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ROADMAP (DRAFT)

ON THE APPLICATION OF A PEOPLE-CENTERED APPROACH IN IMPROVING THE ACCESS TO JUSTICE FOR GENDER-BASED AND DOMESTIC VIOLENCE SURVIVORS WITH RESPECT TO ISSUANCE OF RESTRICTIVE ORDERS

BACKGROUND

The problem of gender-based and domestic violence is a complex issue that should be addressed by means of using coordinated policies and a comprehensive approach.

Violence has its beginning just like any other phenomenon. In each separate family, marriage, or other relations there is a moment when violence occurs for the first time. In the moment of resorting to violence there happens a violation of human rights, which is why the state as represented by respective authorized bodies has to respond effectively to that. Action against violence at the initial stage, when the scale of the problem is not large, may be more effective and require fewer resources. (In this context the word ‘resource’ means time, number of involved specialists, number of processes and procedures launched at the state level). At the initial stage there is a chance to change behavior of the offender by means of prevention or programs for offenders. If there are severe consequences that may be a continuation of a repeated or systematic violence, not always there is an opportunity to restore violated rights. Sometimes not only health, but also human life depends on timely response of the state.

Hence, as soon as violence is committed or even in case there is a reasonable risk of committing violence, the victim (or the person who may probably be affected) should receive some protection from public authorities in the form of termination of actions that violate human rights at the very least. One of the tools of such protection is adoption of the decision by the court on applying a restrictive injunction to the offender.

An important manifestation of the people-centered approach to justice is timely response of respective authorized public authorities to instances of gender-based and domestic violence and use of measures relating to temporary restriction of the offender’s rights and ensuring of the victim’s safety in case there are risks.

Nowadays, at the legislative level there are mechanisms that guarantee safety to victims and restoration of their violated rights, yet there are some barriers (obstacles) to the implementation of these mechanisms, which are discussed in more detail below.

As a rule, untimely response of the state to violence (and respectively to the violation of human rights) results in repeated or systematic violence with more intense manifestations, frequency, and severe consequences.

CHALLENGES RELATED TO IMPLEMENTATION OF THE PEOPLE-CENTERED JUSTICE FOR GENDER-BASED AND DOMESTIC VIOLENCE SURVIVORS

- **Low awareness about obtaining in courts restraining orders as a mechanism to protect victims of gender-based and domestic violence.** Quite often, even defense lawyers are unaware of such a mechanism to protect victims and do not realize how it is applied, therefore they cannot take full advantage of it for the benefit of their clients.
- **Lack of awareness of the requirements for restraining order applications among both victims of gender-based and domestic violence and the defense lawyers.** If victims of gender-based and domestic violence do not meet the basic requirements to the content of the restraining order applications, the courts would dismiss such applications based on formal criteria.
- **Legislative barriers.** There are a fair number of legal gaps in Ukrainian laws that make it difficult for victims of gender-based and domestic violence to access justice.
- **Quality of justice.** A fairly common problem is misunderstanding by judges of the nature of restraining orders, so most judges, referring to the presumption of innocence of an abuser, place the burden of proof on the victims. The contradicting provisions require awareness-raising activities among judges in order to provide for better understanding of the rule of law principles and the people-centered approach. Justices of the Supreme Court acting in different chambers do not have a common position, or contradict each other, which leads to the situation where trial judges do not apply to it. There is a Risk Assessment Order on Urgent Prohibitory Injunctions issued by the Ministry of Internal Affairs and the Ministry of Social Policy, which is not applied by judges because it is not directly related to the restraining orders.
- **Lack of a timely coordination mechanism between public authorities.** To ensure that a court judgement is properly reasoned, in the event of a restraining order, judges often require the victim to provide a prior application to the police, outcomes of such an application, or certificate of the offender's alternative residence or other confirmations. This approach does not take into account the nature of the restraining order as well as mental and emotional status and needs of the victim. Thus, direct interaction between public authorities and local self-government bodies with a view to ensuring quick exchange of information would contribute to needs and vulnerable position of victims being taken into consideration, as well as to the improvement of access to justice.
- **Non-compliance with the restraining order judicial decisions.** Not all judges provide the full text of the decision immediately before adjudicating, and if they do, they announce the abuser's right to appeal their decision, which ultimately complicates its further enforcement. The victims turn to the National Police, and the Police refer them to the Enforcement Service. Despite the court decision prohibiting the offender from staying in the place of cohabitation (temporary residence) with the victim, police officers do not enforce it if the offender is a co-owner of the dwelling.

THE PEOPLE-CENTERED APPROACH IMPLEMENTATION

People-centered justice is about making all actors in the justice system—formal and informal—put people at the center and focus on solutions that solve people’s justice problems. Moreover, it is about providing equal access to justice for all, regardless of income levels, gender, age, race, ethnic group, and other differences between people. A people-centered approach to justice starts with an understanding of people’s justice needs and designs adequate solutions to respond to them.

The need for people-centered justice has never been greater due to the urgent challenges that the COVID 19 pandemic poses. Major COVID-related shocks dealt by justice actors, both formal and informal, have posed unique challenges and obstacles that threaten to widen the global justice gap. People-centered justice can help societies manage the institutional, social and economic fallout from the pandemic and can help build more just and peaceful societies for the future.

As stated above, the classical approach to justice has been impeding access to justice for victims of gender-based and domestic violence who apply for a restraining order, but often did not get protection. By applying a people-centered approach, it was possible to identify barriers to justice and, most importantly, to identify the needs of those who should be the focus of the justice system, namely the victims of gender-based and domestic violence who are seeking the protection, and based on these to develop solutions that would meet the needs of victims.

CALL FOR ACTION

- 1. Increase the awareness of restraining orders as a mechanism to protect victims of gender-based and domestic violence:**
 - Disseminate information materials and analytical articles on this topic among the professional communities.
 - Provide restraining order sample applications as well as the information about the free legal aid in trial courts, free legal aid offices, National Police offices, maternity houses, women’s consultations, and on the web-sites of the above mentioned and other partners.
- 2. Provide practical support to victims of gender-based and domestic violence:**
 - Develop a user-friendly restraining order sample application, taking into account the relevant case law.
 - Provide restraining order sample applications in trial courts, free legal aid offices, National Police offices, and on the web-sites of the above mentioned and other partners.
 - Develop a pilot project module to enable on-line filing of restraining order applications.
- 3. Overcome legislative obstacles:**
 - Develop draft amendments to the Civil Procedure Code of Ukraine on improving the legal framework regarding the individuals and entities applying for restraining orders, as well as legislative acts in the area of enforcement

proceedings in order to bridge the legislative gaps and ensure the implementation of restraining order court decisions.

4. Improve quality of judicial decisions:

- Cooperate with Supreme Court Justices and staff to analyze the legal positions under this type of cases, since the entry into force of the relevant law.
- Present the analyses results to the legal community, in particular to judges, defense lawyers, prosecutors, and NGOs representatives.
- Update the Restraining Orders Training Module provided for judges at the National School of Judges of Ukraine, in particular in the field of jurisprudence, considering international best practices, national case law analysis, and risk assessment methodology.
- Develop Risk Assessment Guidelines for Considering Restraining Order Applications.
- Explore the feasibility of introducing internal specialization for judges considering gender-based and domestic violence matters.

5. Build timely coordination mechanism between public authorities:

- Use the experience of the Kyiv District Court of Odessa in establishing a high-speed electronic information share between courts, parties to the proceedings, public authorities, relevant NGOs and other stakeholders.
- Develop and implement on a regional level a National e-Share Concept for sharing information in electronic format between courts, public authorities, and citizens on processing of applications for restraining orders, with the view of making all case materials available to the court in electronic form as soon as possible.

6. Ensure timely enforcement of judicial decisions on applying restrictive orders:

- Conduct research and present the case law analyses results in terms of restraining order judgements enforcement.
- Launch ongoing discussions of the analysis of statistical and other relevant data, to the leadership of the Ministry of Internal Affairs, the Ministry of Social Policy, and the National Police of Ukraine.
- Develop guidelines for the officers of the National Police of Ukraine to immediately address the non-compliance with the restraining order court judgements.

LEADERSHIP AND COMMITMENT

This Roadmap has been developed upon suggestion of members of the First National Consultations on People-Centered Justice that took place on 17 November 2020. The USAID New Justice Program has supported establishment of the Working Group on developing the roadmap. In order to prepare the draft Roadmap, members of the Working Group studied analytical reports concerning this issue, case law and researched needs of victims of gender-based and domestic violence. The next step in implementing the Roadmap would be developing a detailed Action Plan with responsible parties and tools to measure the progress.

The key stakeholders who demonstrate leadership and willingness to implement the Roadmap and the respective Action Plan, including delegation of their representatives to join the Working Group, can be divided into three groups. Group 1 – (International Partners) - including the USAID New Justice Program and Pathfinders for Peaceful, Just and Inclusive Societies. Group 2 – (Government Partners) - including the Ministry of Justice of Ukraine, the Supreme Court of Ukraine, the Legal Aid Coordination Center, and the Office of the Prosecutor General. Group 3 – (NGO Partners) - the Ukrainian Women Lawyers Association "YurFem", NGO "La Strada-Ukraine", the Ukrainian National Bar Association, and Attorney Liudmyla Grytsenko.

WAY FORWARD

The Roadmap will be presented during the 2nd All-Ukrainian People-Centered Justice Discussion in Ukraine and circulated among all stakeholders. International agencies operating in Ukraine, international technical assistance projects, public authorities, local governments, NGOs, and self-governing bodies may join the implementation of this Roadmap at any time.