

Programmatic Cooperation Framework for Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus

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In the framework of the project
Improving Women's Access to Justice in Five Eastern Partnership Countries
(Armenia, Azerbaijan, Georgia, Republic of Moldova and Ukraine)

ANNOTATED OUTLINE Training Manual for Judges and Prosecutors on Ensuring Access to Justice for Women

GENERAL PART

Introduction

- **Background** (*outline of the project, what has been done*)
- **Purpose, objectives and scope of the training manual** (*who is the intended audience, what should they learn, what are the limitations of the materials, etc.*)
- **Structure of the manual** (*explanation of the general part and national parts and how to use the materials. It would be useful if national sections included sample training schedules that show how the modules could be grouped into a training that fits the national curriculum/hours.*)

Part 1. Getting Started and Review of Key Concepts and Issues in relation to Women's Access to Justice

Modules:

- 1.1 **Definitions of core terms** (*This would be brief- core terms defined in text with links to the [CoE glossary](#), where applicable. A quiz or self-test could be included*)
- 1.2 **Gender equality, discrimination on the grounds of sex/ gender** (*discussion of gender equality as a human right; different 'visions'/ understandings of gender equality, from formal to substantive equality; temporary special measures, differential treatment, protection of women by the law; discussion of sex/gender-based discrimination, direct and indirect discrimination, intersectionality and multiple discrimination, including the situation of particularly marginalised women or 'invisible' women (transgender women); violence against women as a form of discrimination*)
- 1.3 **Gender-based violence**
- 1.4 **Barriers to equal access of women to justice** (*Introduction and brief overview of all the issues we identified. We could use a chart to illustrate the range of barriers to women's access to justice. Indicators of access to justice may be discussed. Women's representation in the judiciary*)

1.5 **The roles and duties of judges and prosecutors in ensuring access to justice for women** (covers ethics and professional deontology, impartiality vs. neutrality, due diligence. Judges as role models, their role in the community, and public perceptions about the justice system. What judges and prosecutors can do to address the barriers to women's access to justice and what that means in the different areas of law. Mention could also be made of court clerks, where relevant, as well as investigators, and how training could benefit them.)

1.6 **Gender stereotypes and stereotyping** (what are gender stereotypes, discussion of influence of stereotypes, bias, gender stereotypes compounded by other stereotypes (ethnicity, age, refugee or migrant status etc.), judicial stereotyping in cases of gender-based violence. A "myths/facts" self-test or quiz could be used here in addition to the text. Include stereotypes about women as victims, as well as women as offenders.)

Part II. The International and Regional Legal Framework on Women's Rights and Gender Equality

(Review of the international and regional law relevant to women's human rights, non-discrimination, equality and equal access to justice, with a focus on CEDAW and Council of Europe conventions. Case law will be included here. Practical considerations on the status of international and regional instruments for the national courts will be addressed, as well as practical examples of cases in which a conflict between international and national law may arise.)

Modules:

2.1 **International treaty law on equal rights for women and men** (Refers to core UN standards- Universal Declaration, ICCPR, ICESCR etc. This section would be brief and highlight those standards relevant for gender equality.)

2.2 **CEDAW, General Recommendations and the Optional Protocol**

2.3 **Council of Europe human rights law** (Mainly the European Convention on Human Rights, Istanbul Convention, Anti-trafficking Convention and the European Social Charter)

2.4 **European Union law** (fairly brief and just show that the EU supports and reiterates these standards)

2.5 **ILO conventions and standards** (Pertaining to women's rights: The domestic workers convention, others?)

2.6 **Case law** (Cases will be drawn from international jurisprudence - CEDAW, Inter-American Court of Human Rights, European Court of Human Rights to address particular issues, as listed below)

- Restrictions on women's employment (prohibited jobs; denial of employment on grounds of sex/gender; dismissal due to pregnancy; combining employment with motherhood and parenthood)
- Sexual harassment at work
- Unequal impact of women's earlier retirement age and women's working lives more generally on pensions
- Protecting victims of domestic violence (protection orders, balancing rights in the context of emergency barring orders)
- Stereotypes and bias in a rape case (such as, the recent M.G.C vs. Romania)
- Judicial decisions about child custody and alimony, division of property after divorce
- Custody of children in the context of domestic violence, bi-national couples
- Trial of a woman for her partner's murder or murder attempt / self-defence in situations of domestic violence
- Land rights and privatisation

- Ensuring access of women to justice in situations of armed conflicts or frozen conflicts

(Other more specific country examples can be added in the national chapters.)

2.7 **Case studies: how domestic courts apply and enforce international law** *(the topic will be introduced here and good practice examples will be included in the national parts)*

Part III. Promoting Women's Access to Justice in and through the Practice of Judges and Prosecutors

*(This is an overview of **best practices** intended to give practical tools to participants in training/users of the training materials on how to apply a gender perspective and promote women's access to justice. It is organised around "tasks" rather than topics. There should be a disclaimer that due to specifics of national procedure, these are general good practices.)*

Modules:

3.1 **Standing** (who has the right to make claims)

3.2 **Effective investigation** *(Framing the case and preliminary procedural issues. For prosecutors this would include decisions about charging or dropping cases. For judges it would include pre-trial considerations.)*

3.3 **Evidentiary issues** *(for prosecutors- gathering evidence; for judges- interpreting evidence and determining facts; special considerations for interpreting evidence and determining facts in cases of discrimination based on sex/ gender; burden of proof)*

3.4 **Legal reasoning** *(determining applicable law, making a prima facie case, legal analysis; gendered understanding of crimes; discriminatory criminalisation; examples of positive jurisprudence from the region to be given here.)*

3.5 **Remedies** *(this includes remedies that respond to needs of women, considerations at sentencing- also the specifics of sentencing female offenders, as well as issues of compensation, reparations, special courts and special procedures, if they exist)*

3.6 **Enforcement of judgements**

3.7 **Interactions with women as parties to legal proceedings**

3.7.1 Respectful and sensitive interactions with victims/witnesses/parties; specific considerations regarding hearings

3.7.2 Explaining rights and making referrals

3.7.3 Avoiding re-victimisation *(linked to topics below)*

3.7.4 Protecting the rights and interests of victims during judicial proceedings *(focus on victims of gender-based violence as provided for by the Istanbul Convention; discuss the importance of securing access to legal aid for victims)*

3.7.5 Interactions with women as offenders

3.7.6 Specific considerations when interacting with women who belong to groups subjected to multiple discrimination (women living in poverty, single mothers, girls, Roma women, LBT women, refugees, asylum-seekers or women who are IDPs, and any other groups)

3.8 **The role of experts and *amici curiae***

3.9 **Courtroom management**

3.9.1 Demeanour, language and behaviour in the courtroom *(examples of good and bad practices and discussion of repercussions of specific behaviours)*

3.9.2 Impartial decision-making (*include discussion of difference between a gender-sensitive approach and bias with examples of good and bad practices*)

3.9.3 Safety concerns (*relates mainly to GBV cases- both safety of victim in the court process and protecting her from re-victimisation*)

3.9.4 Effects of women's underrepresentation in the judiciary on women victims

3.10 **The Court in a broader environment** (*Co-operation of the court with other institutions or organisations, public communication about the court's work, increasing public confidence in judicial institutions*)

3.11 **Collecting and sharing court data** (*importance of disaggregation of data by sex*)

3.12 **Alternative dispute resolution** (*discussion of ADR as not appropriate for GBV cases but some evidence that flexible processes can benefit women. How to evaluate a situation as appropriate for ADR*).

3.13 **Support for women in the legal profession** (*this is related to the need for support for women judges and prosecutors*)

Part IV. Practical considerations when conducting training

- sample agenda
- methodological guidance
- evaluation and monitoring (with sample pre- and post-tests, evaluation form and some recommendations for evaluation- e.g. court monitoring; hypothetical fact patterns and discussion questions around those)

Annexes

Resource list

Sample forms (*It is possible to provide some sample and general forms- e.g. protective order forms, checklists for interviews etc.- that are too long to go in the main text*)

NATIONAL PARTS

A specific template should be developed later on for the national parts, somewhat following the general template, but also responding to specific interests in each country.

- This would include:
 - the legal and social context in the respective country.
 - case studies on how domestic courts apply and enforce international law (*very practical good practice examples, including relevant excerpts from judgements as 'boxes'.*)
 - sample training schedules that show how the modules could be grouped into a training that fits the national curriculum/hours

I. Armenia

Suggestion: It would be great to have a brief analysis (or an extract from a judicial decision) on balancing protection of DV victims and the constitutional right to property.

II. Azerbaijan

III. Georgia

IV. Republic of Moldova

Suggested examples: Trial of a woman for her partner's murder or attempted murder; Use of the Hague Convention on international abduction of children in situations of domestic violence in bi-national couples

V. Ukraine

This chart could be the basis for a chart and text in Module 1.4 - with more explanatory text about what the precise access to justice issues are, with relevant country examples- and information about what prosecutors and judges should be aware of.

Area of law	Legal issues and forms of discrimination
Violence against women/ Gender-based violence (GBV) [Note: both criminal and civil law issues should be considered]	<ul style="list-style-type: none"> • All forms of violence against women as outlined in the Istanbul Convention (including domestic violence (DV), sexual violence, rape, sexual harassment, etc.) • Early and forced marriage • Human trafficking
Labour law	<ul style="list-style-type: none"> • Discriminatory practices in recruitment, hiring, promotion, remuneration/equal pay, firing • Restrictions on the right to work/protective legislation • Maternity and breastfeeding provisions; childcare/parental leave (including fathers' access) • Sexual harassment • Informal and vulnerable employment • [Social security law/pension issues]
Family and civil law	<ul style="list-style-type: none"> • Marriage and divorce processes¹ • [Links between divorce proceedings and DV cases] • Child custody and alimony (in divorce cases) • Property division (in divorce cases) • Parental rights (incl. in DV cases and couples of different nationalities) • Property rights and inheritance • Citizenship laws
Criminal law	<ul style="list-style-type: none"> • Gender-specific offences • Self-defence in GBV cases • Rights of women in custody/women as offenders
Public law	<ul style="list-style-type: none"> • The disparate impact of neutral tax and pension laws on women
Sexual and reproductive rights	<ul style="list-style-type: none"> • Right to control and decide freely on matters related to sexuality, including sexual and reproductive health • Sex selection before birth • Access to reproductive health services, family planning and contraception, medical confidentiality in relation to abortion, paternity in assisted reproduction cases, or HIV status

¹ Please note that early and/or forced marriage can be considered an issue of family law or a form of gender-based violence.