



Committee on the Elimination of Discrimination against Women - General
Discussion on "Access to Justice" – Geneva, 18 February 2013

Contribution by the Council of Europe Gender Equality Commission (GEC)

The Concept Note "Access to Justice" endorsed by the Committee on the Elimination of Discrimination against Women at its 53rd Session for the General Discussion, provides an excellent basis for further work in the area of access to justice for women. The members of the Gender Equality Commission fully share the approach taken by the Committee, in particular, the "aim to set out a concrete framework within which states must exercise the obligation under the Convention to respect, protect, promote and fulfill access to justice for women as a human right".

The members of the Gender Equality Commission of the Council of Europe would like to bring to the attention of the CEDAW the following comments which the Committee may wish to consider in the process of drafting a general recommendation on access to justice.

1. The envisaged scope of the new recommendation (paragraph 2, page 2) underlines 'the challenges for certain groups of disadvantaged women to access justice, as well as the particular obstacles for women in post-conflict context'. With regard to women in the last category, the GEC believes that the [Committee of Ministers Recommendation \(2010\) 10](#) to the member states on the role of women and men in conflict prevention and resolution and in peace building may be a useful source of information and reference.
2. As needs of women migrant workers and older women in accessing justice have already been discussed by CEDAW in General Recommendations 26 and 27, the GEC would at this stage like to stress the need to improve access to justice for other particularly vulnerable groups, such as women living in rural and remote areas, disabled women, and women victims of violence and trafficking.
3. While discussing article 15 (page 4, paragraph 1), the note suggests that 'achieving substantive equality within the meaning of article 15 involves that legal literacy and legal aid must be accessible to women to claiming their rights'. The GEC could not agree more and would like to mention the case of Portugal, where the legal aid has obtained a very social character. Men and

women can be granted the right to legal advice, the total or partial exemption from court fees, and the right to the appointment of a public defender, which in general compensates the unequal access to justice for women, especially in civil and family justice. The fact that legal aid is provided through social services might serve as a model for other countries; obviously, some role for the judicial authorities should be preserved, as they should have the right to accord this assistance in particularly important cases representing public interest, where such aid was not provided for financial reasons. Strategic public interest litigation becomes of great importance here. However, at present, there is a trend in some countries to decrease legal aid funds: in this connection, already in 1978, the Committee of Ministers of the Council of Europe indicated in its [Recommendation \(78\) 8](#) on legal aid and advice that legal aid in non-criminal matters should not be seen 'as charity to indigent persons but as an obligation of the community as a whole'. Furthermore, the European Court of Human Right has also developed important case law concerning the link between access to justice in article 6, guaranteeing right to a fair trial, and legal costs. These standards may be useful reference for the preparation of the general recommendation.

4. In relation to violence against women (pages 7- 9), the Committee may consider a reference to the [Council of Europe Convention on preventing and combating violence against women and domestic violence, CETS No. 210](#) (Istanbul Convention), as the first legal treaty in Europe on this issue and in terms of scope, the most advanced international treaty to tackle this serious violation of human rights. A number of provisions of this Convention aim at ensuring *de jure* and *de facto* access to justice, in particular to criminal justice, for women who have suffered gender-based violence. The Convention also places a strong emphasis on the obligation of the state to prosecute such crimes. In this context, the GEC notes that the CEDAW Committee has consistently called for the ratification of the Istanbul convention in respect of Council of Europe member states. The GEC welcomes this approach and wishes to recall that in addition to Council of Europe member states, any other state may sign and ratify the Convention. It will enter into force following the ratification by 10 countries.
5. The note also discusses under-representation of women in the courts (page 10). The GEC agrees that this is a very important issue, and recalls the latest Annual report of [the European Commission for the Efficiency of Justice \(CEPEJ\)](#) offers important information and statistics in this regard which the Committee may wish to take into consideration in the preparation of the general recommendation.