



# **Alternative Report to the Committee on the Elimination of Discrimination against Women**

**Implementation of the Concluding Observations on the combined 4<sup>th</sup> and 5<sup>th</sup> periodic reports of Georgia on the Convention on the Elimination of All Forms of Discrimination against Women**

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This report was prepared by the Georgian Young Lawyers' Association (GYLA) on the implementation of the Concluding Observations on the combined fourth and fifth periodic reports of Georgia on the Convention on the Elimination of All Forms of Discrimination against Women, dated 24 July 2014. The report concerns para. 21 of the Concluding Observations on violence against women. In accordance with para. 42 of the Concluding Observations the Government of Georgia submitted the report on the implementation of the recommendations, dated 18 July 2016, and distributed on 21 July 2016.

Sections of the report on sex workers and women who use drugs was prepared in cooperation with Akeso and Tanadgoma, which was made possible through the Open Society Foundations' funded project "Addressing Gender-Based Violence and Increasing Access to Justice for Criminalized Women in Georgia."

1. Even though since July 2014 the Government of Georgia has taken a number of steps to fight domestic violence, violence against women remains widespread in Georgia.<sup>1</sup> Legal and policy responses are still insufficient to prevent, investigate and punish gender-based violence and provide reparations to the victims. The incidence of domestic violence remains underreported and entrenched patriarchal culture and sexist attitudes make violence against women tolerated.<sup>2</sup>

### ***Deficiencies in Legal Framework on Violence against Women***

2. It is particularly striking that, despite numerous public pledges, the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), signed by Georgia in June 2014, is not ratified yet. The legislative amendments, which would bring the laws of Georgia in conformity with the Convention and improve many of the shortcomings, are not yet enacted.
3. In contrary to the requirements of the Istanbul Convention, the laws of Georgia do not recognize violence against women and gender-based violence as a distinct category of

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<sup>1</sup> Georgian Young Lawyers' Association (GYLA) alone, with its Tbilisi office and 8 regional offices, provides up to 1500 legal consultations to women who claim to be victims of domestic violence each year. Under the information of the Public Defender of Georgia, in 2015, restrictive orders were issued on 2726 occasions. Killings of women and attempted killings amounted 28, 16 of which was committed by partners, ex-partners or persons rejected from intimate relationship (information available at <http://www.ombudsman.ge/ge/reports/specialuri-angarishebi/qalta-uflebrivi-mdgomareoba-da-genderuli-tanasworoba.page>).

<sup>2</sup> See Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia, 9 June 2016, A/HRC/32/42/Add.3.

crimes. Laws do not classify violence against women as a form of discrimination against women.

4. Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence (Law on Domestic Violence) provides safeguards to victims of domestic violence through restriction and protective orders.<sup>3</sup> The Law does not envisage such measures in cases of violence against women that does not fall within the domestic sphere. If a woman experiences gender-based violence and the perpetrator is not a family member<sup>4</sup> (e.g. violence by an intimate partner, or by someone who is interested to marry or have a relationship with the woman or, violence by a client against a sex worker) as defined by the Law on Domestic Violence, no restriction or protective orders can be issued against the batterer.
5. Respectively, state shelters are only designed for domestic violence victims<sup>5</sup> and no services are provided to other victims of gender-based violence. Even though the Law provides for the establishment of crisis centers,<sup>6</sup> no such government-run centers are in place so far.<sup>7</sup>
6. In contrary to the requirements of the Istanbul Convention, stalking and sexual harassment are not punishable under the law; commission of a crime against a family member and commission of a crime that was preceded with extreme violence are not classified as aggravating circumstances of crimes. Definitions of rape and other forms of sexual violence are not in line with the requirements of CEDAW and the Istanbul Convention (see paras. 18-20 below). “Battered women’s syndrome” – when wives kill their husbands as a result of having suffered continuous domestic violence – is not included in the criminal legislation as a mitigating circumstance.
7. Under the Law on Domestic Violence, the Government had to issue a legal act to provide compensation for victims of domestic violence by 1 May 2015.<sup>8</sup> However, no such act is enacted so far. There are no rehabilitation programs for batterers in contrary to the provisions of the Law.<sup>9</sup>

### ***Prevention, Prosecution and Punishment of Violence against Women***

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<sup>3</sup> Violence, Protection and Support of Victims of Domestic Violence (Law on Domestic Violence), Art. 9.4.

<sup>4</sup> Article 4(g) of the Law on Domestic Violence provides: For the purposes of this Law, mother, father, grandmother, grandfather, spouse, child (stepchild), adopted child, adoptive parent, spouse of adoptive parent, foster family (foster mother, foster father), grandchild, sister, brother, parents of a spouse, son-in-law, daughter-in-law, former spouse, persons who are in a non-registered marriage and members of their families, guardians.

<sup>5</sup> Law on Domestic Violence, Art.17.1(e)

<sup>6</sup> Law on Domestic Violence, Art. 17.1

<sup>7</sup> Under the information provided by the State Fund for Protection and Assistance of (statutory) Victims for Human Trafficking in July 2016, the first crisis center is planned to be opened in September 2016 in Tbilisi. However, this center will only serve alleged victims of domestic violence and will not provide services to other victims of gender-based violence.

<sup>8</sup> Law on Domestic Violence, Article 21.11.

<sup>9</sup> Law on Domestic Violence, Art. 8.2(f)

8. Georgian legislation and practice do not regard violence against women and domestic violence as crimes of gender-dimension. Judgments in domestic violence cases show that in these crimes, the gender-based motivation of the perpetrator is never specifically investigated. Even though the Criminal Code of Georgia envisages discrimination, including discrimination on the basis of sex, as an aggravating circumstance,<sup>10</sup> this article has never been applied by the courts in imposing punishments on violence against women.<sup>11</sup> Lack of examination of the discriminatory motive of the perpetrator is one of the reasons for the classification of crimes against women/domestic crimes as acts of less gravity and the imposition of lighter penalties to perpetrators. In addition, the courts largely fail in assessing the potential threat of repeating violence in determining the sentences to the batterers.<sup>12</sup>
9. Even though the number of restriction and protective orders has significantly raised in the recent period, police response to the applications of domestic violence/gender-based violence victims, seeking protection from the abuser, often remains inadequate. Police officers and prosecutors responsible for the inadequate handling of domestic violence/violence against women are not imposed any administrative or criminal penalties.<sup>13</sup>

#### ***Provision of medical and psychological services to victims of violence against women***

10. Despite the prevalence of violence against women and domestic violence, medical service providers do not have any instructions on screening gender-based violence and providing medical support to the victims of this type of abuse. Even though, under the Law, medical service providers shall notify the police about the violence experienced by the patients, medical personnel are largely unaware of this obligation.<sup>14</sup>
11. Medical, legal and psychological services are provided by the State to women victims placed in shelters. Victims of violence who do not have a victim status are not provided with any type of services by the State.

#### ***Child marriages as a form of violence against women***

12. The age of marriage is 18 years, while, under the amendments to the Civil Code of December 2015, at 17 marriage can be allowed by the court in exceptional circumstances,

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<sup>10</sup> Criminal Code of Georgia, Article 53.3<sup>1</sup>

<sup>11</sup> The information is valid as of December 2015.

<sup>12</sup> These were demonstrated by examining randomly selected 20 court judgments on domestic crimes issued by courts of first instance in Georgia in 2014-2015.

<sup>13</sup> Under the information provided by the Chief Prosecutor's Office on 24 November 2015, in none of the cases the elements of crime or disciplinary offence in the conduct of prosecutors in charge of responding to domestic violence was detected.

<sup>14</sup> Law on the Rights of Patient, Art. 28.1 (c<sup>1</sup>). Awareness of the medical personnel about the obligation to report domestic violence was assessed at 4 of GYLA's patients' rights trainings conducted in May and June 2016, in the framework of the Open Society Georgia Foundation project, which included 70 medical professionals in total.

like childbirth.<sup>15</sup> Starting from 1 January 2017, the age of marriage will be 18 years without any exceptions. While marrying a child is not a criminal offense itself, coercion into marriage (both registered and unregistered) was criminalized in October 2014 and sexual intercourse with a minor is punishable under the Criminal Code.<sup>16</sup>

13. Despite the above legislative amendments, child and forced marriages (mostly unregistered) are still practiced for, among other reasons, controlling women's sexuality<sup>17</sup> and are not seen by the authorities and the broader public as a form of violence and discrimination against women and a human rights violation.
14. The above is evidenced in the prosecution and punishment of these crimes against girl children. According to the information of the Chief Prosecutors Office, in 2015 the investigation started on account of sexual act with a minor in 189 cases, 140 of which was the result of child marriages (victims were girls). Out of these charges were brought against 99 persons, 80 of which resulted in plea agreements - all the cases of sexual intercourse with girl children in the name of "family" ended with conditional sentences, or fines. Only 1 case, which was not related child marriage, was decided on the merits.<sup>18</sup>

#### ***Prosecution and punishment of femicides/gender-related killings of women***

15. Criminal Code of Georgia does not classify femicide as a separate crime or as an aggravating circumstance of other crimes. Therefore, *gender-based killing of a woman, the motive or context of which is related to gender-based violence, discrimination or subordination of women, manifested in the desire of entitlement or superiority over women, assumption of ownership of women, control of women, or any other gender-related reasons; as well as incitement to suicide of a woman based on the above reasons*<sup>19</sup> - is not recognized as a distinct category of crimes in the law.

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<sup>15</sup> Civil Code of Georgia, Art. 1507<sup>3</sup>. Before December 2015 marriage could be allowed by courts or by parental consent at 16.

<sup>16</sup> Criminal Code of Georgia, Article 140 - Sexual intercourse or any other act of sexual nature with a person who has not attained the age of 16 years - Sexual intercourse, homosexual or lesbian or other sexual intercourse in a perverted form committed knowingly by an adult offender against a person who has not attained the age of 16 years, - shall be punished by imprisonment for a term of seven to nine years. Article 150<sup>1</sup> - Coercion into marriage, including unregistered marriage

<sup>17</sup> See on this Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia, 9 June 2016, A/HRC/32/42/Add.3, para. 26.

<sup>18</sup> Sexual intercourse or any other act of sexual nature with a person who has not attained the age of 16 years, Chief Prosecutor's Office of Georgia, available at: <http://pog.gov.ge/res/docs/holideiinn/140analizi.pdf>

<sup>19</sup> This definition of femicide, which is relevant to Georgian context and draws on international and feminist experience, is developed in the study of the Georgian Young Lawyers' Association "Judgments in Femicide Cases 2014", available at: [https://gyla.ge/files/news/2016%20%E1%83%AC%E1%83%9A%E1%83%98%E1%83%A1%20%E1%83%92%E1%83%90%E1%83%9B%E1%83%9D%E1%83%AA%E1%83%94%E1%83%9B%E1%83%90/femicidi\\_ge.pdf](https://gyla.ge/files/news/2016%20%E1%83%AC%E1%83%9A%E1%83%98%E1%83%A1%20%E1%83%92%E1%83%90%E1%83%9B%E1%83%9D%E1%83%AA%E1%83%94%E1%83%9B%E1%83%90/femicidi_ge.pdf)

16. In the absence of a separate article on femicide, in the crime is treated as premeditated murder (Article 108 of the Criminal Code of Georgia), premeditated murder in aggravating circumstances (Article 109 of the Code) though gender bias does not constitute a reason for aggravation, and incitement to suicide (Article 115 of the Code). In certain cases femicides can also be detected within the crimes wrongfully qualified as intentional grave injury to health, which resulted in death (Article 117.2 of the Code). Since the above articles can generally be applied to any crimes of deprivation of life, without examining particular facts of each case, detecting femicides is impossible without studying particular circumstances of each case. Even though the general article of the Criminal Code (53.3<sup>1</sup>) envisages discrimination, including sex discrimination, as an aggravating circumstance for crimes in the Code, this article has never been applied to make it easier to identify femicide. Therefore, there exists no statistical information on femicide in Georgia.
17. The Georgian Young Lawyers' Association studied the response of the prosecution and the courts to femicides committed in 2014.<sup>20</sup> Out of 12 judgments analyzed in the paper, 5 were delivered by the Tbilisi City Court, and the rest by the first instance courts in the eastern and western parts of Georgia. In 7 cases femicide was committed by a husband, while in 3 cases the perpetrator was a former husband and in 2 cases – an intimate partner of the victim. The motive of the crime is identified as jealousy or revenge, while in most of the cases there is no deliberation on the motive of the perpetrator. In 2 of the cases the perpetrator was a law enforcement official and least 4 cases reveal the history of domestic violence experienced by the victim before the killing. 9 cases were decided on the merits and in 3 cases procedural bargaining was concluded. In 3 of the cases femicide was qualified as intentional grave injury to health, which caused death, rather than as premeditated murder.
18. The minimum punishment imposed on the perpetrator in the femicide cases was fine of 2000 GEL (incitement to suicide, which ended with procedural bargaining). The maximum punishment constituted imprisonment for 15 years (procedural bargaining was concluded for premeditated murder in aggravating circumstances). In 2 cases, because of established mental illness, the perpetrator had to serve the sentence in a mental health institution.
19. The study found that there is a drastic failure of the judicial and prosecutorial authorities in classifying and treating femicide as a crime that has the gender dimension. In none of the femicide cases the gender-biased motivation of the perpetrator is raised by the prosecution and/or given due examination by the courts. Sometimes acts of femicide are qualified as less serious crimes than premeditated murder and sentences for perpetrators

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<sup>20</sup> See study of the Georgian Young Lawyers' Association "Judgments in Femicide Cases 2014", available at: [https://gyla.ge/files/news/2016%20%E1%83%AC%E1%83%9A%E1%83%98%E1%83%A1%20%E1%83%92%E1%83%90%E1%83%9B%E1%83%9D%E1%83%AA%E1%83%94%E1%83%9B%E1%83%90/femicidi\\_ge.pdf](https://gyla.ge/files/news/2016%20%E1%83%AC%E1%83%9A%E1%83%98%E1%83%A1%20%E1%83%92%E1%83%90%E1%83%9B%E1%83%9D%E1%83%AA%E1%83%94%E1%83%9B%E1%83%90/femicidi_ge.pdf)

are often unreasonably lenient. In none of the cases, but one, victims' experience of systematic domestic violence before femicide is given any consideration by the courts. Commission of the crime by a law enforcement official does not always affect the sentence. Femicides are investigated and punished as isolated incidents and are not examined within the broader context of structural discrimination, subordination, and violence against women. Families of the victims are unable to receive reparations.

### ***Rape and sexual violence against women***

20. Criminal Code of Georgia defines rape as “a sexual intercourse by use of violence, threat of violence or abusing the victim’s helpless condition.”<sup>21</sup> This definition is contrary to the Istanbul Convention, which defines rape as “engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object; engaging in other non-consensual acts of a sexual nature with a person; causing another person to engage in non-consensual acts of a sexual nature with a third person.”
21. Criminal Code definition of rape is limited to heterosexual penetration with sexual organs of a man and a woman and does not regard penetration of other forms as constituting rape (e.g. penetration by other body parts of objects). Lack of victim’s consent is not sufficient for the act to be classified as rape, if it is not accompanied by violence or threat of violence.
22. Georgian court practice interprets victim’s consent restrictively and does not look at the “coercive circumstances” in examining consent issue. A sexual act committed with the threat of rape, which was directed to the future, is not classified as rape. In the overwhelming majority of cases physical injuries are required for criminal prosecution of rape.<sup>22</sup>

### ***Violence against marginalized women (sex workers and women who use drugs)***

23. Marginalized women, including sex workers and women who use drugs, experience some of the most insidious forms of violence. Sex workers and women who use drugs are particularly vulnerable to physical, psychological, sexual and economic violence because of intersecting forms of discrimination. Their sex, structural problems associated with punitive drug policy/administrative penalties for sex work and social stigma related to their lifestyle make them particularly vulnerable. There is no reliable data on the actual scale of violence experienced by these groups of women.

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<sup>21</sup> Criminal Code of Georgia, Article 137.

<sup>22</sup> This was evidenced by studying 12 randomly selected first instance court judgments by GYLA, delivered in 2013-2015, for the purposes of this report.

24. Ineffective response to violence against sex workers and women who use drugs is rooted in the belief that these women “fail” to fulfill their roles as exemplary mothers, sisters and daughters. Therefore, they are subjected to severe judgment and double standards as compared to men. Women who use drugs and sex workers face double stigma, as they deviate from the traditional norms and do not fulfill the socially determined and gender-related “morality” requirements. As a result, violence against marginalized women is considered acceptable and oftentimes justified as compared to monolithic groups of women. Stigma and discrimination instigates violence, which, coupled with repressive state response, make these women particularly vulnerable to various forms of abuse.

### *Women who use drugs*

25. Women who use drugs are among the most invisible and underserved groups. The majority of women drug users are neither involved in any kind of treatment or in harm reduction services. Drug use among women often leads to poverty and sometimes sex work.
26. 3 focus group interviews conducted by GYLA in Tbilisi, in cooperation with ACESO, in March-May 2016, found that physical, psychological, sexual violence and coercion, in many cases perpetrated by the police, constitutes the most serious human rights violation against women who use drugs. In none out of the 5 cases of police violence and torture, identified during the focus groups, police officers were brought to justice. As a result of GYLA’s application, the investigation started 1 year and 5 months after the reported abuse in one of the cases and is now ongoing. The investigation has never started in the remaining cases.
27. The focus groups also showed that women who use drugs face violence, discrimination and breach of confidentiality in accessing health services (no separate/gender-sensitive treatment centers for women, videotaping during receiving treatment, breach of personal data of women in methadone program). Inadequate and insensitive services, together with social stigma related to women’s drug use, is one of the many barriers for them to access treatment.
28. A number of reasons prevent women who use drugs from accessing justice for gender-based violence: repressive drug policy being an obstacle for them to report abuses, fearing that their drug use will be revealed; physical, psychological and sexual violence by the police, including coercion to cooperate for uncovering drug crimes, isolation by the families and gender-based violence in the family.
29. Reporting violence is particularly risky for women who use drugs – they fear that the police will uncover their drug use and that they, or their friends or relatives, will face criminal prosecution related to drugs. This remains one of the main barriers for women drug users to accessing help.

30. Women who use drugs face additional obstacles when they try to apply to medical personnel to receive treatment for physical injuries inflicted as a result of violence. Medical personnel is often able to detect the fact of drug use, being the reason for providing inadequate care.
31. Poverty and financial dependence on male partners is one more important barrier to ending domestic violence against women who use drugs. This situation is sometimes stated to make the drug using women engage in sex work to earn their living.
32. Existing shelters for victims of domestic violence fail to meet the needs of drug-using women, even the ones involved in methadone substitution treatment, making the entry requirements discriminatory. In addition, women are deterred from applying to shelters because of a range of legal, structural and societal factors, including the risk of being identified as a drug user, fear of losing parental rights, or facing criminal prosecution. In many cases drug users are uninformed that there is somewhere to apply to in case of domestic violence.
33. A range of structural inequalities, starting from the inaccessibility of shelters for drug-using women to repressive state policies ignoring their needs, lead to the failure to uphold the rights of women who use drugs and help them to escape the cycle of violence.

### ***Sex workers***

34. Prostitution is subject to administrative penalties under Administrative Offences Code of Georgia.<sup>23</sup> Sellers, not the buyers of sex are subject to the penalties. Engaging others in prostitution<sup>24</sup> and making available an area or dwelling place for prostitution<sup>25</sup> are punishable under the Criminal Code of Georgia.
35. 5 focus group interviews were conducted by GYLA with sex workers (26 participants in total), in cooperation with Tanadgoma, from March 2016 to May 2016, at 5 cities of Georgia (Tbilisi, Telavi, Zugdidi, Batumi and Kutaisi). The focus groups revealed that the most commonly sex workers experience physical, verbal and sexual violence by clients. They also reported verbal abuse by the police and the facts of police asking them sex in return to not imposing fines to them (Kutaisi focus group).
36. As restraining and protective orders are only issued for domestic violence victims, these remedies are not available for sex workers who experience abuse by their current or former clients.
37. Sex workers face a number of obstacles in accessing justice for gender-based violence;; fear for administrative penalties and police persecution for sex work; fear that they will

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<sup>23</sup> Administrative Offences Code of Georgia, Art. 172<sup>3</sup>- Prostitution: Prostitution – shall carry a warning or a fine of up to one half of the minimum wage. The same act committed within one year after the imposition of an administrative penalty – shall carry a fine from one half to one minimum wage

<sup>24</sup> Article 253 of the Criminal Code of Georgia

<sup>25</sup> Article 254 of the Criminal Code of Georgia

be coerced by the police to identify persons who commit criminal offences related to sex work (e.g. persons from whom they rent property); lack of legal awareness of sex workers; social stigma preventing them from seeking remedy (fear that sex work will become known by their friends and relatives); ineffective response of the police when sex workers report violations; abuse by the police (mostly verbal) when sex workers seek protection; fear of retaliation by the abuser before charges are brought against him. Sex workers reported that they never received any remedy for the abuses by the police or the clients.

38. Study conducted by Hera XXI also showed that discrimination and violence against sex workers is most often demonstrated in the beating and other physical violence, coercion by the police to cooperate, physical and verbal abuse and humiliation by police officers, forcing into sexual intercourse by the police and denial of the medical personal to provide medical services. Every second sex worker interview by the Association Hera XXII states that they experience the above forms of violence at least twice a week.<sup>26</sup>
39. Stigma, discrimination, fear, hopelessness, lack of affordable legal services for sex workers prevent them from seeking justice for the abuses they experience. Sex workers interviewed by Hera XXII further claimed that they had never applied to the prosecution, the court or any NGOs to seek help for their rights violations (violence and discrimination). In 2 of the cases they had applied to the police, but the police did not provide them with any help. 88% of the respondents claimed that the violence they experience leads to serious health implications.<sup>27</sup>

## **Recommendations:**

### **Violence against women and femicide:**

- Promptly ratify the Istanbul Convention on violence against women and domestic violence and bring the legislation of Georgia in full conformity to the Convention, including the expansion of the protection measures (restriction and protective orders) and services to all victims of gender-based violence and outlawing stalking and sexual harassment;
- Modify the definition of rape based on the Istanbul Convention and CEDAW and take all relevant measures to improve the investigation and punishment of sexual violence against women;
- Introduce the definition of femicide in the Criminal Code of Georgia;

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<sup>26</sup> Research on the needs of sex workers and causes of discrimination, Hera XI, 2014, available at:

<http://en.calameo.com/read/004110021894c3ad2d39d>

<sup>27</sup> Ibid

- Investigate gender-related motives in all cases of violence against women and femicide and apply these motives as aggravating circumstances in imposing punishment. Ensure that the penalties for these crimes correspond to the gravity of the violations and that all measures are taken to ensure the safety of the victims;
- Promptly and gradually modify the criminal policy on sexual intercourse with minors (resulting from child marriages) to fully uphold the girls' right to be free from all forms of violence;
- Take all necessary measures to comply with the recommendations in the report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to Georgia, dated 9 June 2016.

#### **Violence against sex workers:**

- Remove administrative penalties for sellers of sex-work to improve access to justice for sex workers who are victims of gender-based violence;
- Ensure that the expanded scope of restriction and protective orders based on the Istanbul Convention, also covers the protection of sex workers from abusive clients/former clients;
- Ensure the effective investigation of all the reported abuses against sex workers and women who use drugs, with the particular focus on the violations committed by the police;
- Conduct trainings for police, prosecution and judges to effectively respond to abuses against sex workers;
- Conduct trainings for state legal aid lawyers to effectively represent sex workers in civil, criminal and administrative proceedings.

#### **Violence against women who use drugs:**

- Revisit the existing repressive drug policy to remove barriers to access to justice for drug users, considering specific vulnerability of women who use drugs;
- Take all appropriate measures, including training of personnel, to ensure that women who use drugs are not subjected to stigma, violence, and humiliation while receiving drug treatment (including methadone substitution treatment) and that drug treatment services are available and accessible to them;
- Conduct trainings for police, prosecution, and judges to effectively respond to abuses against women who use drugs;
- Conduct trainings for state legal aid lawyers to effectively represent women who use drugs in civil, criminal and administrative proceedings.