

# REPORT OF THE ONLINE ROUNDTABLE ON “FRAMEWORK TO MEASURE ACCESS TO JUSTICE INCLUDING SPECIFIC CHALLENGES FACING WOMEN”



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**REPORT OF THE ONLINE  
ROUNDTABLE ON “FRAMEWORK  
TO MEASURE ACCESS  
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CHALLENGES FACING WOMEN”**

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# 1. INTRODUCTION

This report is a component of the regional PGG project on “Women’s Access to Justice-Delivering on the Istanbul Convention and other European gender equality standards”. The project aims at strengthening access to justice for women, especially women victims of violence in line with the Council of Europe Istanbul Convention and contributing towards the Eastern Partnership countries’ ratification of the Istanbul Convention. The project aims to support the Council of Europe Member States in their efforts to guarantee all their citizens, including women, equal access to justice in line with their national and Council of Europe’s standards and develop a gender-sensitive justice chain.

The report follows an online intergovernmental roundtable on the “Framework to measure access to justice including specific challenges facing women”, held on 29-30 June 2020, and an initial phase of data collection conducted through online questionnaires administered to participating governmental institutions and NGOs in participating countries.

The report lays out a framework to measure access to justice accounting for women’s specific experience and needs. It provides national authorities with recommendations towards a research plan aiming at collecting key data useful to inform policies and interventions by governments to ensure inclusive access to justice to all citizens, including women, in line with Council of Europe’s standards.

The analysis and recommendations provided in the report reflect data from existing assessments<sup>1</sup> of participating countries’ framework for women’s access to justice and the information we received from participating governments and NGOs in participating countries.

Sections 2 and 3 of this report discuss the concept of access to justice as understood in accordance to human rights standards; section 4 analyses the specificity of women’s access to justice, and section 5 describes the role of governments in ensuring access to justice for all. Finally, section 6 lays out the dimensions that can most contribute to inclusive access to justice in Armenia, Azerbaijan, Georgia, the Republic of Moldova, and Ukraine, and discusses relevant indicators.

<sup>1</sup> Council of Europe (2016), “Barriers, remedies and good practices for women’s access to justice in Armenia, Azerbaijan, Georgia, Moldova and Ukraine”, Council of Europe, Strasbourg.

## 2. ACCESS TO JUSTICE – A DEFINITION

Access to justice for all is a fundamental human right, and, as such, it is enshrined in international as well as European human rights instruments and standards. In the past decade access to justice has come to the fore both as a fundamental right in itself and as an essential element of development, democracy and the rule of law, an instrument to realize all other civil, social, political and economic rights, including the right to life, dignity, full political participation, non-discrimination, and freedom from violence.

Access to justice is a broad concept, which has been construed to include both procedural as well as outcome-focused elements. Both the Council of Europe and European human rights frameworks enshrine the right to access to justice. Article 6 of the European Convention on Human Rights establishes the right to a fair trial, which includes the right to free legal assistance for those who cannot afford to pay for it. Article 13 sanctions the right to effective remedies. The European Commission for the Efficiency of Justice (CEPEJ), which evaluates member states' justice systems<sup>2</sup>, has identified quality and efficiency of justice as a key element of access to justice<sup>3</sup>.

Definitions addressing women's access to justice detail a number of aspects affecting access that are particularly relevant to women. They include the existence of equal rights, effective and accessible dispute resolution mechanisms as well as accountability of justice institutions.

The United Nations Development Programme (UNDP) describes women's access to justice as:

*"Access by women, in particular, from poor and disadvantaged groups, to fair, effective, affordable and accountable mechanisms, for the protection of rights, control of abuse of power, and resolution of conflicts. This includes the ability of women to seek and obtain a fair and just remedy through formal and informal justice systems and the ability to influence and participate in law-making processes and institutions<sup>4</sup>.*

<sup>2</sup> See Special file - Report "European judicial systems - CEPEJ Evaluation report - 2020 Evaluation cycle (2018 data) (coe.int)

<sup>3</sup> See, for example: CEPEJ (2017), "Measuring the quality of Justice", Council of Europe, Strasbourg, available at <https://edoc.coe.int/en/efficiency-of-justice/7500-measuring-the-quality-of-justice-guide.html>; CEPEJ (2016) Handbook for conducting satisfaction surveys aimed at Court users in the Council of Europe's member States; <https://rm.coe.int/european-commission-for-the-efficiency-of-justice-cepej-handbook-for-c/168074816f>

<sup>4</sup> UNDP (2005), "Programming for justice: access for all – A practitioner's guide to a human rights-based approach to access to justice", UNDP, Bangkok.

CEDAW Recommendation No. 33 defines women's access to justice as encompassing

- justiciability, that is the unhindered ability of women to access justice and claim their rights under CEDAW;
- availability, which entails the existence of courts and quasi-judicial bodies throughout national territory, including rural and remote areas;
- accessibility, requiring all justice systems to be secure, affordable, physically accessible to women and adapted and appropriate to the needs of women;
- good quality, which includes elements such as competence, efficiency, independence, impartiality and timeliness, and the provision of viable, meaningful, and effective remedies;
- accountability of the justice system(s).

The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) includes specialist support services (art 25); adequate civil remedies (art 29); the right to timely compensation (30); effective, proportionate and dissuasive sanctions (art 45); the prohibition of mandatory alternative resolution processes or sentencing (48); timely investigation and judicial proceedings, and adequate and immediate protection for victims (art 49); and access to legal assistance and free legal aid (art 57) among the obligations of state parties to ensure access to justice for women victims of violence. Finally, effectiveness is a key element of a definition of access to justice that is meaningful for all - a crosscutting dimension that underpins and encompasses all other elements of a functioning justice system. According to the European Commission<sup>5</sup>, effectiveness encompasses the efficiency, quality, and independence of a justice system. In general, an effective justice system is one that delivers justice services that meet the needs of citizens, across all elements of the justice path. It includes a legal framework that grants comprehensive and equal rights to all citizens in accordance with international human rights standards; widespread legal awareness and literacy among the population; availability of affordable and quality legal advice and representation, including legal aid for criminal and civil cases; availability of dispute resolution mechanisms that are accessible, affordable, timely, effective, efficient, impartial, corruption-free and trustworthy, and that apply rules and processes in line with international human rights standards; and the availability of efficient, impartial and effective mechanisms for the enforcement of judicial decisions<sup>6</sup>



<sup>5</sup> European Commission (2016), Effective Justice Systems, European Semester Thematic Factsheet. Available at [https://ec.europa.eu/info/sites/default/files/european-semester\\_thematic-factsheet\\_effective-justice-systems\\_en.pdf](https://ec.europa.eu/info/sites/default/files/european-semester_thematic-factsheet_effective-justice-systems_en.pdf) accessed on 24 May 2021.

<sup>6</sup> UN Women and Council of Europe (2016), "A Framework for measuring women's access to justice", UN Women, New York.

# 3. ACCESS TO JUSTICE – A RIGHT-BASED APPROACH

This report reflects an understanding of access to justice and its constitutive elements that is underpinned by a right-based approach. In a right-based perspective, access to justice is referred to as the capacity of the “duty bearer” (i.e., the institutions entrusted with the authority and duty to render justice) to provide access, and the ability of the “right holders” (i.e., the individuals and entities entitled to seek and obtain justice) to exercise their rights through access to justice services.

This approach, which construes the relationship between justice institutions and citizens in terms of fulfilment of rights rather than delivery of services, emphasises institutional accountability and citizens’ empowerment. Assessments of justice systems that are underpinned by a human right-perspective will, thus, not only consider the existence and efficiency of justice services; rather, they will include a careful evaluation of their quality, effectiveness, and impact on the intended beneficiaries. When evaluating institutional capacity, for example, studies will not only consider the number of judges and their technical knowledge, but also their ability to deliver justice in accordance with human rights standards. Another key characteristic of right-based justice system assessment and measurement frameworks is the focus on demand-side data, such as for example, citizens’ justice needs and perception data including trust in institutions, quality of justice services and level of satisfaction.

# 4. THE SPECIFICITY OF WOMEN'S ACCESS TO JUSTICE

## and the elements of a legal and policy framework fostering women's access to justice

The right of women and men to equality before the law and equal access to dispute resolution mechanisms is enshrined in a number of international instruments, sanctioning access to justice as a universal human right. In this context, a number of studies and reports<sup>7</sup> by international actors – including the United Nations, the World Bank, the Council of Europe and the United Nations Committee on the Elimination of Discrimination against Women – have highlighted the unique challenges faced by women seeking to access justice. These barriers can be grouped into two different categories, which, while grounded on different aspects of women's lived reality, intersect to severely limit women's ability to access justice compared to men's. These are institutional barriers and social, economic, and cultural barriers.

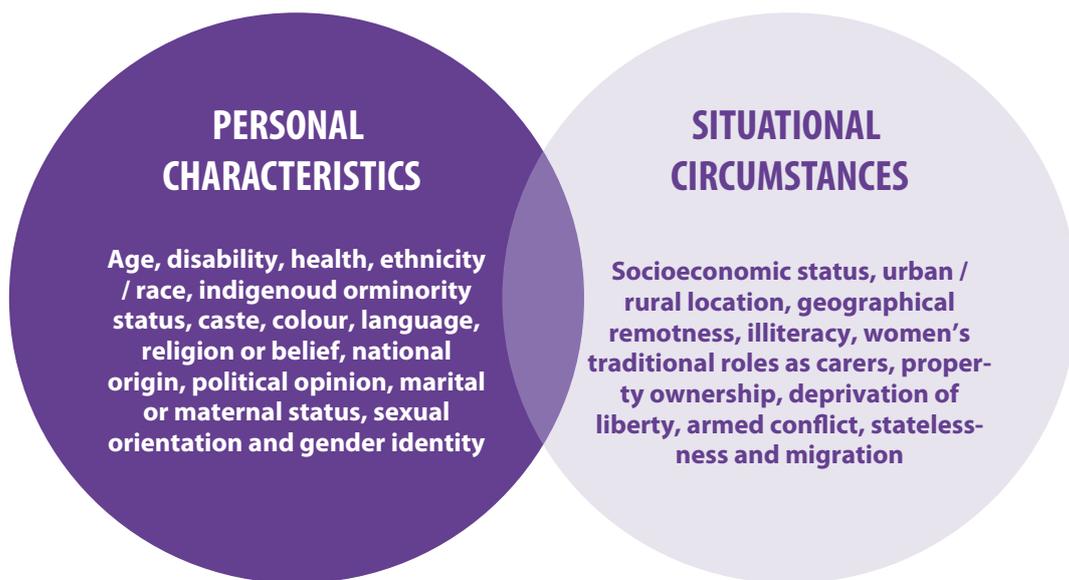
***Institutional barriers.*** These barriers stem from the lack of an enabling legal and institutional environment fostering women's access to justice. They include the existence of discriminatory laws that deny women the same rights as men, and of gender neutral laws that negatively impact women; biases among justice professionals, including judges, prosecutors and law enforcement officials, and lawyers, including providers of legal aid services; limited access to legal aid in civil cases and instances of violence against women and domestic violence; lack of an appropriate legal framework to combat violence against women and domestic violence and, when laws are in place, low capacity of judicial systems to implement and enforce them. In addition, resources are often unevenly allocated and fail to target key areas of the judicial system of particular interest to women, such as, for example, fee waivers programmes covering family law and employment cases, and procedures such as obtaining IDs, birth or death certificates.

Many institutional barriers stem from factors other than gender: high costs and length of procedures, limited geographic access; lack of interpretation services and lack of legal knowledge and awareness affect both, women and men. However, a combination of social and institutional barriers compounds the difficulty women face in accessing justice institutions – across different income and education levels, age, and ethnic groups – creating higher barriers at entry and high

<sup>7</sup> UNDP (2004) "Access to justice", UNDP, New York, available at <http://bit.ly/1Pu4NBq>, accessed on March 15, 2021; The World Bank (2011), "World development report 2012: gender equality and development", The World Bank, Washington, DC; American Bar Association Rule of Law Initiative (2012), "Access to justice assessment manual", American Bar Association, Washington, DC; UN Women (2011), "Progress of the world's Women – In pursuit of justice", UN Women, New York; CEDAW (2015) "General recommendation No. 33 on women's access to justice", available at <https://digitallibrary.un.org/record/807253?ln=en>, accessed March 30, 2021; Council of Europe (2018), Council of Europe (2018). "Gender equality strategy 2018-2023", Strasbourg, UN Women (2018). "A practitioner's toolkit on women's access to justice programming", UN Women, New York; UN Women, IDLO, and The World Bank (2019). "Justice for women – High level group report", UN Women, New York.

attrition and making women more vulnerable during the judicial process.

**Social, cultural, and economic barriers.** Entrenched gender norms also hinder women's ability to access justice in various ways. Where traditional gender roles define women's position in society, women's recourse to justice is seen as shameful and women seeking to redress violations of their rights through legal means run the risk of being ostracised by their communities. Time poverty, stemming from women's traditional duties in the household, means that they have little or no time to take care of personal matters outside the house. Economic inequalities compound barriers to access to justice such as high costs of procedures. Indeed, eligibility criteria for free legal aid or fee waiver programmes that do not take into consideration real income available to the applicant inherently discriminate against women who, on average, have access to a smaller portion (if any) of household income than men. Limited access to private means of transportation, lower literacy, and education level, are all elements that negatively impact women's access to justice with respect to men's. Figure 2 below shows these elements, identified as "situational circumstances", along with personal characteristics, such as age, race, maternal and marital status, in a combination that further limits women's rights and access to justice.



**Figure 2** Social, cultural, and economic barriers to women's access to justice

To be successful, interventions aiming to foster women's access to justice must thus take into account the visible and invisible barriers that women experience when seeking to fulfil their specific justice needs. In particular, key elements of an enabling environment fostering women's access to justice will include: a gender-responsive legal framework, women's legal awareness and literacy, access to affordable and quality legal advice and legal representation, institutional capacity of the judicial system, fair procedures free from gender biases, special courts and procedures, effective remedies and enforcement, gender sensitive allocations of resources.

# 5. ROLE OF GOVERNMENTS IN GUARANTEEING WOMEN'S ACCESS TO JUSTICE

Guaranteeing women's equal access to justice is one of the five priority themes of the Council of Europe's Gender Equality Strategy 2018-2023. The right of all to equal access to justice is established by four major treaties of the Council of Europe: the European Convention of Human Rights; the European Social Charter; the Convention on Action against Trafficking in Human Beings, and the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)<sup>8</sup>.

Article 6(1) of the European Convention of Human Rights (ECHR) establishes the obligation of member states to guarantee the right to a fair trial and effective remedies. Article 14 and Protocol 12 to the convention prohibit any discrimination in the application of the right set by convention, including on the basis of sex. The European Social Charter (ESC) guarantees the right to legal protection, and prohibits discrimination on any ground, including sex.

As mentioned (Section 2), the Istanbul Convention sets binding obligations for states to foster women's access to justice, including by taking measures to promote changes in social and cultural patterns to eradicate gender stereotypes; providing adequate training of professionals working with victims of violence on their needs and rights and on equality; and providing adequate legal information. While the Convention focuses on women's victims of violence, the standards it sets should be applied to other areas of particular interest to women, such as employment and family law<sup>9</sup>.

The CEPEJ conducts periodic evaluations of judicial systems in the 47 member states. These evaluations include indicators on gender equality in courts and prosecution services, access to legal aid, training of judges and prosecutors on issues related to domestic and sexual violence and the existence of favourable arrangements for victims of sexual violence and rape. These data, collected from states, raise awareness on elements of efficient and quality judicial systems, and highlight existing good practices and gaps.<sup>10</sup>

<sup>8</sup> Choudhry S. (2018), "Women's access to justice – A guide for legal practitioners", p. 13, Council of Europe, Strasbourg.

<sup>9</sup> Ibidem.

<sup>10</sup> See Evaluation of judicial systems (coe.int) and Special file - Report "European judicial systems - CEPEJ Evaluation report - 2020 Evaluation cycle (2018 data) (coe.int)

CEPEJ also provides guidelines and standards for improving the quality and efficiency of justice<sup>11</sup>.

The European Court of Human Rights has been upholding European standards of access to justice by holding governments of member states accountable for the violation of the right to fair trial, including on grounds of discrimination based on sex, on the bases articles 6 and 14 of the ECHR as well as protocol 12 to the convention<sup>12</sup>.

Within the UN human rights framework, CEDAW recommendation No. 33 creates obligations of states to address discriminatory laws, stereotyping and gender bias in the justice system, education and awareness raising, and access to legal assistance and legal aid.

Finally, the UN 2030 Agenda for Sustainable Development, calls upon governments, as bearers of the duty to provide access to justice to women and men, as the main actors in the realization of human rights and in ensuring equal access to justice for all<sup>13</sup>.

<sup>11</sup> Find CEPEJ guidelines, toolkits and handbooks at <https://www.coe.int/en/web/cepej/gt-qual-tools> and <https://www.coe.int/en/web/cepej/cepej-work/saturn-centre-for-judicial-time-management>

<sup>12</sup> The European Court of Human Rights (2021) "Factsheet on gender equality", available at [https://www.echr.coe.int/Documents/FS\\_Gender\\_Equality\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Gender_Equality_ENG.pdf), accessed on March 29, 2021

<sup>13</sup> UN (2015), Resolution A/ RES/70/1, available at <https://documents-ddsny.un.org/doc/UNDOC/GEN/N15/291/89/PDF/N1529189.pdf?OpenElement>, accessed on March 20, 2021; UN (2015), Sustainable Development Goal 16, Target 16.3, available at <https://www.un.org/sustainabledevelopment/peace-justice/>, accessed on March 20, 2021.

# 6. OVERVIEW OF A FRAMEWORK TO MEASURE WOMEN'S ACCESS TO JUSTICE

in Armenia, Azerbaijan, Georgia, Republic of Moldova, and Ukraine

A key component of effective interventions to foster women's access to justice is the availability of reliable data on its main elements. In the context of the ongoing project seeking to support Eastern Partnership countries' efforts to strengthen inclusive access to justice, this section lays out a cohesive set of recommendations to collect information about the status of women's access to justice. The areas listed below appear, based also on information provided by participating governmental institutions, to be critical in advancing women's access to justice.

## I. Women's justice paths.

### a. Main justiciable issues encountered by women

### b. Preferred justice resolution mechanisms

### c. Women's justice outcomes

A thorough understanding of women's and girls' access to justice must start from a mapping of women's justice paths. Learning what are the main justiciable issues women face and what women do about them helps contextualise and guide any further policy efforts to foster the accessibility of the justice system. Where do women actually go to seek justice? Are specialised courts and other subject-matter jurisdiction bodies fulfilling their purpose, or are women bypassing them? Do women prefer alternative, non-judicial means of dispute resolutions? What do women do to seek protection and remedies against violence? Answering these and other similar questions will be essential to correctly understand women's experience of justice – allowing further assessments and interventions to focus on matters most relevant to women, and meaningfully address the any possible shortcoming limiting their access to justice.

**Policy design focus.** Policies seeking to create an enabling environment for women's access to justice must respond to women's actual needs and reflect their lived experience. Data collection aiming at shedding light on women's justice paths should thus primarily focus on women's experience of justice. Data sources should include general population and user surveys and well as women's and women associations' focus groups. Administrative data on case filed and their outcomes and expert interviews will be useful to complement and triangulate information.

## II. Institutional Capacity.

### a. Participation of women in the legal and justice professions

### b. Gender training for justice and legal professionals

### c. Institutional Arrangements and Coordination capacity

### d. Availability of Gender training to legal/justice/police professionals

### e. Implementation of gender neutral and gender responsive laws

### f. Gender budget analysis

“Capacity” is a measure of a justice system’s ability to respond to citizen’s justice needs. It includes gender equality in the justice profession; the institutional arrangements involved in the delivery of justice and their level of coordination capacity, including with law enforcement agencies and the health sector; the composition and level of training of the judicial staff; the capacity of justice professionals to deliver inclusive justice, free of discrimination and in accordance to human rights standards; implementation of laws; and budgeting and allocation of resources - all elements determining the capacity of the justice system to effectively address justice needs and fulfil the right to access to justice without discrimination.

**a. Participation of women in the legal and justice professions** is an indispensable feature of inclusive and effective justice systems<sup>14</sup>. Indeed, “[w]omen’s participation in the judiciary [...] is important in order for the [...] justice system to reflect the society it serves. Women judges [...] can promote the strengthening of the rule of law by contributing to an impartial judiciary [...] as well through their role in the implementation of laws (including on access to justice for women and girls)”<sup>15</sup>. While diversity in the legal and justice profession is a positive element in itself, there are indications that women seeking justice benefit from it as well. Although “[t]he mere presence of women legal professionals does not guarantee that women will obtain justice when they seek it through formal institutions [...] it does make the justice sector more approachable for women”<sup>16</sup>. Studies have shown<sup>17</sup> that the absence of women justice professionals is a strong disincentive for women to approach a justice system.

<sup>14</sup> CEPEJ data on gender distribution among judges, court presidents, non-judge staff, prosecutors, staff attached to the prosecutors’ offices shows a positive trend in the representation of women among justice professionals in the Eastern Conference countries. However, data on gender distribution among court presidents are less positive, showing how access of women to high-ranking positions in the judiciary is still extremely limited. For complete data, see the CEPEJ-STAT dynamic database/dashboard on gender equality in courts and public prosecution service, available at [https://public.tableau.com/profile/cepej#!/vizhome/CEPEJ-Genderequalityv2020\\_1\\_0EN/GenderEquality](https://public.tableau.com/profile/cepej#!/vizhome/CEPEJ-Genderequalityv2020_1_0EN/GenderEquality) . Accessed on May 20, 2021.

<sup>15</sup> UNODC (2013), “Accounting for security and justice in the post-2015 development agenda”, UNODC, New York, p. 59.

<sup>16</sup> Women and Children Legal Research Foundation (WCLRF) (2008), “Women’s access to justice: problems and challenges”, WCLRF, Kabul; available at <http://www.wclrf.org.af/wp-content/uploads/2013/09/Women-Access-To-Justice-Final.pdf>. accessed on March 25, 2021.

<sup>17</sup> WCLRF (2008); The World Bank (2011).

This is particularly true in sensitive cases, such as rape and violence against women<sup>18</sup>. A key element of inclusive justice systems, women's participation in the legal and justice profession must be closely linked to sensitization and training activities for all justice professionals in order to create an institutional culture of equity and non-discrimination.

**b. Gender training for justice and legal professionals.** The existence of gender-responsive practices in the judiciary significantly contributes to the ability of a system to respond to women's and girls' specific justice needs. Entry level and in-service training is essential to build a strong understanding of the specificity of women's experience of justice and justice needs, and help eradicate embedded biases among lawyers, judges, prosecutors, investigators, court personnel and law enforcement. Gender considerations in the selection/appointment of judges and other justice professionals<sup>19</sup>, and their career progression, the existence of directives providing guidance on how to handle gender-sensitive cases, the appointment of gender focal points within the judiciary's governance bodies, and the routine collection of gender-disaggregated data including on incoming and closed cases, number of appeals and user satisfaction, all contribute to "institutionalise" gender considerations in the work of the judiciary. As noted in the Council of Europe<sup>20</sup> Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice Country Chapter for Armenia, providing judges and other justice professionals with key data on gender-related justice issues is essential to the provision of gender-responsive, free of biases justice services: "It is of paramount importance for judges and especially prosecutors to have a clear image of prevalence of domestic violence in the country. This will enable them to effectively respond to the current challenges, reveal latent crimes, bring perpetrators to justice, support victims and ensure their safety, make correct qualifications of the offences and take necessary measures to lower the level of domestic violence."

**c. Institutional Arrangements and Coordination capacity.** Many are the ministries, departments, agencies, and other institutional bodies involved in the delivery of justice. Mapping such institutions and the arrangements through which gender is mainstreamed in their operations is essential to identify the key actors engaged in fostering women's access to justice. The ability of such actors to coordinate among themselves and with other institutions is also an indicator of the capacity of a system to address women's justice needs. Indeed, as pointed out in a UN Women review of the justice and security sector policy environment<sup>21</sup>, the lack of intersectoral coordination is one of the elements hindering the implementation of justice policies or strategies.

<sup>18</sup> All-women police stations in India have proved successful in increasing women's willingness to report cases of violence, including sexual violence. See the World Bank (2011).

<sup>19</sup> See CEPEJ-STAT dynamic database/dashboard on gender equality in courts and public prosecution service, Cit.

<sup>20</sup> "Training manual for judges and prosecutors on ensuring women's access to justice – Country chapter for Armenia ", available at <https://rm.coe.int/training-manual-for-judges-and-prosecutors-on-ensuring-women-s-access-/1680764286>, accessed on March 26, 2021

<sup>21</sup> UN Women (2015), "Preventing conflict, transforming justice, securing the peace: a global study on the implementation of United Nations Security Council resolution 1325", UN Women, New York.

**d. Implementation of gender neutral and gender responsive laws.** An essential, and often overlooked, dimension of institutional capacity is the ability of the justice system to implement laws that foster gender equality and protect women's rights. Indeed, even in countries where discriminatory laws have been repealed and replaced with gender-responsive legislation, implementation is sometimes uneven, also due to low awareness among justice professionals.

**e. Gender budget analysis.** The Council of Europe defines gender budgeting as "an application of gender mainstreaming in the budgetary process" and as a "gender based assessment of budgets, incorporating a gender perspective at all levels of the budgetary process and restructuring revenues and expenditures in order to promote gender equality."<sup>22</sup>

A focus on gender budgeting when assessing the accessibility of a justice system is warranted by the observation that budgets are not gender neutral. Rather, the way governments raise revenues and allocate resources reflects policy choices and priorities – and it may affect women and men in different ways. Government budgeting impacts individuals by redistributing resources, including through financing different services and programmes. Thus, budgeting is a powerful policy instrument to foster - or hinder - equality and non-discrimination in the implementation of rights, including human rights<sup>23</sup>. While not expressly mentioned by CEDAW, budgeting is an essential tool for Governments to fulfil their obligations of non-discrimination, equality, participation and elimination of prejudices and practices based on harmful gender stereotypes. CEDAW recommendation No. 33 on women's access to justice, article 18, includes among the requirements to guarantee the quality of justice, the provision of budgets and resources to ensure the effectiveness of protective measures for women defendants, witnesses, and prisoners. In article 39, the Committee recommends that state parties "provide adequate budgetary [...] assistance to all parts of justice systems, including specialized judicial, quasi-judicial and administrative bodies, alternative dispute resolution mechanisms, national human rights institutions and ombudsperson offices".

Indeed, deliberate budgetary choices are needed to foster women's access to justice and protection of women's rights, and to provide the resources to ensure the quality and effectiveness of programs and services such as legal aid services and fee waiver programs, training programs for judges and other justice professionals, including legal aid providers, special courts and units, and programs and mechanisms to combat domestic violence and violence against women.

**Policy design focus.** Effective policy interventions focusing on capacity, should address both the supply side (actual capacity of the justice system to deliver justice free of discrimination) and the demand side (women's needs vis à vis justice institutions, as well as justice outcomes

<sup>22</sup>Council of Europe (2009), "Gender budgeting: practical implementation handbook", Council of Europe, Strasbourg.

<sup>23</sup> UNIFEM (2008), "Budgeting for women's rights – Monitoring governments' budgets for compliance with CEDAW", UNIFEM, New York.

and their impact on women). In addition, both objective and subjective aspects are important when targeting capacity and gender-responsiveness of the judiciary. Sex-disaggregated data on the number and professional level of lawyers/judges/court staff/police can shed light on the diversity and representativeness of justice systems. Information on gender-sensitive training programs as well the existence of gender-sensitive practices within the judiciary helps track the level of effort and commitment to the provision of inclusive and gender-sensitive judicial services. A thorough institutional mapping as well as data on the existence of coordination mechanisms, allow to gauge the institutional capacity of the justice and gender machineries.

In order to learn whether or not the judiciary in practice delivers inclusive justice to citizens, data collection should include user satisfaction surveys, interviews with civil society organizations and representatives of the judiciary, and case tracking to monitor implementation of gender-responsive legislation.

Finally, policies seeking to promote gender-responsive budgeting should rely on studies tackling different dimensions of budgeting and expenditures: 1) design, to make sure resources are allocated to cover essential elements of women's access to justice (gender training for justice professionals, such as free legal assistance and representation, fee waivers, special courts and units) 2) expenditure tracking, to ensure that resources reach their intended beneficiaries; 3) beneficiaries assessments, to determine whether the resources allocated generate non-discriminatory, gender-sensitive outcomes in line with human rights standards; 4) quantitative studies, using sex-disaggregated indicators such as access to free legal assistance by women and men.

### **III. Access to quality and affordable legal advice and representation.**

#### **a. Availability, quality, cost, and requirements for access**

#### **b. Gender training for justice and legal professionals**

#### **c. Existence of targeted legal assistance and advice services**

For those seeking a judicial resolution to their grievances, navigating the justice system may prove to be a serious challenge, leading to waste of time, money and eventually to abandoning the judicial path altogether. Starting from the very decision to bring a legal claim, to the choice of forum, to securing assistance and representation during the justice process, the accessibility of free or affordable legal advice and representation fosters equal access to justice for all, and has the potential to remediate the capacity gap that, on average, affects women more than men.

In particular, the provision of targeted legal assistance have shown a positive impact on women's access to justice, increasing their ability to report rape or abuse or to obtain birth, marriage or divorce certificates.<sup>24 25</sup> However, quality and affordable legal assistance and representation, which includes legal aid for both criminal and civil cases, is rarely available to all. Biases and gender-based discriminatory practices among legal professionals further limits their capacity to respond to women's legal assistance and representation needs.

**Policy Design Focus.** Legal advice and representation services for those who cannot afford to pay lawyers' fees may be provided by different actors, including the government, private attorneys, civil society organizations and academic institutions. Effective policies should focus not only on the availability of such services, but also on their quality, cost, and their requirements for access. In particular, policy makers should design mechanisms that strengthen the capacity of lawyers and other legal professionals involved in the provision of legal advice and representation service and ensure that they are free of biases and prejudices based on gender. Interventions should thus include gender sensitization training, as well as performance and qualification standards for providers of legal assistance and representation services<sup>26</sup>. Key data to be collected to inform the design of these programs include level of user satisfaction, likelihood of use of, and trust in, the providers of legal assistance and representation services are useful indicators focusing on the demand side of justice. On the other hand, gender-disaggregated administrative data on the number of legal aid providers, their understanding of gender-specific issues and barriers to access, as well as a review of cases where assistance was provided to those unable to afford it will help understand the actual coverage and responsiveness of these services. Information about the criteria to access free legal assistance and representation are also essential to understand their actual accessibility to women. Finally, data on existence and quality of legal advice and representation centres/units focusing on legal issues particularly relevant for women (e.g., family law, gender-based violence) will provide insight on the ability of these services to respond adequately to the specific justice needs of women and girls.

#### **IV. Women's rights awareness and legal literacy.**

##### **Knowledge of rights**

##### **Knowledge of justice fora and mechanisms available to solve their justiciable problems (including legal advice and legal representation services)<sup>27</sup>**

<sup>24</sup> "See Defensoria de la Mujer Indígena (DEMI) (2007), "El acceso de las mujeres indígenas al sistema de justicia oficial de Guatemala: segundo informe DEMI, Ciudad de Guatemala; Sieder R et al. (2010). "Indigenous women's access to justice in Latin America", background paper for UN Women (2011), as cited by UN Women (2011), p. 57.

<sup>25</sup> UN Women and Council of Europe (2016), p. 141.

<sup>26</sup> UNODC (2016), "Global study on legal aid – Global report", UNODC, New York.

<sup>27</sup> American Bar Association Rule of Law Initiative (2012), p. 11.

Awareness of one's rights (and duties) is the first and foremost enabler of access to justice, as it allows a person to correctly characterise a situation as one which can be resolved through legal means (i.e., as "justiciable") and, thus, to seek justice. Likewise, the knowledge, however generic, of the justice fora and mechanisms available to solve their justiciable problems will be essential for people to make informed decisions about their legal problems. Gender differentials in literacy rates, economic resources, time availability, and family and social power dynamics mean that often women and girls have lower levels of legal awareness and literacy than men, making it more challenging for them to independently seek a resolution to their issues through legal means. Within the framework of a right-based approach to women's access to justice, governments bear the responsibility to provide women with the tools and skills to make use of the justice system and to reclaim their right to access to justice. Programmes focusing on enhancing women's legal awareness and literacy are key entry points for governments seeking to strengthen women's access to justice. Indeed, by empowering women to claim their rights, such interventions at the same time enhance the responsiveness and accountability of the justice system.

***Policy design focus.*** While it is key to learn first-hand from women and girls what is their level of awareness of their rights and the mechanisms they can use to protect and enforce them, demand-side data should be integrated with information from the judiciary and civil society actors on both their perception of women's legal awareness and their knowledge of tools in place to raise awareness and close possible gender gaps. The availability of easy to use and free or inexpensive legal information resources (such as physical or on-line law libraries, public legal information booths/services in courts or other strategic locations – such as, for example, health care centres, school complex etc.), and targeted right awareness public campaigns, are some of the elements which can help boost access to justice mechanisms, and the existence, quality and effectiveness of which should be ascertained when assessing the accessibility of a justice system.

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European convention on Human rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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