

MODULE 4:

# Women in Conflict with the Law



Empowered lives.  
Resilient nations.



PUBLISHED BY:

**The United Nations Entity for Gender Equality and the Empowerment of Women**

(UN Women) 220 East 42nd St, New York, NY 10017, USA

and

**The United Nations Development Programme**

(UNDP), One United Nations Plaza, New York NY 10017, USA

and

**The United Nations Office on Drugs and Crime**

(UNODC), Vienna International Centre, Wagramer Strasse 5, A 1400 Vienna, Austria

and

**The Office of the United Nations High Commissioner for Human Rights**

(OHCHR), Palais Wilson, 52 rue des Paquis, CH-1201 Geneva, Switzerland

UN Women: ISBN-13: 978-1-63214-116-3

OHCHR: HR/PUB/18/2

© 2018 United Nations

The designations employed and the presentation of material throughout this publication do not imply the expression of any opinion whatsoever on the part of the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), the United Nations Development Programme (UNDP), the United Nations Office on Drugs and Crime (UNODC), and the Office of the United Nations High Commissioner for Human Rights (OHCHR), concerning the legal or development status of any country, territory, city or area of its authorities, or concerning the delimitation of its frontiers or boundaries.

The views expressed in this publication are those of the authors and do not necessarily reflect the views or policies of the United Nations, including UN Women, UNDP, UNODC, OHCHR or the United Nations Member States.

This publication may be freely used for non-commercial, fair use purposes, with proper acknowledgement of and attribution to UN Women, UNDP, UNODC and OHCHR. Any other use must be authorized in writing by the United Nations following a written request for permission from [permissions@un.org](mailto:permissions@un.org).

Design: Irene Ramirez

**MODULE 4:**

# **Women in Conflict with the Law**



*Empowered lives.  
Resilient nations.*





# THE TOOLKIT AT A GLANCE

The Toolkit comprises an Introduction and five Modules:

INTRODUCTION	MODULE 1 The Theory and Practice of Women's Access to Justice Programming	MODULE 2 Marriage, Family and Property Rights	MODULE 3 Ending Violence Against Women	MODULE 4 Women in Conflict with the Law	MODULE 5 Programming at the Country Level
Summary	Summary	Summary			Summary
Women's access to justice	Understanding the overall country context	Creating an enabling environment for women's access to justice			New generation of UNDAFs
Overarching commitments underpinning women's access to justice	Creating an enabling environment for women's access to justice	Creating effective, accountable and gender-responsive justice institutions			The programming cycle of UNCTs
Justice needs of women who face multiple and intersecting forms of discrimination	Creating effective, accountable and gender-responsive justice institutions				Cross-cutting issues to consider during implementation
Programming principles, approach and methodology	Legally empowering women	Legally empowering women			APPENDICES
Purpose and scope	Considerations for crisis-affected contexts	Considerations for crisis-affected contexts			ENDNOTES
About the Toolkit	APPENDICES	APPENDICES			
ENDNOTES	ENDNOTES	ENDNOTES			

# TABLE OF CONTENTS

---

<b>THE TOOLKIT AT A GLANCE</b>	<b>1</b>
<hr/>	
<b>MODULE 4: WOMEN IN CONFLICT WITH THE LAW</b>	<b>5</b>
<hr/>	
<b>1.0 Summary</b>	<b>6</b>
1.1 Why women in conflict with the law?	6
1.2 Definitions	8
<hr/>	
<b>2.0 Creating an enabling environment for women’s access to justice</b>	<b>10</b>
2.1 International law	10
2.1.1 Typical programming challenges/opportunities	11
2.1.2 Programming considerations and options	12
2.2 Domestic law	12
2.2.1 Constitutions	12
2.2.1.1 Typical programming challenges/opportunities	13
2.2.1.2 Programming considerations and options	13
2.2.2 Formal and informal laws	14
2.2.2.1 Formal laws	14
2.2.2.1.1 Typical programming challenges/opportunities	15
2.2.2.1.2 Programming considerations and options	15
2.2.2.2 Informal laws	16
2.2.2.2.1 Typical programming challenges/opportunities	16
2.2.2.2.2 Programming considerations and options	17
2.3 Justice sector policies and budgets	17
2.3.1 Typical programming challenges/opportunities	17
2.3.2 Programming considerations and options	17
<hr/>	
<b>3.0 Creating effective, accountable and gender-responsive justice institutions</b>	<b>21</b>
3.1 Availability	21
3.1.1 Typical programming challenges/opportunities	22
3.1.2 Programming considerations and options	22
3.2 Accessibility	22
3.2.1 Typical programming challenges/opportunities	23
3.2.2 Programming considerations and options	23
3.3 Good quality	25

3.3.1	Typical programming challenges/opportunities	25
3.3.2	Programming considerations and options	25
3.4	Remedies	26
3.4.1	Typical programming challenges/opportunities	26
3.4.2	Programming considerations and options	27
3.5	Accountability	27
3.5.1	Typical programming challenges/opportunities	27
3.5.2	Programming considerations and options	28
3.6	Women participate in justice institutions	28
3.6.1	Typical programming challenges/opportunities	29
3.6.2	Programming considerations and options	29
<b>4.0</b>	<b>Legally empowering women</b>	<b>30</b>
4.1	Women participate in legal reform processes	30
4.1.1	Typical programming challenges/opportunities	30
4.1.2	Programming considerations and options	30
4.2	Support and partner with civil society organizations	31
4.2.1	Typical programming challenges/opportunities	31
4.2.2	Programming considerations and options	31
4.3	Education on women's rights	32
4.3.1	Typical programming challenges/opportunities	32
4.3.2	Programming considerations and options	32
<b>5.0</b>	<b>Considerations for crisis-affected contexts</b>	<b>33</b>
<b>Appendix I</b>		<b>34</b>
<b>Appendix II: Country case studies</b>		<b>36</b>
Creating an enabling environment for women's access to justice		36
Formal laws		36
Informal laws		36
Justice sector policies and budgets		37
Creating effective, accountable and gender-responsive justice institutions		38
Accessibility		38
Good quality		39
Women participate in justice institutions		40
<b>Appendix III: Additional resources</b>		<b>40</b>
International instruments		40
Access to legal aid		41
<b>ENDNOTES</b>		<b>42</b>

# BOXES, FIGURES AND TABLES

---

## BOXES

---

<b>Box 4.1</b>	Examples of discriminatory criminal codes and criminal procedures	14
<b>Box 4.2</b>	Guidelines for male staff members in mixed gender prisons	21
<b>Box 4.3</b>	Examples of measures to assist various groups of women in conflict with the law	24

## APPENDICES

<b>Box A.4.1</b>	Legislation providing alternatives for women offenders	36
<b>Box A.4.2</b>	Linking indigenous justice principles with rehabilitation and reintegration	36
<b>Box A.4.3</b>	Sentencing guidelines for drug crimes in England and Wales	37
<b>Box A.4.4</b>	Programming for legal aid in the State of Palestine	37
<b>Box A.4.5</b>	Focusing on prison management for women in Panama	37
<b>Box A.4.6</b>	Examples of reintegration programmes in Afghanistan, Dominican Republic, State of Palestine and Yemen	38
<b>Box A.4.7</b>	Examples of initiatives for mothers and children in detention in Latin America	38
<b>Box A.4.8</b>	Examples of support to mothers and children in prison in India and Kenya	39
<b>Box A.4.9</b>	Examples of capacity-building programmes for justice actors	39
<b>Box A.4.10</b>	Increasing the number of female prison officers in Japan	40

---

## FIGURES

---

<b>Figure 4.1</b>	The criminal justice continuum	7
-------------------	--------------------------------	---

---

## TABLES

---

<b>Table 4.1</b>	Challenges across the justice chain for women in conflict with the law	7
------------------	--	---

## APPENDICES

<b>Table A.4.1</b>	Policy and human rights considerations related to women in conflict with the law in the SDGs, CEDAW GR 30 and CEDAW GR 33	34
--------------------	---	----



**Above:** Libya. Women sit on the floor in an overcrowded cell in the women's section of the detention centre for migrants in Surman. © UNICEF/Alessio Romenzi.

# 1.0 Summary

## 1.1 Why women in conflict with the law?

The number of women in prisons is growing globally, however laws, policies and practices of the criminal justice sector often fail to take into account the needs of women in conflict with the law

While women often relate to criminal justice systems as victims of crime, recent trends indicate that a growing number are featuring as suspects, accused and prisoners.<sup>1</sup> The percentage of women in prison is growing globally and at a faster rate than the male prison population. While the global prison population grew by approximately 20 per cent from 2000 to 2015, that of imprisoned women and girls grew by 50 per cent during the same period.<sup>2</sup>

The criminal justice system has historically been designed by men for men, which has often meant that laws and policies fail to take into account the pathways to female incarceration and their mitigation. The Special Rapporteur on violence against women, its causes and consequences, notes that these pathways include: a strong correlation with experience of prior violence and abuse; coercion into crime by an abuser or a person of influence; abortion in countries where it is illegal or legal only under limited circumstances; the commission of “moral” crimes such as adultery; running away, for example, to escape violence; being held in prison for protection purposes (protective custody or detention); long periods of pre-trial, immigration and/or refugee detention; and human trafficking.<sup>3</sup> In these contexts, the charges against women tend to be in relation to minor and non-violent offences, which do not pose a risk to the public.<sup>4</sup>

Abolish discriminatory criminalization and review and monitor all criminal procedures to ensure that they do not directly or indirectly discriminate against women; decriminalize forms of behaviour that are not criminalized or punished as harshly if they are performed by men; decriminalize forms of behaviour that can be performed only by women, such as abortion; and act with due diligence to prevent and provide redress for crimes that disproportionately or solely affect women, whether perpetrated by State or non-State actors.

Source: CEDAW GR 33, para. 51(I).

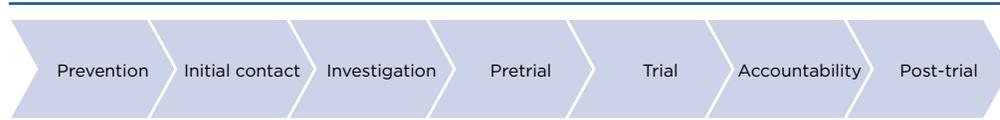
Furthermore, globalization is having an increasing impact on the volume and characteristics of crime.<sup>5</sup> For example, trafficked women may find themselves in conflict with the law when they are accused of committing crimes that are: (1) directly linked to their status as trafficked persons; (2) defined as crimes against public morality (e.g., prostitution); or (3) in breach of immigration regulations.<sup>6</sup> Other factors which bring women into conflict with the law are poverty, forced migration and perceived or actual sexual orientation and gender identity.<sup>7</sup>

Women are entitled to access justice as a fundamental right as suspects, accused or convicted persons when arrested, detained or imprisoned, from the beginning to the end of the criminal justice chain. This requires reviewing prison infrastructure and legal frameworks governing sentencing to reflect women’s rights and needs.<sup>8</sup> Legislation can be discriminatory and sentencing policies may fail to take into consideration the needs of pregnant women or women as primary childcare providers. In practice, women are also at risk of sexual violence and other forms of violence while in detention or prison, facing intimidation and harassment as suspects or threats of abuse during arrest. There

Non-custodial alternatives and access to legal aid are two important avenues for strengthening women’s access to justice

are wide-ranging challenges that women in conflict with the law face within the criminal justice system (see Figure 4.1 and Table 4.1).

**FIGURE 4.1** The criminal justice continuum



Source: Adapted from UN Women, WHO, UNFPA, UNDP and UNODC, “[Module 3: Justice and Policing](#)”, in Essential Services Package for Women and Girls Subject to Violence, Core Elements and Quality Guidelines, p. 8, (New York, 2015).

The criminal justice process is set in motion through preliminary contact with law enforcement officers, leading to investigation by the police, charge, trial, sentencing and a range of post-sentencing scenarios. A more holistic approach also considers post-trial rehabilitation of offenders, the prevention of recidivism and addressing the root causes of criminality to prevent crime. At all stages of the justice chain, women face unique challenges that programming should take into account and address.

**TABLE 4.1** Challenges across the justice chain for women in conflict with the law

Justice chain	Challenges
<b>Prevention</b>	<ul style="list-style-type: none"> <li>• Unique experiences of women, including victimization, are not considered in national crime prevention policies.</li> <li>• Criminal laws may codify as crimes acts that implicate only or mostly women.</li> </ul>
<b>Initial contact</b>	<ul style="list-style-type: none"> <li>• Women, especially, may suffer from illiteracy and lack the necessary knowledge (i.e., about their legal rights) and experience to understand and navigate the criminal justice system.</li> <li>• Women may have limited financial or other resources to effectively navigate the system, including meeting bail and financial requirements of sureties.</li> <li>• Women with childcare responsibilities will be most affected by a decision to arrest.</li> <li>• Legal aid or legal advice are not available in most cases at this stage and women may be unable to afford commercially obtained legal services.</li> <li>• Women who have been arrested or detained may be at risk of sexual and other forms of violence from State officials.</li> </ul>
<b>Investigation</b>	<ul style="list-style-type: none"> <li>• Most police officers are male and/or are not trained in gender-sensitive interrogation techniques.</li> <li>• Suspects and accused persons are at greatest risk of torture or other forms of ill-treatment, ranging from neglect and demands for bribes to coerced confessions and unlawful detention.</li> <li>• Illiterate women are more susceptible to coercion and under such situations, the risk of signing statements that have serious legal implications.</li> </ul>

Programmers must be familiar with the challenges that women in conflict with the law face across the justice chain

<p><b>Pretrial</b></p>	<ul style="list-style-type: none"> <li>• Similar to those at the point of initial contact, women in pretrial detention are at risk of sexual violence and other forms of abuse.</li> <li>• Women who are held in pretrial detention suffer trauma due to the likelihood of losing their jobs and family contact being interrupted.</li> <li>• At this stage, accused persons may not have access to legal advice or representation before trial, thereby missing out on the opportunity to be well prepared.</li> <li>• Women may require comprehensive legal aid services to address their needs holistically (in criminal, civil and family matters).</li> <li>• Pretrial detention periods can be unnecessarily long, subjecting women to additional socioeconomic consequences, which impact their families as well.</li> </ul>
<p><b>Trial</b></p>	<ul style="list-style-type: none"> <li>• Lack of legal representation can lead to limited chances of being considered for bail.</li> <li>• Backlogged judicial systems can lead to slow trials and lengthy detention.</li> <li>• Judges do not sufficiently rely on social services reports to identify mitigating circumstances for women offenders.</li> <li>• As a result, judges are often not aware of women’s relevant history and background (e.g., history of abuse or violence) and do not apply alternatives to imprisonment even when appropriate.</li> </ul>
<p><b>Post-trial</b></p>	<ul style="list-style-type: none"> <li>• Imprisonment creates unique challenges for women (e.g., gender-specific hygiene and health-care needs), with pregnant women and women with children being particularly affected.</li> <li>• Women are stigmatized and may suffer rejection by their families and communities.</li> <li>• Women prisoners are at a heightened risk of sexual violence and other forms of abuse.</li> <li>• Women who have been imprisoned experience difficulties in finding housing and jobs, reuniting with family members and in particular with their children.</li> <li>• There is an overall lack of access to post-release care and follow-up that is suited to address women’s mental health and other complex needs.</li> </ul>

This Module presents an overview of the standards and norms that are applicable to ensuring that women in conflict with the law are not denied justice services at any stage of the justice chain. Using the three programming entry points outlined in the Introduction and Module 1 (creating an enabling environment for women’s access to justice; creating effective, accountable and gender-responsive justice institutions; and legally empowering women), it highlights how these standards and norms can be applied in practice through crime prevention, protection while in detention or prison and rehabilitation upon release.

## 1.2 Definitions

**Accused:** A person who has been charged or is alleged to have committed an offence.<sup>9</sup>

**Arrest:** The act of apprehending a person for the alleged commission of an offence or by the action of an authority.<sup>10</sup>

**Bail:** A legal mechanism used to enable the release from detention of a person accused of a crime prior to the conclusion of their case if certain conditions are met. These conditions are designed to ensure that the accused returns to court for trial. They usually involve placing an amount of money as security with the court, which can be forfeited to the State should the accused fail to return to court at the appointed time and place. Bail is usually posted either by the suspect or accused or a family member, though this is not necessarily a requirement.<sup>11</sup>

**Criminal justice continuum:** Ensuring that the rights of all those affected by the criminal justice system are respected, protected and fulfilled at every stage of the criminal justice chain.

**Custody:** Care or control exercised by a person or authority over something or someone as: (a) supervision and control over property that usually includes liability for damage that may occur; (b) care and maintenance of a child that includes the right to direct the child's activities and make decisions regarding the child's upbringing; or (c) official restraint on freedom (as by arrest or imprisonment or by release on bail, personal recognizance, probation or parole).<sup>12</sup>

**Detention:** The condition of detained persons.<sup>13</sup>

**Detained person:** Any person deprived of personal liberty except as a result of conviction for an offence.<sup>14</sup>

**Diversion:** An administrative procedure allowing certain offenders to bypass the formal criminal justice system in order to avoid further prosecution and conviction by participating in, for example, mediation processes or treatment programmes, or by compensating the victim.<sup>15</sup>

**Imprisonment:** The condition of imprisoned persons.<sup>16</sup>

**Imprisoned person:** Any person deprived of personal liberty as a result of conviction for an offence.<sup>17</sup>

**Judicial or other authority:** A judicial or other authority under the law, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence.<sup>18</sup>

**Non-custodial measures:** Alternatives to imprisonment that may be applied to all persons subject to prosecution, trial or the execution of a sentence, at all stages of the administration of criminal justice.<sup>19</sup>

**Penal:** Of, relating to or being punishment.<sup>20</sup>

**Sentencing circles:** In circle sentencing, participants—judge, defence, prosecution, police, victim/offender and family and community residents—sit facing one another in

a circle. Discussion is aimed at reaching a consensus about the best way to resolve the case, focusing on both the need to protect the community and the rehabilitation and punishment of the offender.<sup>21</sup>

**Victim:** This Module uses the term “victim” rather than “survivor” in relation to victims of crimes more generally. Consistent with Module 3, it uses the term “survivor” only in the context of violence. For the purposes of this Module, “victim” means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within United Nations Member States, including those laws proscribing criminal abuse of power.<sup>22</sup>

## 2.0 Creating an enabling environment for women’s access to justice

### 2.1 International law

Comprehensive international standards have been developed to support gender mainstreaming within the operations of criminal justice systems, including, but not limited to, taking measures to meet the gender-specific needs of women as suspects, accused and prisoners. These standards may be found in both binding and non-binding international instruments, as well as in guidance materials and tools that aim to support the implementation of such instruments. Instruments that relate to the broader dimensions of criminal justice administration, include the following:<sup>23</sup>

- United Nations ECOSOC Resolution 2002/13, [Guidelines for the Prevention of Crime](#)<sup>24</sup> presents different approaches to preventing crime and recommends that crime prevention strategies pay due regard to the different needs of men and women.
- United Nations General Assembly Resolution 67/187, [United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems](#) establishes the responsibility of the State to put in place a national legal aid system that is accessible, effective, sustainable and credible, and that recognizes the right to legal aid of persons in contact with the law at all stages of the criminal justice process.
- United Nations General Assembly Resolution 45/110, [United Nations Standard Minimum Rules for Non-custodial Measures \(the Tokyo Rules\)](#) provides a framework for applying non-custodial measures in the criminal justice system. While there is no specific mention of measures for women, this was subsequently covered by the Bangkok Rules.
- United Nations General Assembly Resolution 70/175, [United Nations Standard Minimum Rules for the Treatment of Prisoners \(the Nelson Mandela Rules\)](#) provides the most comprehensive guidelines on the treatment of prisoners and was initially adopted in 1955 and updated by the General Assembly in 2015.
- United Nations ECOSOC Resolution 2002/12, [Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters](#) identifies a range of flexible, adaptable and complementary measures for criminal justice systems that take legal, social and cultural circumstances into account.



Above: Jordan. Women participate in a literacy class held at the Jordanian Women's Union center in Hitteen.  
© UN Women/Christopher Herwig.

- The African Commission on Human and Peoples' Rights, [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#) (Luanda Guidelines), developed with the support of CSOs and UNDP, define a rights-based approach to pretrial detention, arrest and post-trial detention, and encourage practices that can be integrated into programming from a regional perspective.

In addition, the following instruments specifically relate to the needs and rights of women:

- Article 2(g) of United Nations General Assembly Resolution 34/180, [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW) places an obligation on States to “repeal all national penal provisions which constitute discrimination against women”.
- United Nations General Assembly Resolution 65/228, [Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice](#)<sup>25</sup> provides guidance on crime prevention in the context of violence against women and on criminal justice responses to such violence.
- United Nations General Assembly Resolution 65/229, [United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders \(the Bangkok Rules\)](#) applies to women prisoners under sentence; suspected women offenders awaiting trial while in detention; female offenders subject to non-custodial measures and corrective measures; and women who are in protective custody.

## 2.1.1 Typical programming challenges/opportunities

- Criminality is socially stigmatized, leading to the perception that persons who are in conflict with the law are not rights-holders as conflict with the law entails conflict with society.

Women in conflict with the law have historically been neglected in women's rights programming

Disseminate relevant international standards and model rules among State and non-State justice actors and integrate them into law, policy and practice

Constitutions can promote rights and protections that are critical for women in conflict with the law

- At the national level, awareness on the rights of women in conflict with the law is severely limited among State and non-State actors and there is a lack of systematic data and evidence with respect to offending women, the offences for which they are arrested and trends over time.
- This area of the law has therefore gained limited traction and visibility in comparison to other areas of the law, such as violence against women (which is also of critical importance).
- In this same context, the root causes of offending behaviour among women, the role of previous victimization and the challenges that women face in their passage through the criminal justice chain as offenders are not systematically correlated and linked to national development agendas.

## 2.1.2 Programming considerations and options

Support the development of national standards that are in line with international standards and model rules, particularly those relating to:

- Non-custodial alternatives that respond to the needs of women as mothers and caregivers.
- Availability and accessibility of legal aid and other services and resources for women in conflict with the law, particularly imprisoned/detained women.

In support of the adoption of these proposed standards, undertake baseline assessments that include a comparative analysis of existing laws and policies and gaps to be addressed.

- Assessments can be undertaken as part of any of the country-specific analyses identified in Module 1 in cooperation with governments and CSOs to foster partnerships and shared thinking on reforms.
- Included in such assessments should be baselines on the situation of women as offenders, including the offences for which they are generally identified with, their socioeconomic backgrounds, previous victimization and the number of female prisoners (absolute and as percentage of the total prison population).

## 2.2 Domestic law

### 2.2.1 Constitutions

Constitutions provide a foundation for articulating and enforcing due process rights for women in conflict with the law. It is therefore essential for programmers to advocate for comprehensive due process rights in national normative frameworks, since such rights ensure fair treatment for suspects and accused persons. While the political and legal context of a country will determine the extent to which due process rights can be integrated into a constitution, Article 6, Article 9 and Article 14 of United Nations General Assembly Resolution 2200A(XXI), [International Covenant on Civil and Political Rights](#) (ICCPR) categorizes due process rights as follows: punishment regimes that are proportionate to the severity of the crime; protection from arbitrary arrest or detention; the right to be informed of the reason for an arrest; the right to be tried within a reasonable time; and fair treatment by the courts. Constitutions may protect other

relevant rights such as the right to legal aid, particularly for women who cannot afford or do not otherwise have access to legal assistance.

Additionally, constitutions create institutions that support women's access to justice as well as their ability to claim and exercise their due process rights through institutions such as international or regional human rights courts, NHRIs and ombudsperson institutions. These institutions are conduits for effective and timely enforcement, remedies, monitoring and reporting. They may also be responsible for responding to the recommendations of human rights treaty bodies as well as the UPR in matters related to due process and gender equality.

### 2.2.1.1 Typical programming challenges/opportunities

- Constitutions vary in the extent to which they integrate Article 6, Article 9 and Article 14 of the ICCPR—in some situations, fully or partially integrating these provisions. In practice, where they exist, due process rights are also commonly ignored by security agencies and therefore not enforced.

### 2.2.1.2 Programming considerations and options

Promote constitutional reforms as they relate to due process, prioritizing such actions and issues as:

- **Advocating for improved constitutional due process rights for women.** Prohibition of the death penalty remains a contentious issue globally. Currently, Guatemala and Zimbabwe constitutionally prohibit the death penalty on women unconditionally. Sudan and South Sudan specifically prohibit the death penalty for “pregnant or lactating women, save after two years of lactation”.<sup>26</sup> The examples of Guatemala and Zimbabwe can be replicated in various ongoing and future constitutional reform processes.
- **Legal aid as a constitutional right.** The United Nations General Assembly Resolution 67/187, [United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems](#) calls on States to provide legal aid for all persons detained, arrested or imprisoned, suspected, accused of, or charged with a criminal offence and to guarantee the right to legal aid in their national systems at the highest level.
- **Strengthening constitutional bodies.** Presently, 177 constitutions contain provisions on the establishment or continued existence of constitutional bodies and 89 provide for national human rights bodies.<sup>27</sup> These institutions serve an accountability function, ensuring that rights provided for in constitutions are appropriately protected and promoted. Particular attention should be paid to enabling provisions such as a specific mandate to protect human rights and the ability to operate independently without State interference (effective mandate), the participation of women as members of constitutional bodies (equality of representation) and budgetary support (effective constitutional implementation).<sup>28</sup>
- **Education on international human rights instruments.** Develop mechanisms for strengthening familiarity with and understanding of CEDAW and ICCPR obligations across the State and particularly within the justice and security sector.

The full range of due process rights afforded under international law may not be reflected in constitutions

Reforms should prioritize provisions on due process rights, access to legal aid and the creation/strengthening of human rights monitoring institutions

- Building a strong support base for constitutional reform processes through the creation of coalitions of like-minded advocates and institutions. This can be done by bridging the gender equality and penal reform agendas, in consultation with women who have experienced contact with the criminal justice system, as well as with women's groups and organizations.<sup>29</sup>

## 2.2.2 Formal and informal laws

### 2.2.2.1 Formal laws

Laws create a framework for realizing constitutional rights. Laws are more detailed than constitutions and offer additional nuance and bandwidth for integrating the needs of different population groups. For example, due process rights may be enshrined in a constitution, but legislation such as criminal codes and criminal procedure codes elaborate on individual rights, duties and the State's protective and enforcement roles. This Section highlights various programming options for mainstreaming a gender perspective into formal and informal criminal laws.

As noted earlier, Article 2(g) of CEDAW places an obligation on States to “repeal all national *penal provisions* which constitute discrimination against women”. Criminal justice reforms should therefore focus on the review and reform of discriminatory substantive and procedural laws, including those which are gender-neutral in content but produce discriminatory consequences in their implementation.<sup>30</sup> In some instances, laws and policies can be dictated by discriminatory cultural norms and practices and from that perspective, associate women with specific actions which a community may deem to be a crime. Box 4.1 highlights examples of discriminatory aspects of substantive and procedural laws.

#### BOX 4.1 Examples of discriminatory criminal codes and criminal procedures

##### Substantive criminal codes

- Criminalizing forms of behaviour that are not criminalized or punished as harshly if they are performed by men, e.g., premarital sex, adultery<sup>31</sup> and prostitution.<sup>32</sup>
- Criminalizing forms of behaviour that can only be performed by women. An example is abortion, even when undertaken on medical grounds.
- Criminalizing behaviours which are not crimes by any international legal standard, e.g., running away from home without permission,<sup>33</sup> failure to respect modesty and dress codes.
- Failing to criminalize or to act with due diligence to prevent and provide redress for crimes that disproportionately or solely affect women (e.g., intimate partner violence and FGM/C).
- Jailing women for petty offences and/or their inability to pay bail in such cases.

##### Procedural criminal codes

- Failing to apply the defence of provocation differently to women (as they may react differently from men).
- On this basis, some laws provide for reduced sentences for (predominantly male) perpetrators who kill in response to provocation caused by the behaviour of wives or female relatives, but require aggravated sentences for (predominantly female) perpetrators who kill their abuser with premeditation.<sup>34</sup>
- Preventing self-defence claims by women who have been survivors of violence. The psychological impact, including in cases of battered woman syndrome, is not considered in sentencing.<sup>35</sup>

Legislation defines what constitutes criminal conduct as well as the obligations of criminal justice institutions to protect due process rights in such contexts

Criminal codes may contain crimes that are only associated with women or affect them more than men

- Allowing punishment by stoning and other forms of physical punishment on women.<sup>36</sup>
- Placing a higher evidentiary or probative value on the testimony of men during criminal proceedings and failing to grant women equal entitlement to all minimum guarantees on the same basis as men.<sup>37</sup>
- Allowing the deprivation of liberty of women through “protective detention” rather than taking action against the persons posing a threat to their safety.<sup>38</sup>
- Allowing administrative detention of sex workers for forced rehabilitation.<sup>39</sup>

### 2.2.2.1.1 Typical programming challenges/opportunities

- Ad hoc criminal law reform processes can result in fragmented legislation or incongruence between criminal codes, criminal procedure codes and rules of evidence. For instance, legislation on the protection of women in custody may have little effect overall if criminal conduct continues to be defined in ways that discriminate against women and their evidence is not accorded credibility.
- Institutional arrangements for legislative implementation often require budgetary support to develop programmes for alternatives to imprisonment or probation, new infrastructure and capacity development.

### 2.2.2.1.2 Programming considerations and options

Legislation on legal aid and diversion, restorative justice and alternatives to imprisonment offer opportunities for domesticating international standards and norms. Elements include the following:

**Legislation on legal aid:** The United Nations General Assembly Resolution 67/187, [United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems](#) reinforces legal aid as a right to be guaranteed in constitutions and laws.<sup>40</sup> It calls on States to provide legal aid for all persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence. Special measures are expected to be taken to ensure that women have meaningful access to legal aid through gender-sensitive means.<sup>41</sup> Legal aid must also be provided “to all persons regardless of age, race, colour, gender, language, religion or belief, political or other opinion, national or social origin or property, citizenship or domicile, birth, education or social status or other status.”<sup>42</sup> Remedies must be available if the right to legal aid is undermined, delayed or adequate information about this right is not provided.<sup>43</sup> Furthermore, legal aid providers must be equipped with the necessary education, training, skills and experience commensurate with the nature of their work, including the gravity of the offences dealt with and the rights and needs of women.<sup>44</sup> In designing nationwide legal aid schemes, States must take the specific needs of women into account by, among other means, actively incorporating gender perspectives into legal policies, laws, procedures, programmes and practices, making it possible for women offenders to be represented by female lawyers and instituting affirmative action in favour of women in legal training and education.<sup>45</sup>

---

The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted in 2012, established for the first time a positive duty on States to provide legal aid in criminal justice systems.

Source: United Nations, General Assembly, Resolution 67/187, [United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems](#), Annex, paras. 15-19, 20 December 2012, A/RES/67/187.

---

Reforms should focus on changes to criminal codes and criminal procedure codes, they must also be informed by the experiences of women who have been in conflict with the law

---

Institutionalize systems of legal aid and public defence that are accessible, sustainable and responsive to the needs of women, ensure that such services are provided in a timely, continuous and effective manner at all stages of judicial or quasi-judicial proceedings, including alternative dispute resolution mechanisms and restorative justice processes, and ensure the unhindered access of legal aid and public defence providers to all relevant documentation and other information, including witness statements

Source: CEDAW GR 33, para. 37(a).

---

Reforms should emphasize legal aid and non-custodial sentencing

**Legislation on diversion, restorative justice and alternatives to imprisonment:** Social expectations of caregiving roles placed on women results in severe impacts on dependents when situations of conflict with the law occur. This calls for greater concerted efforts among justice and security sector institutions to consider alternatives to detention and imprisonment at all stages of the criminal justice process, including at the pretrial stage. Considering women are often accused of minor, non-violent offences (see Box 4.1), establishing diversion and restorative justice measures can be an effective way of ensuring that women are not unduly penalized by the criminal justice system. Diversion strategies for women operate best when they include social assistance to women and their families.<sup>46</sup> Laws must be enacted to authorize the police, prosecution services and the courts to exercise discretion in diverting cases away from the criminal justice system. At the pretrial stage, police or prosecution services should also be vested with the discretion to decide not to proceed with a case when they consider that it will not be in the best interests of public safety, crime prevention and the rights and needs of victims, as laid out under agreed standards and criteria. Options for alternatives to imprisonment include:

- Absolute or conditional discharge
- Verbal sanctions
- Arbitrated settlement
- Restitution to the victim, a compensation order or a community service order
- Victim/offender mediation
- Family group conference
- Other restorative processes, such as sentencing circles<sup>47</sup>

### 2.2.2.2 Informal laws

Informal justice institutions adjudicate actions which State laws may or may not define as a crime. Nevertheless, sanctions tend to be geared towards non-custodial punishment regimes, offering a basis for exchange of experiences and collaboration between formal and informal criminal justice stakeholders.

#### 2.2.2.2.1 Typical programming challenges/opportunities

- Similar to formal laws, customary and religious criminal norms may include elements which are discriminatory against women in their substantive, evidentiary and procedural contexts. Common crimes in this category include accusations of witchcraft and adultery.

Informal laws can perpetuate criminal justice norms and practices that discriminate against women

- Specific communities may operate customary and/or religious laws which authorize them to enjoy State powers (e.g., arrest and detention), which they may not be well-equipped to exercise.
- Reform of customary law is a long-term process due to potential resistance and pushback against the undoing of age-old patriarchal principles and practices.

#### 2.2.2.2 Programming considerations and options

Support the codification of relevant aspects of customary and religious laws, which impact due process rights.

- This can be done by assessing whether community views of criminal conduct are in line with international standards and ensuring that specific criminal offences are dealt with through the exclusive jurisdiction of the formal criminal justice system.
- Non-custodial alternatives to imprisonment (e.g., restitution and reconciliation) are an important pull factor in the use of informal laws and processes for addressing criminal offences among individuals. Therefore, identifying alternative methods to detention and imprisonment for resolving disputes and integrating these into the formal criminal justice system could help foster common punishment regimes across both systems.

## 2.3 Justice sector policies and budgets

Legal standards that are set by constitutions and formal and informal laws establish the minimum threshold for the treatment of women in conflict with the law. Criminal justice policies and budgets are important because they provide the implementation framework for these standards.

### 2.3.1 Typical programming challenges/opportunities

- Penal reforms tend to be the least explored area of the justice and security sector. Prioritization of such reforms will require awareness and political resolve among justice and security sector policymakers to change the status quo.

### 2.3.2 Programming considerations and options

Create awareness among justice and security sector actors and promote reforms that will facilitate the implementation of improved standards and norms. Consider interventions such as:

- **Crime prevention policies:** Prevention requires an analysis of the root causes of crime, as well as the patterns of behaviour of female offenders.<sup>48</sup> Policies and actions should be evidence-based, developed and implemented in a participatory manner and their impact systematically monitored and evaluated. Holistic approaches that address basic needs (e.g., housing, physical and psychological safety, education, job training and opportunities, community-based substance abuse treatment, economic support), identify positive female role models and offer a community response to violence against women are recommended.<sup>49</sup>

Customary law may include non-custodial alternatives for sentencing that could inform practice within the formal criminal justice sector

Justice and security sector policies largely determine how women are treated in the criminal justice chain

Penal reforms tend to be the least prioritized in justice and security sector planning

Prioritize crime prevention through effective policy interventions

Legal aid is a critical entry point for ensuring that women in conflict with the law are not excluded from the criminal justice system

Pretrial detention and imprisonment must be used as a last resort

Gender-sensitive sentencing should include mitigating considerations and non-custodial alternatives that are based on individual women's needs

- **Legal aid:** Women should have access to legal aid, beginning with their initial contact with the police or as soon as they become the subject of investigation.<sup>50</sup> The early stages of criminal justice processes are important, as decisions at that point will often relate to critical issues such as women's ability to defend themselves effectively; detention and duration of detention; access to bail or other forms of early release pending trial; and whether and when women are finally able to appear before a court. Ultimately, these decisions profoundly impact women's ability to obtain a fair trial.<sup>51</sup> Special measures must be taken to ensure that women have meaningful access to legal aid<sup>52</sup> and remedies must be available if the right to legal aid is undermined or delayed.<sup>53</sup> A gender perspective should be incorporated into all policies, procedures, programmes and practices relating to legal aid. Inadequate provision of legal aid places illiterate women at risk of coercion or ignorance when signing documents of serious legal consequence. Furthermore, the lack of legal representation can result in delays across the justice chain, the denial of bail, prolonged pretrial detention and inappropriate sentencing.<sup>54</sup> To address such challenges, providers of legal services must possess the requisite knowledge and skills that are needed for working with women suspects, accused and prisoners.<sup>55</sup>
- **Pretrial detention and imprisonment:** Pretrial and preventive detention must be used as a last resort and for as short a time as possible and courts should have the power to consider a number of mitigating factors during sentencing. Pretrial and preventive detention must be avoided in matters of petty offences or when women are unable to meet bail-related financial requirements.<sup>56</sup> Women who have committed minor and non-violent offences as well as those in need of medical or psychiatric treatment should not be imprisoned. Efforts should be made to minimize the number of pregnant women and mothers with dependent children in prison by allowing non-custodial measures to take precedence where appropriate.<sup>57</sup> Women who exercise childcare responsibilities should be permitted to make arrangements for their children prior to detention by the police. When it is determined to be in their best interest, young children should be allowed to stay with their mothers in prison. Factors such as homelessness, substance abuse, lack of employment or lack of a supportive family should be treated as social challenges to be addressed in concert with social welfare agencies and the community to prevent reoffending, rather than as a basis for denying women non-custodial options during sentencing.
- **Sentencing:** Gender-responsive sentencing methods are informed by the circumstances of the offence and the vulnerability of the offender. Courts are expected to take mitigating factors and circumstances that are relevant to women into account when sentencing. Prosecution services and the judiciary must be able to exercise discretion in resorting to non-custodial measures when no clear connection can be established between imprisonment and (1) public safety; (2) crime prevention; and (3) the rights and needs of victims.<sup>58</sup> Gender-sensitive sentencing takes into account factors such as a history of victimization and abuse;<sup>59</sup> coercion; childcare responsibilities; and the impact that separation would have on communities and families.
- **Post-sentencing:** At this stage, competent authorities should have access to a wide range of post-sentencing alternatives to avoid institutionalization as an inevitable option. Post-sentencing dispositions may include: furlough and halfway houses; work or education release; various forms of parole; remission; and pardon. To be effective, interventions should respond to the common root causes of women's

contact with the criminal justice system and work towards the effective and early reintegration of offenders into society.<sup>60</sup> Examples of post-sentencing measures include counselling for survivors of SGBV, substance abuse treatment programmes and educational and vocational training to improve employment prospects—in each case taking into account the provision for childcare and women-only services.<sup>61</sup>

- **Treatment in detention and prison:** The human rights of women must be respected and fulfilled during periods of detention and prison. Human rights treaty bodies identify invasive body searches, including strip and body cavity searches;<sup>62</sup> shackling during childbirth;<sup>63</sup> discipline and punishment of women with children;<sup>64</sup> sanctions for behaviour related to mental health;<sup>65</sup> denial of access to mental health services;<sup>66</sup> and the denial of medical care as constituting torture or ill-treatment against women for which places of detention and prisons must be held to account.<sup>67</sup>
- **Provide support and remedies for women who suffer sexual abuse or other forms of violence before or during detention:**<sup>68</sup> Women should be provided with protection, support and counselling and complaints of sexual abuse or other forms of violence before or during detention should be investigated by competent and independent authorities, with full respect for the principle of confidentiality and taking into account the risks of retaliation.<sup>69</sup> Where an experience of sexual abuse has taken place, including when this has resulted in pregnancy, the woman prisoner concerned should receive appropriate medical advice, counselling, physical and mental health care and legal aid.<sup>70</sup>
- **Drug policies:** Certain risk factors and conditions make women and girls vulnerable to exploitation and participation in drug trafficking, including as couriers. They also have unique needs and vulnerabilities when suffering from drug abuse. Therefore, national drug policies should provide appropriate treatment responses, including measures to prevent discrimination against women who are involved in less serious offences. A gender-responsive drug policy considers the different patterns of drug abuse and criminality among women. Policies should also reinforce legal standards on diversion from prosecution or imprisonment to treatment, restorative justice (where appropriate), alternatives to imprisonment and the reduction of sentences for minor offences (through laws or guidelines). Specialized drug courts with specific jurisdiction to exercise discretion on issues such as referring offenders to treatment can also be established.<sup>71</sup>
- **Prison management:** Women's personal backgrounds and their needs should be taken into account to ensure effective management of facilities in addition to achieving the end goal of transformative rehabilitation. This requires effective record-keeping, coordination and communication with other justice institutions, including flow of information between courts and prisons, transparency in operations and openness to bodies which have been assigned the responsibility for monitoring human rights standards. Women should be granted communication and visits by counsel, family and community members, while being informed and protected from persons who may have violated their rights in the past.<sup>72</sup> Prisoners should be separated by sex and as a precaution against sexual violence by prison officials, women prisoners should not be left alone with male prison officials.<sup>73</sup>
- **Prevention of recidivism, rehabilitation and reintegration programmes:** Women are generally not prepared for post-release life due to inadequate resources that are directed towards their meaningful rehabilitation and economic and social

**Women's human rights must be respected during detention or imprisonment and appropriate remedies must be available if women are ill-treated**

**Drug policies must take into account the patterns of drug abuse and criminality among women**

**Prison management is foundational to effective and gender-responsive criminal justice**

Rehabilitation and reintegration measures are key for avoiding recidivism

The best interests of the child must prevail when decisions are taken as to whether children should be placed with mothers in detention and for how long

Criminal justice reforms must include an implementation strategy that leverages partnerships and resources

reintegration. Women from disadvantaged social and economic backgrounds tend to experience stigma from their families and communities and therefore face peculiar challenges upon release. Reintegration should be a process that begins from the point of sentencing. The sentencing court should issue an order to the probation and/or social welfare services for a sentence plan that reflects the particular short and long-term needs of the woman.<sup>74</sup> Options may include measures already mentioned in this Section under post-sentencing.<sup>75</sup> The detention period should provide women with opportunities to ease their transition into society, such as home leave and community-based programmes.<sup>76</sup> Interventions should also address the root causes of women's offences through programmes such as counselling for survivors of SGBV, substance abuse treatment programmes and educational and vocational training to improve employment prospects.<sup>77</sup> Such programmes should be implemented by prison authorities, in cooperation with probation and/or social welfare services and CSOs (service providers). Additional support must be provided to women who need psychological, medical, legal and practical help to ensure their successful reintegration into society, in cooperation with these service providers.<sup>78</sup>

- **Women with children in detention:** Children who are in prison with their mothers must never to be treated as prisoners. Decisions about whether they should be with their mother should be informed by what would be in the best interests of the children concerned.<sup>79</sup> Such decisions should take into account the age of the child; preferences of the mother and the child; availability and quality of health care and education services inside and outside prison; alternative care for the child (e.g., family members); and visitation options for children who do not reside in the prison environment with their mothers.<sup>80</sup> Following separation, contact with the mother should be maintained through frequent visits.<sup>81</sup> Particular care should be taken in respect of decisions to remove the children of indigenous women due to historical experiences in some countries of child removal policies and their harmful impact on children, their families and wider communities. In instances when an indigenous child is removed, the child should be placed with members of the child's family or kinship.<sup>82</sup>

To support policy reforms in the above-mentioned areas, develop a programming strategy that is informed by broad stakeholder consensus and secure commitments for implementation. Such a strategy could include:

- Encouraging prison authorities to work in close cooperation with State and non-State service providers in the design and implementation of comprehensive pre-release and post-release reintegration programmes which take into account women's specific needs.
- Promoting dedicated budget lines for legal aid. Budgets should cover the full range of services that detained, arrested or imprisoned persons are entitled to when suspected, accused of, or charged with a criminal offence, including in circumstances where there have been prior experiences of violence and abuse.<sup>83</sup> The United Nations General Assembly Resolution 67/187, [United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems](#) recommends the creation of legal aid funds and the identification of fiscal mechanisms to facilitate the earmarking of such funds. These mechanisms can include the allocation of a percentage of the criminal justice budget to legal aid services and applying funds that are recovered

from criminal activities to cover the cost of legal aid. Tax incentives can also be provided to lawyers who work in disadvantaged and hard to reach communities.

#### **BOX 4.2 Guidelines for male staff members in mixed gender prisons**

(1) In a prison for both men and women, the part of the prison set aside for women shall be under the authority of a responsible woman staff member who shall have the custody of the keys of all that part of the prison. (2) No male staff member shall enter the part of the prison set aside for women unless accompanied by a woman staff member. (3) Women prisoners shall be attended and supervised only by women staff members. This does not, however, preclude male staff members, particularly doctors and teachers, from carrying out their professional duties in prisons or parts of prisons set aside for women.

Source: United Nations, General Assembly, Resolution 70/175, [United Nations Standard Minimum Rules for the Treatment of Prisoners \(the Nelson Mandela Rules\)](#), Annex, Rule 81, 17 December 2015, A/RES/70/175.

## **3.0 Creating effective, accountable and gender-responsive justice institutions**

### **3.1 Availability**

Availability is critically important for women in conflict with the law because as rights-holders, they must be protected and respected throughout the justice chain. Their rights and needs include legal services (e.g., access to legal counsel, legal aid and representation in court); access to education; reproductive and other health services; training and rehabilitation programmes; counselling, including for situations where women have had prior experience of violence and abuse; and facilities for women and

**Criminal justice is a specialized area of the law and must be available at the right time and for all women across a State territory**



**Above:** Côte d'Ivoire. Woman from the village of Bouaké, holds her one-year-old son. © UNICEF/Frank Dejongh.

children where they are in the prison environment together. Lack of services may result in women's due process rights being violated and severe underreporting of ill-treatment while in detention or in prison.

### 3.1.1 Typical programming challenges/opportunities

- Programming may have limited impact where the State does not possess adequate resources to sustain the availability of services to women in rural or remote areas.
- States may not prioritize essential services such as legal aid and childcare facilities in all locations where women are detained or imprisoned.

### 3.1.2 Programming considerations and options

To ensure the availability of justice institutions and services for women in conflict with the law, consider promoting the following:

- “One-stop” centres, which offer comprehensive services for different categories of women, including those in conflict with the law. Services could be all-encompassing, particularly for crimes that are linked to SGBV and victimization (e.g., drug trafficking or prostitution linked to human trafficking).
- Infrastructural design that includes detention facilities for women, with special consideration given to spaces for children in detention with their mothers. It is also important to consider the existence of other services within proximity of detention centres and prisons (e.g., legal aid services and rehabilitation programmes).

## 3.2 Accessibility

Women suspects, accused and prisoners often find themselves in situations of confinement and therefore can be restricted in their access to the services mentioned in Section 3.1. The following six dimensions of accessibility apply to such women in various ways:

- **Non-discrimination:** Marginalized and excluded women, such as victims of trafficking, foreign and refugee women, tend to lack social, political and economic ties and therefore must be visible for protective purposes when in contact with the criminal justice system.
- **Physical accessibility:** Criminal justice facilities and services must be physically accessible to women with disabilities and women who are in prison with their children.
- **Economic accessibility:** Women in conflict with the law must have access to free legal services and every means should be used to provide for the education, health and nutrition needs of children who reside outside or inside of prison with their mothers.
- **Information accessibility:** Women who are in detention or prison must have adequate information about their rights and responsibilities, the services that should be available to them and how such services can be accessed.
- **Linguistic accessibility:** Interpretation and translation services must be available to women suspects, accused and prisoners as needed, especially when the justice system is dealing with women of indigenous, minority or foreign status.

Limited State resources and low prioritization can impact upon the availability of criminal justice services

Access to justice can be strengthened by promoting legal aid and “one-stop” centres that are responsive to the needs of women in conflict with the law

Accessibility considers the specific needs of all women in conflict with the law and the barriers that prevent them from accessing justice

Justice actors must be aware of and respond to the diverse needs of women in conflict with the law

- **Cultural accessibility:** Justice services must respect diversity and incorporate an intercultural dimension in delivery, including respect for expressions of culture.

### 3.2.1 Typical programming challenges/opportunities

- The socioeconomic backgrounds of women in conflict with the law place them at risk of being excluded from justice services.
- Legal aid to women suspects, accused and prisoners can be hampered when their eligibility is assessed against family income without taking into account the reality that women may not have access and/or control over such resources.

### 3.2.2 Programming considerations and options

Taking into account the six elements of accessibility, advocate for:

- **Placing a gender lens on infrastructural development:** As noted earlier, criminal justice reforms have historically been designed and implemented from a male perspective. To undo this imbalance, ongoing and future infrastructural developments must integrate gender perspectives, which include the creation of private spaces for meetings (e.g., family and lawyers); breastfeeding facilities and recreational areas for children who are in prison with their mothers; and training and educational facilities to support women’s meaningful rehabilitation and reintegration upon release.
- **The provision of legal aid:** Women suspects, accused and prisoners should be afforded legal aid at each stage of the justice chain and within and outside of the prison environment, inclusive of visits by legal representatives. The eligibility criteria for legal aid should consider women’s personal circumstances, including whether they have access to family resources.<sup>84</sup>
- **The integration of specialized services:** Specific measures such as designated desks in police stations, specialized drug courts and social support services can make justice institutions more accessible to women.

Explore training and other resources to support the implementation of measures for improving accessibility, such as:

- Investing in training and resources for justice actors who are specifically tasked with addressing the rights and needs of women in conflict with the law. It is insufficient that justice actors are physically accessible. These actors must also be familiar with the special needs and challenges of women as suspects, accused and prisoners.
- Raising awareness among prison staff on the existence of different categories of prisoners to equip them with the tools to effectively respond to the needs of diverse prison populations. The categories of women concerned include, but are not limited to, women of indigenous or minority background, women with disabilities, women of diverse forms of sexual orientation and gender identity, foreign women who may include refugee women and asylum seekers, women living with HIV and women in prison with their children.
- Appreciating that the diversity existing among female prison populations requires interventions that address a wide range of cultural, nutritional, spiritual and religious needs. By way of example, *women foreign prisoners* may require interpretation and

translation services, facilities to communicate with their families and lawyers and consular assistance;<sup>85</sup> *pregnant women, breastfeeding mothers and mothers in prison with their children* need reproductive health and child health services, which may not be readily available in prisons; *women of diverse forms of sexual orientation and gender identity* require protection from discrimination, violence and other health services; and *indigenous and minority women* need support in addressing their religious and cultural rights and needs.

---

#### **BOX 4.3 Examples of measures to assist various groups of women in conflict with the law**

##### **Measures to assist women foreign prisoners**

- Ensure that all foreign detainees have access to their consular representatives, legal counsel and interpreters immediately after arrest. Interrogations should be carried out in the presence of a lawyer and an interpreter.
- Where appropriate, consider transferring them, with their consent, to serve the sentence in their country of origin.
- Ensure that legislation and practice provide the maximum possible protection from further victimization for vulnerable groups, such as survivors of human trafficking and migrant domestic workers. Avoid the prosecution of trafficked persons for trafficking-related offences such as holding false passports or working without authorization, even if they agreed to undertake these activities. Refrain from prosecuting persons for being trafficked into sexual exploitation, even if the person originally agreed to work in the sex industry.
- Decriminalize immigration offences. Persons who break immigration laws, if detained, should not be held with prisoners charged with or convicted of criminal offences. Immigration detainees should be held in facilities offering material conditions and a regime that is appropriate to their legal situation and staffed by suitably qualified and specially trained personnel.
- At pretrial and sentencing stage, ensure that foreign women are not disadvantaged in consideration for alternatives to prison due to their nationality and/or sex.

##### **Measures to assist indigenous and minority women**

- Prison authorities should work together with indigenous and minority community-based women's organizations to provide services that are suitable to the needs of such women.
- The provision of culturally relevant programmes to ensure that groups are not indirectly discriminated against in consideration for early conditional release.
- Involving community organizations in programme design and delivery is valuable in maintaining links between prisoners and the outside world, easing resource pressures and improving prison atmosphere.
- Continuing contact with the community is likely to be of particular importance due to the sense of alienation and isolation felt by many indigenous and minority women in the criminal justice system and the higher levels of distress experienced as a result of breaking ties with the community in some cultures.

Sources: UNODC, [Handbook on Women and Imprisonment: 2<sup>nd</sup> edition, with reference to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders \(The Bangkok Rules\)](#), Criminal Justice Handbook Series, pp. 79, 127-128, (United Nations Publication, Sales No. E.14.IV.3) and United Nations, General Assembly, Resolution 65/229, [United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders \(the Bangkok Rules\)](#), Annex, Rule 53, 54, 55, 21 December 2010, A/RES/65/229. See UNODC, [Handbook on the International Transfer of Sentenced Persons](#), Criminal Justice Handbook Series, (New York, United Nations, 2012).

### 3.3 Good quality

Ensure that legal aid and public defence providers are competent and gender-sensitive, respect confidentiality and are granted adequate time to defend their clients

Closely monitor sentencing procedures and eliminate any discrimination against women in the penalties provided for particular crimes and misdemeanours and in determining eligibility for parole or early release from detention

Adopt gender-sensitive procedures in order to avoid revictimization and stigmatization, establish special protection units and gender desks in police stations, undertake investigations confidentially and sensitively and ensure that, during investigations and trials, equal weight is given to the testimony of women and girls as to that of men

Sources: CEDAW GR 33, paras. 37(b), 51(m) and CEDAW GR 30, para. 81(h).

Criminal justice practitioners are not immune from the social and cultural gender norms that dictate how women should behave. Therefore, when interacting with women in conflict with the law, these actors may enforce and perpetuate stereotypes by for example, imposing harsher penalties on women in comparison to those imposed on men for certain crimes like child abandonment, prostitution or other actions that are perceived to violate the parameters of “proper behaviour” for women. To promote good quality institutions, criminal justice actors must remain aware of the stereotypes, perceptions and attitudes that can influence their actions and responses.<sup>86</sup>

#### 3.3.1 Typical programming challenges/opportunities

- In many societies, women in conflict with the law encounter stigmatization due to perceptions that they are immoral.
- Criminal justice institutions (particularly prisons) tend to be overstretched due to the sheer number of male and female suspects, accused and prisoners in contrast to the limited number of personnel available to implement penal reforms and programmes. Such challenges can take considerable time to resolve in the absence of budget lines and budgetary increments.

#### 3.3.2 Programming considerations and options

Promote capacity development initiatives for justice actors:<sup>87</sup>

- **Police:** Specialized police units for women victims and offenders can improve the capacity of the criminal justice system to implement gender-sensitive responses. Key strategies include appealing to police officers’ sense of fairness, identifying champions of gender equality and supporting changes in institutional culture.<sup>88</sup> For example, the Chief Constable of Surrey Police in the United Kingdom recently joined the global solidarity movement for gender equality as a [HeForShe Thematic Champion](#). Under his leadership, Surrey Police has committed to “tackling gender inequality and the abuse of women and girls”.
- **Prosecutors:** Prosecutors are the key agents of the administration of justice, and as such, should respect, protect and uphold human rights and gender equality.<sup>89</sup> Prosecutors should be encouraged to use their functions to make decisions on diversion and alternative punitive measures. As some criminal laws and procedures

Good quality criminal justice services provide women with the support they need to navigate the system without fear or discrimination

Limited capacity among State institutions and the stigma associated with women who are suspected of or have committed crimes, present challenges to women seeking to exercise their rights

Capacity development of justice actors can assist in offsetting discriminatory attitudes and outcomes in justice delivery

may be discriminatory towards women, they should exercise their discretion not to prosecute when it would lead to a violation of the rights of the woman concerned or where prosecution would not be in the public interest. Prosecutors should also be informed of the root causes of women's offending and provided with best practices in rehabilitation and reintegration into society.

- **The judiciary:** Judges promote core values of judicial behaviour, namely, independence, impartiality, integrity, propriety, equality, competence and diligence.<sup>90</sup> Possible interventions for the judiciary include gender capacity audits and gender bench books to track, disseminate and monitor decisions.
- **Parliament:** As oversight and appropriation bodies, parliaments can legislate and allocate resources to address gaps that they identify in the criminal justice system through their oversight function.
- **CSOs, bar associations and legal aid providers:** Lawyers providing legal aid services should have the appropriate experience and knowledge to provide adequate legal advice and should be well informed of women's special needs,<sup>91</sup> and where possible, female lawyers should represent women.<sup>92</sup> In all cases, legal aid providers must have specific training on the relevant gender equality and related standards that are applicable to the case.
- **Prison staff:** Addressing the needs of women is crucial during their admission to prison. Prison staff must therefore be trained in gender and human rights issues related to women's health, HIV prevention, treatment care and support and the detection of mental health problems and self-harm.<sup>93</sup> Additionally, prison staff should possess knowledge of the social reintegration requirements of women prisoners and the management of facilities for both safety and rehabilitative impact.<sup>94</sup>

## 3.4 Remedies

---

Closely monitor sentencing procedures and eliminate any discrimination against women in the penalties provided for particular crimes and misdemeanours and in determining eligibility for parole or early release from detention

---

Source: CEDAW GR 33, para. 51(m).

---

Remedies for women in conflict with the law extend to addressing violations of their rights across the entire justice chain. At the point of sentencing, punishment regimes must be proportional to the crime committed. They must also take into account the circumstances of the offender and ensure that the recommended sanctions will facilitate rather than hinder rehabilitation and reintegration. This could, for example, include options for probation, restitution or community service for non-violent crimes, particularly where a woman defendant is the breadwinner or primary caregiver.

### 3.4.1 Typical programming challenges/opportunities

- Women who enter the criminal justice system are frequently not viewed as holders of rights due to the stigma associated with female criminality.
- In some cases, remedies may be available but not properly implemented by criminal justice actors due to a range of factors including bias or lack of resources.

Effective remedies include fair sentencing for women in conflict with the law as well as available remedies for harm inflicted within the criminal justice system

- Fair sentencing and the availability and accessibility of remedies for harm rely on both gender-sensitive legislation and justice sector policies, as well as on the proper implementation of those laws and policies. Fair sentencing, for example, requires proportional sentencing guidelines and the ability of judges to use their discretion on a case-by-case basis, particularly for criminal conduct that disproportionately discriminates against women.
- Pursuing remedies for women in State custody may involve reporting on internal practices that include human rights violations. Justice institutions may be reluctant to release such data or refuse third-party investigations.

Lack of legislation or weak enforcement of existing obligations affects the availability of remedies

### 3.4.2 Programming considerations and options

Promote fair sentencing through legislative and policy reforms that prioritize the following:

- The integration of effective remedies into legislation, particularly for women who have suffered harm while in detention.
- The needs of different groups of women, such as pregnant women, women primary childcare providers and women undergoing medical or psychiatric treatment.
- Attention to the risk of sexual or other forms of violence while in detention, particularly for women survivors of violence.
- The circumstances of the offence and the vulnerability of the offender (e.g., the commission of murder against a violent husband or family member; and drug offences in which women are used as drug couriers).
- Granting judges the power to consider mitigating factors during sentencing and ensuring that non-custodial sentencing options are available and prioritized.<sup>95</sup> Training and awareness programmes for criminal justice actors and included in such training should be remedies that are available to women in conflict with the law, the appropriate treatment of women in custody, privacy rights related to attorney-client privilege and the standard of care that lawyers must exercise in respect of their female clients.

Promote fair sentencing for women convicted of crimes as well as remedies for those mistreated or harmed while in State custody

Criminal justice systems must prioritize the overall circumstances and needs of women and their families

## 3.5 Accountability

Ensure that mechanisms are in place to monitor places of detention, pay special attention to the situation of women prisoners and apply international guidance and standards on the treatment of women in detention

Source: CEDAW GR 33, para. 51(n).

Accountability ensures that criminal justice actors uphold the rights of women suspects, accused and prisoners in accordance with the standards and norms discussed in Section 2.1.

Accountability considers whether criminal justice actors are acting in accordance with relevant standards and norms

### 3.5.1 Typical programming challenges/opportunities

- Data for assessing performance and improving ongoing criminal administration may not be available due to lack of systematic collection. This includes sentencing and prison records to assess whether judges are implementing fair sentencing practices

and whether women are pursuing legal remedies for ill-treatment while in detention or prison.<sup>96</sup>

### 3.5.2 Programming considerations and options

Promote mechanisms for strengthening accountability across all justice sector institutions, in particular:

- Programming should pay attention to the situation of women prisoners and fully utilize international guidance and standards on the treatment of women in detention.<sup>97</sup> This can be supported by regular inspection of penal institutions and services by qualified and experienced practitioners (which should include women) appointed by a competent authority.<sup>98</sup> Justice institutions must design a plan to implement and monitor the recommendations of experts, as contained in their reports, to ensure the maintenance of high standards. NHRIs often play an important role in prison inspections and through their findings, provide informed advice to governments on standards and procedures that need to be followed in order to maximize the well-being of persons in detention or prison.

In order to support the monitoring of justice institutions, seek ways to promote accurate data collection by:

- Engaging with a range of actors (e.g., national statistics offices, NHRIs and CSOs working with women in conflict with the law) to strengthen administrative data collection and national household surveys. Comprehensive and accurate data must be collected on the number of women in places of detention and prison; the reasons for and duration of their detention; personal circumstances such as pregnancy and childcare responsibilities; availability of legal services, health services and social services; and eligibility for and use of available case review processes, non-custodial alternatives and rehabilitation opportunities.<sup>99</sup>

## 3.6 Women participate in justice institutions

Confront and remove barriers to women's participation as professionals within all bodies and levels of judicial and quasi-judicial systems and providers of justice-related services, and take steps, including temporary special measures, to ensure that women are equally represented in the judiciary and other law implementation mechanisms as magistrates, judges, prosecutors, public defenders, lawyers, administrators, mediators, law enforcement officials, judicial and penal officials and expert practitioners, as well as in other professional capacities

Source: CEDAW GR 33, para. 15(f).

The growing number of women prisoners must be addressed by a commensurate increase in the number of female staff. Women's participation in criminal justice delivery is important for protecting the rights of women suspects, accused and prisoners. Female professionals are needed to address women's rights and needs across the justice chain, including in women prisons or in parts of male prisons set aside for women. The Bangkok Rules stipulate that "there shall be a clear and sustained commitment at the managerial level in prison administrations to prevent and address gender-based discrimination against women staff"<sup>100</sup> and "capacity-building measures for women staff

Programming should prioritize monitoring places of detention, including protections for women who have suffered harm along the justice chain

There are limitations in the collection and analysis of administrative data, which is needed to ensure that justice is administered fairly and effectively

Female criminal justice actors can play a significant role in addressing the specific needs of women suspects, accused and prisoners



Above: Sudan. Girl wants to become a police officer when she grows up. © UN Photo/Albert Gonzalez Farran.

shall also include access to senior positions with key responsibility for the development of policies and strategies relating to the treatment and care of women prisoners.”<sup>101</sup> In prisons, personal searches should “only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures.”<sup>102</sup> It is also important for women offenders, especially those who have experienced violence and abuse, to have access to female police officers and female lawyers to reduce the risk of secondary victimization.<sup>103</sup> Furthermore, female lawyers can play a significant role in the provision of legal services in all legal proceedings.<sup>104</sup>

### 3.6.1 Typical programming challenges/opportunities

- Gendered norms that perpetuate machismo values, the idea that “proper women” do not belong in spaces like prisons and a belief that occupations such as policing and prison administration are a male preserve inhibit women’s participation in criminal justice institutions.

### 3.6.2 Programming considerations and options

Advocate for the inclusion of women at all levels of criminal justice administration through measures such as:

- The review of recruitment procedures of criminal justice institutions to assist in identifying whether they are discriminatory towards women. Some key indicators in that regard should include whether: (1) women have a clear pathway to enter positions of decision-making; (2) human resource plans support the sustained growth of the female labour force; (3) conditions and incentives exist for the retention of female staff.

Promoting women’s participation may be impeded by notions that the justice and security sector is a male preserve

Women's inclusion can be bolstered by a staffing plan that identifies specific areas and mechanisms for increasing women's recruitment, retention and promotion

- Within this context, staffing plans should be designed to include an equitable representation of trained and experienced women staff who can be offered opportunities to discharge key functions as police officers, judges, prosecutors and prison guards. Women should also be appointed to inspection and monitoring boards to ensure that services address the needs of women prisoners and that facilities where women are located are properly inspected by persons of the same sex.
- A strategy that addresses gender-based discrimination against women staff throughout the criminal justice sector and promotes their safety and fair treatment is essential for retention. This could include conducting managerial-level trainings, identifying gender equality champions who can serve as role models for other staff and promoting women to senior positions.<sup>105</sup> Mechanisms should be in place to protect female police officers from sexual violence and other forms of harassment in the workplace and guarantee zero tolerance for such behaviour.<sup>106</sup>
- Promoting female participation in educational programmes through affirmative action measures such as ensuring the availability of childcare support and women's dormitories during training.<sup>107</sup>

## 4.0 Legally empowering women

### 4.1 Women participate in legal reform processes

Women's representation and participation in legal reform processes is critical for ensuring that women's needs and experiences within the criminal justice system are taken into consideration. Women could participate in such processes as members of parliament, individual citizens or members of civil society and through public platforms such as town hall meetings. Laws and policies must respond to the actual experiences of women suspects, accused and prisoners. This can only occur if women are permitted and encouraged to share their experiences during legal reform processes.

#### 4.1.1 Typical programming challenges/opportunities

- As criminal justice reforms have historically been designed, shaped and implemented by men and for men, mainstreaming gender perspectives into such processes would require creating spaces for female policymakers and legislatures to make inroads which would benefit women suspects, accused and prisoners.

#### 4.1.2 Programming considerations and options

Promote the formation of coalitions as avenues for amplifying women's voices and perspectives through:

- Programmes which prioritize greater involvement of women's groups, networks and coalitions working to increase women's participation in reform processes, as well as women's awareness of their own rights, including the right to remedies available for violations in detention or prison, the right to legal aid and avenues and preconditions for non-custodial alternatives.

Meaningful reform requires input from justice actors, civil society and women themselves on how to improve justice sector policies

Programming should seek to include women who have been affected by the criminal justice system

- A convergence of stakeholders who can ensure that women’s voices are reflected in criminal justice reform. To achieve this, identify professionals who have worked directly with such women actors (as members of civil society and/or justice providers) to bolster the credibility of women-led processes and strengthen campaigns for legal reform.

## 4.2 Support and partner with civil society organizations

Women’s CSOs can play an important role in strengthening access to justice for women in conflict with the law. As third-party actors, these organizations occupy a unique place in the criminal justice chain by supporting women in their efforts to access the required services and care, and by working with institutions to fulfil their obligations. Activities conducted by these organizations can include serving as watchdogs to ensure that women suspects, accused and prisoners are not ill-treated and have access to appropriate care and support.

### 4.2.1 Typical programming challenges/opportunities

- In comparison with other fields of women’s rights, there are fewer CSOs for partnering with the United Nations in the area of gender equality and penal reform. This may result in dependency on external expertise at a higher operational cost.
- Accessing prisons and other kinds of detention centres for monitoring and providing services involves rigorous vetting procedures for non-State organizations due to national security concerns.

### 4.2.2 Programming considerations and options

Explore opportunities for CSOs to perform critical functions that support the criminal justice sector in providing for women in conflict with the law. These can include:

- Enhancing the capacities of human rights organizations and human rights defenders to integrate gender equality and criminal justice reforms into their existing work and providing technical and financial resources to expand such work based on national needs.
- Building trust and establishing partnerships with State actors working in the field of criminal justice reforms and advocating for platforms for sharing experiences, lessons learned and good practices.
- Collaboration with faith-based organizations, bar associations and women lawyers associations in the design and implementation of comprehensive pre-release and post-release reintegration programmes and non-custodial sentencing arrangements,



Above: President of the youth club in the village of Navenchauc weaving a cloth. © UN Photo/Jerry Frank.

CSOs provide important services such as legal aid, education and reintegration programmes

CSOs may have limited resources and ability to gain access to women in conflict with the law

CSOs should be supported to undertake critical functions that the State is unable or unwilling to provide

such as reconciliation, restoration, compensation and reintegration, with the knowledge and consent of the women concerned.<sup>108</sup>

- Supporting CSOs to integrate the situation of women suspects, accused and prisoners in their Alternative Reports to international and regional human rights mechanisms, as part of efforts to ensure that States comply with relevant gender and human rights standards.

## 4.3 Education on women's rights

Conduct information and awareness-raising programmes for women about the existence of legal aid and public defence services and the conditions for obtaining them using ICT effectively to facilitate such programmes

Source: CEDAW GR 33, para. 37(c).

Gender-sensitive laws and policies may mean little if women do not have the capacity to claim their rights and protections. Lack of knowledge is however, one of the most significant barriers to justice for women in conflict with the law. Women suspects, accused and prisoners are less likely than their male counterparts to be aware of their legal rights and the protections that are due to them. In the case of women foreigners, this can be exacerbated by factors such as illiteracy and language barriers.

### 4.3.1 Typical programming challenges/opportunities

- Diverse needs and capacities will require flexibility in programme design as different groups of women (e.g., women with disabilities, women of diverse forms of sexual orientation and gender identity, refugee women and asylum seekers) may have specific needs that require tailored programming.
- Women who have experienced both custodial and non-custodial sentences may be reluctant to participate in awareness programmes outside of prison due to stigma towards women who have experienced conflict with the law.
- Criminal justice institutions may not support educational programmes for women in custody due to a lack of appreciation of their benefits.

### 4.3.2 Programming considerations and options

Encourage justice providers and CSOs to promote educational programmes to communicate women's rights, in relation to:

- The right to seek recourse to judicial authorities on the grounds of sexual abuse or other forms of violence prior to and during detention or prison.<sup>109</sup> Women must have access to information on their rights and should be encouraged to report any infringement of those rights without fear of retaliation.<sup>110</sup>
- The right of women to access services such as education, health, psychosocial support and legal aid and how this can be done.
- Non-custodial alternatives, including the availability of options based on a woman's specific circumstances (e.g., family situation, criminal record).

Women may not be educated in criminal law or be aware of their rights across the justice chain

To strengthen knowledge and awareness of women's rights, look for opportunities and avenues for disseminating information, through such means as:

- Conducting awareness and empowerment workshops in prisons to introduce women prisoners to basic legal concepts and strategies for exercising their rights.<sup>11</sup>
- Engaging women through the use of media (e.g., radio, TV, theatre).
- Ensuring that legal services are available for the purpose of informing women of their rights.

## 5.0 Considerations for crisis-affected contexts

For specific resources and guidance on how to factor women's rights and needs into criminal justice in crisis situations, see the following resources:

- UNODC, Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism, (forthcoming)
- Correctional Service of Canada, Swedish Prison and Probation Services, United Nations Department of Peacekeeping Operations (DPKO), Penal Reform International and African Women Corrections Association, "Effective Practices for Gender Responsive Treatment of Women Prisoners". (Unpublished), (2016)
- DPKO, UNODC and UNDP, [A Prison Evaluation Checklist for Post-Conflict Settings](#), (2014)
- UNODC and the United States Institute of Peace, [Criminal justice reform in post-conflict States: A guide for practitioners](#), (2011)
- Julie Ashdown and Mel James, [Women in detention](#), (2010)

Rights awareness among women in conflict with the law is paramount, because abuse of rights can manifest at each stage of the justice chain

# APPENDICES

## Appendix I

**TABLE A.4.1 Policy and human rights considerations related to women in conflict with the law in the SDGs, CEDAW GR 30 and CEDAW GR 33**

SDG Targets and Indicators	CEDAW GR 30	CEDAW GR 33
<p>5.1 End all forms of discrimination against all women and girls everywhere</p> <p>5.1.1 Whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex</p> <p>5.2 Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation</p> <p>5.2.2. Proportion of women and girls aged 15 years and older subjected to sexual violence by persons other than an intimate partner in the previous 12 months, by age and place of occurrence</p> <p>5.6 Ensure universal access to sexual and reproductive health and reproductive rights as agreed in</p>	<p><b>Creating an enabling environment for women's access to justice</b></p>	
	<p>81(d) Ensure that all forms of discrimination against women are prohibited when re-establishing the rule of law during legal reform, establish criminal, civil and disciplinary sanctions where appropriate and include specific measures aimed at protecting women against any act of discrimination; ... (h) Adopt gender-sensitive procedures in order to avoid revictimization and stigmatization, establish special protection units and gender desks in police stations, undertake investigations confidentially and sensitively and ensure that, during investigations and trials, equal weight is given to the testimony of women and girls as to that of men;</p>	<p>51(l) Abolish discriminatory criminalization and review and monitor all criminal procedures to ensure that they do not directly or indirectly discriminate against women; decriminalize forms of behaviour that are not criminalized or punished as harshly if they are performed by men; decriminalize forms of behaviour that can be performed only by women, such as abortion; and act with due diligence to prevent and provide redress for crimes that disproportionately or solely affect women, whether perpetrated by State or non-State actors; (m) Closely monitor sentencing procedures and eliminate any discrimination against women in the penalties provided for particular crimes and misdemeanours and in determining eligibility for parole or early release from detention;</p>
	<p><b>Effective, accountable and gender-responsive justice institutions</b></p>	
	<p>81(k) Enhance women's access to justice, including through the provision of legal aid and the establishment of</p>	<p>51(n) Ensure that mechanisms are in place to monitor places of detention, pay special attention to the situation</p>

<p>accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences</p> <p>5.6.1 Proportion of women aged 15-49 years who make their own informed decisions regarding sexual relations, contraceptive use and reproductive health care</p> <p>5.6.2 Number of countries with laws and regulations that guarantee women aged 15-49 years access to sexual and reproductive health care, information and education</p> <p>16 Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels</p> <p>16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all</p>	<p>specialized courts, such as domestic violence and family courts, providing mobile courts for camps and settlement settings and for remote areas, and ensure adequate protection measures for victims and witnesses, including non-disclosure of identity and the provision of shelters;</p> <p>(l) Engage directly with informal justice mechanisms and encourage appropriate reforms, where necessary, in order to bring such processes into line with human rights and gender equality standards, and to ensure that women are not discriminated against.</p> <p>69(b) Undertake gender-sensitive and gender-responsive security sector reform that results in representative security sector institutions that address women's different security experiences and priorities; and liaise with women and women's organizations;</p>	<p>of women prisoners and apply international guidance and standards on the treatment of women in detention; (o) Keep accurate data and statistics regarding the number of women in each place of detention, the reasons for and duration of their detention, whether they are pregnant or accompanied by a baby or child, their access to legal, health and social services and their eligibility for and use of available case review processes, non-custodial alternatives and training possibilities; (p) Use preventive detention as a last resort and for as short a time as possible, and avoid preventive or post-trial detention for petty offences and for the inability to pay bail in such cases.</p>
<p><b>Legally empowering women</b></p>		
	<p>46(b) Ensure women's equal representation at all decision-making levels in national institutions and mechanisms, including in the armed forces, police, justice institutions and the transitional justice mechanisms (judicial and non-judicial) dealing with crimes committed during the conflict; (c) Ensure that women, civil society organizations focused on women's issues and representatives of civil society are included equally in all peace negotiations and post-conflict rebuilding and reconstruction efforts; (d) Provide leadership training to women in order to ensure their effective participation in the post-conflict political processes.</p>	<p>37(b) Ensure that legal aid and public defence providers are competent and gender-sensitive, respect confidentiality and are granted adequate time to defend their clients; (c) Conduct information and awareness-raising programmes for women about the existence of legal aid and public defence services and the conditions for obtaining them using ICT effectively to facilitate such programmes; (d) Develop partnerships with competent non-governmental providers of legal aid and/or train paralegals to provide women with information and assistance in navigating judicial and quasi-judicial processes and traditional justice systems;</p>

## Appendix II: Country case studies

### Creating an enabling environment for women's access to justice

#### Formal laws

##### BOX A.4.1 Legislation providing alternatives for women offenders

In **Argentina**, the law allows judges to order that mothers with children under five years of age, or with caring responsibilities for persons with disabilities, serve their sentences at home under house arrest (law no. 26.472 of 2009).

In **Costa Rica**, the drug law (no. 8204 of 2013 as amended by law no. 9161) allows the judge to impose alternatives to imprisonment (e.g., home detention, probation and release with electronic monitoring) for women convicted of transporting drugs into prisons if proof of vulnerability can be shown. This includes poverty; heading a household in vulnerable conditions; caring for minors, elderly people or people with any disability; or being herself an elder person in a situation of vulnerability.

In **Ecuador**, reduced sentences are available to people who traffic minor amounts of drugs and pardons can be granted to women convicted of micro trafficking violations.

In **Kazakhstan**, a woman's sentence can be suspended if she has a child of up to 14 years of age, except for those who have been sentenced to five years or longer for grave or especially grave offences (Criminal Code of the Republic of Kazakhstan, article 72).

In **Russia**, a sentence may be postponed and then reduced or cancelled for pregnant women or women who have children under 14 years of age, with the exception of those "sentenced to imprisonment for terms longer than five years for grave and specially grave crimes" (Criminal Code of the Russian Federation, article 82).

In the case of *M v. The State*, the Constitutional Court of **South Africa** suspended the prison sentence of a mother and sole caregiver of three minor children, considering the negative effects of a mother's imprisonment on child development (e.g., loss of home and community, disruption in school routines and transportation and potential separation from their siblings) and stressing that the best interests of the child must be considered in proceedings that could have an impact on their lives.

Sources: UNODC, [Information Note for Criminal Justice Practitioners on Non-Custodial Measures for Women Offenders](#), p. 11, (Vienna, n.d.); Library of Congress, "[Decriminalization of Narcotics: Costa Rica](#)", (28 July 2016); UNODC, [Handbook on Women and Imprisonment](#), p. 121; María Noel Rodríguez (UNODC), "Implementation of Bangkok Rules in Latin America: Best Practices", in United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), [Report of the Workshop, Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, Doha, Qatar, 12-19 April 2015](#), p. 46, (Tokyo, 2016).

#### Informal laws

##### BOX A.4.2 Linking indigenous justice principles with rehabilitation and reintegration

In **Ecuador**, on the basis of the country's Constitution, indigenous women have developed their own "rules for living together well" that are in line with indigenous justice principles, and that address the rehabilitation and reintegration of women offenders and children in conflict with the law. The rules aim to ensure that no violence and discrimination will be used when exercising indigenous justice.

Source: United Nations, Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, "[Background Paper](#)", Workshop 1, para. 23, 27 January 2015, A/CONF.222/10.

## Justice sector policies and budgets

### BOX A.4.3 Sentencing guidelines for drug crimes in England and Wales

In 2012, the Sentencing Council for **England** and **Wales** issued sentencing guidelines for drug crimes. They establish seven degrees of offences: introduction or extraction of controlled drugs into or from the country, supply or offer of supply, possession for the purpose of supplying it to another person, production, growing cannabis plants, allowing the use of facilities and possession of controlled substances. A specific sanction range is provided for each offence, which stipulates the maximum and minimum sentence that can be given. The following factors are taken into account: type of crime, type and quantity of the substance and the role of the offender (leading, significant or minor role). Aggravating and mitigating circumstances were also defined. These Guidelines had an impact mostly on the sentencing of women. On average, these sentences were reduced by half. In the case of personal possession, diversion or referral programmes have been preferred since 1998. These cases are usually settled with a verbal admonishment or fines.

Source: Technical Secretariat Working Group on Alternatives to Incarceration, [Technical Report on Alternatives to Incarceration for Drug-Related Offenses](#), p. 31, (Washington, D.C., Inter-American Drug Abuse Control Commission and OAS, 2015).

### BOX A.4.4 Programming for legal aid in the State of Palestine

UN Women has an agreement with the Correctional Rehabilitation Center Department for the provision of legal counselling in all women's prisons. Through this arrangement, a close connection has been established between the lawyers who regularly visit women inmates for legal counselling and the Bar Association lawyers in the **State of Palestine** who specialize in cases of violence against women. In partnership with UNDP, UN Women also supported the establishment of a Gender Justice Council, which is managed by female lawyers working with prisons to provide legal aid services to female inmates.

Source: UN Women, "Analysis of Country Annual Reports", (2015). (Unpublished).

### BOX A.4.5 Focusing on prison management for women in Panama

Under the framework of a UNODC project on prison reform, **Panama** has achieved significant results for the treatment of women prisoners. First, an inter-institutional working group to improve conditions for female prisoners was established. Then, a specialized programme focusing on the female inmates, designed in line with the Bangkok Rules, was implemented, and a special informative pamphlet for female inmates was prepared. Regarding education and training, the University of Panama opened a branch inside the female prison in Panama City, and more than 60 inmates are currently participating in different university studies. Furthermore, the number and the quality of reintegration activities for women have increased, including through new productive projects such as one on hydroponics. Prison staff have received gender and human rights training, and UNODC prepared an online self-paced course based on its Handbook on Women and Imprisonment.

Sources: [A/CONF.222/10](#), para. 22 and Rodríguez (UNODC), "Implementation of Bangkok Rules in Latin America: Best Practices", in UNAFEI, [Report of the Workshop](#), p. 44.

#### **BOX A.4.6 Examples of reintegration programmes in Afghanistan, Dominican Republic, State of Palestine and Yemen**

**Afghanistan:** UNODC, in partnership with the Government of Afghanistan and the NGO Women for Afghan Women, supports two post-release transition houses for women leaving prisons in Kabul and Mazar-e-Sharif. The transition houses offer women instruction in reading, writing and arithmetic, life skill classes, vocational training, basic health care, family counselling and mediation. The centres also facilitate family reunions as needed. The programme offers women a minimum of six months of follow-up assistance in order to facilitate their reintegration.

**Dominican Republic:** The Model Prison Management facilitates the promotion and development of educational activities in Corrections and Rehabilitation Centers (RACs) at various levels and modalities. An education policy is supported by the Ministry of Education and implemented by local vocational and technical training institutions. Institutional relations are developed with private, government and civil society actors both at national and local level for technical assistance and logistical and financial support. In order for the detainees to have access to educational possibilities similar to those available in a free environment, the Model Prison Management provides diverse educational options that include: formal education (basic, middle and high school levels), technology, art, culture, recreation/sports and education in values. Literacy training is a compulsory activity. College education is offered on site and special education is offered for inmates with learning disabilities.

**State of Palestine:** UN Women supports the Ministry of Social Affairs to implement human rights standards for female inmates as well as to have the prison administration integrate legal aid, vocational training and income-generating activities into prison reforms.

**Yemen:** The Ministry of Human Rights, with the financial support of the Government of Germany, has established the Social Care House for women in Aden to facilitate the reintegration of women who have been released from prison. The project partners include the Arab Foundation for Supporting Women and Juveniles and al-Mansura Prison. The Aden Social Care House helps women who are in prison, as well as those who have been released, to earn their own income rather than being dependent on their families. Upon release, many women cannot return to their families because they have committed “moral crimes” and would risk facing violence and abuse if they did. The Social Care House also accommodates women survivors of violence and offers educational opportunities, vocational training and literacy classes. Women have access to social workers, doctors, psychologists and volunteers who provide the support that they need. Female lawyers also offer legal aid to the women and help them navigate the legal system. All residents have learned how to read and write, and have acquired handicraft skills.

Sources: UNODC, [Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders](#), Criminal Justice Handbook Series, pp. 126-127, (New York, United Nations, 2012); [A/CONF.222/10](#), para. 21; Sandra Fernández, “Women in the Context of Confinement: Impact of Prison Reform in Female Correctional Centers of the Dominican Republic”, in UNAFEI, [Report of the Workshop](#), pp. 77-81; and UN Women, “Analysis of Country Annual Reports”.

## **Creating effective, accountable and gender-responsive justice institutions**

### **Accessibility**

#### **BOX A.4.7 Examples of initiatives for mothers and children in detention in Latin America**

Home detention or suspended sentences for pregnant women or mothers with young children is a practice widely applied in Latin America. Other programmes seek to provide support to women with children in prisons.

- **Costa Rica:** A female prison in San José has a sector for pregnant women and mothers with children under 3 years. Another prison nursery in Santa María caters to children older than one year and is run by an NGO.
- **Peru:** In the nursery in a female prison, Chorrillo I in Lima, the Ministry of Education offers teachers, pedagogic materials and workshops for mothers.
- **Uruguay:** Mother and Baby Unit “El Molino” in Montevideo hosts mothers and children under 4 years. A nursery outside the prison, “Pájaros pintados”, serves female prisoners’ children, staff’s children and children from the local community.

Source: Rodríguez (UNODC), “Implementation of Bangkok Rules in Latin America: Best Practices”, in UNAFEI, [Report of the Workshop](#), p. 46.

#### BOX A.4.8 Examples of support to mothers and children in prison in India and Kenya

**Measures to assist women in prison with their children:** Flexible regimes and appropriate programmes for pregnant women, nursing mothers and women with children in prison should include the provision of childcare facilities or arrangements to enable women prisoners with children to participate in prison activities. Mothers and their children should also have provisions of health care, adequate food and exercise.

**India:** In 2007, the Government of India decided to dramatically increase the number of women’s correctional homes run by the Departments of Women and Child Development and of Social Welfare. Pregnant women and mothers with children are housed in such correctional homes, which among other things oversee the children’s education, vaccinations and special nutrition programmes.

**Kenya:** The Kenyan Prison Service recognizes the importance of offering every mother a kit for her baby containing the following items: assorted baby clothes, two baby blankets, two small bed sheets, one medium-sized towel, a pair of plastic pants, a dozen nappies, a plastic sheet to be placed under the bed sheet to protect the bed from becoming soiled, one bar of soap, a jar of petroleum jelly (for rashes), a feeding bottle, a spoon and a plate. Mothers can keep their babies until the baby is two or three years old and they are permitted to stay together in shared cells with other women. Female prison guards are trained to be sensitive to the needs of incarcerated imprisoned mothers.

Sources: UNODC, [Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders](#), p. 124 and [A/RES/65/229](#), Annex, Rules 42, 48.

## Good quality

#### BOX A.4.9 Examples of capacity-building programmes for justice actors

In **Brazil**, the Ministry of Justice, in cooperation with the Federal Prison Department, has established specialized schools for prison staff and designed postgraduate courses on prison management with a gender perspective.

DPKO focuses heavily on training judicial affairs officers, prison officers and UN police. DPKO has incorporated gender-sensitivity training in the pre-deployment training for government-provided prison personnel, which includes the Standard Minimum Rules for the Treatment of Prisoners and the Standard Minimum Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules). DPKO also launched the UNPOL Gender Manual in 2015 as a repository of standardized processes, procedures and templates on gender mainstreaming of policing in peacekeeping based on good practices.

Sources: [A/CONF.222/10](#), para. 23 and UN Women and UNDP, [Improving Women’s Access to Justice: During and After Conflict: Mapping UN Rule of Law Engagement](#), p. 38, (New York, 2014).

## Women participate in justice institutions

### BOX A.4.10 Increasing the number of female prison officers in Japan

A study in **Japan** revealed that half of the female officers working in women's prisons were in their 20s, and many possessed limited experience. It implied that female officers quit their jobs when they reached their 30s. This was the result of long, irregular working hours, the high level of stress on female officers and the burden of working with difficult inmates. Prison authorities therefore decided that improving support for young female officers was a critical priority, especially in the context of the increased number of women prisoners overall. In order to secure the stable employment of female prison officers, build their capacity and improve their working environment, authorities launched the "Marguerite Action" to improve conditions in women's prisons. Commitments included a new recruitment plan to increase the number of female officers; promoting the re-employment of female officers; improving training content for senior female officers; opportunities for promotion into administrative positions; expansion of job categories for female officers; opportunities for the exchange of opinions and information among female officers; and promoting public relations/improving the public image of female officers.

Source: Masako Natori, "Capacity-Building of Female Correctional Officers: from the Perspective of Administration of Women's Prisons in Japan", in UNAFEI, [Report of the Workshop](#), pp. 87-92.

## Appendix III: Additional resources

### International instruments

- OHCHR and the International Bar Association, [Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers](#), (2008)
- United Nations General Assembly Resolution 61/177, [International Convention for the Protection of All Persons from Enforced Disappearance](#), (2006)
- United Nations ECOSOC (Addendum), [Updated set of principles for the protection and promotion of human rights through action to combat impunity](#), (2005)
- United Nations General Assembly Resolution 60/147, [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), (2005)
- United Nations General Assembly Resolution 57/199, [Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), (2002)
- United Nations General Assembly (recommended) Resolution 55/89, [Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), (2000)
- United Nations General Assembly Resolution 47/133, [Declaration on the Protection of All Persons from Enforced Disappearance](#), (1992)
- Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, [Basic Principles on the Role of Lawyers](#), (1990)
- Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#), (1990)

- Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, [Guidelines on the Role of Prosecutors](#), (1990)
- United Nations ECOSOC (recommended) Resolution 1989/65, [Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions](#), (1989)
- United Nations General Assembly Resolution 43/173, [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#), (1988)
- Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, [Basic Principles on the Independence of the Judiciary](#), (1985)
- United Nations General Assembly Resolution 40/34, [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#), (1985)
- United Nations ECOSOC (approved) Resolution 1984/50, [Safeguards guaranteeing protection of the rights of those facing the death penalty](#), (1984)
- United Nations General Assembly Resolution 39/46, [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), (1984)
- United Nations General Assembly Resolution 37/194, [Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), (1982)
- United Nations General Assembly Resolution 34/169, [Code of Conduct for Law Enforcement Officials](#), (1979)
- United Nations General Assembly Resolution 3452(XXX), [Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), (1975)

## Access to legal aid

- UNODC, [Model Law on Legal Aid in Criminal Justice Systems with Commentaries](#), (2017)
- UNDP, [Legal Aid Service Provision: A Guide on Programming in Africa](#), (2014)
- UNODC and UNDP, [Early Access to Legal Aid in Criminal Justice Processes: A Handbook for Policymakers and Practitioners](#), (2014)
- UNDP, [Programming for Justice: Access for All: A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice](#), (2005)

# ENDNOTES

- 1 The terms “arrest”, “detained person” and “imprisoned person” are understood as defined in United Nations, General Assembly, Resolution 43/173, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, Annex, paras. (a)-(c), 9 December 1988, A/RES/43/173.
- 2 Roy Walmsley, *World Female Imprisonment List, Women and girls in penal institutions, including pre-trial detainees/remand prisoners*, 3<sup>rd</sup> ed., p. 2, (London, World Prison Brief and Institute for Criminal Policy Research, 2015).
- 3 United Nations, General Assembly, Note by the Secretary-General, *Pathways to, Conditions and Consequences of Incarceration for Women*, paras. 5-32, 21 August 2013, A/68/340. This note was prepared by the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo.
- 4 UNODC, *Handbook on Women and Imprisonment: 2<sup>nd</sup> edition, with reference to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules)*, Criminal Justice Handbook Series, p. 4, (United Nations publication, Sales No. E.14.IV.3).
- 5 Rosemary Barberet, *Women, Crime and Criminal Justice: A Global Enquiry*, p. 33, (Abingdon, Routledge, 2014).
- 6 United Nations, General Assembly, Resolution 65/229, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, Annex, Rule 66, 21 December 2010, A/RES/65/229 and United Nations, ECOSOC, Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Addendum, Guidelines 4-6, 20 May 2002, E/2002/68/Add.1.
- 7 United Nations, CEDAW Committee, *General Recommendation No. 33 on Women’s Access to Justice*, para. 49, 3 August 2015, CEDAW/C/GC/33.
- 8 Stephanie S. Covington and Barbara E. Bloom, “Gendered Justice: Women in the Criminal Justice System”, in *Gendered Justice: Addressing Female Offenders*, Barbara E. Bloom, ed., pp. 2-4, (Durham, North Carolina, Carolina Academic Press, 2003).
- 9 UNODC, *Handbook on Strategies to Reduce Overcrowding in Prisons*, Criminal Justice Handbook Series, p. 181, (New York, United Nations, 2013). Prepared in cooperation with the ICRC.
- 10 A/RES/43/173, Annex, para. (a).
- 11 UNODC, *Handbook on Strategies to Reduce Overcrowding in Prisons*, p. 97.
- 12 Merriam-Webster’s Law Dictionary, “Custody”, available from <https://www.merriam-webster.com/dictionary/custody#legalDictionary> (accessed 15 March 2018).
- 13 A/RES/43/173, Annex, para. (d).
- 14 Ibid., Annex, para. (b).
- 15 UNODC, *Handbook on Strategies to Reduce Overcrowding in Prisons*, p. 185.
- 16 A/RES/43/173, Annex, para. (e).
- 17 Ibid., Annex, para. (c).
- 18 Ibid., Annex, para. (f).

- 19 United Nations, General Assembly, Resolution 45/110, *United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)*, Annex, Rule 2.1, 14 December 1990, A/RES/45/110.
- 20 Merriam-Webster's Law Dictionary, "Penal", available from <https://www.merriam-webster.com/dictionary/penal#legalDictionary> (accessed 15 March 2018).
- 21 UNODC, *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment*, Criminal Justice Handbook Series, p. 44, (United Nations publication, Sales No. E.07.XI.2).
- 22 United Nations, General Assembly, Resolution 40/34, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, Annex, para. 1, 29 November 1985, A/RES/40/34.
- 23 The international legal framework concerning girls and boys in conflict with the law also includes: United Nations, General Assembly, Resolution 40/33, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)*, 29 November 1985, A/RES/40/33; United Nations, General Assembly, Resolution 44/25, *Convention on the Rights of the Child*, 20 November 1989, A/RES/44/25; United Nations, General Assembly, Resolution 45/112, *United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)*, 14 December 1990, A/RES/45/112; United Nations, General Assembly, Resolution 45/113, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, 14 December 1990, A/RES/45/113; United Nations, General Assembly, Resolution 69/194, *United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice*, 18 December 2014, A/RES/69/194; and United Nations, ECOSOC, Resolution 1997/30, *Administration of Juvenile Justice*, Annex, 21 July 1997, E/RES/1997/30.
- 24 Refer to the Annex of United Nations, ECOSOC, Resolution 2002/13, *Action to promote effective crime prevention*, 24 July 2002, E/RES/2002/13.
- 25 Refer to the Annex of United Nations, General Assembly, Resolution 65/228, *Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women*, 21 December 2010, A/RES/65/228.
- 26 Constitution of Sudan 2005, Art. 36 and Constitution of South Sudan 2011 with amendments through 2013, Art. 21.
- 27 UN Women, Dashboard, Global Gender Equality Constitutional Database, (2016), available from <http://constitutions.unwomen.org/en/dashboard> (accessed 15 March 2018).
- 28 Currently, only South Africa provides for inclusive provisions (racial and gender) on membership of constitutional bodies. See Constitution of the Republic of South Africa 1996 with amendments through 2012, sect. 174.
- 29 United Nations, Guidance Note of the Secretary-General, *United Nations Assistance to Constitution-making Processes*, pp. 3-5, (New York, 2009) establishes some general guidelines on constitutional reform, and recommends ensuring consultation with all groups in society, including women.
- 30 UNODC, *Handbook on Women and Imprisonment*, p. 124.
- 31 "Adultery as a criminal offence violates women's human rights", see United Nations, Human Rights Council, *Report of the Working Group on the Issue of Discrimination against Women in Law and in Practice*, para. 49, 2 April 2015, A/HRC/29/40 and UNODC, *Handbook on Women and Imprisonment*, p. 123.
- 32 CEDAW/C/GC/33, paras. 49, 51(I).
- 33 See A/68/340, paras. 19-20 and UNODC, *Handbook on Women and Imprisonment*, p. 123.

- 34 See the discussion of Indian case law on “grave and sudden provocation” and “sustained provocation” in Linklaters LLP for Penal Reform International, *Women Who Kill in Response to Domestic Violence: How Do Criminal Justice Systems Respond?*, p. 56, (London, 2016).
- 35 *Ibid.*, pp. 5-6.
- 36 This could be considered as cruel punishment in violation of United Nations, General Assembly, Resolution 39/46, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, A/RES/39/46.
- 37 UNODC, *Handbook on Women and Imprisonment*, p. 124.
- 38 A/RES/65/229, Annex, Rule 59 holds that “generally, non-custodial means of protection, for example in shelters managed by independent bodies, non-governmental organizations or other community services, shall be used to protect women who need such protection. Temporary measures involving custody to protect a woman shall only be applied when necessary and expressly requested by the woman concerned and shall in all cases be supervised by judicial or other competent authorities. Such protective measures shall not be continued against the will of the woman concerned.”
- 39 A/68/340, para. 22.
- 40 United Nations, General Assembly, Resolution 67/187, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, Annex, para. 14, 20 December 2012, A/RES/67/187.
- 41 *Ibid.*, Annex, paras. 32-33.
- 42 *Ibid.*, Annex, para. 26.
- 43 *Ibid.*, Annex, para. 31.
- 44 *Ibid.*, Annex, paras. 37-38.
- 45 *Ibid.*, paras. 52, 63-66.
- 46 UNODC, *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment*, p. 70.
- 47 UNODC, *Handbook on Women and Imprisonment*, p. 108. For more information on alternatives to imprisonment see UNODC, *Handbook on Restorative Justice Programmes*, Criminal Justice Handbook Series, pp. 13-32, (United Nations publication, Sales No. E.06.V.15).
- 48 This is very important, not just as crime prevention, but also as part of the response and assistance provided to women in conflict with the law. For more on crime prevention approaches see UNODC and International Centre for the Prevention of Crime, *Handbook on the Crime Prevention Guidelines: Making Them Work*, Criminal Justice Handbook Series, (United Nations publication, Sales No. E.10.IV.9) and A/RES/65/229, Annex, Rules 67, 69.
- 49 Similar research into girls in conflict with the law identified relevant risk factors to be addressed in crime prevention policies to include: family factors; sexual and/or physical abuse; school problems; early sexual activity; association with delinquent peers and gangs; and substance abuse. See Covington and Bloom, “Gendered Justice: Women in the Criminal Justice System”, in *Gendered Justice: Addressing Female Offenders*, p. 10.
- 50 See A/RES/67/187, Annex, footnote 10: “The right to legal aid of suspects arises before questioning, when they become aware that they are the subject of investigation, and when they are under threat of abuse and intimidation, e.g., in custodial settings.”
- 51 UNODC and UNDP, *Early Access to Legal Aid in Criminal Justice Processes: A Handbook for Policymakers and Practitioners*, Criminal Justice Handbook Series, pp. 1, 19-21, (New York, United Nations, 2014).

- 52 See A/RES/67/187, Annex, paras. 26, 32-33.
- 53 Ibid., Annex, para. 31.
- 54 Regarding pretrial detention, see United Nations, General Assembly, Resolution 70/175, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, Annex, Rules 111-120, 17 December 2015, A/RES/70/175.
- 55 A/RES/67/187, Annex, paras. 37-38.
- 56 CEDAW/C/GC/33, para. 51(p). See A/RES/65/229, Annex, Rules 57-62 on relevant alternatives for women offenders.
- 57 This would be in line with A/RES/65/229, Annex, Rule 64.
- 58 See UNODC, *Handbook on Restorative Justice Programmes*, pp. 72-73. The Tokyo Rules call for the use of non-custodial sentences and alternative measures at the pretrial stage, the sentencing stage and the post-sentencing stage. See A/RES/45/110, Rules 5-9. The Bangkok Rules, which supplement the Tokyo Rules, similarly require criminal justice actors to apply these alternatives in a manner that takes the specific needs of women into account. See A/RES/65/229, Rules 57-62. For a detailed overview of the implementation of the relevant provisions see UNODC, *Information Note for Criminal Justice Practitioners on Non-custodial Measures for Women Offenders*, (Vienna, n.d.). See also UNODC, *A Second Chance: A Report on Alternatives to Imprisonment and the Social Reintegration of Offenders in Kenya*, p. 61, (Nairobi, 2013), recommending halfway houses for women.
- 59 A/RES/65/228, Annex, para. 15(k) provides that “claims of self-defence by women who have been victims of violence, particularly in cases of battered women syndrome, are taken into account in investigations, prosecutions and sentences against them”.
- 60 A/RES/65/229, Annex, Rules 45, 60.
- 61 Ibid., Annex, Rules 60, 62.
- 62 Ibid., Annex, Rule 20.
- 63 Ibid., Annex, Rule 24 and A/RES/70/175, Annex, Rule 48(2). See American College of Obstetricians and Gynecologists, Committee on Health Care for Underserved Women, *Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females*, Committee Opinion No. 511, (Washington, D.C., 2011); United Nations, Human Rights Committee, *CPR General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women)*, para. 15, 29 March 2000, CCPR/C/21/Rev.1/Add.10; and United Nations, Committee Against Torture, *Concluding Observations on the Combined Third to Fifth Periodic Reports of United States of America*, para. 21, 20 November 2014, CAT/C/USA/CO/3-5, which reads: “the Committee notes that 19 states have enacted laws restricting the shackling of pregnant inmates and that such legislation has been under consideration in a number of other states. The Committee is nevertheless concerned at reports that, in certain cases, incarcerated women are still shackled or otherwise restrained throughout pregnancy and during labour, delivery and postpartum recovery (arts. 2, 11, 12, 13, 14 and 16).”
- 64 A/RES/65/229, Annex, Rules 22, 23.
- 65 A/RES/70/175, Annex, Rule 39(3).
- 66 A/RES/65/229, Annex, Rules 6, 12-13, 16, 35 and A/RES/70/175, Annex, Rules 30(c), 31, 45(2), 76(d), 109.
- 67 A/RES/65/229, Annex, Rules 6-18.
- 68 Ibid., Annex, Rule 7.
- 69 Ibid., Annex, Rule 25(1).

- 70 Ibid., Annex, Rule 25(2).
- 71 See United Nations, General Assembly, Resolution S-30/1, *Our Joint Commitment to Effectively Addressing and Countering the World Drug Problem*, Annex, paras. 4(b), (d), (g), (n), 19 April 2016, A/RES/S-30/1.
- 72 A/RES/65/229, Annex, Rules 26, 44.
- 73 A/RES/70/175, Annex, Rules 11(a), 81.
- 74 A/RES/65/229, Annex, Rule 41(c).
- 75 Ibid., Annex, Rule 45.
- 76 Ibid., Annex, Rules 43, 45.
- 77 Ibid., Annex, Rules 60, 62. A/RES/70/175, Annex, Rule 104(1) recommends compulsory education for illiterate prisoners for effective integration into society.
- 78 A/RES/65/229, Annex, Rules 46-47.
- 79 Ibid., Annex, Rule 49.
- 80 See UNODC, “Afghan women prisoners and their children in the first female-only prison in Kabul”, available from <http://www.unodc.org/unodc/en/multimedia.html?vf=/documents/video/2010/kabul-prison.flv> (accessed 15 March 2018).
- 81 A/RES/65/229, Annex, Rule 52(3).
- 82 Ibid., Annex, Rules 52, 54-55 and UNODC, *Commentary to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules)*, p. 42, (Bangkok, 2009).
- 83 See A/RES/67/187, Annex, paras. 60-62.
- 84 Ibid., Annex, para. 41(f) provides that “if the means test is calculated on the basis of the household income of a family, but individual family members are in conflict with each other or do not have equal access to the family income, only the income of the person applying for legal aid is used for the purpose of the means test.”
- 85 A/RES/65/229, Annex, Rule 2(1) holds that “newly arrived women prisoners shall be provided with facilities to contact their relatives; access to legal advice; information about prison rules and regulations, the prison regime and where to seek help when in need in a language that they understand; and, in the case of foreign nationals, access to consular representatives as well.” For information on assisting foreign prisoners through transfer see UNODC, *Handbook on the International Transfer of Sentenced Persons*, Criminal Justice Handbook Series, pp. 9-11, (New York, United Nations, 2012).
- 86 UNODC, *Information Note for Criminal Justice Practitioners on Non-custodial Measures for Women Offenders*, p. 7.
- 87 A/RES/65/229, Annex, Rule 70(4) specifically recommends that “training programmes on the present rules and the results of research shall be developed and implemented for relevant criminal justice officials to raise their awareness and sensitize them to their provisions contained therein.”
- 88 UNPOL, *United Nations Police Gender Toolkit: Standardised Best Practices on Gender Mainstreaming in Peacekeeping*, Handbook, 1<sup>st</sup> ed., p. 115, (n.p., 2015).
- 89 United Nations, Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers*, Gabriela Knaul, para. 96, 7 June 2012, A/HRC/20/19.
- 90 See United Nations, ECOSOC, Resolution 2007/22, *Strengthening basic principles of judicial conduct*, 26 July 2007, E/RES/2007/22; *The Bangalore Principles of Judicial Conduct, adopted by the Judicial Group on Strengthening Judicial Integrity, revised at the Round Table Meeting of Chief Justices, The Hague, 25-26 November 2002*, E/CN.4/2003/65; and United Nations, *Basic*

*Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 26 August-6 September 1985, A/Conf.121/22/Rev.1.*

- 91 A/RES/67/187, Annex, paras. 37-38.
- 92 Ibid., Annex, para. 52(b).
- 93 A/RES/65/229, Annex, Rules 32-35. See discussion of prison staff in UNODC, *Handbook on Women and Imprisonment*, pp. 27-30.
- 94 A/RES/65/229, Annex, Rule 29.
- 95 UNODC, *Handbook on Women and Imprisonment*, p. 108. For information on these options see UNODC, *Handbook on Restorative Justice Programmes*, pp. 13-32.
- 96 CEDAW/C/GC/33, para. 51(o).
- 97 Ibid., para. 51(n).
- 98 A/RES/65/229, Annex, Rule 25(3).
- 99 CEDAW/C/GC/33, para. 51(o).
- 100 A/RES/65/229, Annex, Rule 30.
- 101 Ibid., Annex, Rule 29.
- 102 Ibid., Annex, Rule 19.
- 103 See A/RES/65/228, Annex, paras. 16(b), (l) and A/RES/67/187, Annex, paras. 52(b)-(c).
- 104 A/RES/67/187, Annex, para. 52.
- 105 A/RES/65/229, Annex, Rules 29-30. See UNPOL, *United Nations Police Gender Toolkit*, p. 115.
- 106 For examples of gender-related reform in police forces see Geneva Centre for the Democratic Control of Armed Forces, *Gender and Security Sector Reform: Examples from the Ground*, pp. 6-18, (Geneva, 2011).
- 107 A/RES/67/187, Annex, paras. 65-66.
- 108 A/RES/65/229, Annex, Rule 46.
- 109 Ibid., Annex, Rule 7(1).
- 110 Ibid., Annex, Rule 25(1).
- 111 See UNODC, *Handbook on Improving Access to Legal Aid in Africa*, Criminal Justice Handbook Series, p. 36, (New York, United Nations, 2011).





*Empowered lives.  
Resilient nations.*

