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Panel 8: Governance and Gender Justice

Access to justice for women and girls in the ECE region

**Violeta Neubauer
Vice Chair of the UN CEDAW Committee**

Mr. Chairman (Sansfaçon),
Distinguished experts,
Excellencies, delegates and dear colleagues,

The Beijing Platform for Action and its 15 years older legal sister, the Convention on Elimination of All forms of Discrimination against Women, which together provide for the most comprehensive international legal and policy framework for achieving substantive equality of women, led to historic advances in many areas of women's lives. Much progress and major advances in women's rights, including right of women to equal access to justice have occurred in many countries of the ECE region during the nearly two decades. Nevertheless for many women the laws expanding the scope of women's entitlements have not translated to equality in justice.

My presentation is not intended to serve as a mapping of all the key achievements in ensuring access to justice of women and girls in the ECE region since the adoption of the Beijing Platform for Action nor is a thorough identification of existing obstacles and barriers preventing women to claim their rights or barriers that they are facing when seeking justice for wrongs (they have been subjected to). Such aim would not blend well with the scope of this panel and time limits for my presentation.

My presentation draws on the experience of the CEDAW Committee in the consideration of State parties' reports, analysis of individual communications, and its conduct of inquiries under the Optional Protocol. In addition, it is informed by the work on access to justice by other United Nations human rights mechanisms, national human rights institutions, and civil society organizations, in particular human rights NGOs and women's organizations.

The Committee's jurisprudence developed through carrying out its mandated tasks is a reach source of clarifications and information that contribute to understanding of the substantive content of the Convention's articles and the specific nature of discrimination against women and the various instruments and measures required for combating such discrimination that nullify the recognition, enjoyment or exercise by women of their right to access to justice.

The dynamic nature of the CEDAW Convention is a strong incentive for the Committee to adapt it to the development of international law and contribute to this development by responding to the challenges in realizing human rights of women in the tenor of the time and the evolving world.

Before sharing with you key achievements and obstacles in ensuring full realization of women's rights to access justice on a basis of equality in ECE countries and indicating the

major challenges in their realization, I would like to ensure that we share a common understanding of what the rights to access justice is about.

The right of equal access to justice for women is essential to the realization of all of the rights protected in the Convention and it is also a fundamental element of the rule of law. The right to access justice is multidimensional. It encompasses the rights to fair trial guarantees and legal aid, access to accountability, monitoring, education and awareness raising mechanisms, as well as the right of equal access to timely, appropriate and effective remedies. These interconnected components of the right to access justice, equality, non-discrimination, justiciability, accountability and remedies must all be guaranteed by States parties to the Convention.

The CEDAW Committee has been continuously observing that with variations of its extent and manifestations discrimination to which women are subjected to in realizing these rights continues to be present in all dimensions of the justice system. This warranted the decision of the Committee to further examine the obligations of States parties to ensure that women fully enjoy these rights. Right now the CEDAW is sitting in a private meeting considering the draft General recommendation on Women's Access to Justice submitted to it by the Committees working group for the first reading. This General recommendation will seek to ensure that States parties better understand their obligations and contribute to their awareness of measures required to comply with them.

Achievements and obstacles observed by the CEDAW Committee in the ECE member States

In the area of legal protection from all forms of sex- and gender-based discrimination

Let me start a retrospective of achievements by highlighting that compared to 1995 nine more ECE Member states are now parties to the CEDAW Convention, in other word, all but one States of the region agreed to be bound by the Convention. However, eight of these States maintain their reservations to certain articles of the Convention. Seven ECE countries, parties to the Convention, including three EU member States, have not yet ratified the OP to the CEDAW Convention.

A number of States introduced a general guarantee of equality or a guarantee of equality for women and men into their Constitution which is a critical component in securing gender equality in access to justice. However in most countries a constitutional guarantee of substantive equality and protection against multiple/intersecting discrimination is still lacking. [The Committee has observed that, in practice, States parties that have adopted constitutional guarantees on substantive quality of women and men, and have incorporated international human rights law, including CEDAW Convention, within their national legal order, are better equipped to secure gender equality in access to justice.]

Within a legal reform majority of countries enacted laws aimed at advancing the situation of women and eliminating discrimination based on sex and gender, and other prohibited grounds and amended their civil and criminal law [(such as specific gender equality laws, general equal-treatment or antidiscrimination laws, laws on preventing and combating domestic violence or laws with a broader and gender relevant scope, laws on combating trafficking in human beings, Family Codes, Criminal codes , Criminal Procedures Acts, electoral legislation etc.)] .

However, there are still countries lagging behind their obligation to define discrimination against women in accordance with the definition in the Convention, and their obligation to

provide a legal protection against multiple/intersecting discrimination, [for application of temporary special measures and/or to adequately protect women against all forms of violence against women and harmful practices]. Discriminatory provisions in legislation in some countries, including those related to a definition of minimum age of marriage for women and men, rape based on the use of force, rather than on lack of consent, still persist and discriminatory criminalization of women, including women who engage in prostitution, migrant women, lesbian, bisexual and transgender women, and intersex person has not been yet repealed throughout the region.

Implementation/enforcement of national legislation, in particular gender equality and anti-discrimination laws continues to be challenging in many contexts.

National human rights institutions

In some countries specialised courts, such as family courts and labour, and or special divisions within criminal courts staffed by a judge or judges dedicated to specific cases, such as trafficking in human beings, or special divisions within courts dedicated to gender based violence against women or domestic violence were created.

Countries in the region have opened up further possibilities for women to access justice by establishing Ombuds offices, national human rights institutions and other bodies mandated [to monitor the implementation of anti-discrimination legislation, organize awareness-raising campaigns and] *inter alia* to investigate cases of alleged discrimination were established. However, the categorization of admissible grounds for discrimination in the laws applied by these institutions may make it difficult for women to bring complaints in cases of multiple/intersectional discrimination. Furthermore, many of these national human rights institutions do not have enforcement powers in respect of all human rights of women, and they are not provided with adequate human and financial resources to implement all the functions under their mandate.

Alternative dispute resolution processes

Many jurisdictions have adopted mandatory or optional systems for the mediation and conciliation of disputes, particularly in the areas of family law, domestic violence, juvenile justice and labour law. While these processes may provide greater flexibility and decrease costs and delays for women seeking justice, they may also lead to further violations of women's rights through secondary victimization of women and impunity for perpetrators thereby negatively impacting women's access to judicial review and remedies. The Committee is of the view that mediation or conciliation processes should not be used in cases of violence against women.

In terms of accessibility, functionality and quality of all the components of justice mechanisms a gender-sensitive approach to avoid secondary victimization and stigmatization during legal proceedings and confidentiality in proceedings involving girls victims of violation of their rights, availability of information in adequate languages and in a variety of formats about available justice mechanisms, procedures and remedies, economic barriers to justice, such as document issuing and filing fees as well as courts costs, corruption, lack of legal advice and support services for women across a variety of areas [(such as family matters, health, social security, employment, immigration and criminal justice)] living in poverty and those living in rural and remote areas have been often observed in a different extent by the Committee among barriers in ECE countries. Free legal aid is also often not provided to all women victims of violence as recommended by the Committee to the State parties from the region.

The Committee has documented many examples of the negative impact of intersecting forms of discrimination against women on access to justice, including effective remedies, for specific disadvantaged groups of women.

Women in the ECE countries encounter numerous social barriers in their efforts to seek justice: limited awareness of women's rights; cultural perceptions of men (and not women) as rights-holders; fear of stigma and reprisals; and, for example, the inability to claim rights when fighting for survival, such as in conflict situations or when fleeing a situation of domestic or family violence.

Women belonging to disadvantaged groups which I have already referred to in addressing legal protection are often unable to report violations of their rights to authorities for fear of arrest, deportation, torture and other forms of violence being inflicted on them by law enforcement officials.

In one of its decisions under the OP complaint procedures against the State from the ECE region the Committee has also highlighted the fact that women suffer from discrimination in criminal cases due to a lack of gender-sensitive non-custodial alternatives to detention, a failure to meet the specific needs of women in detention and an absence of gender-sensitive monitoring and independent review mechanisms. [(CEDAW, Communication No. 23/2009, Inga Abramova v. Belarus, 27 September 2011, CEDAW/C/49/D/23/2009; United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (2010) (Bangkok Rules))].

Almost all ECE countries have not yet put in place reliable and accurate systems to observe and monitor progress in women's access to justice mechanisms.

Challenges for the ECE member States that I would like to flag out:

Given that I have not yet specifically addressed girls' access to justice I will start this last part of my presentation by addressing their specific barriers in access to justice

Special consideration is to be given to girls (including the girl child and adolescent girls, where appropriate) as they face specific barriers to accessing justice. Girls often lack the social or legal capacity to make important decisions about their lives in areas related to education, health and sexual and reproductive rights; they may be forced into marriage or subjected to other harmful practices. They may be further marginalized because of disempowerment within their families and the resulting lack of support for their rights.

Therefore positive measures should be taken to ensure that independent, safe, effective, accessible and child-sensitive complaint and reporting mechanisms are available to girls. Conforming to the General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (2013), of the Committee on the Rights of the Child is vital in this respect.

Legal protection

Ratification of all relevant international and regional human rights treaties, including the Council of Europe Convention on preventing and combating violence against women and domestic violence as well as the Optional protocol to CEDAW Convention and ensuring their domestic justiciability

Provision of free or low cost and quality legal aid in all fields of law

Ensuring that all justice mechanisms provide timely, effective and gender-sensitive remedies for the different harm suffered by women and their effective implementation

Systematic professional capacity building programmes for all active participants of justice mechanisms that include information on gender equality to confront gender stereotypes in women's access to justice

Legal awareness, education, and empowerment (including legal education to potential claimants, or training to civil society organizations and media)

Support to CSOs and NGOs that provide services to, or advocacy for, victims (including the provision of victim support services and public interest litigation)

Efforts to **promote women's participation in entire chain of justice institutions**