circumventing gender sensitivity?
10.	Does the law provide for the establishment of a body/mechanism?
	<input type="checkbox"/> Public institution; <input type="checkbox"/> Governing body;
	<input type="checkbox"/> Supervisory body; <input type="checkbox"/> Official position;
	<input type="checkbox"/> Association/Chamber; <input type="checkbox"/> Other
10.A <u>In either of these, did it provide for gender inclusion?</u>	
	<input type="checkbox"/> Yes <input type="checkbox"/> No
11.	Does the law provide for allocation of public resource?
	<input type="checkbox"/> Public fund; <input type="checkbox"/> Public subsidy;
	<input type="checkbox"/> State/public property; <input type="checkbox"/> State/public asset;
	<input type="checkbox"/> No
11.A. <u>In either of these, was there gender inclusion?</u>	
	<input type="checkbox"/> Yes <input type="checkbox"/> No
IMPLEMENTING INSTITUTION ACTIONS	
12.	Has the implementer (ministry/agency) developed indicators for measuring gender impact?
	<input type="checkbox"/> Yes <input type="checkbox"/> No
13.	Has the ministry made an Ex-post assessment of the law under oversight?
	<input type="checkbox"/> Yes <input type="checkbox"/> No
14.	If so, was the gender regulatory impact anticipated? And what were the results?

VII. ANNEX

A. Assessment of Gender Mainstreaming in the Law on Execution of Penal Sanctions

FORM A - GENDER ASSESSMENT FOR REVIEWING LEGISLATION			
NATURE OF THE LAW			
Name of the law: Law on the Execution of Penal Sanctions			
1.	What area does the law cover?		
	Justice		
2.	Is it amendment of an earlier law or does the law regulate an entirely new area?		
	<input checked="" type="checkbox"/> Area regulated earlier	<input type="checkbox"/> Amendments to the law	<input type="checkbox"/> Completely new area
3.	What is the purpose of the law?		
	<input type="checkbox"/> Execution of Penal Sanctions <input type="checkbox"/> sanctions of offenses; <input type="checkbox"/> measures of mandatory treatments, and <input type="checkbox"/> application of detention.		
GENDER MAINSTREAMING			
4.	Is it a law that is directly related to gender issues?		
	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
5.	Does the Law on Gender Equality affect the area or subject this law intends to regulate?		
	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
6.	Are there certain provisions that specify one gender?		
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If yes, note articles _____

Article 20.1.4 - provides that execution of a sentence of imprisonment can be postponed upon the request of the convicted person until, at the latest, six (6) months from the day of commencement of the postponement of execution, if the wife of the convicted person has three (3) months until the day of giving birth, or if less than six (6) months have elapsed from the day on which she gave birth and there is no other member of the household who would help her.

Article 27.2 - Provides postponement of the execution of the sentence even if the postponement has been granted to a pregnant woman whose child is not born alive, the postponement shall be terminated six (6) months after the delivery, and if the child dies after the delivery the postponement shall be terminated six (6) months after the death of the child.

Article 27.3- Also, if a postponement has been granted to a mother of a child younger than one (1) year of age who dies, the postponement shall be terminated six (6) months after the death of the child;

Article 33.3.- Male and female convicts shall be placed separately. Also pregnant women, childbearing women and mothers who are caring for their children shall be accommodated separately from other sentenced women.

Article 52 - In the correctional facility for women, health care services for the health care of pregnant women shall be provided by health institution;

Article 53.1. - A convicted woman who has a child may keep the child until he or she is eighteen (18) months old, and, thereafter, the parents of the child shall agree whether the custody of the child shall be entrusted to the father, other relatives or other persons.

7.	Is the law intended to achieve any desired gender outcome?	
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<u>If YES, name which?</u> <ul style="list-style-type: none"><input type="checkbox"/> better representation of women;<input type="checkbox"/> improving cultural attitudes;<input type="checkbox"/> improving income equality.<input checked="" type="checkbox"/> respect for the right of women to be mothers even when they are serving their sentence in correctional facilities.		

<input type="checkbox"/> <u>If NO, is it possible to achieve desired gender outcomes in this area?</u>		
8.	Does the law provide for the establishment of any body/mechanism?	
<input type="checkbox"/> Public institution;		<input type="checkbox"/> Governing body;
<input checked="" type="checkbox"/> Supervisory body;		<input type="checkbox"/> Official position;
<input type="checkbox"/> Association/Chamber;		<input type="checkbox"/> Other
<input type="checkbox"/> <u>If any of the above, do you foresee gender inclusion in it?</u>		
<input type="checkbox"/> Yes		<input checked="" type="checkbox"/> No
9.	Does the law provide for allocation of public resource?	
<input type="checkbox"/> Public fund;		<input type="checkbox"/> Public subsidy;
<input type="checkbox"/> State/public property;		<input type="checkbox"/> State/public asset;
<input checked="" type="checkbox"/> No		
<u>If any of the above is foreseen, is gender inclusion foreseen?</u>		
<input type="checkbox"/> Yes		
<input checked="" type="checkbox"/> No		
INCLUSION IN DRAFTING PROCESS		
10.	What evidence exists to prove that gender considerations have been a factor in the decision-making process?	
<input type="checkbox"/> Impact assessment		<input type="checkbox"/> Gender analysis
		<input type="checkbox"/> Consultation with women groups
		<input checked="" type="checkbox"/> No data available
11.	Who has been advised on this issue? Whose voices are missing?	

Missing voices and input of domestic and international NGOs dealing with gender issues and treatment of prisoners while serving their sentence.

12. **Is gender-disaggregated data available for the issues under consideration?**

☒ Yes

☐ No

If yes, are there up-to-date and reliable Statistics?

ASSESSING IMPACT ON DIFFERENT SEXES

13. **What groups will be affected by amending the law?**

Convicted women in particular are affected. They are not denied the right to motherhood, they are allowed to live with the child or even postpone the execution of the sentence in case of pregnancy, keeping the child inside the institution where she is serving the sentence, the right to have all the necessary hygienic conditions, etc. Men may also be affected by this law, especially in postponing the execution of sentences.

14. **Can one identify if one sex is more likely to get affected through the amendments of the law and to what extent?**

Probably the female sex (in the positive sense).

15. **Are specific groups of people within each sex more likely to be affected (such as women with disabilities, men of a particular ethnicity or in rural areas), and to what extent?**

No

16. **Do certain groups of people face barriers to accessing the service in question?**

During the implementation of this law, prisoners often complain of inappropriate treatment in these correctional facilities. In addition to serving their **sentence**, the aim is to prepare them for their reintegration and resocialization after release. Often their rude treatment, especially by prison guards, can mislead the purpose, making them repeat offenders or otherwise known as recidivist.

17.	How will public get educated on the law? What methods will be used to ensure that men and women have equal access to this information?
No data available.	
18.	If this area has previously been regulated by primary or secondary legislation, what effects has it produced for equal access for women and men?
Better treatment of prisoners in correctional facilities.	
PROPOSALS FOR AMENDING THE LAW	
<input type="checkbox"/>	_____
<input type="checkbox"/>	_____
<input type="checkbox"/>	_____

