

# A Practitioner's Toolkit on Women's Access to Justice Programming



Empowered lives.  
Resilient nations.



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Design: Irene Ramirez

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*Empowered lives.  
Resilient nations.*





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# FOREWORD

Discriminatory justice systems deny women and their families protection, accountability and reparation—leading to impunity for perpetrators and a cyclical pattern of further violations. Justice is a right in itself as well as an enabler of all other rights. Yet many women and girls—particularly those who face multiple and intersecting forms of discrimination—experience the justice system not as a bastion for the vulnerable but rather as a preserve of a privileged few.

The effective implementation of the 2030 Agenda for Sustainable Development is not conceivable without access to justice. If the commitment of leaving no one behind is to be attained, justice services must reach the excluded. When women’s rights are protected through effective justice systems, pathways are created for inclusion, poverty reduction and sustainable peace.

This Practitioner’s Toolkit on Women’s Access to Justice Programming harnesses experiences, lessons and promising practices to ensure non-discriminatory and inclusive justice systems. It is meant to inform and inspire comprehensive, rights-based access to justice programming that recognizes women’s rights as indivisible and interdependent. The Toolkit signals a determination to explore new ways of doing business.

The United Nations Development Group’s core principles for integrated programming—leave no one behind; human rights, gender equality and women’s empowerment; sustainability and resilience; and accountability—provide a timely catalyst for recalibrating the United Nations system’s work on women’s access to justice.

We stand ready to work with Member States, civil society organizations, religious and traditional leaders, the private sector and the rest of the United Nations system to ensure the effective utilization of this Toolkit through technical cooperation at country, regional and global levels.



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Executive Director  
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# PREFACE

This Practitioner's Toolkit on Women's Access to Justice Programming (Toolkit) was jointly developed by 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) to improve justice delivery and outcomes for women and girls around the world.

Access to justice for all is a critical litmus test of peaceful, just and inclusive societies and a sine qua non for substantive equality, human rights and sustainable development.

Globally, women face barriers to obtaining justice in their capacities as claimants, victims, witnesses or offenders, often driven by institutional, policy and legislative failure to remove discrimination, gender bias, stereotyping, stigma, indifference, corruption and impunity. Women who face multiple and intersecting forms of discrimination as well as those affected by conflict and its aftermath, are often at the backend of justice service delivery.

This Toolkit demonstrates that challenging as they are, these barriers are not insurmountable. It provides practical guidance on how to address them across justice systems and within the contexts of: marriage, family and property rights; ending violence against women; and women in conflict with the law, with special reference to programming at country level. It reaffirms the importance of justice for women through a range of examples of innovative programming, grounded in a human rights approach and builds on three mutually reinforcing programmatic entry points: (i) reforming formal and informal legal norms, policies and budgets that discriminate against women; (ii) reforming justice institutions with a view to making them effective, accountable and gender-responsive; and (iii) legally empowering women. This three-pronged approach provides both women as rights-holders and justice institutions as duty-bearers with the tools for transformative justice.

Designed primarily for staff of the United Nations system, the Toolkit presents a menu of options for responding to the current deficits in women's access to justice programming and the growing demand for technical assistance in this area. It consolidates and complements existing resources and aims at stimulating bolder gender-responsive justice interventions for the full realization of the rights of women and girls in all countries.

# ACKNOWLEDGEMENTS

## Production and coordination

This Practitioner's Toolkit on Women's Access to Justice is a joint publication of UN Women, UNDP, UNODC and OHCHR. It was produced under the overall guidance of a Steering Committee consisting of UN Women (Beatrice Duncan and Begoña Lasagabaster), UNDP (Ana Patricia Graca and Evelyn Edroma), UNODC (Claudia Baroni, Sven Pfeiffer and Valerie Lebaux) and OHCHR (Women's Human Rights and Gender Section)<sup>1</sup>. Substantive coordination was provided by UN Women.

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<sup>1</sup> In compliance with internal policy, OHCHR does not attribute authorship of its publications to individuals.



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# LIST OF ACRONYMS AND ABBREVIATIONS

<b>7-PAP</b>	Secretary General's 7-Point Action Plan	<b>GR</b>	General Recommendation
<b>ADR</b>	Alternative Dispute Resolution	<b>HIV/AIDS</b>	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
<b>ASEAN</b>	Association of Southeast Asian Nations	<b>IASC</b>	Inter-Agency Standing Committee
<b>AusAID</b>	Australian Agency for International Development	<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>BDPfA</b>	Beijing Declaration and Platform for Action	<b>ICT</b>	Information and Communications Technology
<b>CBO</b>	Community-Based Organization	<b>ICJ</b>	International Commission of Jurists
<b>CCA</b>	Common Country Analysis	<b>IDLO</b>	International Development Law Organization
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women	<b>ILO</b>	International Labour Organization
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities	<b>INGO</b>	International Non-Governmental Organization
<b>CSO</b>	Civil Society Organization	<b>IOM</b>	International Organization for Migration
<b>CSW</b>	Commission on the Status of Women	<b>ISF</b>	Integrated Strategic Framework
<b>DAW</b>	Division for the Advancement of Women	<b>JLOS</b>	Justice, Law and Order Sector
<b>DESA</b>	United Nations Department of Economic and Social Affairs	<b>NAP</b>	National Action Plan
<b>DPKO</b>	United Nations Department of Peacekeeping Operations	<b>NGO</b>	Non-Governmental Organization
<b>DRC</b>	Democratic Republic of Congo	<b>NHRI</b>	National Human Rights Institution
<b>ECOSOC</b>	United Nations Economic and Social Council	<b>NPA</b>	National Plan of Action
<b>FGM/C</b>	Female Genital Mutilation/Cutting	<b>OAS</b>	Organization of American States
<b>FIDA-Ghana</b>	International Federation of Women Lawyers, Ghana	<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>GFP</b>	Global Focal Point		

<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights	<b>UNICEF</b>	United Nations Children’s Fund
<b>PEKKA</b>	Pemberdayaan Perempuan Kepala Keluarga	<b>UNMISS</b>	United Nations Mission in South Sudan
<b>PHR</b>	Physicians for Human Rights	<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>PSG</b>	Peacebuilding and Statebuilding Goal	<b>UNPOL</b>	United Nations Police
<b>QCPR</b>	Quadrennial Comprehensive Policy Review	<b>UNSC</b>	United Nations Security Council
<b>SDG</b>	Sustainable Development Goal	<b>UNSCR</b>	United Nations Security Council Resolution
<b>SGBV</b>	Sexual and Gender-Based Violence	<b>UPR</b>	Universal Periodic Review
<b>SMS</b>	Short Message Service	<b>WHO</b>	World Health Organization
<b>UNAFEI</b>	United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders	<b>WPS</b>	Women, Peace and Security
<b>UN Women</b>	United Nations Entity for Gender Equality and the Empowerment of Women	<b>ZWLA</b>	Zimbabwe Women Lawyers Association
<b>UNAMA</b>	United Nations Assistance Mission in Afghanistan		
<b>UNAMID</b>	United Nations–African Union Mission in Darfur		
<b>UNCT</b>	United Nations Country Team		
<b>UNDAC</b>	United Nations Disaster Assessment and Coordination		
<b>UNDAF</b>	United Nations Development Assistance Framework		
<b>UNDG</b>	United Nations Development Group		
<b>UNDP</b>	United Nations Development Programme		
<b>UNDS</b>	United Nations Development System		
<b>UNFPA</b>	United Nations Population Fund		
<b>UNHCR</b>	United Nations High Commissioner for Refugees		

# Introduction

# 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			

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Above: Tunisia. A pottery artist based in Senjane. © World Bank/Arne Hoel.



# 1.0 Summary

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This Toolkit is primarily aimed at relevant staff of the United Nations system and has been designed in response to current gaps in women’s access to justice programming. This straddles the growing demand for technical assistance and the momentum for transformative change that is evolving from the 2030 Agenda for Sustainable Development. Premised on the human rights-based approach to programming,<sup>1</sup> it supports sustainable women’s access to justice through the United Nations Development Group’s (UNDG) four integrated programming principles for United Nations Development Assistance Frameworks (UNDAFs)—leave no one behind; human rights, gender equality and women’s empowerment; sustainability and resilience; and accountability, as well as the three mutually reinforcing entry points for women’s access to justice programming:

- **Creating an enabling environment for women’s access to justice** through reforming formal and informal legal norms that discriminate against women, including addressing the absence of gender-responsive norms and making the macro environment more supportive of women’s justice needs.
- **Reforming justice institutions** to make them effective, accountable and gender-responsive as front-line points of contact.
- **Legally empowering women** through actions which are important for sustaining the first two entry points. These include empowering women and girls with the tools to know, claim and exercise their rights and extending knowledge of women’s rights to men, boys and community power structures.

In this regard, the Toolkit elaborates on the requisite capacities that are needed by both rights-holders and duty-bearers to claim their rights and to fulfil their obligations, respectively. It is anchored in the 2030 Agenda for Sustainable Development, and in other key instruments and agreements, including: international and regional human rights treaties; United Nations standards and norms in crime prevention and criminal justice; concluding observations, recommendations and comments of human rights treaty bodies and the Universal Periodic Review (UPR); Sustaining Peace Resolutions of the General Assembly and United Nations Security Council (UNSC); United Nations Security Council Resolutions (UNSCR) on [Women, Peace and Security](#) (WPS); Peacebuilding and Statebuilding Goals (PSGs) of g7+ countries; and the United Nations General Assembly and Economic and Social Council (ECOSOC), Report of the Secretary-General, [Repositioning the United Nations Development System to Deliver on the 2030 Agenda: Ensuring a Better Future for All](#).

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## Ban Ki-Moon, the Eighth Secretary-General of the United Nations

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“Justice is central to the effort to help women become equal partners in decision-making and development. Without justice, women are disenfranchised, disempowered and denied their rightful place. But with sound legal and justice systems, women can flourish and contribute to the advancement of society, including by helping to improve those very same systems for future generations – daughters and sons alike.”

Source: UN Women, [Progress of the World’s Women, 2011–2012: In Pursuit of Justice](#), p. 2, (New York, 2011).

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The Toolkit is a response to the programming challenges of the new and emerging development environment of the twenty-first century

Access to justice is an important entry point for tackling discrimination against women

The Toolkit consists of five Modules. Module 1 presents a broad overview of the key elements of women’s access to justice programming and Module 2 to Module 5 provide thematic “deep dives” into specific areas of women’s access to justice. Intended as a dynamic tool in response to the rapidly evolving nature of the gender and development environment, the initial five Modules are as follows:

- Module 1: The Theory and Practice of Women’s Access to Justice
- 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

This Introduction sets out the rationale, methodology and building blocks that underpin this Toolkit. It identifies the important role that women’s access to justice plays in addressing gender discrimination and the imperative for specific programming guidance on how this can be done.

## 1.1 The need for a Toolkit

An estimated four billion people are excluded from the benefits of the rule of law, and as a result, are deprived of the means to live in dignity and escape poverty.<sup>2</sup> The 2030 Agenda for Sustainable Development signals an urgency to reverse this trend.

[Sustainable Development Goal \(SDG\) 16](#) seeks to promote “peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”. The means of achieving this is partly reflected in Target 16.3, which measures the extent to which the rule of law and equal access to justice for all are being promoted at the national and international levels. A recent analysis by the [Pathfinders for Peaceful, Just and Inclusive Societies](#) demonstrates that there are important synergies between SDG 16 and other SDGs: as many as 36 SDG Targets are relevant to peace, inclusion or access to justice.<sup>3</sup> To this extent, the world community is agreed that there will be no sustainable development without peace, and no peace without sustainable development.

However, justice will not be “equal” and for “all” unless the root causes of discrimination in access and delivery are addressed. Throughout the world, women continue to experience discrimination in the exercise of their rights through official bias, corruption, impunity, stigma, indifference and systematic failures. Key entry points for reversing such trends are effective laws and justice systems—recognized as mechanisms for shaping society, through enforcement, the elimination of the abuse of power and the creation of a clear pathway for achieving rights.<sup>4</sup> While constitutional and legislative advancements have been made in favour of women, the transformative power of the law cannot be galvanized without continuing reforms, as discriminatory laws contribute to inequalities within society (SDG Target 10.3).

For desired impact on the ground, it is important that UN staff working in the field of access to justice are aware of both the barriers that women face in accessing justice and the implications of the evolving development landscape on their work. This is particularly

important within the context of the anticipated exponential growth in technical assistance to further the objectives of the 2030 Agenda for Sustainable Development. The World Bank estimates that by 2030, 46 per cent of the world's poor will live in areas characterized as fragile or conflict-affected<sup>5</sup> and the United Nations Development System (UNDS) is expected to deliver transformative results in such contexts.

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**BOX 1 The implications of working in crisis-affected environments: A UNDG perspective**

Crisis contexts are regarded as “risk-laden development situations, where the cost of implementation is high and the potential for programme/project failure and financial loss is significant. In response, UNDS donors have stressed the need for improved risk management, coupled with greater emphasis on risk mitigation, management, and sharing. Nonetheless, it is crucial to reduce complexities that constrain risk management, particularly in complex conflict and transition contexts.”

Source: UNDG, [UNDG Programme Risk Management for Pooled Funding Solutions in Conflict and Transition Countries](#), p. 3, (New York, 2015).

As complex as the implementation of SDG 16 will be, it must be context-specific, consensus-based, locally owned and proactive rather than reactive. The term “isomorphic mimicry” has been coined by development practitioners in reference to situations in which external actors use a copy and paste approach to development without a focus on achieving functionality.<sup>6</sup> Calls for external actors to respond to rapidly evolving and complex legal, political, social and cultural ecosystems have increased in recent times.<sup>7</sup> In line with this, the new peacebuilding architecture of the United Nations demands an uprooting of silos across the pillars of development, prevention and peace and security, with an emphasis on crisis prevention rather than responding to crisis.<sup>8</sup> As the new trajectory for delivering justice, this business approach needs elaboration through guidance and tools.

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**BOX 2 Bridging the conflict, post-conflict and development agendas**

International actors, including within the UN system, have yet to absorb fully how their tools and actions must adapt and, in general, too often prefer militarized responses. While these can prove effective in the immediate context of halting violence, they tend to address symptoms rather than root causes. The very nature of such responses, with their emphasis on short-term security and their correspondingly heavy resourcing needs, can sometimes detract support and attention from achieving sustainable peace. ... A change in mind-set is needed: rather than waiting until crisis breaks out and then making a default recourse to a crisis response, timely efforts to prevent conflict and then sustain peace need to be embedded across all sectors and phases of action.

Source: [The Challenge of Sustaining Peace](#), Report of the Advisory Group of Experts for the 2015 Review of the United Nations Peacebuilding Architecture, p. 46, (2015).

The Toolkit presents practitioners with a menu of options for preventing and addressing the obstacles that women face prior to, during and after contact within the justice system. It is informed by the recommendations of two interrelated mapping exercises undertaken by the United Nations to assess its operational activities in relation to women's access to justice in conflict and non-conflict settings, respectively.<sup>9</sup> A common

**What does this Toolkit offer?**

outcome was a call for specific resources to support UN staff in undertaking women's access to justice programming.<sup>10</sup> While several partners have produced resources on access to justice more broadly, as well as on some thematic areas, a resource to facilitate comprehensive and coherent women's access to justice programming had yet to be developed. The mapping exercises also identified programming deficits in ongoing and future work.<sup>11</sup> They include:

- Limited gender-responsive justice planning and capacity-building for justice systems in development settings.
- The lack of comprehensive strategies to take advantage of multiple access points in the justice chain to promote women's access to justice, especially for poor and marginalized women, coupled with severe barriers facing women who experience multiple and intersecting forms of discrimination.
- Inadequate infrastructural development and assistance to local actors in resource mobilization.
- Inadequate engagement with informal justice systems, despite these forums being a significant source of dispute settlement for most women (recognizing, however, that informal justice systems often perpetuate discrimination against women).
- Inadequate measures to mainstream gender-sensitive perspectives beyond sexual and gender-based violence (SGBV), including economic and social justice, in areas such as legal aid, family law and domestic and family violence.
- Inadequate interventions for female prisoners and detainees, in response to the violence that they face, as well as gaps in addressing health and family circumstances.

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For most women in post-conflict environments, the violence does not stop with the official ceasefire or the signing of the peace agreement and often increases in the post-conflict setting. The Committee acknowledges the many reports confirming that, while the forms and sites of violence change, which means that there may no longer be State-sponsored violence, all forms of gender-based violence, in particular sexual violence, escalate in the post-conflict setting. The failure to prevent, investigate and punish all forms of gender-based violence, in addition to other factors such as ineffective disarmament, demobilization and reintegration processes, can also lead to further violence against women in post-conflict periods.

Source: United Nations, CEDAW Committee, General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations, para. 35, 1 November 2013, CEDAW/C/GC/30.

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To the extent possible, this Toolkit brings together the knowledge and tools that are required for gender-responsive justice programming, including those developed by UN agencies, governments and civil society organizations (CSOs). Furthermore, it builds on the following important investments in programming as highlighted by the two mapping exercises:

- Law reform and advocacy
- Training, awareness and education of justice and security sector personnel
- Service provision through entities such as paralegals and CSOs on issues such as SGBV

- Empowering women as agents of change, advocates and rights claimants through, inter alia, CSOs who provide legal aid services, rights awareness and other forms of legal education
- Opportunities presented for integrated rule of law programming in crisis settings through the [Global Focal Point for Police, Justice and Corrections](#) (GFP) arrangement

## 2.0 Women’s access to justice

The concept of justice is rooted in all national cultures and traditions and is closely linked to fairness, equity and impartiality.<sup>12</sup> The United Nations views justice as “an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs.”<sup>13</sup> More recently, the High-Level Meeting of the United Nations General Assembly on Peacebuilding and Sustaining Peace (2018) has stressed that the rule of law and access to justice are key to unlocking the potential of sustaining peace.<sup>14</sup>

Access to justice is both a basic human right and a means of implementation of other human rights. The United Nations Development Programme (UNDP) defines *access to justice* as “the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards.”<sup>15</sup>

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### Access to justice

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- A public good
- An accountability mechanism
- Validates the individual as a holder of rights
- Catalyses poverty eradication
- Contributes to economic growth
- Forms the basis for peace in all societies

Women’s justice needs and experiences may, however, be different from men due to higher levels of poverty and power dynamics in the family and community. Building on the UNDP’s definition of access to justice, the mapping report on non-conflict settings defines women’s access to justice as: “*Access by women, in particular, from poor and disadvantaged groups, to fair, effective, affordable and accountable mechanisms, for the protection of rights, control of abuse of power, and resolution of conflicts. This includes the ability of women to seek and obtain a fair and just remedy through formal and informal justice systems and the ability to influence and participate in law-making processes and institutions.*”<sup>16</sup>

With variations by country, a wide range of formal and informal institutions play a significant role in justice delivery. Formal justice and security sector institutions<sup>17</sup> encompass the broad range of State institutions which administer justice across the justice chain. They may include ministries of justice, ministries of defence and ministries of interior/homeland security (as applicable), as well as the respective departments and agencies of these ministries (e.g., law reform commissions, police, courts, prosecution services, immigration and military). Some of these institutions may be specialized. For example, courts may be created to deal specifically with issues such as family, domestic violence, land and labour. The State may also establish quasi-judicial bodies such as National Human Rights Institutions (NHRIs) and Equal Opportunities Commissions to address legal rights, duties and privileges.

## 2.1 Why focus on women's access to justice?

Justice reforms are needed throughout the world to redress the impact of unequal power relations between men and women. Access to justice is an important dimension of conflict prevention and sustaining peace. CEDAW [General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations](#) (CEDAW GR 30) and CEDAW [General Recommendation No. 33 on Women's Access to Justice](#) (CEDAW GR 33) signal a paradigm shift in justice delivery for women. They emphasize that justice delivery must traverse development, conflict, post-conflict and other forms of crisis contexts, because women and girls are at risk of violence and other forms of violations in all these settings.

The 2030 Agenda for Sustainable Development prioritizes those who are furthest behind, and in many cases, this means women. The diversity of women's personal characteristics and circumstances can lead to complex forms of exclusion, aggravating systemic and structural discrimination, prejudice and stereotyping. Justice programming must therefore strive to be inclusive, which means that no woman can be denied justice due to personal and situational circumstances. Inclusive justice signals a system of justice that is pro-poor and responsive to the rights and needs of all categories of women, particularly those who are marginalized and excluded.

Overall, women's access to justice:

- **Is a means of implementation of women's rights:** Impartial justice institutions signal that women's rights are human rights and, in this context, discrimination against women is eliminated and laws and standards are upheld and enforced.
- **Is central to sustaining peace and the rule of law:** Addressing the myriad of obstacles to women's access to justice before, during or in the aftermath of conflict is essential to eliminating gender-based violence and discrimination.
- **Contributes to the fight against impunity towards women:** The availability of justice signals that women's rights are human rights and that perpetrators of violations of such rights must be held to account.
- **Combats poverty and exclusion:** Accessing justice is a critical pathway to combating poverty, through the protection of economic assets such as land and housing. Strengthening women's property rights also supports income generation, agricultural productivity and food security.
- **Protects from economic exploitation and abuse:** Justice provides legal recourse against unequal pay, sexual harassment and physical harm. By accessing justice, women can address unfair labour practices and exploitation.

## 3.0 Overarching commitments underpinning women's access to justice

A range of standards and norms provide the relevant foundations for designing and implementing women's access to justice programmes. While many additional protocols exist at global and regional levels, the most salient are highlighted and elaborated in this Section (see Table 1). They constitute a framework of agreed commitments, which

demonstrates the essence of bridging the peace and security, human rights and development agendas. By doing so, programming is better able to capture the continuum of violations of women's rights, including in contexts where transitional justice processes have been concluded.

Women's access to justice is underpinned by a range of global standards, norms and guidelines

**TABLE 1 Women's access to justice is underpinned by important standards and norms**

<p><b>2030 Agenda for Sustainable Development</b></p>	<p>This framework contains a set of 17 interconnected Goals, 169 Targets and 232 Indicators for eradicating poverty, promoting human rights, gender equality, good governance, effective participation and the rule of law. The <a href="#">Pathfinders Roadmap for Peaceful, Just and Inclusive Societies</a>, finds that in all, 36 Targets across the Agenda directly measure an aspect of peace, inclusion or access to justice. Of these, one-third are found in SDG 16. <a href="#">SDG 5</a> is also particularly relevant because it encompasses a range of commitments such as reforming discriminatory laws, tackling violence against women, addressing women's property rights and ensuring women's effective and meaningful participation in decision-making.</p>
<p><b>Peacebuilding and Statebuilding Goals</b></p>	<p>Developed by g7+ countries<sup>18</sup> with bilateral and multilateral donor partners (collectively known as the <a href="#">International Dialogue on Peacebuilding and Statebuilding</a>)<sup>19</sup> the PSGs respond to the specific needs of fragile States in conflict or in its aftermath. This set the stage for <a href="#">A New Deal for Engagement in Fragile States</a> in 2011, which is established on the following five PSGs:</p> <ul style="list-style-type: none"> <li>• Legitimate politics: Foster inclusive political settlements and conflict resolution</li> <li>• Security: Establish and strengthen people's security</li> <li>• Justice: Address injustices and increase people's access to justice</li> <li>• Economic foundations: Generate employment and improve livelihoods</li> <li>• Revenues and services: Manage revenue and build capacity for accountable and fair service delivery.</li> </ul>
<p><b>UNSCRs on Women, Peace and Security</b></p>	<p>All eight UNSCRs on <a href="#">WPS</a> demonstrate important linkages between access to justice, international peace and security and state accountability. The four dimensions of the WPS agenda, namely, (1) prevention, (2) participation, (3) protection and (4) peacebuilding and recovery, are the reference points for dealing with the many challenges that women face in crises and fragile contexts. Given the volatility and instability of political conditions in fragile settings, understanding the situation of women at risk and undertaking political analyses are central to planning and programming for women's access to justice. Significantly, the <a href="#">Report of the Secretary-General</a></p>



	<p><a href="#">on Women's Participation in Peacebuilding</a> (<a href="#">A/65/354-S/2010/466</a>), <a href="#">Tracking Progress: 7-Point Action Plan (7-PAP)</a>, intends to accelerate implementation of UNSCR <a href="#">1325</a> by committing the United Nations system to specific targets. It highlights the need for increased access to justice for women and girls whose rights are violated, including the promotion of women's participation in post-conflict justice mechanisms and law enforcement.<sup>20</sup></p>
<p><b>Sustaining Peace</b></p>	<p>The Sustaining Peace agenda has been shaped by a number of groundbreaking assessments and resolutions. These include the assessment of the High-Level Independent Panel on Peace Operations, <a href="#">Uniting Our Strengths for Peace – Politics, Partnership and People</a>; the Report of the Advisory Group of Experts for the 2015 Review of the United Nations Peacebuilding Architecture, <a href="#">The Challenge of Sustaining Peace</a>; UNSCR <a href="#">2282</a>; and United Nations General Assembly and ECOSOC, Report of the Secretary-General, <a href="#">Repositioning the United Nations Development System to Deliver on the 2030 Agenda: Ensuring a Better Future for All</a>. These frameworks and initiatives emphasize prevention and greater cooperation across the peace and security, human rights and development “pillars” of the United Nations. In this context, UNSCR 2282 recognizes that “an integrated and coherent approach among relevant political, security and developmental actors, within and outside of the United Nations system, consistent with their respective mandates, and the Charter of the United Nations, is critical to sustaining peace, and essential for improving respect for human rights, advancing gender equality, empowering women and youth, strengthening the rule of law, eradicating poverty, building institutions, and advancing economic development in conflict-affected countries”.<sup>21</sup></p>
<p><b>The Convention on the Elimination of All Forms of Discrimination against Women</b></p>	<p>United Nations General Assembly Resolution 34/180, <a href="#">Convention on the Elimination of All Forms of Discrimination against Women</a> (CEDAW) is the global charter of women's rights and therefore, the blueprint for women's access to justice programming. Ratified by 189 countries, the Convention provides the basis for realizing equality between women and men by ensuring women's equal access and equal opportunities in all spheres of economic, social, cultural, political and civil life.<sup>22</sup> States parties agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms. States which have ratified the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with</p>



	<p>their treaty obligations to the Convention’s monitoring body, the CEDAW Committee. United Nations General Assembly Resolution 54/4, <a href="#">Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women</a> also serves as an important access to justice recourse.<sup>23</sup></p>
<p><b>United Nations standards and norms in crime prevention and criminal justice</b></p>	<p>These are instruments which have been adopted by the General Assembly or other intergovernmental bodies based on the consensus of all Member States of the United Nations. They contain detailed guidance for crime prevention and criminal justice practitioners and systems, therefore serving as a roadmap for implementing international obligations on human rights in the administration of justice and related political commitments concerning peace, justice, the rule of law and sustainable development. Examples of standards and norms relating specifically to women’s access to justice include:</p> <ul style="list-style-type: none"> <li>• United Nations General Assembly Resolution 67/187, <a href="#">United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems</a></li> <li>• United Nations General Assembly Resolution 65/229, <a href="#">United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)</a></li> <li>• United Nations General Assembly Resolution 65/228, <a href="#">Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice</a><sup>24</sup></li> <li>• United Nations ECOSOC Resolution 2002/12, <a href="#">Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters</a></li> </ul>
<p><b>General recommendations of the CEDAW Committee</b></p>	<p>Several general recommendations of the CEDAW Committee and other treaty bodies are central to justice programming because they assist in identifying the underlying causes of gender discrimination in justice delivery, as well as actions that are needed to address them. In response to persistent violations of women’s human rights in and outside of conflict, the CEDAW Committee issued CEDAW GR 30 in 2013. Used as a tool for operationalizing the WPS agenda, CEDAW GR 30 emphasizes the need to establish effective linkages between transitional and post-conflict justice mechanisms to ensure that vulnerabilities associated with SGBV are adequately addressed in all phases of development and fragility. In 2015, the CEDAW Committee issued CEDAW GR 33 to guide States parties and other stakeholders on the most effective ways to protect women against violations of their rights across diverse legal systems.</p>

## 4.0 Justice needs of women who face multiple and intersecting forms of discrimination

Women who face intersecting forms of discrimination are more likely to be excluded from justice institutions and justice outcomes, often resulting in a cyclical pattern of marginalization

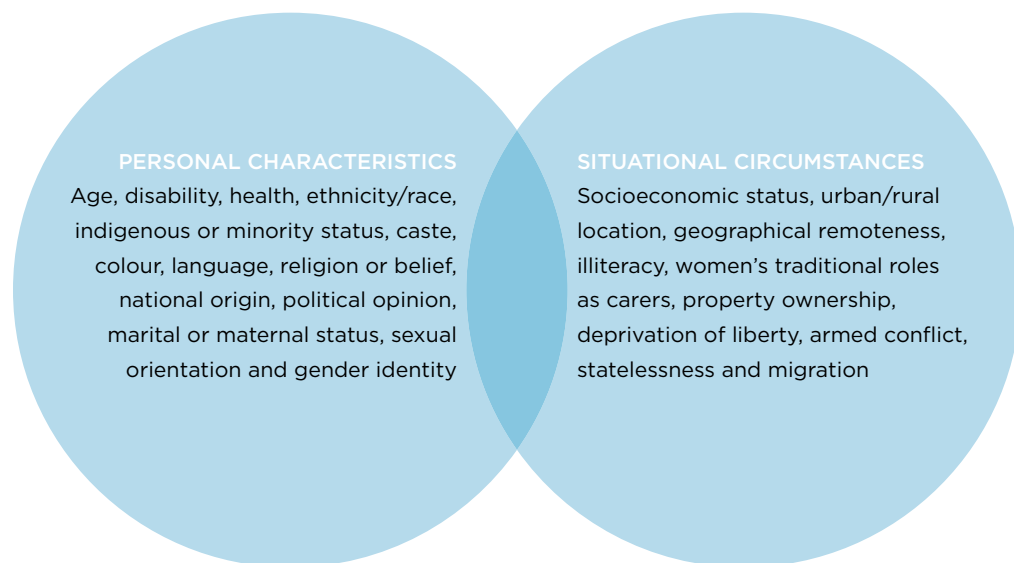
Women are not a homogeneous group. Several personal characteristics and situational circumstances often combine to deepen their exclusion and marginalization. When one or more of the factors highlighted in Figure 1 overlap—as is often the case—the risk of social exclusion and marginalization is not only perpetuated, but also acquires an enduring quality that can span over a lifetime and across generations.

The CEDAW Committee finds that such women are at risk of being deprived of effective remedies for violations of their rights. Women who are marginalized socially, economically, culturally and politically are less likely to report such violations to authorities for fear that they will be humiliated, stigmatized, arrested, deported, tortured or have other forms of violence inflicted upon them. When they do lodge complaints, law enforcement officials often fail to act with due diligence to investigate, prosecute and punish perpetrators and provide remedies.<sup>25</sup>

Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in Article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them.

Source: CEDAW GR 28, para. 18.

**FIGURE 1** Characteristics and situational factors that influence vulnerability



**TABLE 2 Vulnerabilities and rights violations that specific groups of women and girls face**

<p><b>Girls and adolescents</b></p>	<p>Most girls and adolescents <i>will</i> face some form of violation of their rights by the time they reach 18 years of age. They are at risk of early marriage in over 50 countries where the minimum legal age for marriage is lower for women than for men. One in three girls, mainly in developing countries, is married before the age of 18.<sup>26</sup> One hundred million to 140 million girls and women worldwide have undergone female genital mutilation/cutting (FGM/C).<sup>27</sup> Young girls and adolescents lack the voice and status to challenge discrimination, and young wives and mothers have few opportunities to influence the design of informal and formal justice systems so that programming can reflect and address their realities. Being young and female can be a potential source of intersectional discrimination, placing girls and adolescents at much higher risk for gender-based violence, especially during crisis situations, and a heightened likelihood for rape, early marriage, sexual exploitation, abduction and trafficking. Girls and adolescents also lack the social or legal capacity to make significant decisions about their lives in areas relating to education, health and sexual and reproductive rights. There is some urgency to target the needs of this group: the leading causes of death are suicide, complications during pregnancy and childbirth and AIDS.<sup>28</sup></p>
<p><b>Rural women</b></p>	<p>Rural women live in locations where the availability of formal justice institutions may be limited, resulting in substantial direct and indirect costs of accessing justice (i.e., traveling long distances). For women who experience extreme poverty, high levels of illiteracy and lack knowledge of their rights and available services, the obstacles are much greater. Reliance on subsistence agriculture for sustained livelihoods demands that women possess secure land tenure, access to a home and an income, whether through inheritance, marriage or their own labour. See CEDAW <a href="#">General Recommendation No. 34 (2016) on the Rights of Rural Women</a> (CEDAW GR 34) for additional information.</p>
<p><b>Indigenous, Afro-descendant and minority women</b></p>	<p>Women from indigenous, Afro-descendant and minority (national, ethnic, religious and linguistic) groups experience intersectional discrimination resulting from experiences of colonization and militarization, as well as in their personal characteristics (e.g., sex, race, age and ethnicity). They may have limited legal awareness and suffer from inadequate legal protection. Furthermore, lack of intercultural approaches and recognition of their rights leads to limited confidence in State justice institutions and increased reliance on informal systems, which may uphold discriminatory patterns of behaviour and</p>

The barriers that specific groups of women, adolescents and girls face in accessing justice are enormous and include situations such as poverty, lack of autonomy and agency

	<p>practices. See: United Nations General Assembly Resolution 47/135, <a href="#">Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities</a>; United Nations General Assembly Resolution 61/295, <a href="#">United Nations Declaration on the Rights of Indigenous Peoples</a>; and International Labour Organization (ILO), <a href="#">Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries</a>.</p>
<b>Women living with HIV</b>	<p>Women living with HIV experience at least three forms of intersectional discrimination: gender, HIV status and perceived disability. The HIV pandemic magnifies barriers and has a disproportionate impact on women. Women are most vulnerable to contracting HIV and least able to mitigate the impact of the virus if infected. Their rights are compromised because of their real or presumed status, or because of the fear or fact of HIV risk and vulnerability. Women living with HIV experience an ongoing continuum of human rights abuses within their families, communities and in legal and health-care settings that include, but are not limited to, violence, violations of sexual and reproductive rights and the denial of property and inheritance rights.</p>
<b>Women migrants</b>	<p>Women migrants have limited legal protections as non-citizens or as undocumented migrants. They often work in invisible sectors as bonded labourers and domestic workers, outside the purview of government institutions responsible for enforcing employment standards and of law enforcement agencies. Linguistic and legal literacy challenges limit their ability to report abuse and identify institutions and organizations that can support them.</p>
<b>Older women</b>	<p>Older women are defined as those who are 50 years and above.<sup>29</sup> They are disproportionately affected by unequal power relations within the home, illiteracy, discrimination in the distribution of productive resources, unpaid care work and gender bias in employment and in accessing services. Furthermore, older women experience heightened forms of violations of their rights and therefore exclusion and poverty. Compared to other groups, older women are also at greater risk of accusations of witchcraft, widowhood rites and deprivation of property.<sup>30</sup></p>
<b>Sexual orientation and gender identity</b>	<p>Lesbian, bisexual, transgender, intersex and related groups lack legal protection, particularly in the estimated 72 countries where consensual relationships between adults of the same sex are criminalized. Reports of the Special Rapporteur on violence against women, its causes and consequences notes alleged</p>

	incidents of gang rape, corrective rape, family violence and murder experienced by lesbian, bisexual and transgender women in a number of countries, as a result of societal prejudices which often extend into the very systems where women seek protection. <sup>31</sup>
<b>Women with disabilities</b>	Women and girls with disabilities experience discrimination and prejudice in both public and private spaces and crimes committed against women and girls with disabilities are not routinely exposed or reported. Moreover, the lack of accessible justice facilities and services to persons with diverse forms of disability (e.g., visual, physical, hearing, intellectual, mental), results in exclusion from protection and remedies.

## 5.0 Programming principles, approach and methodology

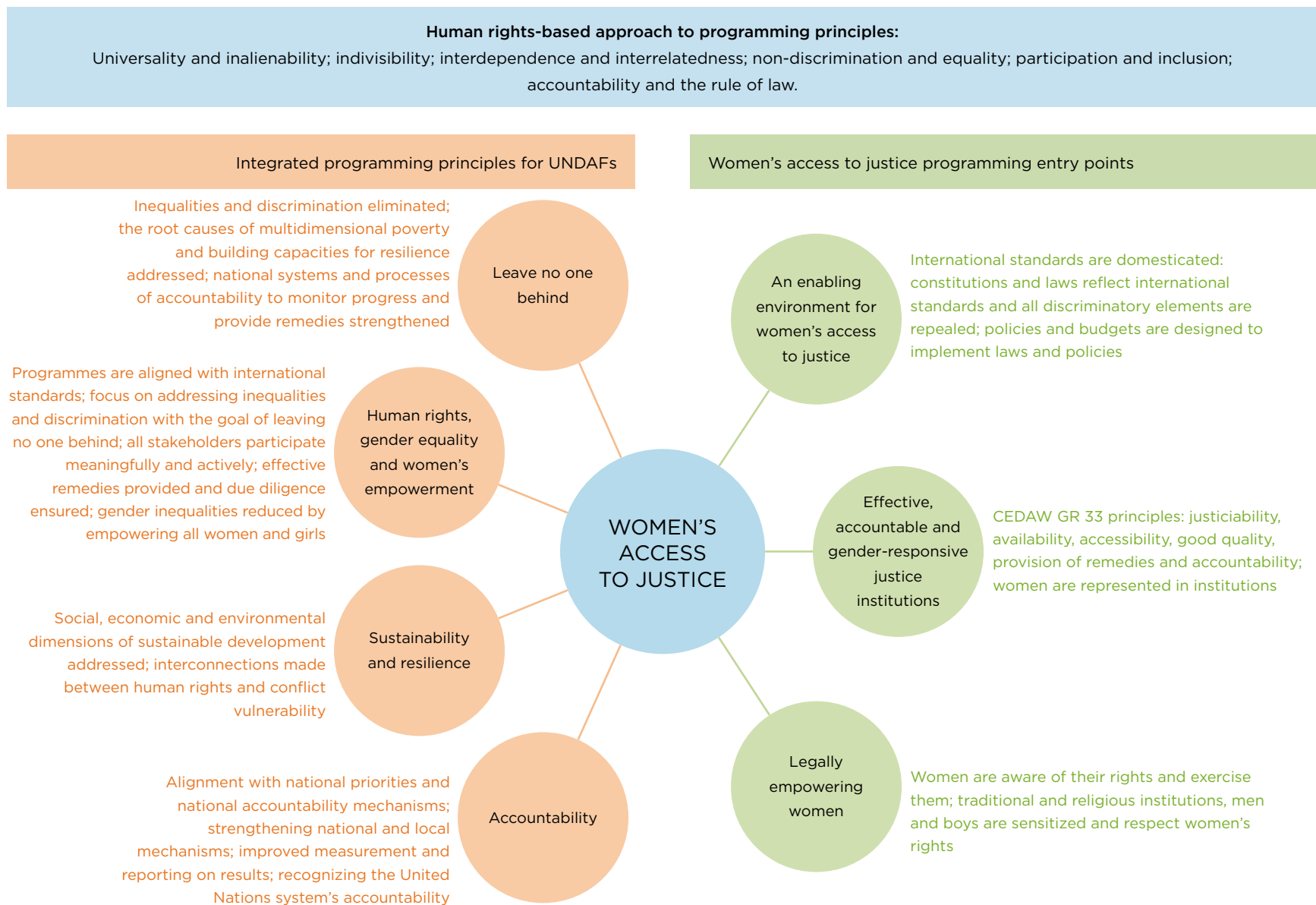
### 5.1 Programming principles and approach of the Toolkit

The adoption of the four UNDAF integrated programming principles (leave no one behind; human rights, gender equality and women’s empowerment; sustainability and resilience; and accountability) and three programming entry points (creating an enabling environment for women’s access to justice; effective, accountable and gender-responsive justice institutions; and women’s legal empowerment) ensure that the following perspectives are taken into account in programming:

- The elimination of discrimination based on both sex and gender across the entire justice chain, recognizing the complex network of actors and institutions.
- The varying needs and circumstances of diverse groups of women. The Toolkit promotes the inclusive agenda of *leave no woman behind*—especially those who face multiple and intersecting forms of discrimination based on personal characteristics and situational circumstances such as age, race, ethnicity, disability, sexual orientation and gender identity, location and HIV/AIDS status.
- A continuum in women’s access to justice programming across all country contexts—conflict, post-conflict, humanitarian and development (low, medium to high human development), including when countries transition across such contexts.
- Limited awareness of *rights-holders* (women) and *duty-bearers* (justice actors) of their rights and duties within and across the justice chain as well as accountability for their actions.
- Considerations for the local context, history, politics and culture of the country in question.

The Toolkit is informed by the four UNDAF integrated programming principles and the human rights-based approach to programming

**FIGURE 2 Principles and entry points for women's access to justice programming**



Sources: UNDG, [United Nations Development Assistance Framework Guidance](#), pp. 9-12, (New York, 2017); [CEDAW GR 33](#); and United Nations, General Assembly, Resolution 70/1, [Transforming Our World: The 2030 Agenda for Sustainable Development](#), 25 September 2015, A/RES/70/1.

## 6.0 Purpose and scope

### 6.1 What is covered by the Toolkit?

This Toolkit presents a common operational model for the design, implementation, monitoring and evaluation of women’s access to justice programmes in all country contexts, crisis situations (conflict, post-conflict, natural disasters and development) and across legal systems.<sup>32</sup>

While relevant to such contexts, the Toolkit is also capable of responding to evolving shifts and developments in global and regional situations. In this context, the Toolkit is a dynamic tool, capable of expanding over time. It elaborates on the theory and practice of women’s access to justice and incorporates thematic “deep dives” into the areas of: (1) marriage, family and property rights; (2) ending violence against women; (3) women in conflict with the law; and (4) programming at the country level.

In line with CEDAW GR 33, “women” as used in this Toolkit includes girls—“for the purposes of the present general recommendation, all references to ‘women’ should be understood to include women and girls, unless otherwise specifically noted.”<sup>33</sup> This approach is consistent with other standards such as the African Union, [Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa](#) (Maputo Protocol); United Nations General Assembly Resolution 48/104, [Declaration on the Elimination of Violence 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>34</sup> and Council of Europe, [Convention on Preventing and Combating Violence against Women and Domestic Violence](#) (Istanbul Convention).

### 6.2 What are the limitations of the Toolkit?

This Toolkit is designed to fill specific gaps in existing resources, and therefore complements, rather than duplicates, tools that are presently available.

Firstly, it does not cover the broader dimensions of access to justice and rule of law, into which the more specific dimensions of women’s access to justice are embedded. Additional scope for examining the wider field of access to justice and rule of law are offered through a number of other resources produced by UN agencies, the World Bank, the Organisation for Economic Co-operation and Development (OECD) and other institutions.

Secondly, justice for the girl child is not included in the context of girls in conflict with the law as juveniles. This is in view of the specialized nature of this important area of law, which is deserving of its own attention and is resourced by several existing tools, particularly those of the United Nations Children’s Fund (UNICEF) and United Nations Office on Drugs and Crime (UNODC).<sup>35</sup> Other aspects of the Toolkit, particularly those that involve legislative and policy reforms, and institutional and empowerment measures in areas such as family law and violence, are, however, relevant to girls and adolescents.

The issues covered in this Toolkit are a starting point. Additional thematic chapters will be developed over time in response to the technical needs of UN staff



Above: Bangladesh. A transgender woman poses at her home. © UNICEF/Jannatul Mawa.

Due to the availability of other resources, the Toolkit does not cover issues of transitional justice, which involve Truth Commissions and various forms of national and international criminal courts and investigative processes.<sup>36</sup>

The Toolkit is expected to catalyse action on the programming gaps identified in the two mapping reports referenced in Section 1.1 and documentation of experiences and lessons will provide opportunities for shaping future Modules.

### 6.3 Methodology

This Toolkit is based on desk reviews of: (1) the current state of published and unpublished literature on women's access to justice globally; (2) UN agencies' and other international and regional organizations' work on rule of law with a focus on women; (3) the positioning of women's access to justice in UNDAFs and justice sector policies; (4) potential indicators that can support measurements in access to justice from a gender perspective at national level, resulting from a partnership between the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) and the Council of Europe; (5) existing technical resources on access to justice generally, and on women's access to justice specifically; (6) WPS frameworks and reports; and (7) United Nations resolutions on access to justice.

The development of the Toolkit also benefited from expert papers commissioned by UN Women, focus group discussions and key informant interviews with selected national stakeholders. Additionally, it drew on expertise from two representatives of the CEDAW Committee as well as practitioners from the United Nations, government and CSOs, through an expert group meeting held from 17 to 19 October 2016 in New York.

The Toolkit is informed by desk reviews of published and unpublished resources, key informant interviews, focus group discussions and a collation of expert opinions



The following frameworks, resolutions and studies serve as the policy basis for the Toolkit:

### BOX 3 Policy basis of the Toolkit

- United Nations and World Bank, [Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict](#), (2018)
- United Nations General Assembly and Security Council, Report of the Secretary-General, [Peacebuilding and sustaining peace](#), (2018)
- Council of Europe, [Improving Women's Access to Justice in Six Eastern Partnership Countries in Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine in 2015-2017](#)
- United Nations General Assembly and ECOSOC, Report of the Secretary-General, [Repositioning the United Nations Development System to Deliver on the 2030 Agenda: Ensuring a Better Future for All](#), (2017)
- UNODC, [Model Law on Legal Aid in Criminal Justice Systems with Commentaries](#), (2017)
- International Commission of Jurists (ICJ), Practitioner's Guide 12 on [Women's Access to Justice for Gender-Based Violence](#), (2016)
- Office of the United Nations High Commissioner for Human Rights (OHCHR), [Human Rights and Traditional Justice Systems in Africa](#), (2016)
- United Nations General Assembly Resolution 70/262, [Review of the United Nations Peacebuilding Architecture](#), (2016)
- United Nations General Assembly Resolution 71/243, [Quadrennial Comprehensive Policy Review of Operational Activities for Development of the United Nations System](#) (QCPR) (2016)
- United Nations Security Council Resolution [2282](#), (2016)
- [World Humanitarian Summit](#), (2016)
- CEDAW [General Recommendation No. 33 on Women's Access to Justice](#), (2015) and related recommendations and comments of the CEDAW Committee and other treaty bodies
- OHCHR, United Nations Population Fund (UNFPA), UNODC and UN Women, [Recommendations for Action Against Gender-Related Killing of Women and Girls](#), (2015)
- Report of the Advisory Group of Experts for the 2015 Review of the United Nations Peacebuilding Architecture, [The Challenge of Sustaining Peace](#), (2015)
- UN Women, [Preventing Conflict. Transforming Justice. Securing the Peace: A Global Study on the Implementation of United Nations Security Council resolution 1325](#), (2015)
- United Nations High-Level Independent Panel on United Nations Peace Operations, [Uniting Our Strengths for Peace - Politics, Partnership and People](#), (2015)
- United Nations General Assembly Resolution 70/1, [Transforming Our World: The 2030 Agenda for Sustainable Development](#), (2015)
- UNDP and UN Women, [Improving Women's Access to Justice: During and After Conflict: Mapping UN Rule of Law Engagement](#), (2014)
- United Nations General Assembly, Report of OHCHR, [Summary Report on the Recommendations of the Panel Discussion on Gender Stereotyping and on Women's Human Rights in the Context of Sustainable Development Agenda](#), (2014)

- UNODC and UNDP, [Handbook on Early Access to Legal Aid in Criminal Justice Processes: A Handbook for Policymakers and Practitioners](#), (2014)
- UNODC, [Handbook on Effective Prosecution Responses to Violence Against Women and Girls](#), (2014)
- UNODC, [Handbook on Women and Imprisonment](#), (2014)
- UNODC, [Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women](#), (2014)
- OHCHR, [Gender Stereotyping as a Human Rights Violation](#), (2013)
- ILO, International Organization for Migration (IOM), OHCHR, UNDP, UNODC and UN Women, “Mapping of Women’s Access to Justice Activities of Select IANGWE Members in Non-Conflict Settings”. Report prepared by Caitlin Boyce. (Unpublished), (2012)
- UNDP, UNICEF and UN Women, [Informal Justice Systems: Charting a Course for Human Rights-Based Engagement](#), (2012)
- The findings and recommendations of UN Women, [Progress of the World’s Women 2011-2012: In Pursuit of Justice](#), (2011)
- United Nations [Report of the Secretary-General on Women’s Participation in Peacebuilding \(A/65/354-S/2010/466\)](#), [Tracking Progress: 7-Point Action Plan](#), (2010)
- UNODC, [Handbook on Effective Police Responses to Violence Against Women](#), (2010)

## 7.0 About the Toolkit

### 7.1 Audience

The primary users of this Toolkit are programming, policy and managerial staff of the United Nations system. It is also adaptable for use by State and non-State actors who seek to better understand perspectives on women’s access to justice programming within their own institutional contexts. In addition to the broader dimensions of programming, the Toolkit assumes that users possess basic knowledge of issues and concepts related to gender and development.

### 7.2 Overview of the Toolkit

The Toolkit is comprised of five Modules, all of which are structured around the three entry points to justice programming (creating an enabling environment for women’s access to justice; creating effective, accountable and gender-responsive justice institutions; and women’s legal empowerment). Each Module highlights key thematic issues, elaborates on the three programming entry points and outlines the primary considerations for undertaking women’s access to justice programming. The Toolkit is not a policy prescription or one-size-fits-all. It acknowledges that women’s justice needs differ by country and region and on that basis, programming must be context-specific and rooted in local ownership. While recognizing this broader context, the Toolkit also sheds light on valuable experiences and lessons of the United Nations system, governments and CSOs in designing and implementing gender-responsive access to justice programmes.

While designed for UN staff, the Toolkit can also be used by State and non-State practitioners

The Toolkit consists of five interrelated Modules



Above: Afghanistan. Students in a classroom. © World Bank/Sophie Tesson.

The Modules consist of the following:

### [Module 1: The Theory and Practice of Women's Access to Justice](#)

Module 1 sets out the programming framework and approach that serves as the foundation for subsequent Modules. It brings together the knowledge and the tools that are required for gender-responsive justice programming, to mitigate barriers and strengthen women's capacity to navigate the justice system. It presents a detailed exploration of the three women's access to justice programming entry points, while identifying typical programming challenges and recommendations for each area. This approach recognizes that effective access to justice requires a combination of legal reforms, changes in institutional culture and effective community responses to standards and norms which hinder women's rights.

### [Module 2: Marriage, Family and Property Rights](#)

Module 2 addresses marriage, family and property rights. It cuts across a range of economic, social, cultural, political and civil domains that have considerable impact on women's ability to access justice. Laws, policies and practices in this area are often the most discriminatory against women and require scrutiny and well-designed programming to support reforms and timely implementation. Furthermore, laws and policies regulating marriage, family and property often overlap with customary law, which is a complex terrain for women who are seeking justice. As such, this Module considers women's ability to access justice in relation to personal law in their capacities as wives, mothers and daughters.

**Module 1:  
The Theory and  
Practice of Women's  
Access to Justice**

**Module 2:  
Marriage, Family  
and Property  
Rights**

**Module 3:  
Ending Violence  
Against Women**

### Module 3: Ending Violence Against Women

Module 3 provides programmatic guidance to support access to justice in the context of violence against women, which manifests in a range of crimes in violation of the fundamental human rights of women. Violence against women is rooted in historical inequality between women and men, and can cause significant physical, social and economic harm to women. It is therefore necessary to carefully consider access to justice programming challenges and options in the context of supporting women to report instances of violence. In so doing, it would be important to assess and address the response of justice and security actors to such situations and to ensure that women are protected at all levels and stages at which the administration of justice is set in motion.

**Module 4:  
Women in Conflict  
with the Law**

### Module 4: Women in Conflict with the Law

Module 4 signals an urgency in programming in a largely neglected area of women and the law. Although the percentage of women in prison is growing at a faster rate compared to that of the male prison population globally, policies, programmes and structures that govern criminal justice administration remain largely male-centred and do not integrate the specific needs and rights of women in a comprehensive manner. Laws and policies, for example, often do not consider the pathways to female incarceration and how those drivers can be mitigated. The Module therefore explores the challenges and opportunities for strengthening women's access to justice across the entire criminal justice chain, from women's first contact with law enforcement officials, pretrial detention, trial, sentencing, detention, imprisonment and release.

**Module 5:  
Programming at  
the Country Level**

### Module 5: Programming at the Country Level

Module 5 provides guidance on how best to advance women's access to justice in the context of the programming cycle of United Nations Country Teams (UNCTs). It identifies synergies between the UNDG [United Nations Development Assistance Frameworks Guidance](#) on preparing UNDAFs, Common Country Analysis (CCA) and international standards and norms on women's access to justice. These Guidelines support the human rights-based approach to programming and are expressed in the three-pronged framework of this Toolkit. The step by step guidance follows the stages of the UNDAF roadmap and identifies key entry points for women's access to justice programming.

**How to use the  
Toolkit**

## 7.3 Navigating the Toolkit

The Toolkit Modules are presented separately and in consolidated form. It integrates additional sources and materials to enhance the user's understanding of women's access to justice, as well as hyperlinks to these resources to facilitate online use. Although integrated and interconnected, each Module of the Toolkit can be used as an independent resource. The full list of acronyms used across the entire Toolkit can be found at the beginning of the consolidated version of the Toolkit and in this Introduction.

# ENDNOTES

- 1 The United Nations system's adoption of the human rights-based approach to programming is solidly expressed in United Nations, *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies*, developed at the Inter-Agency Workshop on a human rights-based approach in the context of UN reform, (3-5 May 2003). More information may be found on the HRBA Portal, available from <http://hrbaportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies> (accessed 15 March 2018).
- 2 Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone*, Report of the Commission on Legal Empowerment of the Poor, vol. 1, p. 19, (New York, Commission on Legal Empowerment of the Poor and UNDP, 2008).
- 3 Pathfinders for Peaceful, Just and Inclusive Societies, *The Roadmap for Peaceful, Just and Inclusive Societies: A Call to Action to Change our World*, p. 12, (New York, Center on International Cooperation, 2017).
- 4 UN Women, *Progress of the World's Women 2011-2012: In Pursuit of Justice*, p. 9, (New York, 2011).
- 5 The World Bank, "Fragility, Conflict and Violence", (9 February 2017), available from <http://www.worldbank.org/en/research/dime/brief/fragility-conflict-and-violence>.
- 6 See Lant Pritchett, Michael Woolcock and Matt Andrews, "Capability Traps? The Mechanisms of Persistent Implementation Failure", Working Paper 234, p. 20, (Washington, D.C., Center for Global Development, 2010) and Philipp Krause, Background Note, "Of institutions and butterflies: is isomorphism in developing countries necessarily a bad thing?", p. 1, (London, Overseas Development Institute, 2013).
- 7 See United Nations, General Assembly, ECOSOC, Report of the Secretary-General, *Repositioning the United Nations Development System to Deliver on the 2030 Agenda: Ensuring a Better Future for All*, 11 July 2017, A/72/124-E/2018/3.
- 8 Ibid., paras. 7-8, 31 and United Nations, UN Peacebuilding Support Office/Policy, Planning and Application Branch, *What Does "Sustaining Peace" Mean?*, p. 5, (New York, 2017).
- 9 UN Women and UNDP, *Improving Women's Access to Justice: During and After Conflict: Mapping UN Rule of Law Engagement*, (New York, 2014). This study was commissioned by UN Women, with support from UNDP, and conducted by Caitlin Reiger, an independent consultant. It has been endorsed by the UN Rule of Law Coordination and Resource Group. See ILO, IOM, OHCHR, UNDP, UNODC and UN Women, "Mapping of Women's Access to Justice Activities of Select IANGWE Members in Non-Conflict Settings", (2012). Report prepared by Caitlin Boyce. (Unpublished).
- 10 UN Women and UNDP, *Improving Women's Access to Justice: During and After Conflict*, p. 68.
- 11 Ibid., pp. 64-68. See "Mapping of Women's Access to Justice Activities of Select IANGWE Members in Non-Conflict Settings".
- 12 United Nations, Security Council, Report of the Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, para. 7, 23 August 2004, S/2004/616.
- 13 Ibid., para. 7. See United Nations, International Covenant on Civil and Political Rights (ICCPR), Human Rights Committee, General Comment No. 31 [80], *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 29 March 2004, CCPR/C/21/Rev.1/Add.13. General Comment No. 31 discusses the nature of the general legal obligation imposed on States parties,

- along with 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*, 16 December 2005, A/RES/60/147 and United Nations, Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers*, Gabriela Knaul, 29 April 2011, A/HRC/17/30.
- 14 United Nations and World Bank, *Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict*, (Washington, D.C., World Bank, 2018) and United Nations, General Assembly, Security Council, Report of the Secretary-General, *Peacebuilding and sustaining peace*, 18 January 2018, A/72/707-S/2018/43.
  - 15 UNDP, *Programming for Justice: Access for All – A Practitioner’s Guide to a Human Rights-Based Approach to Access to Justice*, p. 5, (Bangkok, 2005).
  - 16 “Mapping of Women’s Access to Justice Activities of Select IANGWE Members in Non-Conflict Settings”.
  - 17 The Toolkit uses the terms “justice sector” and “justice and security sector” interchangeably.
  - 18 The g7+ countries are a voluntary association of countries that are, or have been, affected by conflict and are now in transition to the next stage of development. See g7+, “Who We Are”, (2018), available from <http://www.g7plus.org/en/who-we-are> (accessed 15 March 2018).
  - 19 In 2012, civil society was brought into the dialogue as “the third partner” although it has struggled to maintain a voice in the process. See Jacob Hughes, Ted Hooley, Siafa Hage and George Ingram, *Implementing the New Deal for Fragile States*, Global Economy and Development at Brookings, Global Views, Policy Paper 2014-02, p. 2, (Washington, D.C., The Brookings Institution, 2014).
  - 20 United Nations, Security Council, Report of the Secretary-General, *Women’s Participation in Peacebuilding*, paras. 7, 18, 7 September 2010, A/65/354-S/2010/466.
  - 21 United Nations, Security Council, *Resolution 2282*, p. 2, 27 April 2016, S/RES/2282(2016).
  - 22 OHCHR, “Ratifications of the Convention on the Elimination of All Forms of Discrimination against Women”, (20 June 2016), available from [http://www.ohchr.org/Documents/HRBodies/CEDAW/OHCHR\\_Map\\_CEDAW.pdf](http://www.ohchr.org/Documents/HRBodies/CEDAW/OHCHR_Map_CEDAW.pdf).
  - 23 United Nations, General Assembly, Resolution 54/4, *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, 15 October 1999, A/RES/54/4.
  - 24 Refer to the Annex of United Nations, General Assembly, Resolution 65/228, *Strengthening Crime Prevention and Criminal Justice Responses to Violence Against Women*, 31 March 2011, A/RES/65/228.
  - 25 United Nations, CEDAW Committee, *General Recommendation No. 33 on Women’s Access to Justice*, para. 10, 3 August 2015, CEDAW/C/GC/33.
  - 26 UNFPA, *Marrying Too Young: End Child Marriage*, p. 22, (New York, 2012).
  - 27 UNFPA, *State of the World Population 2014: The Power of 1.8 Billion: Adolescents, Youth and the Transformation of the Future*, p. 36, (New York, 2014).
  - 28 See UNFPA, *State of the World Population 2015: Shelter from the Storm: A Transformative Agenda for Women and Girls in a Crisis-Prone World*, pp. 36-55, (New York, 2015).
  - 29 World Health Organization (WHO), *Women, Ageing and Health: A Framework for Action: Focus on Gender*, p. 2, (Geneva, 2007).
  - 30 *Ibid.*, pp. 5-6, 38.
  - 31 Aengus Carroll and Lucas Ramón Mendos, *State-Sponsored Homophobia 2017: A World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition*, 12th ed., p. 8, (Geneva, International Lesbian, Gay, Bisexual, Trans and Intersex Association, 2017). For an example of the



Special Rapporteur's findings see United Nations, Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to South Africa*, Dubravka Simonovic, paras. 33-34, 18 November 2016, A/HRC/32/42/Add.2. For a full list of the Special Rapporteur's reports see OHCHR, "Annual reports", available from <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/AnnualReports.aspx> (accessed 15 March 2018).

- 32 According to Urban Jonsson, internal conflict can be of three types: (1) armed conflict between government and dissident forces, where the latter control part of the territory, enabling them to carry out sustained concerted military operations; (2) armed conflict between government and dissident forces, when the latter do not have control of the territory; and (3) lower intensity conflict, classified as internal tensions and disturbances. See Urban Jonsson, *Human Rights Approach to Development Programming*, p. 194, (Nairobi, UNICEF, 2003).
- 33 CEDAW/C/GC/33, para. 1.
- 34 Refer to the Annex of A/RES/65/228.
- 35 Resources in the field of child justice administration include: 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 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; United Nations, ECOSOC, Resolution 1997/30, *Administration of Juvenile Justice*, 21 July 1997, E/RES/1997/30; United Nations, ECOSOC, Resolution 2005/20, *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, 22 July 2005, E/RES/2005/20; United Nations, Committee on the Rights of the Child, *General Comment No. 10, Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10; Office of the Special Representative of the Secretary-General on Violence against Children, *Safeguarding the Rights of Girls in the Criminal Justice System: Preventing Violence, Stigmatization and Deprivation of Liberty*, (United Nations publication, Sales No. E.15.I.10); and UNODC, "Children, Victims and Women's Issues", (2018), available from <https://www.unodc.org/unodc/en/justice-and-prison-reform/childsvictimswomensissues.html> (accessed 15 March 2018). Latest tools developed by UNODC in the field of justice for children include: (i) Introductory Booklet on the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice; (ii) Checklist to the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the field of crime prevention and criminal justice; (iii) Training Programme on the Treatment of Child Victims and Child Witnesses of Crime - for Prosecutors and Judges; (iv) Training Programme on the Treatment of Child Victims and Child Witnesses of Crime - for Law Enforcement Officials; and (v) INSPIRE: Seven Strategies for Ending Violence against Children. See UNODC, "Tools and Publications", (2018), available from <https://www.unodc.org/unodc/en/justice-and-prison-reform/tools.html> (accessed 15 March 2018).
- 36 For resources in the field of gender and transitional justice, see UN Women, *A Window of Opportunity: Making Transitional Justice Work for Women*, prepared by Nahla Valji, (New York, 2010); UN Women, *Gender and Transitional Justice Programming: A Review of Peru, Sierra Leone and Rwanda*, prepared by Nahla Valji, (New York, 2010); UN Women, "Chapter 4: Justice for Women During and After Conflict", in *Progress of the World's Women 2011-2012: In Pursuit of Justice*, pp. 80-103; UN Women, "Toward an Era of Transformative Justice", in *Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of UN Security Council resolution 1325*, pp. 98-129, (New York, 2015).

MODULE

1

**The Theory and Practice of  
Women's Access to Justice Programming**



# 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			

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Above: World Conference on Indigenous Peoples participant. © UN Photo/Loey Felipe.



# 1.0 Summary

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Women who seek justice are confronted by a complex landscape of laws, systems and institutions. This Module brings together the knowledge and tools that practitioners need to build and sustain justice systems that are responsive to the rights and needs of women. It provides the basic foundations for women's access to justice programming at country level by outlining the key contextual factors to be taken into account (political, legal, economic, social and cultural) and unpacks the operationalization of the three programming entry points by highlighting common challenges and providing potential solutions. In doing so, it serves as the foundation for applying the programming principles and entry points in subsequent Modules, which provide detailed explorations of women's access to justice by thematic area.

It is modelled to facilitate a continuum in justice programming across all country contexts (development, conflict, post-conflict and other crisis situations) and all dimensions of the justice chain, while recognizing that effective access to justice requires investments beyond formal legal reform. This Module therefore, offers a broader vision for addressing structural barriers, such as gender bias among justice actors, geographic, linguistic, cultural and financial inaccessibility and underlying discriminatory societal and cultural norms.

As noted in the Introduction, this Toolkit premises the theory and practice of women's access to justice on three sets of programming principles. Firstly, it adopts the human rights-based approach to development as outlined in [The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies](#). Secondly, it utilizes the four principles for integrated programming at country level (leave no one behind; human rights, gender equality and women's empowerment; sustainability and resilience; and accountability) as defined by the UNDG [United Nations Development Assistance Framework Guidance](#). Finally, in conjunction with existing principles, it introduces three mutually reinforcing entry points for sustainable women's access to justice programming:

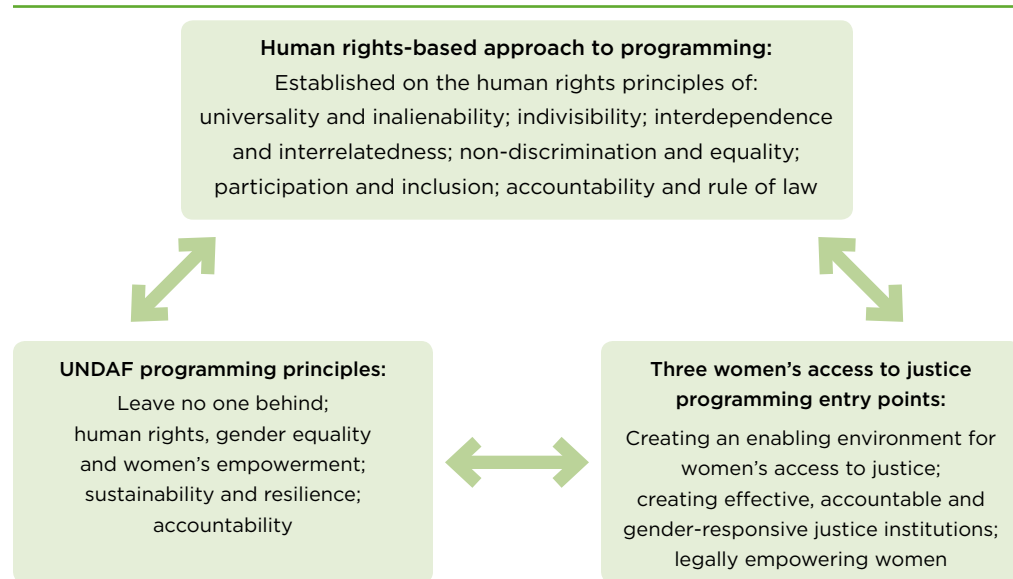
- **Creating an enabling environment for women's access to justice:** Reforming formal and informal legal norms that discriminate against women as well as making policy and financial investments more supportive.
- **Creating effective, accountable and gender-responsive justice institutions:** Reforming justice institutions and systems for effective women's participation, coordination and response to women's justice needs.
- **Legally empowering women:** Empowering women and girls with the tools to know, claim and exercise their rights and extending knowledge of women's rights to men, boys and community power structures.

Table A.11 in the Appendices presents an overview of the entire means of implementation of women's access to justice programming across all country contexts by demonstrating the relevance of the following instruments to the three programming entry points: the [Sustainable Development Goals](#) (SDGs); the [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW); CEDAW [General Recommendation No. 30](#)

This Module applies the human-rights based approach, the four UNDAF programming principles and the three entry points for women's access to justice, which support the implementation of human rights standards and the SDGs

on [Women in Conflict Prevention, Conflict and Post-Conflict Situations](#) (CEDAW GR 30); CEDAW [General Recommendation No. 33 on Women's Access to Justice](#) (CEDAW GR 33); the WPS Goals and Indicators contained in the Annex of the United Nations Security Council, [Report of the Secretary-General, Women and Peace and Security](#); and the PSG fragility assessment indicators found in Annex 2 of the g7+ [Note on the Fragility Spectrum](#).

**FIGURE 1.1** Theory and practice is based on the four UNDAF programming principles and three programming entry points, both informed by the human rights-based approach to programming



Sources: United Nations, [The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies](#), developed at the Inter-Agency Workshop on a human rights-based approach in the context of UN reform, p. 2, (3-5 May 2003); UNDG, [United Nations Development Assistance Framework Guidance](#), pp. 9-12, (New York, 2017); [CEDAW GR 33](#); and [SDG 16](#).

In this and subsequent Modules, basic information, typical programming challenges and programming considerations and options are proposed for each of the three programming entry points. They recognize that programming challenges can be translated into opportunities.

Across all Modules, there is also a basic acknowledgement that while it may not be possible for a country to swiftly bring together all the components needed for an enabling environment for women's access to justice; effective, accountable and gender-responsive justice institutions; and legally empowering women, the aim should be to work towards them over time.

## 1.1 Definitions

**Alternative Report:** Independent reports that CSOs submit to treaty bodies on their perspective on a State's implementation of the treaty concerned. It is otherwise known as a "shadow report".

Words and phrases which are not defined in the text of the Module are defined here

**“Claw back” clause:** The watering down or withdrawing of a beneficial provision in a legal instrument.

**Complainant:** A person who initiates a case or reports a crime.

**Concluding observations and recommendations:** Substantive remarks issued by a treaty body after consideration of a State party’s report. Concluding observations refer both to positive aspects of a State’s implementation of the treaty and areas where the treaty body recommends that further action needs to be taken by the State. The treaty bodies are committed to issuing concluding observations which are concrete, focused and implementable and are paying increasing attention to measures that ensure effective follow-up to their concluding observations.<sup>1</sup>

**Derogation clause:** Derogation clauses are generally reflected in constitutions. It is defined as a measure adopted by a State to partially suspend the application of one or more provisions of a human rights treaty, at least temporarily. Some human rights treaties allow States parties, in a public emergency which threatens the life of the nation, to derogate exceptionally and temporarily from a number of rights to the extent strictly required by the situation. The State party, however, may not derogate from certain specific fundamental rights (e.g., the right to life; prohibitions against torture, slavery and servitude) and may not take discriminatory measures.<sup>2</sup> See United Nations General Assembly Resolution 2200A(XXI), [International Covenant on Civil and Political Rights](#) and United Nations Human Rights Committee, [General Comment No. 29: States of Emergency \(Article 4\)](#).

**Dualist legal traditions:** Countries which require parliamentary approval and legislation prior to the incorporation of international treaties into domestic law. The courts of such States are not bound to apply treaties in their decisions, although an increasing number demonstrate such usage.

**Fragility:** A heightened exposure to risk combined with a low capacity to mitigate or absorb these risks. This situation of vulnerability can lead to violence, conflict, chronic underdevelopment and protracted political crisis.<sup>3</sup>

**In camera:** In private or outside of public view.

**Legal domain:** A specific category or branch of the law (e.g., administrative, civil, commercial, criminal, family, investment and insurance law).

**Legal system:** The sum total of all formal and/or informal laws and institutions, including the principles which govern the interaction of laws and institutions and the manner in which human rights treaties are ratified and integrated into domestic law and practice.

**Meta-analysis:** A synthesis of findings, conclusions and recommendations from various evaluations.

**Monist legal traditions:** Countries where international treaties are regarded as an integral part of domestic law and the courts apply them in their decisions.

**Respondent:** A person who is legally required to answer to a claim submitted to a judicial forum by another person. The term is mostly used in civil, family and administrative proceedings. The corollary in criminal proceedings in which a perpetrator of a crime is involved is “accused person”.

**Rules on standing:** Regulations which determine who can set the administration of justice in motion, either for one’s own self or on behalf of another person.

**Universal Periodic Review:** A State-driven process which involves a review of the human rights records of all United Nations Member States. It operates under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations.<sup>4</sup>

## 2.0 Understanding the overall country context

### 2.1 Assessing country contexts

As noted in the Introduction, women’s access to justice programming must be anchored in the United Nations system’s broader access to justice and rule of law engagement. In as much as the legal environment is a critical cornerstone of the broader access to justice and rule of law arena, other factors such as the social, economic, political and security contexts and the degree to which women’s rights are locally accepted can impact upon the effectiveness and long-term sustainability of interventions. These considerations must be taken into account for purposes of ensuring national relevance and local ownership (see Module 5).

“Politically smart, locally led development” requires sufficient background information (including what may have happened in prior programming phases), knowledge of the political economy and a politically astute approach that focuses on issues of local relevance.<sup>5</sup> Assessments are necessary for evaluating immediate country priorities, as well as realizing the overall objective of assisting a country’s transition into peace and development. This will require a comprehensive meta-analysis of various country assessments, which may have been undertaken over an extended period of time.

This Section presents an overview of the assessments from which such information can be obtained in both development and crisis contexts. It begins with a discussion of country typologies and then provides examples of country assessments including CCAs, g7+ fragility assessments and United Nations crisis-related assessments.

#### 2.1.1 Country typologies

As a first step, programmers must be familiar with the classification of the country in which they are operating. While various sources can be used, the human development groupings of UNDP, classification of fragile States of OECD and the fragility spectrum of the g7+ are useful starting points for determining such classifications.

Effective women’s access to justice programming is based on sound knowledge of the environment and stakeholders. The tools and entry points for undertaking country assessments are many and varied

Diverse country situations demand context-specific interventions



Above: Tunisia. View of El Kef Medina, photographed from the Grand Fort © World Bank/Arne Hoel.

#### **BOX 1.1 A description of the relationship between the phases of post-conflict and development**

There are two phases to consider in relation to post-conflict human security and law and order: the first is the immediate need to regain some degree of law and order in the state—this crisis management phase often involves peacekeeping troops, UN police, and sometimes foreign judges. The development phase, which is practically concurrent with the crisis phase, aims to set up a more long term sustainable environment of law and order in the state, and represents an even more difficult challenge ... The development phase, which must be planned from the start and must be integrated into the crisis management phase, involves the need to re-establish a sustainable law and order environment in the country. It requires a more long term strategy to address criminal behavior and assist in conflict resolution.

Source: Kirsti Samuels, "[Rule of Law Reform in Post-Conflict Countries: Operational Initiatives and Lessons Learned](#)", Social Development Papers: Conflict Prevention & Reconstruction, No. 37, p. 8, (Washington, D.C., The World Bank, 2006).

The [Human Development Report 2016: Human Development for Everyone](#) identifies four broad human development groupings (very high human development, high human development, medium human development and low human development) based on a calculation of the Human Development Index for each country.<sup>6</sup>

[States of Fragility 2015: Meeting Post-2015 Ambitions](#) contains a compilation of fragile States to capture five factors of risk and vulnerability clustered around several dimensions of [SDG 16](#) (see Figure A.1.1 in the Appendices). These are:

- *Violence*: Reduce all forms of violence and violent deaths everywhere
- *Justice*: Promote the rule of law at the national and international levels and ensure equal access to justice for all

According to OECD, access to justice or the lack thereof is an indicator of fragility

- *Institutions*: Develop effective, accountable and transparent institutions at all levels; reduce illicit financial flows and combat organized crime
- *Economic foundations*: Reduce youth unemployment; promote economic, social and political inclusion
- *Resilience*: Reduce exposure and vulnerability to climate-related extreme events and other economic, social and environmental shocks and disasters; build adaptive capacity

Finally, the fragility spectrum of the g7+ charts a country's journey from crisis to rebuilding and reform, transition, transformation and ultimately resilience.<sup>7</sup> The spectrum therefore offers both a system for country classification and a methodology for conducting a country assessment (see Section 2.2.2). It is important to note that countries may differ in terms of how the fragility spectrum should be applied, as a country may be either fully or partially engulfed by conflict. Varying circumstances across geographic regions may therefore require multiple approaches to justice delivery to reflect different levels of vulnerability, risk and fragility.

## 2.2 Examples of country assessments

### 2.2.1 The Common Country Analysis: The development context

The CCA is the United Nations system's independent and mandate-based articulation of the country context, opportunities and challenges, encompassing sustainable development, human rights, gender equality, peace and security and humanitarian perspectives.<sup>8</sup> It is an objective assessment (a description of what is happening) and an analysis (a description of why it is happening) of the country situation. It strategically positions the United Nations at the country level and serves primarily as a programming tool for strengthening its engagement with national stakeholders, including in regard to advocating for policy change and supporting national development planning.

Furthermore, CCAs facilitate the identification of areas for integrated policy support, reflecting the interdependence of the SDGs and a country's own development priorities. Rather than adopting a fragmented approach to individual issues, CCAs combine multiple perspectives in a complementary and coherent manner. They identify national capacity gaps (e.g., analytical, institutional, statistical) that can be addressed through coordinated support by the United Nations at the country level and by enhanced policy coherence.

CCAs include a review of existing assessments, evaluations and analyses by the government, the United Nations and other stakeholders. Existing flagship publications, specific assessments and analytical tools, particularly those contributing to the global monitoring of progress on the SDGs, may be useful sources of information. Data can be gathered in partnership with governmental and non-governmental actors, ensuring soundness of methodology and reliability.

The assessment element of the CCA examines all areas of the 2030 Agenda. It encompasses the material situation of people in a country, including non-nationals, as

Assessments include CCAs that inform the preparation of UNDAFs, and those which are undertaken in crisis-related contexts

The UNDG strongly recommends CCAs for all UNDAFs

well as the political, policy and legislative environment for achieving the SDGs and other national commitments and obligations under international conventions ratified by the country. It assesses risks for different groups and geographic areas. It also identifies challenges, opportunities, potential trade-offs, national capacities and capacity gaps, policy enablers and limitations and considers these in the context of the United Nations system’s comparative advantage. Disaggregated data is fundamental to an accurate assessment of a national situation from the perspective of the 2030 Agenda dimension of “leaving no one behind”. The assessment also examines the financial system in the country in terms of the achievement of the SDGs, focusing primarily on domestic finance.<sup>9</sup>

The analysis element of the CCA identifies the immediate, underlying and root causes of multidimensional poverty, inequalities and discrimination and the reasons why particular groups are left behind. It furthermore examines gaps in the capacities of duty-bearers to fulfil their obligations and of rights-holders to make their claims. Special emphasis is paid to gender and geographical analysis at the macro-meso-micro levels. In this context, the CCA provides an important entry point for integrating an analysis of the root causes of gender inequality more broadly and the structural barriers that women face in accessing justice.

## 2.2.2 Fragility assessments of g7+ countries

The degree of fragility that exists within a country can be assessed from the fragility spectrum designed by the g7+ (see Table 1 in the Introduction). The fragility spectrum is to be read together with the justice-related PSG fragility assessment indicators listed in Table A.1.1 in the Appendices. Table 1.1 builds on the spectrum and indicators by integrating a gender lens from the perspective of CEDAW GR 30. It presents important levers for identifying women’s potential justice needs across the entire period of fragility (the fragility continuum) during the preparation of fragility assessments.

**TABLE 1.1 Understanding the fragility spectrum from a gender perspective**

Stages of conflict and fragility through the g7+ fragility spectrum	Integrating a gender lens
<p><b>Stage 1: Crisis</b> Countries in crisis experience acute instability, with the presence of various armed groups and increased levels of violent conflict or the potential for a lapse into more generalised violent conflict.</p>	<p>Conflicts exacerbate existing gender inequalities, placing women at a heightened risk of various forms of gender-based violence by both State and non-State actors. Irrespective of the character of the armed conflict, its duration or the actors involved, women and girls are increasingly deliberately targeted for and subjected to various forms of violence and abuse, ranging from arbitrary killings, torture and mutilation, sexual violence, forced marriage, forced prostitution and forced impregnation to forced</p>

Fragility assessments have been undertaken for selected g7+ countries. The first five countries to undertake fragility assessments were the Democratic Republic of the Congo (DRC), Liberia, Sierra Leone, South Sudan and Timor-Leste



	<p>termination of pregnancy and sterilization. Conflict-related gender-based violence results in a vast range of physical and psychological consequences for women, such as injuries and disabilities, increased risk of HIV infection and risk of unwanted pregnancy resulting from sexual violence. There is a strong association between gender-based violence and HIV, including the deliberate transmission of HIV, used as a weapon of war, through rape. Perpetrators of conflict-related gender-based violence include members of government armed forces, paramilitary groups, non-State armed groups, peacekeeping personnel and civilians.</p>
<p><b>Stage 2: Rebuild and reform</b> During this phase, renewed efforts towards political dialogue to resolve political differences and to move towards disarmament may be in progress. Security issues remain a challenge to stability, with a proliferation of small arms.</p>	<p>SGBV often escalates in post-conflict settings, even after the official ceasefire or the signing of the peace agreement. While the forms and sites of violence change, violations of women's rights can persist.</p>
<p><b>Stage 3: Transition</b> Transition is often associated with consensus-building among parties to the conflict. This stage often leads to efforts to strengthen institutions and reform laws. While there should be increased stability in the country, there is also the likely presence of corruption in service delivery and weak oversight capacity from the legislature. There may be an increased control of security by the State, although this continues to be weakened due to lack of resources and capacity. There may also be an increased confidence in security and justice institutions and a commensurate reduction in the use of violence to resolve disputes. Efforts to decentralize justice systems can be found, including the presence of alternative dispute resolution (ADR) mechanisms. During transition, there may be increased access to basic infrastructure, but mainly in urban areas. Stronger basic services are provided, with an enhanced but poorly implemented regulatory framework.</p>	<p>The most egregious and pervasive violations that occur during conflict often remain unpunished by transitional justice mechanisms and are normalized in the post-conflict environment. Efforts to strengthen and/or complement domestic justice systems notwithstanding, transitional justice mechanisms may not adequately deliver justice and reparations for all harms suffered, thereby entrenching the impunity enjoyed by perpetrators of women's human rights violations. Transitional justice mechanisms have not succeeded in fully addressing the gendered impact of conflict.</p>



<p><b>Stage 4: Transformation</b></p> <p>In the transformation stage, a country may have increased resilience within society and conflicts are more often resolved peacefully, supported by non-violent and democratic political processes. The security situation has typically remained stable and peaceful for a considerable amount of time, often for at least five years. More likely, one should encounter the presence of security personnel throughout the territory, but with limited numbers and capacity. Also, it is expected that there is increased public confidence in security institutions and that potential abuses are more frequently sanctioned. Usually, a decentralised approach is implemented to extend the delivery of basic services to the whole country.</p>	<p>Justice and security sector institutions may lack capacity to deliver services to all women. Although there could be a greater uptake in rule of law and responding to human rights abuses more broadly, institutions may not be able to provide specialized services to address the multifaceted impacts of conflict e.g.,</p> <ul style="list-style-type: none"> <li>• Medical and psychosocial support to address sexual violence, forced pregnancies, abortions or sterilization</li> <li>• Women’s limited and unequal access to property and interventions to leverage opportunities for women’s economic empowerment</li> <li>• Women’s new roles in the family and community, especially when they have lost husbands or close male relatives</li> <li>• Female-headed households emerge</li> </ul>
<p><b>Stage 5: Resilience</b></p> <p>Resilience can be understood as the capacity of a society to deal with challenges and to absorb shocks without relapsing into crisis. Every stage in the fragility spectrum represents growing resilience, but at this stage the resilience of the society has been institutionalised in its social customs, cultural practices, social contract and formal State institutions to the degree that a relapse into crisis is so unlikely that the country in question can no longer meaningfully be considered a post-conflict country. The focus therefore shifts away from socio-political consolidation to long-term social and economic development. During this period, political stability has been seen for a prolonged amount of time, often for more than 20 years, and the country should have created a strong culture of democracy and good governance. There should be reasonable numbers of security personnel throughout the country and a high level of confidence by the population that they will maintain the rule of law. There is demonstrated political will to fight impunity that operates in favour of elites and widespread awareness of how the justice</p>	<p>When conflict comes to an end, society is confronted with the complex task of dealing with the past, which involves the need to hold human rights violators accountable for their actions, putting an end to impunity, restoring the rule of law and addressing all the needs of survivors through the provision of justice accompanied by reparations. Challenges relating to access to justice are especially aggravated and acute in conflict and post-conflict situations because formal justice systems may no longer exist or function with any level of efficiency or effectiveness. Formal and informal justice institutions are not fully operational and may not possess the capacity to effectively prevent and respond to violations of women’s rights. Barriers that women face in gaining access to justice before the national courts prior to the conflict, such as legal, procedural, institutional, social and practical barriers, in addition to entrenched gender discrimination, are exacerbated during conflict, persist during the post-conflict period and operate alongside the breakdown of the police and judicial structures to deny or hinder women’s access to justice.</p>

system operates. Public institutions function both at the national and the sub-national level and the State increasingly becomes the main service provider for basic services.

Sources: g7+, [Note on the Fragility Spectrum](#), pp. 10-13, (Kinshasa, 2013) and [CEDAW GR 30](#), paras. 34-35, 38(e), 49, 52(b), 63, 74, 76.

The requirement for undertaking a fragility assessment under [A New Deal for Engagement in Fragile States](#), endorsed by g7+ countries in 2011 to guide international engagement in conflict-affected countries, provides the United Nations system and other actors with an opportunity to mainstream gender into all phases of the assessment and to use the results to influence future justice and security sector policy design and implementation in g7+ countries. By way of example, Table 1.2 summarizes the results of the fragility assessment of Sierra Leone, which was conducted during the resilience phase of its fragility experience and utilizes the fragility assessment indicators and guidance provided by CEDAW GR 30. It demonstrates that fragility assessments can serve as robust instruments for identifying and addressing women’s justice priorities from crisis to development.

**TABLE 1.2 A completed fragility assessment of Sierra Leone with reference to access to justice**

Progress	Challenges	Policy actions to be taken
<ul style="list-style-type: none"> <li>• Local Court Act (2011) made access to informal justice more timely and affordable</li> <li>• Efforts made to decentralize formal system, with circuit court sittings and increased accessibility to paralegals</li> <li>• Establishment of the Justice Sector Coordination Office built synergy between security and justice sectors</li> <li>• Increasing confidence in formal and informal justice systems, with rights of individuals increasingly protected and human rights violations prosecuted</li> </ul>	<p><b>Justice conditions:</b></p> <ul style="list-style-type: none"> <li>• Formal justice system is inaccessible outside of major urban centres</li> <li>• Formal justice is expensive, poorly understood, and incurs long delays</li> <li>• Very limited access to representation (legal aid)</li> <li>• Low prosecution capacity</li> <li>• Limited support to vulnerable victims</li> <li>• Perception of political interference in justice remains high</li> </ul> <p><b>Capacity and accountability:</b></p> <ul style="list-style-type: none"> <li>• The Judiciary is perceived to be overly politicised, with some political interference in the application of justice</li> </ul>	<ul style="list-style-type: none"> <li>• Develop awareness of the formal justice system based on visible fairness of the system</li> <li>• Improve coordination between the formal and informal justice system and across the justice and security sectors</li> <li>• Develop well capacitated system with modern budgets, vehicles and logistics</li> <li>• Issue guidelines to reduce judicial discretion in sentencing</li> <li>• Progress efforts to ensure that traditional and formal justice systems are fully harmonized and working together</li> </ul>

The fragility assessment of Sierra Leone pays attention to justice and its gender dimensions

<ul style="list-style-type: none"> <li>• Human rights organisations have increasingly made it possible for elites to face justice</li> <li>• Alternative Dispute Mechanisms available and accepted by both formal and customary systems, helping to build collaboration and cooperation between both systems of justice</li> </ul>	<ul style="list-style-type: none"> <li>• Magistrates are allowed too much discretion in their judgements</li> <li>• Court staff are insufficiently paid so resort to corruption</li> <li>• Delays in justice occur due to a lack of sufficient magistrate court sittings, low capacity and resistance to change amongst local court officials</li> <li>• High prison overcrowding and lack of remand homes for juveniles</li> </ul> <p><b>Performance and responsiveness:</b></p> <ul style="list-style-type: none"> <li>• Little effective partnership between formal and informal systems</li> <li>• Limited codification of customary law and unclear if codification will make customary law less arbitrary because of regional differences</li> <li>• Law Reform Commission established but making limited progress</li> <li>• Lack of awareness of laws among citizens</li> <li>• Citizens and adjudicators are often unaware of updated laws</li> </ul>	
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Source: Sierra Leone, [Fragility Assessment: Republic of Sierra Leone – Summary of Results](#), pp. 7-8, (Freetown, 2013).

### 2.2.3 Crisis-related assessments by the United Nations

The United Nations is obliged to undertake assessments of the nature and scope of different crisis situations, informing its determination of how and when it should respond. Basing a response to crisis on shared assessments will improve the credibility of the responsible organization, helping to align the work of different entities towards common goals.<sup>10</sup>

#### United Nations integrated assessments and Strategic Assessments

An assessment is considered as “integrated” when it carries implications for multiple United Nations entities at the strategic, programmatic or operational level. A key

United Nations crisis-related assessments must include a conflict analysis for a deeper understanding of the root causes of crisis

category of integrated assessments is the Strategic Assessment, which aims to bring United Nations political, security, development, humanitarian and human rights entities together to develop a shared understanding of a conflict or post-conflict situation in order to propose options for engagement.<sup>11</sup> Strategic Assessments should complement and draw on existing analytical processes going on within the United Nations system, and must be undertaken in consultation with relevant interlocutors such as national authorities, civil society and key Member States.<sup>12</sup> A Strategic Assessment for any given conflict or post-conflict situation should include:

- *A conflict analysis* centred on the aim of the Strategic Assessment
- *An analysis of priority objectives* for peace consolidation
- *An articulation of the United Nations strategic options* to address the situation in the country (ideally, a maximum of two to three strategic options should be presented in the Strategic Assessment report)
- *A risk assessment* for each strategic option<sup>13</sup>

The decision to launch a Strategic Assessment can only be made by the Secretary-General, the Executive Committee on Peace and Security or an Integrated Task Force at Director level or above. It can take place ahead of the start-up and planning phase or during the life-cycle of established United Nations missions, providing a basis for developing recommendations on the nature and (re)configuration of United Nations engagement. These recommendations are then submitted for the consideration of the Secretary-General and, when necessary, the UNSC as well.<sup>14</sup>

### Conflict analysis

A conflict analysis is a constituent component of a United Nations Strategic Assessment, forming the starting point and foundation for all integrated assessment and planning.<sup>15</sup> Such analyses help to establish an accurate and shared understanding of the root causes, proximate causes, triggers, dynamics and trends of conflict, as well as the stakeholders involved.<sup>16</sup> A wide range of conflict analysis methodologies exist: some exercises will be conducted over an extended period of time, such as those used to inform a Strategic Assessment, while others may require a shorter time span in response to urgent developments on the ground.<sup>17</sup> At a minimum, all conflict analyses should include a situation profile, a causal analysis of conflict factors, a stakeholder analysis and an understanding of conflict dynamics, which involves an examination of the resulting interaction between the profile, causes and stakeholders.<sup>18</sup> Additionally, United Nations conflict analyses should include a context-specific analysis of gender issues and the relationship between human rights issues and violent conflict.<sup>19</sup> This means conducting assessments with reference to the Inter-Agency Standing Committee (IASC) [Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action: Reducing Risk, Promoting Resilience and Aiding Recovery](#), which offer guidance for assessments, analysis and strategic planning for governments, humanitarian coordinators and other stakeholders. Examples of questions that humanitarian coordinators must explore for integrating SGBV-related concerns during assessments are highlighted in Table 1.3.

**TABLE 1.3** Examples of what humanitarian coordinators must prioritize for addressing SGBV\* in conflict analysis

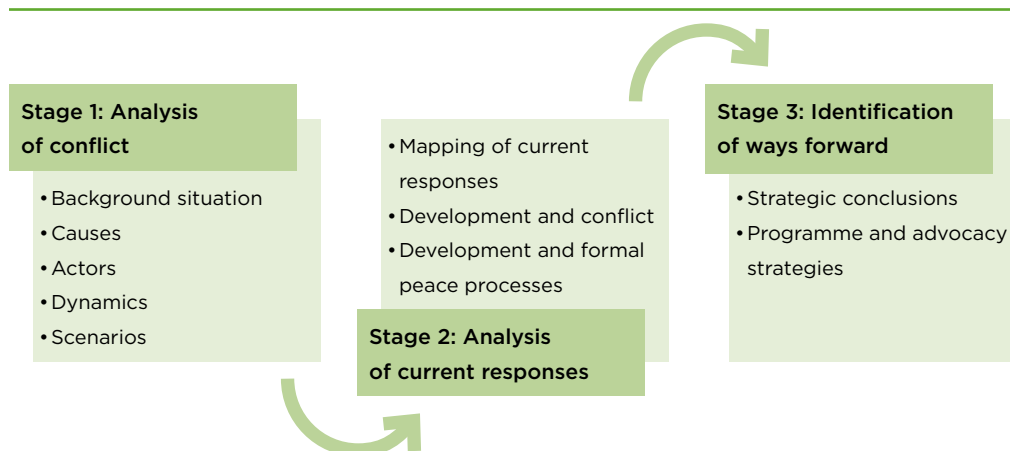
<p>Request GBV specialists as part of the overall protection assessment capacity, e.g. within the United Nations Disaster Assessment and Coordination (UNDAC) and other assessment teams deploying to the emergency to:</p> <ul style="list-style-type: none"> <li>• Lead on ensuring that appropriate GBV-related questions are included in initial rapid multi-cluster/sector assessments (with input from GBV specialists on questions and data collection methods)</li> <li>• Ensure that GBV is specifically addressed in assessment reports and the overall Protection Strategy</li> </ul>
<p>Support the work of GBV specialists (national and international) to:</p> <ul style="list-style-type: none"> <li>• Undertake mapping on GBV (e.g. nature and scope; risk and vulnerability factors; national legal framework; cluster/sector capacities to prevent, mitigate and respond to GBV)</li> <li>• Ensure design and implementation of safe and ethical data collection, storage and sharing</li> </ul>
<p>In preliminary scenarios of emergencies, ensure that any available data on affected populations' risks of and exposure to GBV are safely and ethically included</p>

\*Note that the Guidelines refer to GBV and not SGBV which this Toolkit references.

Source: IASC, [Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action: Reducing Risk, Promoting Resilience and Aiding Recovery](#), p. 20, (n.p., Global Protection Cluster and IASC, 2015).

The absence of accurate conflict analysis could lead to missed opportunities for preventing violence or to ill-informed interventions that trigger or exacerbate conflict. Particular attention should therefore be paid to conflict analysis during the start-up, reconfiguration or drawdown of missions or when a new strategic plan is being created.<sup>20</sup> While the composition of the analysis team may vary, the approach should be multidisciplinary, politically astute and include personnel with both technical and contextual expertise in order to identify a broad range of conflict causes and accurately determine the motivations and relationships of stakeholders.<sup>21</sup>

**FIGURE 1.2** A snapshot of the UNDP conflict-related development analysis



Source: UNDP, [Conflict-related Development Analysis \(CDA\)](#), p. 6, (New York, 2003).

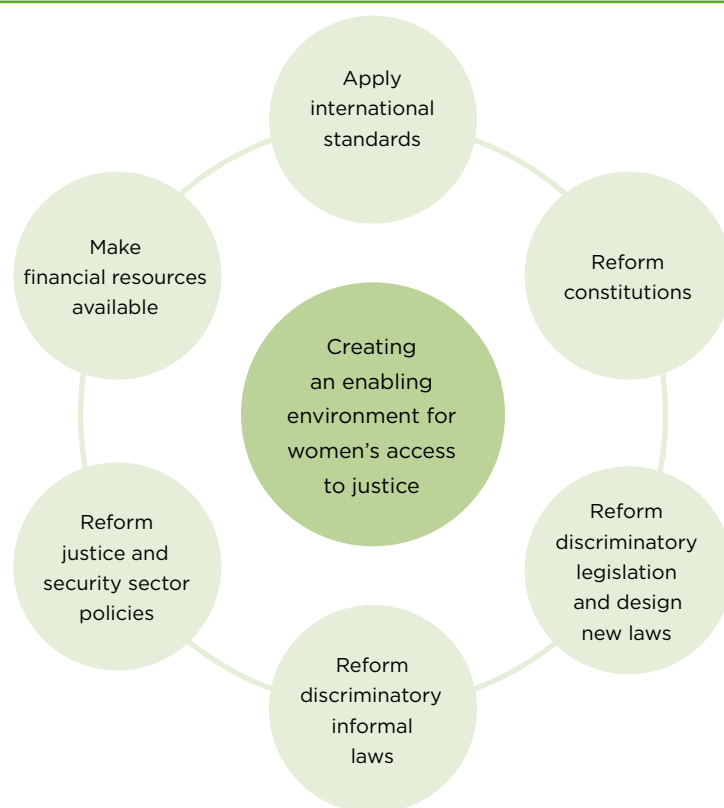
The UNDP conflict analysis model brings convergence to crisis and development. This facilitates a planning continuum across both phases of a country's experience

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

An enabling environment for women’s access to justice creates the regulatory, policy and financial basis for national justice interventions

For purposes of this Module, the term “enabling environment” is used to describe the basic conditions that must exist within a State for women to access justice systems and for justice actors to effectively respond to women’s justice needs. This environment needs to be acknowledged by practitioners because it is shaped by the prevailing political, social, economic and cultural climate within a country. An enabling environment is supported by international and regional standards and norms, domestic laws, policies and budgets.<sup>22</sup> SDG Target 10.3 clearly articulates the linkages between law, policy and practice and reducing inequality, calling on States to “ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard”. Creating an enabling environment for women’s access to justice is therefore central to the goal of reducing inequality and achieving gender equality across the world.

FIGURE 1.3 Elements to create an enabling environment for women’s access to justice



Support for national standards on gender equality has gained traction over the past 30 years, starting from the inclusion of equality and non-discrimination clauses in 192 constitutions.<sup>23</sup> The UN Women report, [Progress of the World’s Women 2015-2016: Transforming Economies, Realizing Rights](#), finds that 119 countries have passed laws against domestic violence and 125 have taken action with respect to sexual harassment.<sup>24</sup> While this represents an important inroad in legal protections, significant work remains

The enactment of laws is not necessarily matched by implementation, therefore gaps in reforms persist

to strengthen and improve women’s ability to seek redress for violations of the rights contained in these laws.

In many contexts, both formal and informal laws and policies remain biased against women. Some laws are outright discriminatory, explicitly recognizing that women have fewer rights than men. For instance, to date, 25 countries deny women the right to pass their nationality to their children on an equal basis with men.<sup>25</sup> Over 50 countries maintain some form of gender discrimination in their nationality laws, such as denying women the equal right to confer nationality to spouses or linking women’s nationality to their marital status.<sup>26</sup> Women also often have fewer rights than men in marriage, divorce and inheritance, particularly when customary law governs these areas. In some domains of customary law, women may even be held to different legal standards than men.<sup>27</sup> Gender-neutral language in laws can be detrimental to women when the definition of crimes and the design of punishment regimes and remedies are tailored towards men. In many ways, these laws are less favourable because they appear gender-neutral, but in practice deny women the rights and protections that they supposedly provide. Such laws fail to take into consideration the different conditions and obstacles that women face as rights-holders in comparison to men.

There are also areas of law where rights and protections are largely absent or implemented poorly. For instance, women who work in the domestic domain (e.g., family, home-based and domestic workers) are often not legally protected.<sup>28</sup> The absence of laws prohibiting discrimination in the workplace can also affect the ability of women to engage in activities which are vital for empowering them in such settings. These may include policies and regulations against sexual harassment, equal representation in labour unions and maternity protection.

To foster a legal system that is responsive to women’s justice needs, programming should focus on providing technical and policy advice to decision makers on addressing critical gaps in women’s legal protections. This should include reforming existing statutory and customary laws and policies that create barriers to women’s access to justice or designing new laws and policies in response to women’s justice needs. This Section offers programmatic guidance for five important elements of the enabling environment for women’s access to justice: international law, domestic law (constitutions, formal laws and informal laws), justice sector policies and financial allocation for women’s justice needs.

### 3.1 International law

When States sign and ratify international conventions, they accept binding obligations to abide by those standards through domestication and implementation. International human rights law represents the broader framework within which domestic laws are set for advancing gender equality and women’s empowerment. The [Charter of the United Nations](#) espouses equality between men and women<sup>29</sup> and is reinforced by the [Core International Human Rights Instruments](#) and their associated Optional Protocols. These include CEDAW, which establishes not only “an international bill of rights for women, but also an agenda for action by countries to guarantee the enjoyment of those rights”.<sup>30</sup> The [Vienna Declaration and Programme of Action](#) (Vienna Declaration), adopted by the World Conference on Human Rights, affirmed that human rights are inalienable, universal, indivisible and interdependent.

Effective programming provides informed and sound policy advice on critical gaps in reforms, as well as measures to address them



ILO Conventions also create relevant, binding commitments such as equal work for equal pay (Equal Remuneration Convention No. 100), non-discrimination in employment relationships (Discrimination (Employment and Occupation) Convention No. 111), equality of opportunity and treatment of workers with families (Workers with Family Responsibilities Convention No. 156), maternity rights and protections (Maternity Protection Convention No. 183) and the protection of domestic workers (Domestic Workers Convention No. 189).<sup>31</sup>

These global standards operate alongside region-specific obligations in regional human rights treaties (e.g., League of Arab States, Arab Charter on Human Rights; Organization of African Unity, African Charter on Human and Peoples' Rights; Organization of American States (OAS), American Convention on Human Rights "Pact of San Jose, Costa Rica"; and European Union, Charter of Fundamental Rights of the European Union) and other gender-specific regional instruments (e.g., African Union, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol); OAS, Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belem do Para"; Council of Europe, Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention); and Association of Southeast Asian Nations (ASEAN), Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN).

In the area of criminal justice administration, there are also important guidelines adopted by the United Nations. They include: United Nations General Assembly Resolution 70/175, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules); 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); United Nations General Assembly Resolution 67/187, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems; UNODC, United Nations Standards and Norms in Crime Prevention; United Nations General Assembly Resolution 45/110, United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules); and 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>32</sup>

### 3.1.1 Enforcing human rights standards through global and regional complaints procedures

A range of global and regional human rights treaties and institutions provide standards, procedures and platforms for an individual or a group of individuals to submit complaints when the provisions of a treaty are violated.<sup>33</sup>

#### Examples of complaints procedures at global level

Eight out of the nine core international human rights instruments are complemented by Optional Protocols, which permit their respective monitoring bodies to consider complaints (or communications) of violations of rights which are protected under the specific instrument. As a basic condition for setting such a process in motion, the Optional Protocol in question must have been ratified by the State concerned. The full

Both individuals and groups are recognized claimants of international and regional dispute mechanisms



preconditions for setting the CEDAW Committee's [Communications Procedure](#) in motion are listed in Article 1 to Article 4 of United Nations General Assembly Resolution 54/4, [Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women](#).<sup>34</sup> See the [CEDAW Committee's recent jurisprudence](#).

### Examples of complaints procedures at regional level

- Communication procedures of the African Commission on Human and Peoples' Rights in relation to the African Charter on Human and Peoples' Rights.<sup>35</sup> See the [Commission's jurisprudence](#).
- The application procedure of the European Court of Human Rights, which rules on individual or State applications alleging violations of the civil and political rights set out in the European Convention on Human Rights. See the [Commission's judgments and decisions](#).
- The petition system of the Inter-American Commission on Human Rights in relation to the [American Declaration of the Rights and Duties of Man](#), the [American Convention on Human Rights](#) and other inter-American human rights treaties.<sup>36</sup> See the [Commission's jurisprudence](#).

#### 3.1.1.1 Addressing reservations

Many countries have made reservations to: (a) Article 2(c), which indicates that States parties undertake to establish legal protection of the rights of women on an equal basis with men ... (b) Article 5(a), which indicates that States parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women ... (c) Article 15, which indicates that States parties shall accord to women a legal capacity in civil matters identical to that of men and the same opportunities to exercise that capacity.

In view of the fundamental importance of women's access to justice, the Committee recommends that States parties withdraw their reservations to the Convention, in particular to articles 2(c), 5(a), 15 and 16.

Source: CEDAW GR 33, paras. 65-66.

A reservation is a statement made by a State by which it seeks to exclude or alter the legal effect of certain provisions of a treaty in their application to that State.<sup>37</sup> When a State makes a reservation upon signing, it must confirm the reservation upon ratification, acceptance or approval. However, human rights treaty bodies are generally agreed that reservations cannot be contrary to the object and purpose of the treaty in question.<sup>38</sup>

Out of the 189 parties to CEDAW, 62 countries entered reservations upon ratification of the treaty.<sup>39</sup> Some reservations are procedural (i.e., reservations to Article 29 regarding dispute resolution), but others obstruct specific State responsibilities to uphold substantive women's rights in areas such as non-discrimination, holding public office, equal nationality rights and marriage and family (see Module 2).<sup>40</sup>

#### 3.1.2 Typical programming challenges/opportunities

- **Incorrect perceptions of international human rights treaties.** Some decision makers perceive international human rights treaties such as CEDAW as codifying norms

Reservations to a human rights treaty can serve as a major bottleneck to the implementation and enforcement of that treaty

Lack of political will and incorrect perceptions about the intentions and sources behind international and regional instruments can further weaken the ability of a State to enforce treaty obligations

Programming interventions can focus on advocating for the ratification of human rights instruments and their respective Optional Protocols, in addition to their dissemination throughout all sectors of society

that are more compatible with Western cultures. This results in limited political will for implementing “externally imposed values”.

- **The integration of treaties into domestic law and policy can be prolonged in some country contexts.** States have different requirements for incorporating international law standards into domestic law, which makes them binding domestically. In dualist States, there are substantial hurdles, such as requiring the legislature to adopt the treaty in order to achieve domestic enforcement (see Section 1.1).
- **Limited knowledge and understanding of treaty obligations among State actors.** The CEDAW Committee and other treaty bodies have noted that poor implementation of human rights treaty obligations is in part due to government actors’ inadequate or incorrect knowledge of the rights provided under CEDAW and their implications for women’s rights.<sup>41</sup>
- **Weak enforcement.** While each of the nine core human rights treaties are assigned monitoring bodies to assess implementation among States and eight of the treaty bodies have communications procedures, States are not “sanctioned” for lack of implementation of their treaty obligations.<sup>42</sup>

### 3.1.3 Programming considerations and options

1. **Support States parties to ratify relevant treaties and protocols, withdraw reservations and establish domestic mechanisms to support the implementation of international instruments.** International and regional frameworks play an important role in realizing women’s rights, by serving as building blocks for the development of domestic law and policy.<sup>43</sup> References that may help to inform targeted programming include the CEDAW Committee’s concluding observations and recommendations, recommendations of other relevant treaty bodies and recommendations of UPR sessions.
2. **Develop mechanisms for strengthening familiarity with, and understanding of, CEDAW obligations across the State, and particularly within the justice sector.** This could be combined with other State-wide gender mainstreaming initiatives, such as ensuring that all members of staff and not just gender focal points are aware of their obligations to implement women’s rights.
3. **Explore opportunities for greater cooperation with CSOs in developing strategies for implementing treaty obligations and maintaining accountability.** CSOs can provide valuable insights into implementation gaps and priority areas to be addressed by highlighting these in their Alternative Reports to the CEDAW Committee as well as to other treaty bodies, and by monitoring State implementation of concluding observations and recommendations.
4. **Strengthen enforcement of treaties.** Disseminate the Optional Protocol to CEDAW and other human rights treaties widely, provide guidance to CSOs on navigating the human rights system and advocate for the implementation of decisions arising out of such complaints. In this context, practitioners could also map out stakeholders and identify allies in support of sustaining political will for treaty ratification and enforcement.
5. **Promote national dialogue on human rights.** Under the leadership of NHRIs, foster national dialogue on human rights and identify positive linkages between international human rights norms and local cultures and religions to mitigate



Above: Côte d'Ivoire. High school students in the town of Odienné in the northwest of the country. © UNICEF/ Frank Dejongh.

perceptions that such norms are externally driven. This could include building partnerships and communities of practice among traditional and religious leaders, young people and men and boys.<sup>44</sup>

## 3.2 Domestic law

The absence of effective laws and regulations in a country, as well as the presence of laws that are discriminatory towards women, significantly hinder development. Domestic laws consist of a system of rules that a State establishes to regulate the actions and inactions of private and public individuals and organizations. Domestic laws are complex and cover a wide range of legal domains that impact a country's overall development. While women's lives are influenced by all domestic laws that their States may have in place, the following discussion is limited to the domains that CEDAW GR 33 identifies as having a comparatively greater and more direct impact on women's access to justice.<sup>45</sup> These consist of constitutional law, various forms of formal laws (civil law, family law, criminal law and administrative, social and labour law) and informal laws (customary and religious law). Although treated separately in this Toolkit for illustrative purposes, in practice, all legal domains and the laws which flow from them are interdependent and often intersect (e.g., in claims related to family law, domestic violence or citizenship).

### 3.2.1 Constitutions

Constitutions are the most authoritative expressions of a State's system of governance and accountability, posing both opportunities and threats to the advancement of gender equality. UNDP defines a constitution as the framing legal instrument, which captures the basis of the social contract between the State and the people that it serves. It constitutes a body of rules that outlines the authority and powers of the State, including as it relates to the rights that citizens and others enjoy in relation to the State.<sup>46</sup>

Domestic law is the entry point for implementation and enforcement of international and regional human rights treaties

Constitutions are political instruments which shape and define the national normative agenda on women's rights

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States parties that have adopted constitutional guarantees relating to substantive equality between men and women and incorporated international human rights law, including the Convention, into their national legal orders are better equipped to secure gender equality in access to justice.

Source: CEDAW GR 33, para. 41.

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Over the past 50 years, constitutions in around half of countries have been redrafted or amended in varying degrees.<sup>47</sup> The UN Women [Global Gender Equality Constitutional Database](#) estimates that 192 constitutions contain provisions on equality and non-discrimination, such as equality before the law, equal rights on the basis of sex and the duty of the State to protect all individuals from discrimination. Constitutions are also important because they often reflect how States will domesticate international law such as human rights treaties, dictating if they take a dualist or monist approach.

### 3.2.1.1 Typical programming challenges/opportunities

- **Constitutional gains are sometimes watered down by discriminatory clauses.** Despite constitutional reforms that promote gender equality, discriminatory provisions persist in some constitutions and many women are impacted by contradictory regimes of clauses which negate legal advancements in other areas. These include “claw back” clauses, which impose exceptions to equality and non-discrimination provisions in matters of personal law (11 constitutions) and provisions that discriminate against women in matters of citizenship (14 constitutions).<sup>48</sup> Of the 44 constitutional monarchies that exist globally, only 17 (39 per cent) recognize succession by both females and males.<sup>49</sup> Furthermore, several concluding observations and recommendations of the CEDAW Committee point to a growing demand for States to adopt the CEDAW definition of discrimination in both constitutions and laws.<sup>50</sup> Reforms in these areas have been piecemeal.
- **Weak enforcement.** Where programming succeeds in incorporating gender equality and related provisions into a constitution, implementation remains a significant challenge. Constitutional provisions possess limited enforcement power on their own, relying on implementing legislation or adjudication in the courts (often a constitutional court) for enforcement. The rights provided for in a constitution may therefore mean little in practice without mechanisms for implementation, especially if the constitution is seen only as aspirational. Impactful programming requires enough political will to make these enforcement mechanisms a reality.
- **Ill-timing of programmatic interventions.** Gender advocates may initiate advocacy and mobilization much too late for meaningful impact. Programmes in support of gender equality and women’s access to justice are often not timed strategically with political shifts and other indicators of constitutional reform, leading to missed vital opportunities and entry points.
- **Insufficient political will.** As a political process, constitutional reforms may be subject to many competing interests. Political actors often perceive women’s rights as secondary to other political issues that they deem as “more pressing”.
- **Gender advocates focus on major normative provisions at the expense of other important substantive rights and protections.** Women’s rights-related advocacy tends to focus more on civil and political rights (e.g., quotas) and less on social and economic

Some constitutional provisions are drivers of women’s rights, while others serve as barriers



Above: Morocco. View of Salé, photographed from the Corniche of Rabat. © World Bank/Arne Hoel.

rights. This may stem in part from the limited capacity of women’s rights organizations to address a varied range of issues within constitutional reform time frames.

- **Lack of gender-sensitivity in standard constitutional language.** While an increasing number of constitutions are incorporating stand-alone women’s rights clauses (24 constitutions to date), the tendency to employ gender-neutral language remains a common feature of reforms.<sup>51</sup> In such instances, the language may not consider the myriad of obstacles that women face in their interaction with the law as well as unequal power relations in society.

### 3.2.1.2 Programming considerations and options

1. **Six guiding principles for constitution-making.** While an enabling environment focuses primarily on the substantive content of a constitution, there are also important considerations around the constitution-making process itself. The frame of reference for the United Nations system’s support to constitution-making processes is provided by the United Nations [Guidance Note of the Secretary-General, United Nations Assistance to Constitution-making Processes](#) (Guidance Note), which stipulates that constitution-making for the United Nations “is a broad concept that covers the process of drafting and substance of a new constitution, or reforms of an existing constitution.”<sup>52</sup> The six guiding principles of the Guidance Note support (1) seizing opportunities for state-building and peacebuilding; (2) promoting the integration of and compliance with human rights standards; (3) ensuring local ownership; (4) inclusivity, participation and transparency; (5) mobilizing and coordinating a wide range of expertise; and (6) follow-up and outreach.<sup>53</sup>
2. **Constitutional support should be timely.** Constitutional reform processes are time-bound. Therefore, anticipate the reform timetable, engage systematically with State and non-State actors and bring all actors together for consensus-building.
3. **Amplify the voices of gender advocates.** Promote the full and inclusive participation of relevant stakeholders in constitutional reform processes to ensure that the primary concerns within each subject area are accurately identified and addressed.

Spaces must be created to ensure that women from all walks of life are enabled to participate in constitutional reform processes, regardless of their political leanings or social and economic backgrounds



Constitution-making is an incremental process. Women's groups and advocates must therefore be aware of strategic entry points, opportunities as well as potential threats

Based on the principles outlined in the Guidance Note, constitutional reforms must serve as platforms for women's effective participation in all settings (e.g., hard to reach areas such as rural communities) and take place with the active engagement of CSOs, community-based organizations (CBOs), national women's machineries, women of all political party affiliations and relevant parliamentary committees and caucuses. This could involve supporting the inclusion of these actors in the constitutional process, connecting them to the media and decision makers and promoting coalition-building among like-minded individuals and organizations to take women's demands forward.

4. **Review the existing constitution from a gender perspective.** Examine the constitution for gender discriminatory language and provisions. Determine whether it complies with the recommendations of the CEDAW Committee, other treaty bodies and the UPR on reforming the constitution to address discriminatory content and propose reforms based on these findings and good practices from other countries. In this context, work with State and non-State actors to agree on a package of demands for women. Priority attention should be given to expunging existing discriminatory provisions and adopting new provisions which enhance the achievement of substantive equality.<sup>54</sup>
5. **While general equality clauses are essential, it is also important to advocate for stand-alone women's rights clauses.** These clauses often include explicit language that call on the State to uphold and enforce women's rights in specific areas, such as in politics, the economy and protection from violence.<sup>55</sup> Such stand-alone clauses present opportunities to hold States accountable for their obligations under CEDAW and other international legal instruments. They therefore provide an important entry point for the domestication of global and regional legal standards in areas such as equal access to education, health, citizenship and participation in elected and appointed bodies.
6. **Support the creation and sustained resourcing of constitutional review bodies.** Constitutions must provide for the creation of structures that guarantee judicial review and monitoring mechanisms "to oversee the implementation of all fundamental rights, including the right to substantive gender equality."<sup>56</sup>
7. **Conduct detailed background research and negotiate respectfully.** The United Nations must win the credibility and trust of all stakeholders involved in the constitutional reform process through a better understanding of the positions and concerns of all stakeholders. At the same time, the United Nations can impress upon legislators/drafters, that as representatives to the people, they must prioritize women's rights as a State obligation by referring to good practice provisions from other constitutions, as well as by demonstrating the strategic value of constitutional guarantees on women's rights for both women and society as a whole.
8. **Pay close attention to language.** Carefully evaluate the implications of gender-neutral provisions on women's rights. Such provisions include those relating to access to education, the right to work, the right to inherit, the right to pass on citizenship, the right to run for office, quotas on participation in legislatures and institutions and the status of customary or religious law in domestic law and practice. In the context of avoiding gender-neutral language, constitutional reform processes in Ethiopia, Morocco and Tunisia succeeded in integrating appropriate pronouns (e.g., male/female, he/she) into constitutions, by explicitly guaranteeing women's access

to specific offices on an equal basis with men.<sup>57</sup> Article 74 of the [Constitution of Tunisia 2014](#) ensures that “every male and female voter” can stand for President and Article 66(4) of the [Constitution of the Republic of Ecuador 2008 with amendments through 2015](#) recognizes formal equality as part of its non-discrimination clause. Furthermore, provisions can be included to promote legislative arrangements on specific areas of women’s rights. For example, Article 22 of the [Constitution of the Republic of Ghana 1992 with amendments through 1996](#) places an obligation on Parliament to enact legislation to protect the property rights of women.

### 3.2.2 Making and reforming laws

Constitutional provisions must be translated into law for their meaningful impact on women. Legal systems are defined by sources of law and the types of institutions which have been established to interpret and enforce them. In some countries, laws may be derived from one or more sources (plural or mixed legal systems) and such systems are often characterized by the coexistence of State laws and regulations on the one hand (formal), and religious, customary and indigenous laws and practices on the other (informal). The existence of multiple sources of law presents potential threats and opportunities for women’s ability to access justice.

In some countries, a thin line exists between formal and informal laws, particularly when constitutions recognize customary and/or religious laws as part of the formal laws of the State (e.g., Ghana, The Gambia and Nigeria).<sup>58</sup> Arab States such as Egypt, Kuwait, Maldives, Oman, United Arab Emirates and Qatar recognize Islam as the main source of formal law in their respective constitutions. In these countries, the code of law derived from the Qur’an and Hadith (sayings and exhortations of the Prophet Muhammad), collectively known as Sharia law, is the primary source of law, although interpretations may vary between schools and scholars.<sup>59</sup>

For effectiveness, law-making processes must draw on linkages within and between horizontal and vertical events. This approach assumes that community, sub-national and national level actors are all critical for sustained law reform and therefore must be comprehensively engaged as Figure 1.4 illustrates.

**FIGURE 1.4** Horizontal and vertical relationships in law-making processes



Formal and informal laws are the trajectories for the implementation of human rights treaties and provide meaning to constitutions

Law-making is multifaceted and underpinned by political and legal systems as well as cultural traditions

Formal and informal laws can be mutually reinforcing

The following Sections focus on the programming options for addressing the challenges and opportunities presented by both formal and informal laws.

### 3.2.2.1 Formal laws

Formal laws generally consist of procedural and substantive legislation and executive decrees and orders, with some jurisdictions viewing court decisions as an integral part of formal laws as well. Gender-sensitive legislation assumes “the integration of a gender perspective into all components of the legislative process—design, implementation, monitoring and evaluation—in order to achieve the ultimate objective of equality between women and men.”<sup>60</sup> To be effective, programming that seeks to promote women’s access to justice must consider how laws interact and relate to each other. Federal systems of government, for instance, do not guarantee the automatic acceptance of federal laws at state level.

UN Women’s [Progress of the World’s Women 2011-2012: In Pursuit of Justice](#), notes that gender equality is dependent on a range of laws. Over 150 countries have in place at least one law that is discriminatory towards women.<sup>61</sup> In 100 countries around the world, women are barred from doing certain work solely because they are women.<sup>62</sup> In 32 countries, women cannot apply for passports in the same way as men and in 18 countries they cannot get a job if their husbands feel it is not in the family’s interest.<sup>63</sup> Therefore, the achievement of certain substantive rights may require supporting legislation across a variety of fields. In the area of economic rights for example, laws must address power dynamics within the household, child-rearing tasks and other unpaid labour which affects the ability of women to access the labour market on equal terms to men.<sup>64</sup> Where federal systems of government can impact negatively on women’s rights, the constitutions of such countries must always signal that the laws of sub-national governments are subject to the national constitution, including with respect to gender equality.

There are many areas of law that influence and shape women’s access to justice. Guided by CEDAW GR 33, these fall under four broad categories which may sometimes overlap:

#### Civil law

This area of law extends to rights, procedures and remedies in the fields of personal/legal capacity, contracts, private employment, personal injury, consumer protection, inheritance and property rights. Article 15 of CEDAW guarantees women equality before the law, identical legal capacity to that of men and the same opportunities to exercise that capacity in civil matters. SDG Target 5.1 encourages States to undertake reforms in the sphere of civil law that would give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws. According to CEDAW GR 33, States are required to:

- Eliminate all gender-based barriers to access in civil law procedures, such as requiring that women obtain permission from judicial or administrative authorities, spouses and other family members prior to initiating legal action, or requiring that they furnish documents relating to identity or title to property.
- Deem null and void all contracts and other private instruments that restrict the legal capacity of women, as set out in the provisions of Article 15(3) of CEDAW.

CEDAW GR 33 recognizes a range of legal domains which define claims and remedies that women can receive. These domains cover but are not limited to civil law, family law, criminal law, administrative, social and labour law and procedural and evidentiary rules



- Adopt and enforce positive measures to ensure women are free to enter into contracts and other private law agreements.<sup>65</sup>

### Family law

Technically, family law (otherwise known as “personal law”), is a part of civil law. It is, however, treated as a separate legal domain under CEDAW GR 33 because of its specific impact on women. This area of the law addresses matters related to marriage, divorce, parental rights and obligations and property rights in the context of marriage or inheritance. Module 2 elaborates on this further, exploring women’s experiences of discrimination based on ideology, tradition and culture in this private sphere and highlighting measures to address these challenges.

### Criminal law

Criminal law encompasses frameworks which define what constitutes a crime and the corresponding remedies and punishments. All legal systems recognize two important dimensions of criminal law in the context of women’s access to justice: when women are (1) victims or survivors of crime, and (2) persons in conflict with the law (see Module 3 and Module 4). Gender-sensitive reforms in criminal law could include:

- Creating gender-sensitive resources and procedures for dealing with crimes that are often committed against women, such as providing and training female police officers and medical examiners to support female survivors of sexual assault.
- Reviewing the legal status of behaviours that are not criminalized or punished as harshly if they are committed by men, such as pre-marital sex, adultery<sup>66</sup> or prostitution.<sup>67</sup>



Above: Tunisia. Fondation El Kef pour le Developpement training and empowering woman in El Kef. © World Bank/Arne Hoel.

- Revising laws that seek to regulate women’s behaviour, but which are not crimes by any international legal standard, such as running away from home without permission,<sup>68</sup> or failure to respect modesty and dress codes.

### Administrative, social and labour law

Issues of special importance to women in this area include health services, social security entitlements, labour relations (such as equal remuneration, including for civil servants, and equal opportunities to be hired and promoted), housing and land zoning, compensation funds, governance of internet resources and immigration and asylum, including detention in such cases. Measures to promote gender-responsiveness in this area of the law include:

- Carrying out independent reviews in accordance with international standards and ensuring that they are available for all decisions by administrative bodies.
- Requiring decisions rejecting an application to be reasoned and ensuring that the claimant can appeal to a competent body against the decision. The implementation of any prior administrative decisions should additionally be suspended pending further judicial review.
- Using administrative detention only exceptionally, as a last resort, and for a limited time when necessary and reasonable in the individual case. Administrative detention must be proportionate to a legitimate purpose and in accordance with national law and international standards.
- Ensuring that all appropriate measures, including effective legal aid and procedures, to challenge the legality of their detention are available, as well as regular reviews of such detention in the presence of the detainee.

This area of the law significantly impacts upon marginalized and excluded women because they often cannot access institutions for protection. Examples include domestic workers, migrants and women who work in the informal economy without protection from economic and sexual exploitation.<sup>69</sup>

### Procedural and evidentiary rules

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Many of the Committee’s concluding observations and views under the Optional Protocol, however, demonstrate that discriminatory procedural and evidentiary rules and a lack of due diligence in the prevention, investigation, prosecution, punishment and provision of remedies for violations of women’s rights result in contempt of obligations to ensure that women have equal access to justice.

Source: CEDAW GR 33, para. 23.

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Procedural rules govern the steps that a complainant and respondent must fulfil to be fully heard and conclude a dispute, particularly in a formal or informal judicial forum. In the formal context, such steps could include the filing of documents within specified time periods and serving such documents on affected persons. Evidentiary rules on the other hand, determine who, when and how evidence on a particular set of facts is presented.

Procedural and evidentiary rules cut across each of the above four areas of law because they are critical to the determination of a case, for example, in cases where women are

not permitted to file claims without the permission of a male guardian, where different standards of proof exist for men and women for certain crimes or in civil and family cases. Discriminatory evidentiary rules include those that discriminate against women as witnesses, complainants and defendants by requiring them to discharge a higher burden of proof than men to establish an offence or seek a remedy, as well as rules that exclude or accord inferior status to the testimony of women.

Even where procedural and evidentiary rules are gender-neutral, discriminatory approaches to their interpretation and enforcement can translate into the exclusion, discrediting or devaluation of women's testimony by law enforcement officials. Stigmatization of women, systematic failures in evidentiary collection procedures for crimes committed against women and onerous probative requirements can destroy the evidentiary foundations of cases even before women are heard.

### 3.2.2.1.1 Typical programming challenges/opportunities

- **Legislative reform is often a slow and long-term process.** The legislative process requires an incredible amount of time, effort and social capital and may involve political bargaining over minutiae that can span several years, particularly in States which apply dualist approaches to the adoption of international treaties. Such long-term processes may be less interesting to both donors and practitioners, despite their critical importance for actualizing women's rights.
- **Reforms in one area of law may not have the desired impact if other areas of law continue to discriminate against women.** The interconnected nature of the law illustrates the challenges in creating an enabling environment for women's access to justice and highlights the need for comprehensive reform across sectors. For example, legislation criminalizing violence against women may be ineffective if family law discriminates against women, particularly in the areas of marital property, divorce, custody and the maintenance of children. This is because discriminatory family laws place women in situations of dependency and may discourage them from reporting cases of violence committed against them.
- **Reforms that challenge customary and religious norms may face opposition from various groups in society.** Advocates of such reforms may be suspected of asserting an external agenda or values that are otherwise antithetical to domestic culture. Cultivating broad-based support across government and non-government actors may be necessary to drive these reforms forward.
- **There may be insufficient political will among policymakers to prioritize the operationalization of women's rights.** Legislative reforms will have limited impact without adequate implementation. Policymakers may have supported women's rights during a constitutional process or the ratification of a human rights treaty but may be unwilling to commit resources to the implementation of those commitments.

### 3.2.2.1.2 Programming considerations and options

1. **Use evidence-based approaches to inform the women's rights legislative agenda.** Every item of the legislative agenda must be supported by evidence of the legislative gap that it is seeking to fill. This could serve as a basis for key messaging among gatekeepers such as parliamentarians, policymakers and community leaders. Legislative analysis can help assess the range of gender discriminatory issues to be

Law reform is a long-term process, not a one-time event

addressed by the law and help drafters avoid discriminatory language in the design of laws themselves. It also extends to analysis of the likely impact of the law on women and the actual and opportunity cost of implementation.<sup>70</sup>

2. **Adopt strategic messages.** Care must be taken to avoid the impression that the law or laws under consideration will benefit only women. Even where the basic policy considerations address gender inequality, messaging on the reform process must stress the intended impacts on all of society, including men and boys.
3. **Prioritize “low hanging fruits” and reforms which have potential for wider impact.** Comprehensive legal reforms take time. Prioritization is therefore essential and requires careful analysis to understand how the laws are interconnected, as well as the key entry points. This can be assessed through a mapping process, but also requires engaging with women to understand which laws most affect their daily lives.
4. **Integrate implementing provisions.** All laws must integrate specific implementation arrangements that are supported by adequate funding sources. This could include the creation of specific budgetary measures, placing obligations on ministries and departments to issue directives to their agencies and staff and the creation of new policies and services.
5. **Ensure national ownership of processes and outcomes.** Similar to constitutional reform processes, law-making requires the collective effort of a range of stakeholders for effective ownership and support. “Champions” can be sought from members of cabinet, parliament (and the Inter-Parliamentary Union), policymakers, policy influencers as well as the intended female beneficiaries of such reforms. Working with and incorporating the views of women themselves is an effective method for identifying problematic laws and obstacles to implementation. Feedback on implementation challenges and other institutional shortcomings outside the control of public servants can also be useful. Legislative advocacy could involve the drafting of model laws, maintaining and building alliances and creating a compilation of good practice legislation drawn from similar legal systems.

### 3.2.2.2 Informal laws

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States Parties shall take all appropriate measures: To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes

Source: CEDAW, Art. 5(a).

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Protect women and girls from interpretations of religious texts and traditional norms that create barriers to their access to justice and result in discrimination against them.

Source: CEDAW GR 33, para. 25(d).

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Ensure that religious, customary, indigenous and community justice systems harmonize their norms, procedures and practices with the human rights standards enshrined in the Convention and other international human rights instruments

Source: CEDAW GR 33, para. 64(a).

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Informal sources of law encompass customary and religious laws and practices which have evolved over time and include their substantive content, procedures and evidentiary dimensions. It has been mentioned above that these could also form part of the formal laws of a State.

*Customary laws* pertain to customs that have acquired the force of law. They are laws that are embodied in customs, rules or traditions and accepted by members of the community as binding, but nevertheless remain adaptable, dynamic and flexible.<sup>71</sup> CEDAW GR 33 also recognizes *indigenous laws*.<sup>72</sup> These are similar to customary laws but are often given a distinct identity in recognition of the specific international standards related to the rights and protections of indigenous peoples and their justice systems. Informal *religious laws* refer to norms that are derived from interpretations of codified religious texts.<sup>73</sup> *Informal laws* may vary from one community or school of thought to another and are generally uncodified. This means that their interpretation can be unpredictable and predisposed to deepening discriminatory social norms and inequalities.<sup>74</sup>

### 3.2.2.2.1 Typical programming challenges/opportunities

- **There is no single process or entry point for reforming informal laws.** For instance, a distinct customary law review body may not exist at community level to initiate reforms. Customary law is furthermore inherently challenged by diversity and its diverse application within and across different communities. Any reform process is therefore going to be iterative, slow and anything but linear. Some countries have tried to overcome this through statutes which regulate the application of customary and religious laws as well as customary and religious institutions.<sup>75</sup>
- **Changes in customary law often require shifts in deep-rooted sociocultural norms.** Customary law is rooted in a community's historical experiences, values and practices. Challenges to existing sociocultural norms may therefore be resisted, particularly by gatekeepers such as traditional and religious leaders who may perceive change as a challenge to their own authority and power.
- **Where customary law is derived from religious texts, seeking to reform these laws can appear to be a secular contestation of religious principles.** Programming on customary law that does not adequately root reforms in the local context is particularly vulnerable to this challenge. This highlights the importance of developing relationships with religious and traditional leaders and working with them to create reforms that have broad buy-in.
- **Inadequate consultation and research can result in misguided programming.** Assumptions about customary law and informal justice systems must be identified and tested before designing and implementing access to justice programmes. Inaccurate assumptions about underlying norms, without balanced information on the elements which are both supportive and harmful to achieving gender equality, could lead to backlash.
- **Legal pluralism can create barriers and prevent the full exercise of women's rights.** While women should be allowed and encouraged to choose whichever laws and forums are more accessible and fair for their purposes, care must be taken to recognize and address loopholes that exist across both formal and informal justice institutions.

Informal laws mean non-State rather than unimportant, irregular, unofficial or casual

Lack of codification and variation of informal laws can disrupt certainty and predictability in their application

Preconceived ideas about informal laws can becloud judgement and programming decisions

Acknowledge, disseminate and utilize the positive dimensions of informal laws

Reforming informal laws is possible if strategically timed entry points are used and the right stakeholders are involved

### 3.2.2.2 Programming considerations and options

1. **Begin programme design on the premise that customary and religious norms can change.** Customary and religious norms are not isolated systems and most norms and practices have been impacted by social, economic, cultural and political change.<sup>76</sup> Without change, both formal and informal laws lose their relevance and suffer stagnation.
2. **Identify existing or eroded positive traditional and religious norms.** Cultural legitimacy for women's rights may be asserted from positive traditional and religious norms which are still in existence or have been eroded over time through colonial influences or the impact of conflict. These include the political spaces that women occupy in some traditional societies, the right of a woman to access and control land and her right to be protected from physical and sexual harm.<sup>77</sup>
3. **Prioritize the reform of harmful norms and explore mechanisms to guide related disputes into the formal justice system.** Programming interventions may simultaneously acknowledge that customary laws exist and remain an important source of law, while recognizing that the formal justice system is better equipped to address specific areas of women's rights (e.g., SGBV), as determined by national stakeholders. To be successful, negotiations, trade-offs and agreements on incremental as well as immediate changes may be necessary and will require buy-in from those administering customary law, local communities and women themselves.
4. **Ensure that interventions are community-driven and community-defined.** Sustainability of interventions can only be assured if they are locally-driven. Therefore, encourage traditional and religious rulers to be self-starters in initiating community-based reforms (see Box A.1.10 and Box A.1.11 in the Appendices) and ensure that community action and results are fed into overall law reform efforts at the sub-national and national levels. In this context, identify and work with allies who can point to drivers of change within customary or religious sources of law.<sup>78</sup> Coalition-building and mobilization could also generate energy around a larger movement to strengthen women's access to justice, with clusters of different thematic groups or communities of practice among informal justice actors offering a useful platform for drilling deeper into a range of norms which impact on women.
5. **Create dedicated, safe spaces for women of all generations, backgrounds and literacy levels to voice their opinions and priorities.** Listen to the views of various groups of women and be sensitive to their fears and expectations about changes in social norms. Do not expect all women to agree on one approach to change or even to change at all. Contrary views must be treated with respect and taken into account for purposes of country context-specific programming.
6. **Do no harm, be open-minded and explore multiple options for protecting women and girls.** "Do no harm" in this context means that interventions must not escalate the situation or problem that is under review, and must not pose a danger to the families and communities concerned. These efforts need to operate hand in hand with changing attitudes and building the capacities of relevant institutions and decision makers. For example, it may take time to convince a community that a perpetrator who is a breadwinner should be reported to the police. In such situations, agreement on basic issues (i.e., that violence against women is a crime) can be considered an initial step forward, while issues related to apprehension of perpetrators and

remedies may have to be worked out over time. In reforming relevant areas of Sharia law, experts recommend that an interpretative approach rather than a secular, non-compatibility or reconciliatory approach be used.<sup>79</sup> The differences between the four approaches are highlighted below:

- *Secular approach*: An application of international human rights law in Muslim States on a presumption that there are no obstacles to the coexistence of Sharia law and human rights law.
- *Non-compatibility approach*: The belief that Sharia law is valid at all times and that human rights are a form of Western imperialism.
- *Reconciliatory approach*: Based on the argument that Islamic human rights norms are compatible with international standards in many respects and areas of conflict can be reformulated and reconciled with international standards. While not denying the divine origins of Sharia, it is grounded in the belief that there are similarities and differences in the conferment of rights and responsibilities that must be reconciled.
- *Interpretative approach*: This is the preferred approach adopted by the reformist group who take the position that Sharia law can be reformed by reanalysing the divine text on the basis that the Qur'an is a living text and can be reinterpreted to meet the contemporary needs of a given society.<sup>80</sup>

### 3.3 Justice sector policies and budgets

(a) Provide adequate budgetary and technical assistance and allocate highly qualified human resources to all parts of justice systems, including specialized judicial, quasi-judicial and administrative bodies, alternative dispute resolution mechanisms, national human rights institutions and ombudsperson offices; (b) Seek support from external sources, such as the specialized agencies of the United Nations system, the international community and civil society, when national resources are limited, while ensuring that, in the medium and long term, adequate State resources are allocated to justice systems to ensure their sustainability.

Source: CEDAW GR 33, paras. 39(a)-(b).

Women's access to justice may be shaped by several national level policy strategies, including national development plans, national justice and security sector policies, national gender equality action plans and national action plans (NAPs) related to the implementation of UNSCR 1325. Justice and security sector policy design provides a platform for harmonizing and integrating these frameworks. It can also serve as a docking station for planning, prioritization, budgeting and monitoring of justice services. According to a UN Women review of the justice and security sector policy environment, at least 22 countries have national justice sector policies or justice and security sector strategies. Sub-sector policies may also exist for institutions such as the police, prosecutorial services, the judiciary, prisons, immigration and social services. Broad (sector) and specific (sub-sector) policies allows for the identification and strengthening of horizontal and vertical linkages between and across sectors during planning, implementation and monitoring of justice delivery within the country (see Box A.1.13 in the Appendices). This represents an opportunity to plan for coordinated interventions that support and strengthen women's access to justice.

The constraints that women face in accessing justice should be taken into account in the formulation of justice and security sector policies, UNSCR 1325 NAPs and budgets



**FIGURE 1.5** Placing women's access to justice at the centre of relevant national planning processes



Gender mainstreaming is yet to be fully adopted in policy and practice within the justice and security sector

Although justice and security sector strategies have become more gender-sensitive over time, there is limited evidence of their effectiveness as tools for advancing women's access to justice. This is probably due to the fact that justice sector planning is a relatively recent practice and limited knowledge exists on how to undertake sector-specific planning from a gender perspective. In the WPS context, UNSCR 1325 NAPs provide an opportunity for national stakeholders to identify priorities, determine responsibilities, allocate resources and initiate strategic actions within a defined time frame. Although a total of 73 countries have developed such plans to date,<sup>81</sup> the UN Women publication, [Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council resolution 1325](#), finds that a lack of intersectoral coordination has tended to hamper their implementation.<sup>82</sup>

### 3.3.1 Typical programming challenges/opportunities

- **Limited resources exacerbate the already low priority status of women's access to justice.** Women's access to justice programming remains a low priority within the justice sector overall. Based on the limited data available, UN Women estimates that only 5 per cent (around USD \$206 million) of the \$4.2 billion that was allocated to justice in 2009 was spent on projects in which gender equality was a primary aim.<sup>83</sup>
- **The importance of women's access to justice is often undervalued and oversimplified.** There is limited understanding of the scope of the challenges that women face, which are multidimensional in nature and extend beyond women's experiences as survivors of violence.
- **In light of the above, women's access to justice may not be viewed as an integral part of justice sector planning.** There is a common misconception that only national women's machineries or gender desks located in sector ministries are responsible for promoting gender mainstreaming and that such efforts therefore fall outside the purview of the justice and security sector as a whole.





Above: Turkmenistan. Students participate in a meeting on standards and codes. © World Bank.

### 3.3.2 Programming considerations and options

1. **Utilize country assessments (see Section 2.0) to identify target populations currently underserved by the justice sector and barriers to access.** Sources should include poverty analysis, justice needs surveys and demographic and health surveys, among others. Data gathered during this process should be used to define baselines and targets for achieving milestones and for monitoring progress (see Module 5).
2. **Justice and security sector planning must be participatory.** Justice and security sector planning must not be “board room processes” among and between formal justice actors alone but must also extend to the informal sector and CSOs working in the field of justice reform and delivery.
3. **Build relationships with policy and financial gatekeepers.** Build alliances with those who hold sway over the macroeconomic environment and encourage gender advocates to strengthen their relationships with these actors as well, so that national consensus can be built on justice and security sector reforms and financing.
4. **Build bridges with national development planning.** Justice and security sector policy design provides a platform for planning, prioritization, budgeting and monitoring of justice services. They must therefore inform and be informed by the broader national development planning process, national gender strategies and action plans on the [Beijing Declaration and Platform for Action](#) (BDPfA). For example, mainstreaming access to justice activities into poverty reduction and social protection programmes could institutionalize fee waivers and legal aid for indigent women. Budgeting for the justice sector could also focus on poorer districts and the creation of facilities and programmes which can ensure women’s access to justice (e.g., family courts, domestic violence courts, land courts and integrated victim support units).
5. **Justice and security sector plans must hold duty-bearers accountable to women.** National strategies must include time-bound results and a monitoring and evaluation

Programming must encourage and support the participation of women in identifying areas for reform

Support national actors in designing and defending their sector and sub-sector budgets

Justice and security sector strategy development should be informed by evidence and a credible monitoring and evaluation framework

framework that spells out agency-specific responsibilities and performance indicators. Consequently, each participating institution must have clarity concerning its role and responsibilities and how to execute them. Task forces should be established to ensure coordination, information flow and feedback functions.

#### 6. Promote gender-responsive budgeting in the context of women's access to justice.

The costing of justice and security sector strategies should be accompanied by several complementary steps to secure dedicated funding for women's access to justice. For example, budget officers of the administrative units of each sub-sector (e.g., police, prosecutorial services and the judiciary) should receive training in the preparation of their respective budgets and the drafting of strategic talking points to assist the officers and their superiors in defending the specific budget lines on promoting women's access to justice. Briefings should also be arranged for relevant staff of ministries of finance and parliamentary budget approval committees ahead of budget readings.

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

While the enabling environment lays the foundation for women's access to justice, the functioning of justice institutions directly impacts women's actual experiences in accessing justice. Without institutions that are adequately resourced, accessible, coordinated, fair, responsive and accountable, the transformative potential and implementation of laws, international agreements and women's rights will remain theoretical. Institutions that perpetuate structural discrimination can stifle progress made both in the enabling environment and in women's empowerment (see Section 5.0). Moreover, institutions are often slow to change, which can allow for the persistence of discrimination and bias even in contexts of comprehensive legal reforms. Creating gender-responsive justice institutions is therefore essential to achieving transformational change for women.

### An overview of justice and security sector institutions

A wide range of formal and informal institutions play a significant role in justice delivery (see Section 2.0 of the Introduction). The following describes how women's ability to access justice can be hindered or supported by these institutions and furthermore illustrates how such institutions interact.

**Formal justice institutions** derive their legitimacy from the State. They may have broad mandates or operate as specialized units, such as domestic violence courts, labour courts and family courts. In conflict and post-conflict settings, the military and associated military courts often play important roles in maintaining law and order as well as peace and security. In addition, *quasi-judicial mechanisms* such as independent national institutions for the protection and promotion of human rights may exist (e.g., ombudsperson institutions and NHRIs) to arbitrate or initiate actions on behalf of individuals or a group of individuals whose rights have or are being violated. Box A.1.16 in the Appendices highlights the complex range of formal institutions in Uganda.

Women often experience discrimination, bias and impunity at the hands of formal justice and security sector personnel. As duty-bearers, institutions may lack awareness and

Effective, accountable and gender-responsive institutions translate laws and policies into reality for women

Pro-poor justice is underpinned by both formal and informal justice delivery



Above: Haiti. A small shop keeper in Delmas. © World Bank/Dominic Chavez.

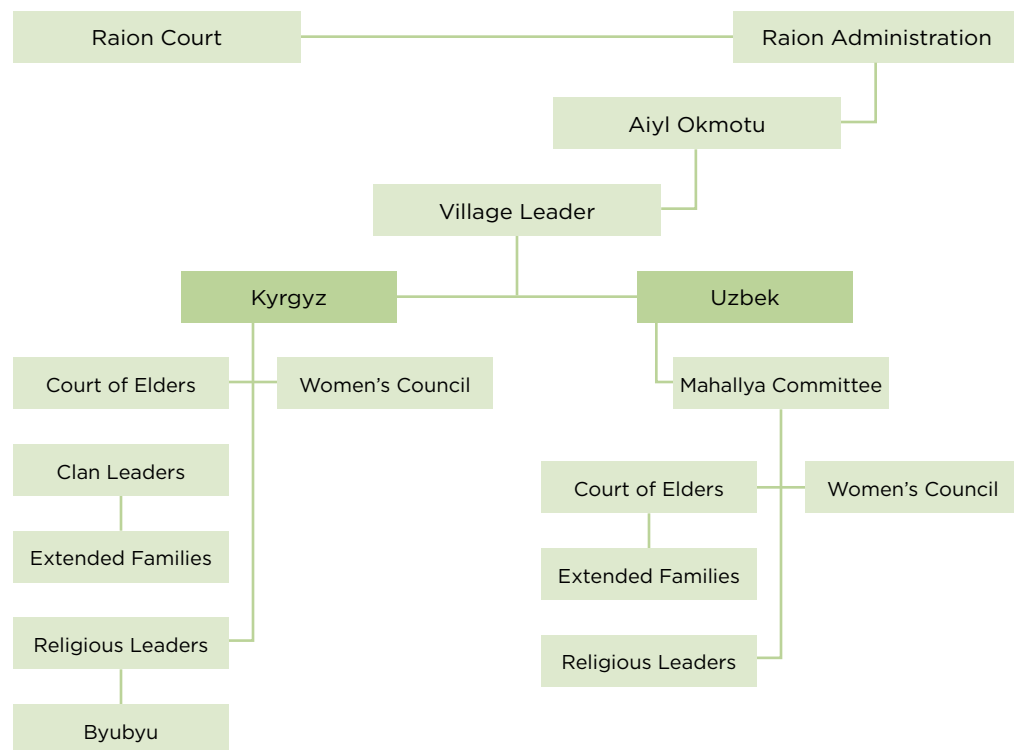
training on women's rights as well as basic supplies and logistical tools (e.g., stationery for recording statements; vehicles or fuel to attend crime scenes, apprehend suspects, transport prosecutors to courts or bring witnesses and survivors to hearings; facilities in which to detain them; equipment for gathering evidence; private spaces in which to conduct interviews; lockable cabinets in which to safely store statements; or appropriate referral systems such as shelters for women at risk of violence). Limited capacities also exist in terms of infrastructural development, provision of legal aid, filing fee waivers, interpretation, fast-tracking of claims involving specific population groups (e.g., pregnant and lactating mothers, persons with disability, the elderly) and data management capabilities to monitor disposal, conviction and attrition rates. Furthermore, judges, prosecutors and other justice professionals working in rural and remote areas may often operate without basic legal resources or dedicated justice facilities and supporting staff.

**Informal justice institutions** are broadly defined as customary and religious systems that undertake the resolution of disputes and the regulation of conduct by adjudication or the assistance of a neutral third party that is not part of the State system and/or whose substantive, procedural or structural foundation is not primarily based on statutory law.<sup>84</sup> Although positive elements of customary and religious systems may be found, overall evidence suggests that they tend to afford a lower level of protection to women, denying them rights and entitlements generally recognized under both domestic law and international human rights law. Informal justice forums are, however, "too important to ignore"<sup>85</sup> as an estimated 80 per cent of disputes are resolved through such channels in some countries.<sup>86</sup> Their operations are generally informed by individual and community experiences of justice rather than by the laws of States. Complaints can be entered either orally or in writing. Proceedings also generally take place without legal representation, due to the limited formalities involved. A multi-country study on informal justice systems undertaken by UN Women, UNDP and UNICEF found that the majority of the 3,629 female and male respondents interviewed had a higher preference for informal justice channels of dispute resolution in comparison to the formal channels based on the former's geographical, financial, technical, cultural and linguistic accessibility.<sup>87</sup> Such

institutions may be best suited for male and female disputants because of the high value placed on social cohesion, community harmony and consensus-based decision-making. Nevertheless, as noted, they can also serve as a risk to women’s effective access to justice when there are limited State regulations on their processes and decisions. Similar to formal justice institutions, they are susceptible to bias, discrimination, elite capture and the perpetuation of power asymmetries. Furthermore, due to the lack of codification of informal laws, their decisions and outcomes are generally not predictable or consistent.<sup>88</sup>

**Hybrid or semi-formal institutions** reflect characteristics which are common to both formal and informal justice institutions. A healthy interaction between formal and informal justice is often promoted through formal legislation, which prescribes the scope and power of informal laws and institutions and their role in the administration of justice. Sometimes such laws include provisions on the establishment of village courts, local council courts, religious, local and customary courts. An estimated 18 countries have laws mandating customary or local courts to apply both formal and informal laws for minor offences and personal status matters such as marriage, divorce, inheritance, child custody and maintenance.<sup>89</sup> An illustrative example of this is Kyrgyzstan, which has established approximately 1,000 semi-formal courts, known as courts of elders (or *Aksakal* courts) through presidential decree.<sup>90</sup>

**FIGURE 1.6** Institutions that enforce customary law in Kyrgyzstan



Source: Eurasia Foundation and the Caucasus Research Resource Centers, [Equal Before the Law? A Study of How Citizens Experience Access to Justice in Kazakhstan, Kyrgyzstan and Tajikistan](#), p. 15, (Washington, D.C. and Tbilisi, 2011).



Above: Participants at the forum on the contribution of religious leaders to the implementation of the peace and reconciliation agreement from the Algiers process at the International Conference Center in Bamako.  
© MINUSMA/Harandane Dicko.

The United Nations Human Rights [Committee General Comment No. 32 on Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial](#) recommends that informal institutions must conform to the rule of law, due process and general human rights standards. This is in view of their tendency to provide fewer and less appropriate protections and remedies, particularly to survivors of violence. In deploying a combination of formal and informal procedures and laws, semi-formal courts are therefore legally obliged to ensure that no violation of statutory law occurs in the process. The legal matters that semi-formal courts have jurisdiction over will vary, depending on the extent to which their roles and jurisdictions are recognized within formal laws. For example, under [The Local Council Courts Act, 2006](#) of Uganda, local council courts can deal with matters governed by statutory law such as debts, contracts, assault/battery, damage to property and trespassing, as well as matters governed by customary law such as land, marriage and child custody/maintenance issues.<sup>91</sup>

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Many jurisdictions have adopted mandatory or optional systems for mediation, conciliation, arbitration and collaborative resolutions of disputes, as well as for facilitation and interest-based negotiations. This applies, in particular, in the areas of family law, domestic violence, juvenile justice and labour law. Alternative dispute resolution processes are sometimes referred to as informal justice, which are linked to, but function outside of, formal court litigation processes.

Source: CEDAW GR 33, para. 57.

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Interactions between formal and informal justice systems may also be appreciated from ADR processes. In some countries, formal courts include mediation units which allow for judges to refer cases for settlement by a professional mediator at the request of the parties.<sup>92</sup> When cases reach their conclusion and parties agree on a settlement, the results



are submitted back to the court and judgment is “entered” based on the settlement. In other situations, parties can proceed straight away to an arbitration institution or other process that is recognized by the State. This kind of mediation may be guided by formal legislation as in Malawi, where the rules require (with some exceptions) that parties attempt mediation in all civil actions pending before the High Court and subordinate courts.<sup>93</sup>

In a few countries, formal and informal mechanisms work together to collaborate on enforcement and protection. In this regard, CSOs, including community and faith-based organizations, can also play important mediation roles at the community level. In Malawi, a Village Mediation Programme was piloted between 2008 and 2009 to improve justice by building the capacity of village mediators who were trained to handle misdemeanors, using human rights standards. Women expressed satisfaction with the programme on the basis that there was no cost involved and it guaranteed privacy and confidentiality in cases of domestic violence.<sup>94</sup>

From the above, it is clear that enhancing women’s access to justice requires effective engagement with both formal and informal justice institutions. Box 1.2 presents some tips on how this can be done.

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#### **BOX 1.2 Tips for working with formal and informal justice institutions**

**Promote healthy interaction between formal and informal systems.** Propose spaces of engagement between the two systems and recommend State laws that clearly define the mandate and jurisdiction of informal systems in terms of their enforcement of formal and informal laws, both of which must conform to international standards. Furthermore, establish “supervisory systems” within formal institutions and strengthen the appeals process whereby decisions of informal courts can be heard in the formal.

**Think out of the box and be innovative.** Transforming justice institutions to ensure effectiveness, accountability and gender-responsiveness is a long-term endeavour that is costly. Therefore, justice programming must explore new sites of justice delivery and services, including those which can reduce the steps within a justice chain. Notable areas to consider include integrated one-stop services which offer legal aid, awareness and social support, specialized courts, mobile courts and legal aid clinics, remote or settlement-based help desks and free hotlines (see Section 4.1.1). Furthermore, use technology to strengthen information sharing within and across formal and informal institutions through modes such as Short Message Service (SMS) (see Box A.1.20 in the Appendices).

**Work with and support informal justice institutions.** The contributions of informal justice mechanisms to the administration of justice must be fully recognized and exploited in view of their influence in determining the majority disputes in many countries. While shortcomings exist in terms of their application of human rights standards, they must not be singled out, since women’s access to justice can be influenced by many additional factors.<sup>95</sup> Informal justice institutions could be supported through the codification of customary law and where appropriate, harmonization with statutory laws.

## 4.1 What do effective, accountable and gender-responsive justice institutions look like?

CEDAW GR 33 outlines six dimensions of access to justice—“justiciability, availability, accessibility, good quality, provision of remedies for victims and accountability of justice systems”.<sup>96</sup> These six overlapping dimensions provide a structured framework for comprehensive analysis of women’s access to justice generally and serve to help in assessing justice institutions specifically.

**FIGURE 1.7** Six components of effective, accountable and gender-responsive justice institutions



Source: CEDAW GR 33, para. 14.

Effective programming must take each of these dimensions into account. Justiciability is however not elaborated in this Section because the guidance provided by CEDAW GR 33 suggests that it encapsulates all of the dimensions and aspects covered by this Toolkit: “Justiciability requires the unhindered access by women to justice and their ability and empowerment to claim their rights as legal entitlements under the Convention”.<sup>97</sup> This Section focuses on the remaining five dimensions by highlighting how they serve as cross-cutting considerations in justice delivery.

### 4.1.1 They are available

To ensure the availability of justice and security sector institutions, States are expected to ensure “the creation, maintenance and development of courts, tribunals and other entities, as needed, that guarantee women’s right to access to justice without discrimination throughout the entire territory of the State party, including in remote, rural and isolated areas, giving consideration to the establishment of mobile courts, especially to serve women living in remote, rural and isolated areas, and to the creative use of modern information technology solutions, when feasible”.<sup>98</sup>

Programming requires a coherent approach that addresses justiciability, availability, accessibility, good quality, remedies and accountability

Justice services must exist in as many geographical locations as possible

#### 4.1.1.1 Typical programming challenges/opportunities

- Limited capacity may impact upon a State's ability to establish justice institutions throughout an entire territory. States with financial and human resource constraints may experience poor reach in regions outside of the capital and efforts at expanding services may not be possible without external support. General challenges associated with remote and rural programming can further compound the difficulty of implementing programmes in these areas. These include poor infrastructure and a shortage of skilled professionals.

#### 4.1.1.2 Programming considerations and options

The Committee has observed that the concentration of courts and quasi-judicial bodies in the main cities, their non-availability in rural and remote regions, the time and money needed to gain access to them, the complexity of proceedings, the physical barriers for women with disabilities, the lack of access to high-quality, gender-competent legal advice, including legal aid, as well as the often-noted deficiencies in the quality of justice systems (e.g., gender-insensitive judgements or decisions owing to a lack of training, delays and excessive length of proceedings, corruption) all prevent women from gaining access to justice.

Availability requires the establishment of courts, quasi-judicial bodies or other bodies throughout the State party in urban, rural and remote areas, as well as their maintenance and funding.

Ensure that the physical environment and location of judicial and quasi-judicial institutions and other services are welcoming, secure and accessible to all women, with consideration given to the creation of gender units as components of justice institutions and special attention given to covering the costs of transportation to judicial and quasi-judicial institutions and other services for women without sufficient means.

Source: CEDAW GR 33, paras. 13, 14(b), 17(e).

1. Advocate for the holistic development of rural and hard to reach areas among government partners. Governments must prioritize infrastructure (e.g., roads, railways, bridges, court buildings, police stations and other related institutions) and safe transportation systems and networks as part of the overall development of rural and other hard to reach areas. These will benefit all sectors (e.g., justice, local government, education, health, agriculture) and ensure the holistic development of these areas.
2. Consider innovative approaches to justice delivery. To ensure greater outreach to larger groups of women, support the creation of mobile courts and legal aid clinics, remote or settlement-based help desks and free or subsidized hotlines. The use of information and communication technology (ICT) can help improve access for such settings through methods such as electronic transmission of information and the use of teleconferencing for the provision of witness testimony. Mobile justice delivery services must take cultural and linguistic contexts and seasonal cycles into account (e.g., agricultural and fishing seasons and market days when women are engaged in income generating activities).
3. Promote community-based paralegal programmes. These can increase the availability of justice actors in remote regions and contribute to legal literacy of communities.



4. **Support duty-bearers in hard to reach areas.** Ensure that there is adequate transportation, accommodation and other logistical arrangements in place for justice actors who are out-posted to remote locations. Special provisions should be made for female personnel who are compelled by their personal circumstances to travel with their family members, particularly young children.
5. **Advocate for reasonable accommodation for different groups.** Women should be secure and safe in their immediate environments, and when approaching and leaving the premises of formal and informal institutions. Therefore, programming should explore how to make institutions available for people with limited mobility and accommodations more comfortable and secure for women with young children, lactating mothers, persons with disabilities and the elderly.

## 4.1.2 They are accessible

Accessibility requires that all justice systems, both formal and quasi-judicial, be secure, affordable and physically accessible to women, and be adapted and appropriate to the needs of women, including those who face intersecting or compounded forms of discrimination

Source: CEDAW GR 33, para. 14(c).

Accessibility considers the needs of women in diverse capacities as claimants, respondents, accused persons and witnesses and the specific barriers they may face. It requires that formal and informal justice systems are secure, affordable and physically accessible to all groups of women.<sup>99</sup>

Programming must address the following six aspects of accessibility identified by CEDAW GR 33:<sup>100</sup>

- **Non-discrimination:** Justice facilities and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, including women from minority groups and illiterate women.
- **Physical accessibility:** Justice facilities and services must be physically accessible for those with disabilities or mobility challenges. Additionally, they should be secure for all women, including those with young children and the elderly.
- **Economic accessibility:** Justice must be affordable for all women. Payment for justice services should be based on the principle of equity, which demands that poorer women should not be disproportionately burdened with justice expenses.
- **Information accessibility:** Accessibility includes the use of ICT by and for women, the right to seek, receive and impart information and ideas about justice and security sector institutions in a way that women with varying needs and education levels can understand.
- **Linguistic accessibility:** Justice services must be available in the language of the user.
- **Cultural accessibility:** Justice services must respect diversity and incorporate an intercultural dimension to delivery, including respect for expressions of culture through various means.

Accessibility is not just about being present in a justice institution, but also about utilization by target groups, regardless of personal or situational circumstances

Programming must address six key dimensions of accessibility

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For the purposes of the present Convention:

“Communication” includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

“Language” includes spoken and signed languages and other forms of non spoken languages

Source: United Nations, General Assembly, Resolution 61/106, [Convention on the Rights of Persons with Disabilities](#) (CRPD), Annex, Art. 2, 13 December 2006, A/RES/61/106.

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Above: India. Adolescent sits in a wheelchair while younger members of her family play nearby, in the north-eastern Punjab Province. © UNICEF/Asad Zaidi

If justice and security sector institutions are not responsive to the needs of women of all backgrounds, the latter will not be motivated to utilize them. Inaccessibility can therefore contribute to underreporting of crimes, attrition of cases at various stages along the justice chain and impunity. Women must be equipped with relevant information about the justice institution that they are seeking to access and the procedures involved, in languages and through methods that they understand. They must also be assured of fair treatment and protection from discrimination.

#### 4.1.2.1 Typical programming challenges/opportunities

- **Seeking legal redress is often costly for women.** Women are often the poorest of the poor and cannot afford the litany of costs associated with pursuing justice. The indirect costs of accessing justice (e.g., time burdens and opportunity costs associated with delays) are as prohibitive as the direct costs (e.g., filing fees, expenses for witnesses, translation, execution /enforcement and transportation).

- **Justice planning tends to ignore the multifaceted needs of justice users.** Within a single jurisdiction, the prevalence of different ethnic groups may give rise to different languages and justice and security sector institutions may not have the capacity to accommodate this diversity. The rights of persons with disabilities and other women who face intersecting and multiple forms of discrimination are also largely ignored and not factored into infrastructural development, facilities and justice delivery.
- **Justice and security sector institutions generally do not publicize information.** Lack of information (e.g., simple notice boards) on the official cost of services, availability of complaint mechanisms, location of services and scheduling of cases can impact upon the ability of women to access services in a timely and effective manner.

Women are confronted with direct and indirect costs when accessing justice and may not be able to access institutions because of disability issues or lack of interpretation services

#### 4.1.2.2 Programming considerations and options

1. **Determine who may be left out of policy and infrastructural investments.** Interventions must be inclusive of all women. For example, interpretation services must be available in languages which reflect all ethnic groups in the locality concerned. In line with CRPD, accessibility further requires that live assistance and intermediaries, including guides, readers and professional sign language interpreters, public signage in braille and in easy to read and understandable forms, be made available in buildings and other facilities to persons with disabilities.<sup>101</sup>
2. **Explore measures to combat monetary barriers to access.** These may include the provision of pro bono legal representation, fee waiver programmes, fee scales based on need and support for ancillary costs, such as those related to the transportation of women complainants and their witnesses.
3. **Support the provision of free legal services.** Legal services are broader than legal aid. The [Essential Services Package for Women and Girls Subject to Violence, Core Elements and Quality Guidelines](#) defines it to “include legal aid as well as legal services provided by prosecutors to victims, particularly as in some jurisdictions the victim does not have separate standing in criminal proceedings.”<sup>102</sup> This is especially important for poor and marginalized women, who would not otherwise have access to these services. It also includes the use of appropriate legal aid eligibility criteria<sup>103</sup> and the availability of information on such services and how they can be accessed. Legal aid, advice and court support services should be provided in all legal proceedings to female survivors of violence to ensure access to justice and avoid “secondary victimization”.<sup>104</sup> Legal aid and public defence providers must be competent, respectful of client confidentiality and devote adequate time to defend their clients. Furthermore, legal assistance and services must be available in local languages, including where the provision of professional translation and interpretation services becomes necessary. For further information on legal aid see United Nations General Assembly Resolution 67/187, [United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems](#) and the UNDP and UNODC [Global Study on Legal Aid, Global Report](#).<sup>105</sup>
4. **Determine the benefits and drawbacks of hierarchies within formal and informal court structures.** Lower courts tend to be embedded within local governance structures and therefore, are often women’s first point of contact in minor civil, criminal and family disputes. Technical and financial support to the justice and security sector for purposes of enhancing the effectiveness of such courts would minimize

Programming should address structural barriers which exclude specific groups of women

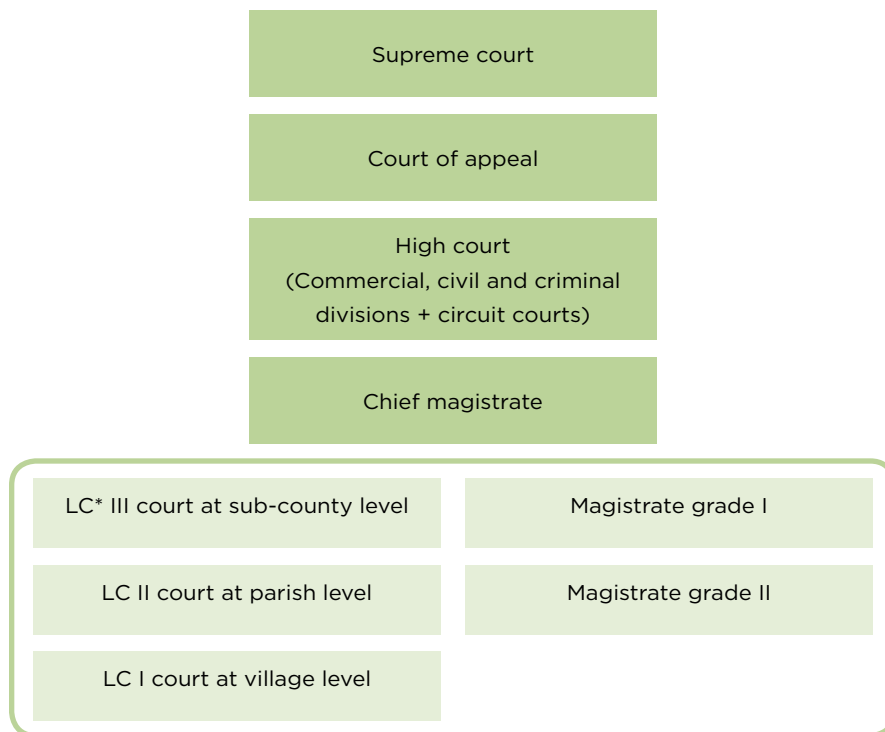
Fee waivers and free legal services are effective pro-poor measures

Invest in institutions which are likely to reach more women and promote effective supervision and support to ensure adherence to human rights principles

the financial burden of appealing to the more expensive higher courts when lower courts are not familiar with relevant procedural, evidential and substantive rules. Although based on social structure and geographical influence, informal institutions are also subject to hierarchy. In traditional settings, adjudicative authority originates in the community and runs through the village, lineage and family. Heads of these stratified institutions play important roles in dispute resolution, including facilitating appeals to higher levels, such as by Paramount Chiefs, whose areas of influence may extend to several communities. By way of example, the lower area in Figure 1.8 highlights the courts that poorer women in Uganda are more likely to go to in the first instance.<sup>106</sup>

5. Specialized justice institutions can positively impact women’s experiences of justice. Broad mandates have the benefit of providing justice institutions with opportunities to address a diversity of women’s justice needs. Specialized institutions are also useful because they are readily identifiable by name and location and therefore more likely to be known by women (e.g., family courts, domestic violence courts, sexual offences courts and small claims courts), including in local languages. If well-resourced, specialized institutions can address specific needs and in some situations, a combination of specialized functions or services (e.g., family and domestic violence courts) for cost-effectiveness.

FIGURE 1.8 The court structure of Uganda



\*LC = Local council.

Sources: Adapted from Uganda, The Justice Law and Order Sector (JLOS), [The Third JLOS Strategic Investment Plan \(SIP III\) 2012/13-2016/17](#), p. 4, (Kampala, 2013) and UN Women, [Enhancing Women’s Access to Justice: Addressing Barriers in the Justice Delivery System in Uganda](#), p. 80, (forthcoming).

### 4.1.3 They are of good quality

According to CEDAW GR 33, “good quality of justice systems requires that all components of the system adhere to international standards of competence, efficiency, independence and impartiality and provide, in a timely fashion, appropriate and effective remedies that are enforced and that lead to sustainable gender-sensitive dispute resolution for all women. It also requires that justice systems be contextualized, dynamic, participatory, open to innovative practical measures, gender-sensitive and take account of the increasing demands by women for justice”.<sup>107</sup> Good quality also embraces sector-wide reforms, innovation in justice delivery and protecting the privacy and security of women as claimants and witnesses.<sup>108</sup>

#### 4.1.3.1 Typical programming challenges/opportunities

- **Limited capacities, cultural biases and discriminatory attitudes.** The application of procedures and evidentiary rules can be influenced by limited knowledge of women’s rights, negative stereotypes and prejudices, which can have an impact on the ease with which cases progress along the justice chain, including whether or not crimes are effectively investigated and prosecuted.
- **Lack of guarantees of privacy and security.** Procedures may not be developed or enforced along the justice chain to protect the privacy of women petitioners, witnesses or defendants.
- **Delays in the administration of justice.** Delays can stem from inadequate human resource capacity, challenges in transmitting information across distances or along the justice chain, difficulties in collecting evidence and overlaps or gaps in institutional mandates.

#### 4.1.3.2 Programming considerations and options

1. **Provide capacity development to formal and informal justice actors.**<sup>109</sup> Capacity-building should be geared towards changing standards and the behaviour of justice sector administrative and operational personnel, with the goal of eliminating discriminatory attitudes. Justice actors must be introduced to international and domestic gender equality standards in order to combat behaviours which deprive women of quality justice. These include bias, myths, stigma and stereotyping in their dealings with women claimants and colleagues. Capacity-building should be linked to gender-responsive work performance standards and the adoption of workplace incentives to foster adherence to human rights. For capacity-building to be impactful, it needs to be culturally relevant and tailored to suit the communities being served.
2. **Focus on long-term systemic change.** Reforming institutional culture involves behavioural change, which takes time. Attention should be paid to developing partnerships with professional training institutes to integrate women’s rights into curricula, as well as engaging with professional associations to do the same for continuing legal education. Training on women’s rights should be mandatory for entry level staff and tailored programmes should be designed to address specific needs. A self-evaluation of European Commission programming in the justice sector found that “very limited evidence” was available to determine whether justice

The quality of institutions determines whether women will choose to access justice

Weak capacity, lack of impartiality, lack of privacy and delays can discourage women from accessing justice

Capacity development, including women’s rights in curricula and the provision of psychosocial support to justice actors, can improve the quality of justice

personnel became more sensitive to gender issues after training.<sup>110</sup> Bearing such uncertainties in mind, capacity development should be planned as a long-term investment, with the goal of reforming institutional culture through changes in human resource policies and end of year performance evaluations of personnel.

3. **Determine the best entry points for combatting corruption.** Institutionalizing complaint procedures and mechanisms, listening to women, recording and investigating their complaints in safe and confidential justice spaces and taking disciplinary action against culprits will assist in reducing corrupt practices.
4. **Duty-bearers need help too.** Promote the availability and use of psychosocial support by justice actors to assist in recovery from burnout and the trauma that results from dealing with a diversity of justice issues. This is a relatively new consideration for justice programming, but must be embraced as an important aspect of justice delivery which can improve quality.<sup>111</sup>
5. **Assess the causes of backlogs and delays and identify sustainable solutions.** Attention should be paid to delays in processes that include protection orders, applications for access to marital property, custodial orders for children and applications connected to the needs of women with disabilities, pregnant women, lactating mothers, women with young children and elderly women. Solutions could include clear referral pathways between formal and informal justice institutions at all levels (community, sub-national and national), clarity on institutional roles and mandates, creating case management tracking systems and extending justice working hours into evenings and weekends.
6. **Encourage institutions to protect the privacy of women in their capacities as petitioners, victims of crime, survivors of violence, witnesses, defendants and prisoners.** This can be achieved through the adoption of pseudonyms, in camera testimonies, confidentiality of statements and evidence, excluding proceedings from media coverage and security arrangements for witnesses under special witness protection programmes.

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Take steps to guarantee that women are not subjected to undue delays in applications for protection orders and that all cases of gender-based discrimination subject to criminal law, including cases involving violence, are heard in a timely and impartial manner

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

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#### 4.1.4 They provide appropriate remedies

The provision of remedies requires that justice systems provide women with viable protection and meaningful redress for any harm that they may suffer.<sup>112</sup> Access to remedies is a basic right guaranteed by United Nations General Assembly Resolution 217A(III), Universal Declaration of Human Rights.<sup>113</sup> Remedies must be effective (i.e., address the wrong committed) and must be enforced by a competent authority as provided for by United Nations General Assembly Resolution 2200A(XXI), International Covenant on Civil and Political Rights;<sup>114</sup> United Nations General Assembly Resolution 39/46, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;<sup>115</sup> United Nations General Assembly Resolution 44/25, Convention on the Rights of the Child;<sup>116</sup> United Nations General Assembly Resolution 2106(XX), International Convention on the Elimination of All Forms of Racial Discrimination;<sup>117</sup> and

Meaningful remedies are guaranteed by international law and strongly determine whether justice will be transformational for women

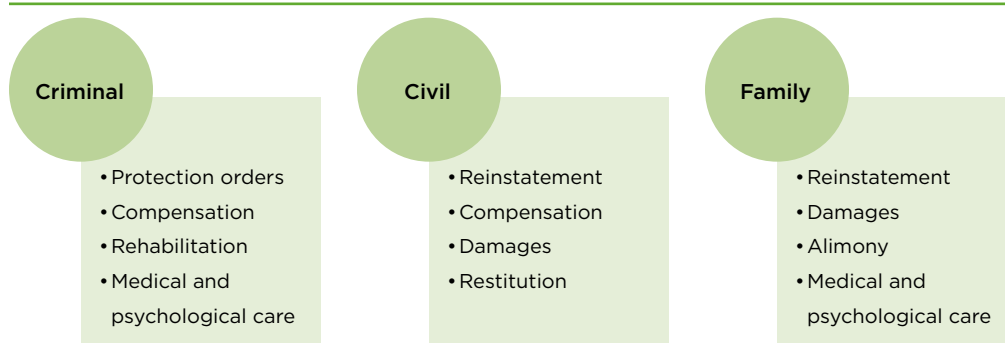


CEDAW.<sup>118</sup> Other sources include United Nations General Assembly Resolution 40/34, [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#) and United Nations General Assembly Resolution 60/147, [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#).

The ability of justice and security sector institutions to guarantee effective remedies is an important determinant of both quality and accountability. Given that the substance and enforcement of remedies can achieve transformative results for women, programming in this area must consider strengthening and reforming regimes which govern remedies and approaches to their enforcement.

Remedies are best described in terms of the domains of law as illustrated in Figure 1.9. Remedies under each domain are not mutually exclusive. For example, it would be possible for a woman to claim compensation in a civil case for damages which she may have suffered in a criminal context.<sup>119</sup>

**FIGURE 1.9 Remedies for different types of law**



Source: CEDAW GR 33, para. 19(b).

#### 4.1.4.1 Typical programming challenges/opportunities

- **Legislative regimes on remedies may not be in alignment with international standards.** Societal perceptions of wrongdoing may impact how and whether certain actions are criminalized. For example, domestic violence may not be viewed as a human rights violation and remedies for rape may be understood only in terms of damage to the survivor's reputation and potential marriage prospects.<sup>120</sup> The implication is that women will not be effectively protected by the law and perpetrators may not be held accountable for wrongs they have committed.
- **A State's ability to enforce remedies may be quite low.** Even when remedies are clearly set out by law and/or pursuant to judicial decisions, effective enforcement systems may not be in place.

#### 4.1.4.2 Programming considerations and options

1. **Advocate for a review of remedies contained in all laws.** The provision of adequate remedies must be integral to law reform processes related to specific areas of law. In criminal law for example, they form part of punishment regimes and must be

**Women cannot claim remedies unless they are expressly provided for in law and can be enforced**

Funds such as alimony funds can ensure that women receive the financial support that is legally due to them even where remedies are delayed, inadequate or unenforced

As a principle, accountability is inseparable from rule of law in the context of the human rights-based approach to programming

adequate, effective, timely and proportional to the claim or to the harm suffered. Remedies may, however, impact upon more than one domain (e.g., protection orders in criminal and family cases) and must also fill gaps in existing laws (e.g., taking unremunerated domestic and caregiving activities of women into account when assessing damages or compensation).<sup>121</sup> Undertaking a review of existing remedial regimes will assist in ascertaining gaps and new measures to be taken.

2. **Invest in monitoring and enforcement.** Relevant administrative departments within justice sector institutions (e.g., registrars, bailiffs and inspectors) are often the least recognized. Such units should be made more visible and receive a reasonable percentage share of budgets that are allocated to the justice and security sector to ensure their effectiveness. In addition, bodies such as NHRIs must keep track of their decisions and subsequent enforcement as part of their overall mandates in relation to human rights monitoring.
3. **Advocate for and assist in the creation of women-specific funds or alimony funds.** These will ensure that the availability of remedies is not dependent on factors beyond the control of the justice sector and provide workarounds so that women are not impacted by delayed financial payments.<sup>122</sup>

#### 4.1.5 They are accountable

The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies (see Figure 1.1) identifies accountability and rule of law as a human rights programming principle: “States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.”<sup>123</sup>



Above: Tunisia. Two girls from the Hammam Mellegue district. © World Bank/Arne Hoel.



Accountability of a justice system involves an “assessment of the adequacy of performance, and the imposition of a *corrective action* or remedy in cases of performance failure. Accountability from a gender perspective requires that the decisions and actions of public actors can be assessed by women and men equally.”<sup>124</sup>

Within the context of women’s access to justice, accountability of justice systems is ensured through monitoring to guarantee that they are in accordance with the principles of justiciability, availability, accessibility, good quality and the provision of remedies. Accountability of justice systems also refers to the monitoring of the actions of justice and security sector personnel and their legal culpability when they violate the law.<sup>125</sup> Justice actors such as the judiciary, police and prosecutorial services at all levels (national, sub-national and community) and in all settings (formal, informal and semi-formal) must be held accountable to all women who access justice services.<sup>126</sup>

#### 4.1.5.1 Typical programming challenges/opportunities

- **Accountable justice systems require a monitoring framework.** Justice and security sector institutions are not accustomed to assessing performance and case management through robust indicators and data collection. Such processes may need both political and administrative acceptance and approval.
- **Geographical remoteness can pose significant challenges to monitoring.** Seasonal cycles and remoteness may affect the ability of justice inspectors to undertake monitoring visits.
- **Impunity and corruption among justice actors can significantly reduce the accountability of a system.** Justice actors occupy positions of influence and power in contrast to users. This can lead to resistance towards interventions that are aimed at improving transparency and the effective functioning of the system for women’s access to justice.

#### 4.1.5.2 Programming considerations and options

1. **Support institutional change.** Undertake a participatory analysis of accountability gaps, the benefits of removing barriers to accountability for the justice system itself and potential incentives (e.g., public sector awards for justice institutions which are successfully implementing reforms aimed at making their processes transparent and effective application of sanctions for corruption).
2. **Provide support for administrative data collection and information management systems.** Programming could support record-keeping and information flow between different institutions. However, where programming aims to take responsibility for some data collection and analysis functions, practitioners must consider the sustainability of such endeavours and be sure to communicate all findings so that justice institutions can respond to changing circumstances and challenges.<sup>127</sup>
3. **Support monitoring by external actors.** NHRIs and other independent State actors are best placed to play this role. UN Women Palestine supported the Palestinian National Human Rights Institution through a Women’s Access to Justice Observatory that monitors judicial processes and outcomes in cases involving violence against

Many justice institutions have yet to fully embrace accountability as an integral part of work culture

Utilize incentives and disincentives: reward accountable behaviour and apply sanctions after complaints are fully investigated and are determined as warranted

women and documents violations of women's rights that are the result of discriminatory laws and procedures.<sup>128</sup> In Uganda, the Government established inspectorate divisions in the courts to allow for continuous internal monitoring and quality assurance of processes and decisions.<sup>129</sup>

4. **Promote the establishment of internal complaints mechanisms.** Complaints mechanisms should be located within justice institutions staffed by independent and trained personnel to address allegations of corruption, abuse of power and sexual harassment. Awareness and information on the existence of such structures must be provided to users and their capacity to use complaints mechanisms and other spaces to hold providers accountable must be integrated into community awareness programmes. Users should also be assured of privacy and confidentiality and appropriate disciplinary actions should be taken against inappropriate behaviour.

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Data should include but need not be limited to:

- The number and geographical distribution of judicial and quasi-judicial bodies
- The number of men and women working in law enforcement bodies and judicial and quasi-judicial institutions at all levels
- The number and geographical distribution of men and women lawyers, including legal-aid lawyers
- The nature and number of cases and complaints lodged with judicial, quasi-judicial and administrative bodies, disaggregated by the sex of the complainant
- The nature and number of cases dealt with by the formal and informal justice systems, disaggregated by the sex of the complainant
- The nature and number of cases in which legal aid and/or public defence were required, accepted and provided, disaggregated by the sex of the complainant
- The length of the procedures and their outcomes, disaggregated by the sex of the complainant

Source: CEDAW GR 33, para. 20(d).

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## 4.1.6 Women participate in justice institutions

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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).

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### BOX 1.3 International standards for the appointment of judges

Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national

Women are often the best advocates for women's access to justice. Yet their presence in justice institutions and reform processes remains low in some countries

or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

Source: United Nations, [Basic Principles on the Independence of the Judiciary](#), adopted at 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.

#### **BOX 1.4 The challenge of inclusion: Underrepresentation of women in the judiciary**

Women are still largely underrepresented in judicial office and in the legal profession throughout the world, in particular in the highest-level positions; this undoubtedly reflects institutionalized gender discrimination within the justice system ... Women appointed to office also have to face bias and discrimination from their colleagues and society at large on the basis of assumptions about their gender. Their behaviour is scrutinized and harshly criticized, their qualifications are more frequently questioned than those of their male colleagues and their objectivity is more likely to be challenged. Women are often restricted or pushed to working on “low-profile” cases, in areas of the law that are traditionally associated with women, like family law, or confined to working in the lower courts.

Source: United Nations, General Assembly, Note by the Secretary-General, [Independence of Judges and Lawyers](#), paras. 23-24, 10 August 2011, A/66/289.

Including women in justice and security sector institutions can produce tangible results for women and create an amplifying effect in justice institutions as well.<sup>130</sup> For example, evidence suggests that increasing the number of female judges and other front-line justice sector officials can create more conducive environments for women in courts and make a difference to outcomes in sexual violence cases.<sup>131</sup> In a study of 39 countries, the presence of women police officers was shown to result in greater reporting of sexual assault.<sup>132</sup> In Liberia, after an all-women police unit was deployed, rates of reporting of gender-based violence increased as well as the recruitment of other women into the police force. Despite this evidence, women’s participation in formal and informal justice delivery varies widely across countries and regions, partly reflecting the patriarchal nature of formal and informal decision-making structures.<sup>133</sup>

Women remain underrepresented in the formal justice sector. Globally, only 27 per cent of judges are women.<sup>134</sup> Furthermore, on average, women constitute only 9 per cent of the police force, with rates as low as 2 per cent in some countries.<sup>135</sup> In Afghanistan, women number 186 of the 1,800 judges and 300 of the 1,700 defence lawyers.<sup>136</sup>

However, women’s representation in the judiciary approaches 50 per cent in Central and Eastern Europe and Central Asia, with the highest proportion in Serbia, Slovenia and the former Yugoslav Republic of Macedonia.<sup>137</sup> The [Constitution of Rwanda 2003 with amendments through 2015](#) reserves 30 per cent of decision-making posts for women and about half the justices of its Supreme Court are women.<sup>138</sup> A few Arab States have made notable progress in closing the gender gap in the judiciary: women represent 28 per cent of the judiciary in Tunisia, 23.5 per cent in Algeria and 20 per cent in Morocco.<sup>139</sup>

The degree of female participation in informal dispute resolution can also vary by community. In the Afghan provincial capital of Sar-e Pol, female community leaders are permitted to intercede on behalf of women in the community and act as their advocates in both government and community forums.<sup>140</sup> In matrilineal communities of Ghana,

“queen mothers” are known to appoint chiefs and take part in dispute resolution.<sup>141</sup> The law establishing the local council court of Uganda states that “at least two members of the town, division or sub-country local council court shall be women”<sup>142</sup> and the position of either Chair or Vice-Chair must be assigned to a woman.<sup>143</sup> In Ecuador, indigenous justice institutions are required by the Constitution to ensure (1) the participation of women; (2) respect for international human rights standards; and (3) respect for the provisions of the Constitution. Constitutional supervision is undertaken by an appeal tribunal composed of both indigenous and State judges.<sup>144</sup>

#### 4.1.6.1 Typical programming challenges/opportunities

- **Cultural barriers and stereotyped roles of women and men.** The maintenance of rule of law, security and access to justice is often perceived as a male preserve. This is rooted in the belief that men are the protectors of law and order. Women in uniform must often assume machismo tendencies to be accepted by the justice and security community. Stereotypes and untenable notions about women in the justice and security sector include beliefs such as: (1) there is a lack of qualified women to fill existing positions; (2) women cannot be involved in specific areas of law enforcement because they are too dangerous or require long hours; and (3) women cannot effectively operate or focus on their work during their menstrual cycle or when pregnant.
- **Institutional relegation and segregation.** Following from the above, women are often relegated to institutions and functions which match their perceived maternal instincts, roles and experiences. Many of such functions and institutions relate to welfare, family and children’s issues. While this may be a positive development if undertaken with the strategic vision of improving women’s engagement with the justice system, it could also result in gender segregation, if women are not provided with opportunities to work in other areas.
- **Justice and security sector institutions may be averse to affirmative action.** Historical experiences of gender discrimination in legal education and justice and security sector employment demand that special measures be taken to level the playing field between men and women. Decision makers may exhibit a lack of political will to correct such imbalances.

#### 4.1.6.2 Programming considerations and options

1. **Work with government and related actors to design, shape and implement affirmative action commitments.** The UN Women [Global Gender Equality Constitutional Database](#) reveals that 85 countries currently include provisions on gender-related affirmative action in their constitutions.<sup>145</sup> These present opportunities for engagement at the national policy level and across justice and security sector institutions, as well as advocacy among national appointment bodies to implement such provisions. Affirmative action targets for the sector could also be integrated into the broader affirmative action policy of the State to ensure effective linkages with national policy commitments to women. UN agencies must be fully supportive of national associations of women professionals (e.g., private legal practitioners, judges, police, prosecutors, military, immigration) and collaborate in identifying women to assume positions within these sectors. Female participation in the legal profession can also be enhanced through scholarship schemes and mentoring.



Above: Tunisia. Two friends meet near La Goulette. © World Bank/Arne Hoel.

2. **Promote women's leadership in decision-making.** While women's inclusion is a priority, moving beyond numbers is necessary for sustainable impact. Women are needed in leadership positions to help set decision-making priorities that facilitate the continued inclusion of women and the conditions for them to thrive in such institutions. To this extent, the focus should be on women as decision makers rather than in secretarial and clerical positions. Peer support mechanisms and associations among female professionals can also be instituted for valuable exchange and learning and mutual support. Professional associations or other support mechanisms could also represent women's interests in negotiations with decision makers such as appointment committees. Furthermore, social protection arrangements such as maternity and family leave, pension mechanisms that do not penalize women and safeguards against discrimination and sexual harassment will support in attracting and retaining women in the sector.

## 5.0 Legally empowering women

### BOX 1.5 The what and why of legal empowerment of the poor

For states to guarantee their citizens' right to protection, systems can, and have to be changed, and changed systemically. Legal empowerment is a central force in such a reform process. It involves states delivering on their duty to respect, protect, and fulfil human rights, and the poor realising more and more of their rights, and reaping the opportunities that flow from them, through their own efforts as well as through those of their supporters, wider networks, and governments. The elements of legal empowerment are grounded in the spirit and letter of international human rights law, and particularly in Article 1 of the Universal Declaration of Human Rights, which declares, 'All human beings are born free and equal in dignity and rights.'

Source: Commission on Legal Empowerment of the Poor, [Making the Law Work for Everyone](#), Report of the Commission on Legal Empowerment of the Poor, vol. I, p. 4, (New York, Commission on Legal Empowerment of the Poor and UNDP, 2008).

Investments in the legal environment and in justice institution-building are sustained when women participate in reforms and demand justice

The legal empowerment of women places them at the front line of access to justice and strengthens their capacity to advocate for their rights in society. Programmes that empower women reinforce their agency and ability to identify their legal needs. They support women's capacity to address issues within their own communities in a manner that respects personal dignity and human rights and upholds women's capacity to obtain meaningful remedies. Empowering women requires the most creative, culturally appropriate and nuanced programme design. Guidance in this area explores how to: make women visible in legal reform processes; strengthen legal literacy and awareness of women's rights; and support local organizations.

**FIGURE 1.10** Three elements of the legal empowerment of women



Empowering women reinforces their capacities as agents of change in legal reform and judicial processes. It requires holistic programming to (1) mitigate discriminatory social and cultural norms (e.g., norms that prevent women from speaking to the police) and (2) amplify opportunities for women to exercise agency with respect to their legal rights (e.g., women driving reform processes to make the laws more gender-responsive).

## 5.1 Women participate in legal reform processes

While creating an enabling environment for women's access to justice (see Section 3.0) primarily considers the substantive reform of laws and policies, empowering women involves the legal reform process itself, focusing on who participates in and drives those reforms. Women's agency, voice and participation are central to advancing substantive equality. Women's inclusion in legal reform is therefore a critical component of improving women's access to justice.

The inclusion of women in legal reform can take many different paths (e.g., women serving as elected or appointed members of constitutional review bodies, parliament, appointed policymakers in various ministries or departments, elected or appointed officials in local government). There may also be entry points for women's participation

Women's voices and views must be reflected in reforms which aim to improve justice delivery for them

as individual citizens or members of civil society in contexts where public participation is embedded in the policy or law-making process.

Women's representation and participation in legal reform in the above capacities is important because they bring different perspectives to the reform process, including an understanding of how laws affect them differently than men. This also underscores the importance of not just women's participation, but also the inclusion of diverse interests. For example, factors such as the absence of childcare may prevent women from accessing justice. The same could be said about the different experiences of marginalized and excluded women in contrast to elite women in accessing justice. The inclusion of women can also have an amplifying effect. Experience indicates that when women are included in constitutional reform processes, they advocate for the continued representation of women in subsequent legislatures and other policymaking bodies. For example, in Tunisia, an electoral quota led to women holding 27 per cent of seats in the National Constituent Assembly, which was responsible for drafting the 2014 Constitution. Women representatives, in turn, advocated for continuing the electoral quota for future legislative elections, in addition to gender parity in elected assemblies and other gender equality provisions in the Constitution. As a result, women won almost one-third of the seats in the subsequent legislative elections and in 2016, female parliamentarians successfully spearheaded a gender quota in the local electoral law.<sup>146</sup>

### 5.1.1 Typical programming challenges/opportunities

- **Exceptions to the general notion of women leaders supporting women's issues.** While there is evidence that increases in women's representation in parliaments have generally been accompanied by legal reforms in favour of women,<sup>147</sup> programming must recognize the local context and consider that women parliamentarians may not necessarily prioritize or have consensus on these issues. For example, during the constitution-drafting process in Colombia, some female Constituent Assembly members disassociated themselves from the demands of the feminist movement.<sup>148</sup> In addition, legal reform is inherently political and decision makers more broadly may be reluctant to open the process to additional competing interests.
- **Women leaders may not possess political agency.** While gaining seats in the legislature or other institutions, women may not be politically empowered with voice and agency if their political parties are tokenistic towards their female members and/or only support women who base decisions on party lines.
- **Cultural and security barriers.** This could include norms that discourage women from speaking up in public or stigma against women who participate in politics. Women who enter the political arena also encounter multiple challenges such as politically-related violence and humiliating media exposure.<sup>149</sup>

### 5.1.2 Programming considerations and options

1. **Women can be effective advocates of their rights.** International actors may have leverage to advocate for the inclusion of more women among decision makers. This can be even more effective when combined with advocacy from women themselves, provided that this is accompanied by capacity-building on how to engage with decision makers. This can include support for coalition and consensus-building

Programming must take the diverse views and interests of different women into account, as well as entrenched patriarchal views on their status in society



Timely mobilization and coalition-building can support the harnessing and integration of women's voices from various sectors and constituencies

among women's groups, coaching and training in negotiation, mediation, public speaking, stakeholder mapping, strategy development, strategic communication, lobbying and outreach.

2. **Programming should be designed and implemented well in advance of any reform process.** Whether seeking to increase the number of women in a constituent assembly or a legislature, early mobilization is key, since the selection of decision makers for reform processes often occurs well before they start.

## 5.2 Support and partner with civil society organizations

Cooperate with civil society and community-based organizations to develop sustainable mechanisms to support women's access to justice and encourage non-governmental organizations and civil society entities to take part in litigation relating to women's rights

CEDAW GR 33, para. 15(h).

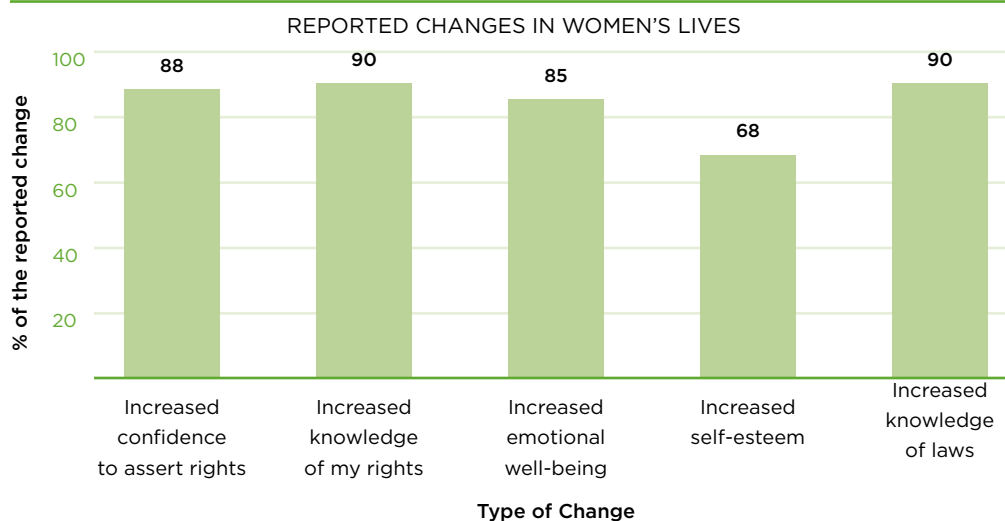
CSOs are critical agents of change and can be the voices of women across country contexts

Women's organizations are uniquely placed to play a transformational role in advancing women's access to justice and therefore occupy a critical space in the justice chain in most contexts.<sup>150</sup> CSOs such as bar associations, women lawyers associations and faith-based organizations often provide justice services either separately, jointly or in partnership with the State. They also undertake advocacy, capacity development, rights awareness, strategic litigation and monitoring of women's rights.

Women lawyers associations deliver effective legal services for women in many countries

Services, advocacy and training provided by these types of organizations have been shown to have an important impact on women's empowerment and rights awareness. Legal service provision and court representation by the Zimbabwe Women Lawyers Association (ZWLA), for instance, have improved women's knowledge and confidence in claiming their rights as noted in client surveys involving 110 beneficiaries.<sup>151</sup> Figure 1.11 disaggregates responses from clients.

FIGURE 1.11 Survey of findings of ZWLA services



Source: ZWLA, "Client Services Report", (2015). Report prepared for UN Women. (Unpublished).



One beneficiary stated:

*“The biggest impact I got from the ZWLA was empowerment, helping me get to know and affirm my rights. It made me become stronger and assertive. Even now, when I come across someone going through what I also went through, I’m in a better position to give advice based on the service and the assistance I got from ZWLA.”<sup>152</sup>*

## 5.2.1 Typical programming challenges/opportunities

- **CSOs and CBOs have limited finances and human resource management capacity.** CSOs may face challenges recruiting and retaining staff with the necessary skills due to an inability to compete with the salaries offered by formal justice and security sector institutions, or international non-governmental organizations (INGOs). Furthermore, in some national contexts, the non-governmental sector is confronted by governmental restrictions on fundraising and areas of focus.
- **Funding priorities rather than local needs drive programming choices.** Donor funding priorities are often set in advance and lack the flexibility required to address local needs, including vital justice services that CSOs provide.

## 5.2.2 Programming considerations and options

1. **Provide financial and technical support to CSOs.** OECD recommends that donors must support women’s groups as primary vehicles in a multi-layered approach to improving women’s access to justice, particularly during times of transition during which they play important monitoring, advocacy and service provisioning roles.<sup>153</sup> Taking into consideration these potential contributions and the capacity challenges that CSOs face, the United Nations should support the work of different CSOs through the provision of financial and technical support.
2. **Invest strategically.** Support to CSOs can be aimed at strengthening and expanding their work in areas such as legal aid, ADR, trainings for other stakeholders, awareness and advocacy for women’s access to justice. Elements of such interventions could include strategies for influencing laws and policies and identifying the most appropriate entry points and approaches for enhancing gender-responsiveness among justice and security sector institutions.
3. **Support coalition-building.** Coalition-building can reduce operational costs of individual CSOs and serve as platforms for maximizing impact through collective action, sharing resources and exchanging lessons learned.
4. **Encourage and facilitate sustainable communication channels.** Justice institutions should involve CSOs in national justice reform processes and solicit feedback and ideas from them on effective women’s access to justice programme design, implementation and monitoring, using platforms such as justice and security sector and sub-sector task forces.
5. **Human rights reporting.** CSOs can identify and integrate concerns related to women’s access to justice in their Alternative Reports to the CEDAW Committee, other treaty bodies and the UPR, and such opportunities can be used to articulate the impact of State restrictions, if any, on their operations in this field.

The effectiveness of CSOs working for women’s rights is being tested by dwindling donor support and shrinking spaces in the arena of decision-making and influence

The United Nations must step in to support CSOs which are reputed to be delivering on women’s access to justice

## 5.3 Education on women's rights

Women who are unaware of their human rights are unable to make claims for the fulfilment of those rights. The Committee has observed, especially during its consideration of periodic reports submitted by States parties, that they often fail to guarantee that women have equal access to education, information and legal literacy programmes. Furthermore, awareness on the part of men of women's human rights is also indispensable to guaranteeing non-discrimination and equality, and to guaranteeing women's access to justice in particular.

Source: CEDAW GR 33, para. 32.

The CEDAW Committee has observed, especially in States parties' periodic reports, that States often fail to ensure that women's rights are widely known among both women and men alike.<sup>154</sup> For gender-sensitive laws and institutions to be effective and transformational, women must know and understand their rights as well as how and where those rights can be exercised and enforced. While limited rights awareness and legal illiteracy are common among both women and men in many contexts, evidence suggests that these factors tend to impact upon women disproportionately. A study of legal literacy in Kazakhstan, Kyrgyzstan and Tajikistan found that while there was limited knowledge among both men and women about the legal requirements of a valid marriage, the impact was especially marked in terms of women's inability to protect their rights when divorce ensued.<sup>155</sup>

Therefore, the core objective of legal awareness is to equip women with the legal skills and knowledge that they need to engage with the formal and informal justice sectors. These programmes can also seek to build women's individual and collective confidence to demand those rights and protections that are otherwise absent or poorly implemented. In this way, programming can be closely aligned to activities focused on changing attitudes and norms.



Above: Morocco. First grade classroom at the elementary school in the village Ait Sidi Hsain, near Meknes.  
© World Bank/Arne Hoel.

### 5.3.1 Typical programming challenges/opportunities

- **Diverse needs and capacities may require programme design to be flexible.** The target audiences of education programmes potentially include a wide range of actors who have varying levels of literacy, mobility and linguistic needs. Interventions are more effective when tailored to different audiences, but at the same time involve higher costs.
- **Concepts of women's rights may vary between communities.** This is particularly relevant in contexts and cultures where the concepts of women's rights and justice differ from the standard Western definitions, creating the need for linguistic and cultural adjustments to be made in community based educational programmes. Programming in these circumstances will require a deep understanding of the specific cultural and social context of rights and norms.
- **Stigma or other cultural barriers may prevent women from participating.** In some contexts, legal literacy is considered as a primarily male preserve because women are not allowed to claim their rights unless supported by a man. In other contexts, women are not permitted to leave their homes or may be barred from being heard in community outreach interventions.

### 5.3.2 Programming considerations and options

1. **Determine previous, current and future stakeholder involvement.** Because education and awareness-raising is context-specific, learning from ongoing or past experiences will help to streamline the planning process and prevent the repetition of approaches that result in poor impact. This could involve knowledge of gaps being filled by other implementing partners, lessons learned and impact.
2. **Work with local partners to identify educational content.** This is particularly important in complex legal systems, where the environment and needs may be hyperlocalized. This approach may also be helpful in contexts where most disputes are settled in the informal justice system and require in-depth knowledge of oral-based traditions.
3. **Focus on deepening awareness of women's rights.** The target audiences for programmes should include women, girls, men and boys, including religious and traditional leaders. Information should be disseminated in local languages and through a wide range of channels (e.g., community radio, drama, SMS) to ensure extensive reach to a diverse range of population groups. All such programmes must be led by national women's machineries in close cooperation with the media, civic education agencies, NHRIs, CSOs and CBOs.
4. **Magnify women's potential as their own agents of change.** When women are enabled to discuss and interpret cultural or legal rules, the system may be open to change, particularly when both women and men advocate for it. Also, when women are informed of their rights and encouraged to discuss or challenge informal laws and practices, they can put pressure on customary justice systems to better protect basic rights.<sup>156</sup>
5. **Measure the impact of awareness-raising and generate lessons learned.** This can be undertaken through perception surveys before and after awareness-raising campaigns for which significant financial investments have been made.

Awareness-raising programmes need to adapt to different audiences and utilize multiple channels, thereby making them costly

Be familiar with local context, awareness gaps and work with women and community leaders to identify the most cost-effective channels of communication



Above: Nepal. Mother and child sit in front of earthquake ruins in the town of Charikot in Dolakha District.  
© UNICEF/Brian Sokol.

## 6.0 Considerations for crisis-affected contexts

### 6.1 Why is women's access to justice programming in crisis contexts important?

Women in conflict-affected contexts are more likely to have their rights violated and less likely to access justice due to the breakdown of the rule of law and the physical and human resource deterioration of institutions. During conflict, women are more vulnerable to various forms of SGBV, which often manifest in sexual slavery in camps of warring factions, rape, forced sterilization, forced marriage, child marriage and domestic violence. Conflict exacerbates violence against women because protections afforded by formal and informal justice systems as well as family structures often break down during such periods, leaving women with limited options for recourse when their rights have been violated.

In conflict and post-conflict settings, interventions for women and their families must be based on the assessments discussed in Section 2.0. These must capture women's needs and vulnerabilities, including redress and inclusion in post-conflict peace processes as defined by women themselves. Included in such contexts are the creation of safe spaces in both conflict zones and refugee camps as well as material and psychological support.

Effective justice mechanisms are needed to prosecute crimes against women both during and after crisis setbacks. Data from a survey in Lebanon indicates that more than a third of Syrian refugee women between the ages of 20 and 24 were married before the age of 18.<sup>157</sup> Child marriage rates are estimated to be four times higher among Syrian refugees compared to before the crisis.<sup>158</sup> Although child marriage has long been prevalent in Yemen, rates have increased from 32 to 52 per cent in recent years, as

International law and the "law of war" protect women and girls as rights-holders and impose obligations on States and warring factions as duty-bearers

dowries have plummeted and families use early marriage as a coping mechanism.<sup>159</sup> Furthermore, crisis contexts are often enduring, with an average of 39 per cent of States emerging from conflict returning to conflict in the first five years and another 32 per cent doing so in the following five years.<sup>160</sup> A recent report by the OECD illustrates that the lines between conflict, post-conflict and development are increasingly blurred.<sup>161</sup> This is because present day forms of fragility are predominantly caused by domestic political instability and social violence rather than civil and transnational wars.<sup>162</sup>

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For most women in post-conflict environments, the violence does not stop with the official ceasefire or the signing of the peace agreement and often increases in the post-conflict setting. The Committee acknowledges the many reports confirming that, while the forms and sites of violence change, which means that there may no longer be State-sponsored violence, all forms of gender-based violence, in particular sexual violence, escalate in the post-conflict setting. The failure to prevent, investigate and punish all forms of gender-based violence, in addition to other factors such as ineffective disarmament, demobilization and reintegration processes, can also lead to further violence against women in post-conflict periods.

Source: CEDAW GR 30, para. 35.

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During and after conflict, specific groups of women and girls are at particular risk of violence, especially sexual violence, such as internally displaced and refugee women; women's human rights defenders; women of diverse caste, ethnic, national or religious identities, or other minorities, who are often attacked as symbolic representatives of their community; widows; and women with disabilities. Female combatants and women in the military are also vulnerable to sexual assault and harassment by State and non-State armed groups and resistance movements.

Source: CEDAW GR 30, para. 36.

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### **BOX 1.6 SGBV in post-conflict settings**

Risk factors for the escalation of SGBV in post-conflict settings:

- Small arms and other weapons can still be in circulation and pose an ongoing threat
- The failure to prevent, investigate and punish all forms of gender-based violence, in addition to other factors such as ineffective disarmament, demobilization and reintegration processes, can lead to further violence against women in post-conflict periods
- Former combatants tend to experience difficulty in adjusting to family life and often turn to substance abuse and domestic and family violence
- Depletion of land due to conflict requires adjustments to community land rights, and women's property rights need to be protected

How women and girls are affected:

- Those at risk include girls, the internally displaced and refugee women, women's human rights defenders, widows and women with disabilities. Women belonging to diverse castes, ethnic, national, religious or other minority groups are often attacked as symbolic representatives of their community. Female combatants and women in the military are also vulnerable to sexual assault and to harassment by State and non-State armed groups and resistance movements
- Women continue to be threatened and victimized in their daily lives. There is therefore a need for approaches that redress past injustices and that reform structures, systems and societies to prevent future victimization



- Survivors run the risk of stigmatization, rejection and discrimination by their families and communities, diminishing their ability to access essential services. This can particularly be a problem for those who are disabled or otherwise impaired due to violence

Source: CEDAW GR 30, paras. 26, 29, 32, 34-37, 63, 65(b), 67-68, 74, 77.

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

### 6.2.1 International human rights law and international humanitarian law

The post-conflict electoral reform and constitution-building process represents a crucial opportunity to lay the foundations for gender equality in the transition period and beyond. Both the process and substance of these reforms can set a precedent for women's participation in social, economic and political life in the post-conflict period, in addition to providing a legal base from which women's rights advocates can demand other types of gender-responsive reform that unfold in transitional periods.

Source: CEDAW GR 30, para. 70.

Critics of international human rights law doubt its effectiveness as a programming tool in crisis situations due to its limited enforceability and the difficulty of its application to crisis contexts.<sup>163</sup> This often stems from a misunderstanding of the use of derogation provisions (see Section 1.1) which, as noted, permit States to suspend selected human rights only for a limited period. It is also important to note that CEDAW, United Nations General Assembly Resolution 44/25, [Convention on the Rights of the Child](#) and United Nations General Assembly Resolution 2200A(XXI), [International Covenant on Economic, Social and Cultural Rights](#), do not contain derogation clauses and therefore cannot be derogated to any extent.<sup>164</sup>

As such, general international human rights law on gender equality and women's empowerment is applicable across all phases of a country's social, economic and political experience. In situations of conflict, States and other combatant entities are also bound by international law on war crimes and crimes against humanity, including genocide and international humanitarian law. "Common Article 3" of the four [Geneva Conventions](#) provides that in times of armed conflict, protected persons should "in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria."<sup>165</sup>



Above: Myanmar. Rohingya refugee whose family fled escalating violence, stands outside a shelter.

© UNICEF/ Thomas Nybo.

CEDAW is a non-derogable treaty and remains applicable during times of crisis

Using the programming principles of this Toolkit, women and girls are regarded as rights-holders during periods of conflict and warring parties as duty-bearers. Warring factions are therefore under an obligation to protect civilians and civilian property and to allow for humanitarian interventions.<sup>166</sup>

Jonsson proposes the following principles of humanitarian action to guide human rights-based approaches to programming in times of conflict:

- *The humanitarian imperative*: Protect rights, life, health and alleviate suffering
- *Neutrality*: Highlight and address abuses committed by all parties to a conflict, but do not take sides
- *Impartiality*: Treat all parties to a conflict in the same way
- *Accountability*: All stakeholders (parties to a conflict, the United Nations system and CSOs) are accountable to the civilian population
- *Do no harm*: Aid must not be used as an instrument to fuel conflict
- *Respect culture, custom and community*: Understanding local customs and traditions helps to contextualize all interventions
- *Develop local community capacity*: Focus on capacity-building to provide sustainable assistance and avoid creating a reliance on external support
- *Coordination*: The United Nations must rally behind a common standpoint to achieve maximum benefit
- *Gender*: Recognize how conflict and the responses to conflict affect men and women differently as a core element of programming<sup>167</sup>

As noted in the Introduction, relevant WPS resolutions establish linkages between access to justice, international peace and security and State accountability through the four dimensions of the [WPS agenda](#) (prevention, participation, protection and peacebuilding and recovery). The Secretary-General's 7-PAP also seeks to accelerate the implementation of UNSCR 1325 as well as other resolutions by committing the United Nations system to specific targets. It highlights the need for increased access to justice for women and girls whose rights are violated, including the promotion of women's participation in post-conflict justice mechanisms and law enforcement.<sup>168</sup>

## 6.2.2 Domestic law

Conflict-affected contexts present a unique set of challenges in terms of establishing an enabling environment for women's access to justice. In situations where violence is widespread or reaches the threshold of civil or international war, the conditions may not be ripe for legal reform efforts. Programming in such environments requires ongoing conflict/context assessments to identify opportunities and entry points for legal reform (see Section 2.0).

The termination of a conflict can offer an important and at times transformational entry point for legal reform, particularly through *peace processes* and *peace agreements* (see Box 1.7). The estimated 1,168 peace agreements in connection with 102 conflicts between 1990 and 2015 have been highly influential in shaping domestic political

Post-conflict contexts provide unique opportunities for making demands for substantive constitutional and legislative reforms

and legal landscapes.<sup>169</sup> Post-conflict phases often involve constitution-drafting and electoral reform processes, both of which are critical opportunities for promoting gender equality and women's rights (see Box 1.8). Significant constitutional reforms—sometimes involving the wholesale rewriting of a constitution—have often taken place in climates of substantial political change and/or armed conflict. For example, since 1995, in sub-Saharan Africa, 44 constitutions have been rewritten and of those, “19 have been in post-conflict countries and 17 in countries where conflicts were high intensity ... or long in duration.”<sup>170</sup> These drafting processes represent important entry points for constitutional reforms that support women's access to justice and more specifically the incorporation of provisions that support CEDAW and other regional and international human rights instruments. Women are constitutional actors in their own right and must continue to feature in constitutional review processes as advocates, members of constitutional review bodies and drafters.

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**BOX 1.7 Post-conflict resolution periods can offer important entry points for legal reform**

Calls on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, inter alia: (a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction; (b) Measures that support local women's peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements; (c) Measures that ensure the protection of and respect for human rights of women and girls, *particularly as they relate to the constitution, the electoral system, the police and the judiciary*

Source: United Nations, Security Council, [Resolution 1325](#), para. 8, 31 October 2000, S/RES/1325(2000). [Emphasis added].

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**BOX 1.8 Constitution-making is a key part of the transition process, and in pushing for women's rights**

Constitution-making processes are a central aspect of democratic transitions, peacebuilding and state-building. For the United Nations, constitution-making is a broad concept that covers the process of drafting and substance of a new constitution, or reforms of an existing constitution. Both process and substance are critical for the success of constitution-making. The design of a constitution and its process of development can play an important role in peaceful political transitions and post-conflict peace consolidation. It can also play a critical prevention role. Constitution-making presents moments of great opportunity to create a common vision of the future of a state, the results of which can have profound and lasting impacts on peace and stability.

Source: United Nations, Guidance Note of the Secretary-General, [United Nations Assistance to... Constitution-making Processes](#), p. 3, (New York, 2009).

### 6.2.3 Justice sector policies and budgets

Justice and security sector planning and budgeting are critical to the implementation of the Secretary-General's 7-PAP, which requires the United Nations system to allocate at least 15 per cent of United Nations-managed funds in support of peacebuilding to projects whose principal objective is to address women's specific needs, advance gender



equality or empower women.<sup>171</sup> Furthermore, the [Guidance Note of the Secretary-General, Reparations for Conflict-Related Sexual Violence](#) requests that the United Nations promote the design of a comprehensive public policy and framework on reparations to address conflict-related sexual violence, including the establishment of judicial remedies and administrative reparation programmes (see Section 6.3.2).

**TABLE 1.4** United Nations commitment to justice planning from a gender perspective

Commitment	Measures
<p><b>Post-conflict planning</b> The UN system will more systematically institutionalize women’s participation in (and apply gender analysis to) all post-conflict planning processes so that women and girls’ specific needs and gender discrimination is addressed at every stage.</p>	<p>Relevant UN entities will undertake a comprehensive review of existing institutional arrangements for incorporating gender issues into post-conflict planning. Principles will apply to all post-conflict strategy &amp; planning processes. [para. 32]</p>
<p><b>Post-conflict financing</b> The UN commits to increasing financing for gender equality and women’s and girls’ empowerment in post-conflict situations.</p>	<p>Each UN entity will initiate a process, in line with its specific institutional mandate and governance arrangements, for laying ground work and investing in systems to track gender post-conflict financing, and to work toward a goal of ensuring that at least 15 per cent of UN-managed funds in support of peacebuilding is dedicated to projects whose principal objective (consistent with existing mandates) is to address women’s specific needs, advance gender equality or empower women. [para. 36]</p>

Source: United Nations, [Report of the Secretary-General on Women’s Participation in Peacebuilding](#), (A/65/354-S/2010/466). [Tracking Progress: 7-Point Action Plan](#).

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

### 6.3.1 Formal and informal justice institutions and actors

Levels of violence against women are often higher in crisis-affected situations. These place a higher demand on justice systems and therefore pose significant challenges to the ability of all women to seek and obtain justice and the ability of justice and security sector institutions to deliver on their mandates. During conflict, the institutions that are tasked with both protecting and responding to the rights and needs of women are barely functioning and there is frequently a shortage of adequately trained justice actors. As a result, some functions of the State may be performed by other governments, intergovernmental organizations or CSOs. In such situations, States remain responsible for acts or omissions which may be attributed to them under international law,

The United Nations system is expected to allocate at least 15 per cent of its managed funds in support of peacebuilding to projects where the principal objective is to address women’s specific needs, advance gender equality and empower women

including when other entities act on their behalf. States are therefore expected to adopt measures to ensure that the policies and decisions of organizations working within their geographical boundaries conform to that State's obligations under CEDAW.

#### **BOX 1.9 State responsibility to protect during times of conflict**

States must exercise due diligence to prevent, investigate, punish and ensure redress for the acts of private individuals or entities that impair the rights enshrined in the Convention ... In addition to requiring States parties to regulate non-State actors, international humanitarian law contains relevant obligations that bind non-State actors, as parties to an armed conflict (for example, insurgents and rebel groups) such as in common article 3 of the Geneva Conventions of 1949 and the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts. Under international human rights law, although non-State actors cannot become parties to the Convention, the Committee notes that, under certain circumstances, in particular where an armed group with an identifiable political structure exercises significant control over territory and population, non-State actors are obliged to respect international human rights. The Committee emphasizes that gross violations of human rights and serious violations of humanitarian law could entail individual criminal responsibility, including for members and leaders of non-State armed groups and private military contractors.

Source: CEDAW GR 30, paras. 15-16.

\*Note: All references to "the Convention" refer to CEDAW.

[Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council resolution 1325](#) finds that informal justice institutions and the customary laws that they mediate often represent the only sites of justice and conflict resolution to which people, particularly women, have access during times of conflict. For this reason, informal justice institutions can play a crucial role in addressing women's rights violations in conflict and post-conflict situations.<sup>172</sup> Responding to the challenges posed by conflict and post-conflict settings is necessary for access to justice programming to be effective. Programming should consider placing a focus on protective measures and exploring the creation of interim structures to protect women. More specifically, the CEDAW Committee recommends that States parties ensure:

- Redress for the acts of private individuals or entities, as part of their due diligence obligation.
- Rejection of all forms of rollbacks in women's rights protections aimed at appeasing non-State actors such as terrorists, private individuals or armed groups.
- Engagement with non-State actors to prevent human rights abuses relating to their activities in conflict-affected areas, particularly all forms of gender-based violence; adequate assistance to national corporations in assessing and addressing the heightened risks of abuses of women's rights; and the establishment of an effective accountability mechanism.
- Use of gender-sensitive practices (i.e., use of female police officers) in the investigation of violations during and after conflict to ensure that violations by State and non-State actors are identified and addressed.<sup>173</sup>

### 6.3.2 Remedies

Conflict-affected contexts demonstrate major “disruptions” in gender relations (and other social relations and roles) as women take over roles that are traditionally dominated by men.<sup>174</sup> Most often, women find themselves occupying the role of head of the family in what are often deeply patriarchal societies, resulting in households and communities being transformed by conflict-related displacement, conscription and casualties.<sup>175</sup> Although these shifts often increase care burdens for women and girls, they also present new and important opportunities for women’s engagement in spheres and activities typically dominated by men. In partnership with women’s organizations and national women’s machineries, programming must support efforts to consolidate and build upon gains for gender equality and women’s empowerment as men return home, to prevent a reversion to pre-conflict norms that relegate women to the domestic sphere and reinforce traditional gender stereotypes. Women’s empowerment programming and women’s inclusion and participation in post-conflict reform processes are two avenues that should be considered to bolster women’s empowerment in post-conflict settings.

It is critical for post-conflict programming to consider the roles that women assumed during conflict and address their specific vulnerabilities and needs. It is especially important that peacebuilding consider the needs of women, as peacebuilding and recovery efforts have historically tended to focus on building the economic space for men, rather than considering the needs of both men and women.<sup>176</sup> Such programming could include land reform efforts that provide for women’s rights to inherit property, and land and rights awareness programming that provides survivors with information about avenues for redress.

The scope of States’ obligations in the provision of remedies is established in 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](#). According to the Principles, to ensure respect for and the implementation of international human rights law and international humanitarian law, States have a duty to: take appropriate legislative, administrative and other actions to prevent violations of human rights; investigate violations effectively, promptly, thoroughly and impartially and hold responsible parties to account; provide equal and effective access to justice; and provide effective remedies, including reparation.<sup>177</sup>

Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s right to:

- Equal and effective access to justice
- Adequate, effective and prompt reparation for harm suffered
- Access to relevant information concerning violations and reparation mechanisms<sup>178</sup>

Victims of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to effective judicial remedies as provided for under international law. In fulfilling its responsibilities, the State is also expected to:

Practitioners must be aware of the likely shifts in gender relations and gender roles, which means that women could be taking on more responsibilities compared to periods before or during crisis. Such circumstances will require diverse forms of support, including social protection for women

- Disseminate, through public and private channels, information as it relates to all available remedies for gross violations of international human rights law and serious violations of international humanitarian law.
- Minimize the inconvenience to victims and their families and witnesses, through protection against unlawful interference with their privacy and safety from intimidation and retaliation, before, during and after judicial, administrative or other proceedings that affect the interests of victims.
- Provide proper assistance to victims seeking access to justice for gross violations of international human rights law or serious violations of international humanitarian law.
- Ensure that victims can exercise their rights to a remedy for gross violations of international human rights law or serious violations of international humanitarian law through means such as legal, diplomatic and consular support.
- In addition to access to justice for individuals, endeavor to develop procedures to allow groups of victims to present claims for reparation and to receive reparation, as appropriate.
- Include all available and appropriate international processes in which a person may have legal standing as part of the provision of remedies, without prejudice to any other domestic remedies.<sup>179</sup>

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#### **BOX 1.10 Categories of remedies**

**Restitution** should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

**Compensation** should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

- (a) Physical or mental harm;
- (b) Lost opportunities, including employment, education and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Moral damage;
- (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

**Rehabilitation** should include medical and psychological care as well as legal and social services.

**Satisfaction** should include, where applicable, any or all of the following:

- (a) Effective measures aimed at the cessation of continuing violations;
- (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
- (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification

and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;

(d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;

(e) Public apology, including acknowledgement of the facts and acceptance of responsibility;

(f) Judicial and administrative sanctions against persons liable for the violations;

(g) Commemorations and tributes to the victims;

(h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

**Guarantees of non-repetition** should include, where applicable, any or all of the following measures, which will also contribute to prevention:

- (a) Ensuring effective civilian control of military and security forces;
- (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;
- (c) Strengthening the independence of the judiciary;
- (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;
- (e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;
- (f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;
- (g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;
- (h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

Source: 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](#), Annex, paras. 19-23, 16 December 2005, A/RES/60/147.

## 6.4 Legally empowering women

### 6.4.1 Women in post-conflict reforms

Analysis from [Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council resolution 1325](#) revealed that “women were routinely excluded from the post-conflict processes that determine power distribution, wealth-sharing patterns, social development priorities, and approaches to justice.”<sup>180</sup> The UNSC has recognized the importance and value of women’s inclusion in relation to conflict resolution and peacekeeping, most notably in UNSCR 1325 and subsequent resolutions. UNSCR 1325 was the first resolution to acknowledge the role of women in conflict resolution as critical for peace and security and specifically calls on “Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms

**Women’s voices must be heard in all phases of disarmament, recovery, reintegration, rehabilitation and transition to development**

for the prevention, management, and resolution of conflict”.<sup>181</sup> Post-conflict reform processes can present opportunities for early mobilization around women’s inclusion to promote access to justice issues and represent important entry points for establishing women’s participation in decision-making as a norm. This is important because these conflict-related processes often serve as the foundation for women’s participation in constitution-making and in justice-related institutions in the post-conflict phase.

Entry points for women’s inclusion in post-conflict processes include constitution-making and security sector reforms (see Section 6.2.2 and Section 6.2.3). The latter represents an opening for shaping security and justice institutions to ensure that they are responsive and representative of the population at large. Restructuring of such institutions are opportunities for enhancing the inclusion of women, while the transition to stable governance and rule of law could provide opportunities for prioritizing women’s access to justice.

**TABLE 1.5 United Nations commitment to promoting women’s participation in conflict resolution**

Commitment	Measures
<p><b>Women’s representation in post-conflict governance</b></p> <p>The UN will ensure that technical assistance to conflict-resolution processes and countries emerging from conflict promotes women’s participation as decision-makers in public institutions, appointed and elected, including through the use of temporary special measures such as positive action, preferential treatment and quota-based systems, as enshrined in international human rights law.</p>	<p>To build structures of inclusive governance, the UN will ensure that technical assistance to conflict-resolution processes and countries emerging from conflict includes rigorous assessment of the potential value of temporary special measures, including quotas for women. [para. 42]</p> <p>As part of its assistance, the UN will ensure that gender discrimination is addressed at every stage in the political process. [para. 43]</p> <p>UN technical assistance to public administrative reform will ensure full consideration of measures, including quotas and fast-tracking promotion schemes, to increase [the] proportion of women in state institutions at all level[s], and capacity-building to improve their effectiveness. [para. 44]</p>

Source: United Nations, [Report of the Secretary-General on Women’s Participation in Peacebuilding. \(A/65/354-S/2010/466\). Tracking Progress: 7-Point Action Plan.](#)

### 6.4.2 Support and partner with civil society organizations

Women’s organizations are critical watchdogs of WPS commitments and often the leaders in service delivery and sustaining dialogue during post-conflict recovery. Timely engagement with CSOs can create opportunities for the growth of women’s movements and their effective participation in political and constitutional processes based on “the power of social movements from the ground up”.<sup>182</sup> CSOs are also critical sources of information for entities such as peacekeeping missions and the UNSC as they are familiar with the local context, the impact of the conflict and appropriate responses.

# APPENDICES

## Appendix I

**TABLE A.1.1** Means of implementation of women's access to justice programming across all country contexts

Key elements	Means of implementation contained in SDGs 1, 5, 10 and 16*	CEDAW	CEDAW GR 30 and CEDAW GR 33	WPS Goals/ Indicators**	PSG Fragility Assessment Indicators***
<b>THE ENABLING ENVIRONMENT FOR WOMEN'S ACCESS TO JUSTICE (UPSTREAM PROGRAMMING)</b>					
Implementation of relevant international and regional human rights instruments. Constitutional and legislative reforms. Design justice sector strategies from a gender perspective. Cost justice sector strategies and create budget lines.	1.a Ensure significant mobilization of resources from a variety of sources ... to implement programmes and policies to end poverty in all its dimensions 1.b Create sound policy frameworks at the national, regional and international levels, based on pro-poor and gender-sensitive	(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle; (b) To adopt appropriate legislative and other	56(e) Ensure the national implementation of international instruments and decisions of international and regional justice systems relating to women's rights, and establish monitoring mechanisms for the implementation of international law. (CEDAW GR 33, para. 56(e)). 19 Women's rights are	Goal 1 - Prevention of all forms of violence against women, particularly SGBV Goal 2 - Safety, physical and mental health of women and girls and their economic security are assured and their human rights respected Goal 3 - Political, economic, social and cultural rights of women and girls are protected	Existence of laws such as: a. Law on sexual violence, law on child protection b. Existence of a structure responsible for the accessibility of specific laws (target)/Number of laws made accessible. c. The inclusion of traditional justice norms into legal code (target)



	<p>development strategies, to support accelerated investment in poverty eradication actions</p> <p>5.c Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels</p> <p>10.3 Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard</p> <p>16.b Promote and enforce non-discriminatory laws and policies for sustainable development</p>	<p>measures, including sanctions where appropriate, prohibiting all discrimination against women;</p> <p>(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;</p> <p>(g) To repeal all national penal provisions which constitute discrimination against women. (CEDAW, Arts. 2(a), (b), (f), (g)).</p>	<p>guaranteed by an international law regime that consists of complementary protections under the Convention and international humanitarian, refugee and criminal law. (CEDAW GR 30, para. 19).</p> <p>18(g) Provide the budgets, resources, guidelines and monitoring and legislative frameworks necessary to ensure that protective measures function effectively. (CEDAW GR 33, para. 18(g)).</p> <p>83 States parties should report on the legal framework, policies and programmes that they have implemented to ensure the human rights of women in conflict prevention, conflict and post-conflict situations. (CEDAW GR 30, para. 83).</p>	<p>and enforced by national laws in line with international standards.</p> <p>Goal 4 - Increased access to justice for women whose rights are violated.</p>	<p>d. No. of customary legal issues/cases that complement or are consistent with the statutory system and the percentage of cases resolved by traditional/customary justice systems</p> <p>e. Existence of a plan and a programme for reform. Budget of the reform</p> <p>f. Availability of an annual report of the Supreme Council of the Judiciary</p> <p>g. Existence of planning and programming of recruitment and retirement</p> <p>h. Improvements in status and salary scales of judges (target)</p>
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CREATING EFFECTIVE, ACCOUNTABLE AND GENDER-RESPONSIVE JUSTICE INSTITUTIONS (MESO LEVEL)

<p>Gender-responsive capacity building of justice sector actors. Improve infrastructure for service delivery. Promote women's participation in justice delivery.</p>	<p>16.a Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime</p>	<p>(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; (CEDAW, Arts. 2(c), (d)).</p>	<p>14 Six interrelated and essential components – justiciability, availability, accessibility, good quality, provision of remedies for victims and accountability of justice systems—are therefore necessary to ensure access to justice. (CEDAW GR 33, para. 14). 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; (CEDAW GR 30, para. 69(b)).</p>	<p>Goal 1 – Extent to which violations of women's and girls' human rights are reported, referred and investigated by human rights bodies QN/r – Percentage of referred cases of SGBV against women and girls that are reported, investigated and sentenced QN/r – Hours of training per capita of decision-making personnel in security and justice sector institutions to address cases of SGBV</p>	<ul style="list-style-type: none"> <li>i. Distribution of magistrate/high court at the district and regions</li> <li>j. Proportion of Public Defenders to the total population by district</li> <li>k. Ratio of lawyers to 100,000 prisoners</li> <li>l. Number of judges per 100,000 population</li> <li>m. Ratio of prisoners to prison wards by region</li> <li>n. Ratio of prisoners to cell space.</li> <li>o. Availability of separate detention facility for women and children</li> </ul>
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## LEGALLY EMPOWERING WOMEN (DOWNSTREAM PROGRAMMING)

<p>Support legal awareness and education on women's rights. Provision of legal services. Engage with informal justice systems to change negative attitudes and norms towards women and girls. Support and partner with CSOs and CBOs.</p>	<p>5.a Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws</p> <p>5.b Enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women</p>	<p>(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; (CEDAW Art. 2(f)).</p> <p>(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; (CEDAW Art. 5(a)).</p> <p>Ensure to women, on equal terms with men, the right: ... (b) To participate in the</p>	<p>14(a) Justiciability requires the unhindered access by women to justice and their ability and empowerment to claim their rights as legal entitlements under the Convention; (CEDAW GR 33, para. 14(a)).</p> <p>30 The provision of education from a gender perspective and raising public awareness through civil society, the media and the use of ICT are essential to overcoming the multiple forms of discrimination and stereotyping that have an impact on access to justice and to ensuring the effectiveness and efficiency of justice for all women. (CEDAW GR 33, para. 30).</p> <p>69(d) Ensure women's equal participation in all stages of disarmament,</p>	<p>Goal 1 - Level of women's participation in the justice, security... sectors</p>	<p>a. No. of women recruited in the judiciary</p> <p>b. No. of legal claims from individuals or organizations against the state on violations of international norms to the court</p> <p>c. % Population with awareness of legal and human rights.</p>
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		<p>formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (CEDAW, Art. 7(b)).</p>	<p>demobilization and reintegration, from negotiation of peace agreements and establishment of national institutions to the design and implementation of programmes; (CEDAW GR 30, para. 69(d)).</p> <p>56(c) Put in place programmes, policies and strategies to facilitate and guarantee the equal participation of women at all levels in those specialized judicial and quasi-judicial mechanisms; (CEDAW GR 33, para. 56(c)).</p>		
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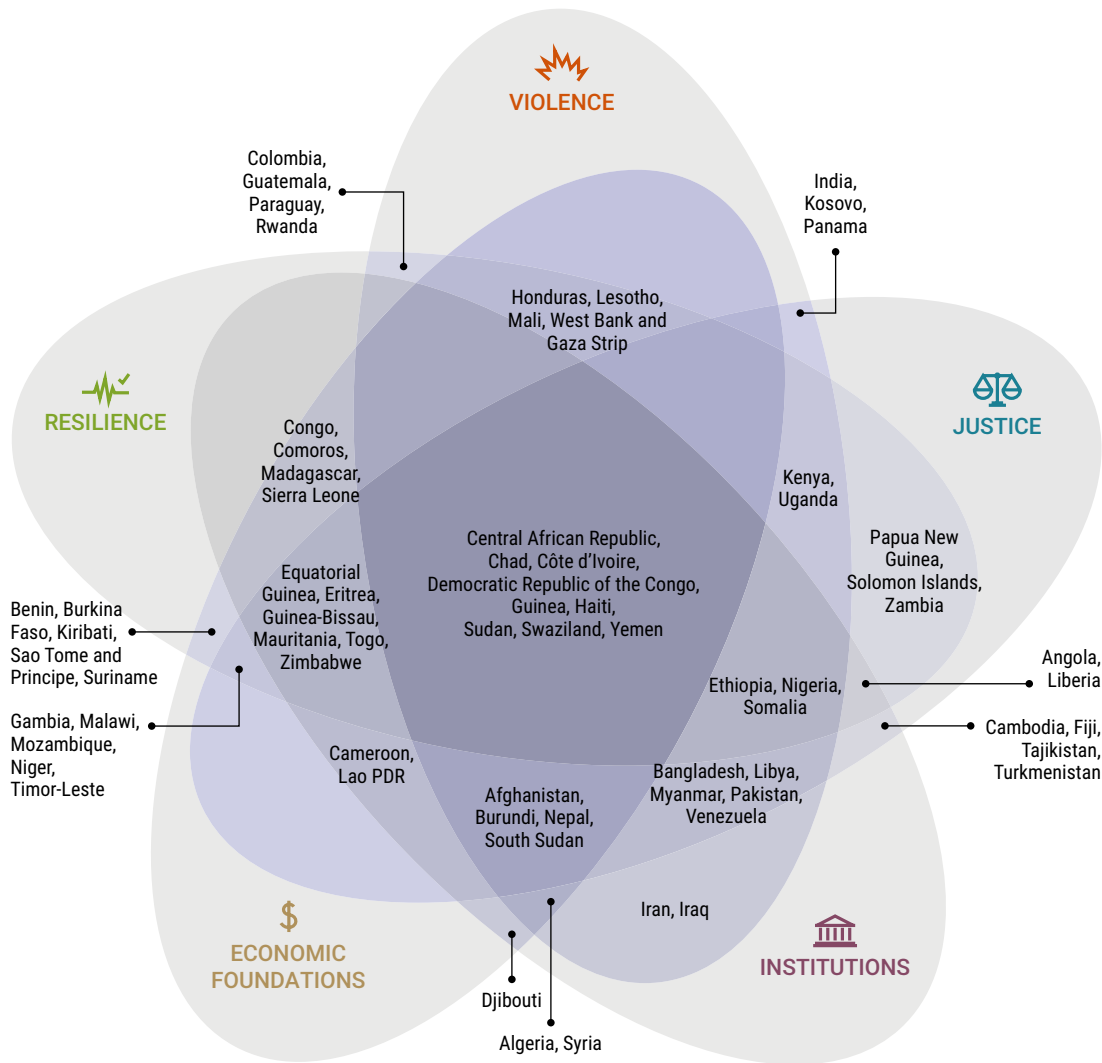
\*The focus here is on the means of implementation for Targets under each Goal. Although none is readily identified for SDG 10, the Targets identified remain relevant for implementing women's access to justice programmes.

\*\*United Nations, Security Council, [Report of the Secretary-General on Women, Peace and Security](#), 28 September 2010, S/2010/498.

\*\*\* These are the only set of indicators reflected in the Table. The indicators are a compilation identified by the fragility assessment five pilot countries (DRC, Liberia, Sierra Leone, South Sudan and Timor-Leste). The indicators are meant to provide a reference point, rather than be prescriptive. For the full list, see g7+, [Note on the Fragility Spectrum](#), (Kinshasa, 2013). Indicator development for monitoring the PSGs themselves is ongoing. For more details, see International Dialogue on Peacebuilding and Statebuilding, [Peacebuilding and Statebuilding Indicators - Progress, Interim List and next steps](#), Document 03 - For discussion, Third International Dialogue Global Meeting, "The New Deal: Achieving Better Results and Shaping the Global Agenda", (Washington, D.C., 2013).

# Appendix II

FIGURE A.1.1 Venn diagram representing fragility clusters across states and economies



- 
**VIOLENCE**  
 Reduce all forms of violence and violent deaths everywhere
- 
**ECONOMIC FOUNDATIONS**  
 Reduce youth unemployment; promote economic, social and political inclusion
- 
**JUSTICE**  
 Promote the rule of law at the national and international levels, and ensure equal access to justice for all
- 
**RESILIENCE**  
 Reduce exposure and vulnerability to climate-related extreme events and other economic, social and environmental shocks and disasters; build adaptive capacity
- 
**INSTITUTIONS**  
 Develop effective, accountable and transparent institutions at all levels; reduce illicit financial flows and combat organised crime

Note: The 9 countries at the centre of this Venn diagram rank among the 50 most vulnerable countries in all five fragility clusters simultaneously. Moving out from the centre, those listed in the overlapping areas are among the 50 most affected in four, three and two clusters. The five proposed dimensions were taken from the SDG framework.

Source: OECD, *States of Fragility 2015: Meeting Post-2015 Ambitions. Highlights*, p. 8, (Paris, 2015). For a full publication of the methodology, see OECD, *States of Fragility: Meeting Post-2015 Ambitions*, Annex A, pp. 101-110, (Paris, 2015).

## Appendix III: Country case studies

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

#### Constitutions

##### BOX A.1.1 Strategies and stakeholder involvement in constitutional reforms in Zimbabwe

With technical and financial support from UN Women and UNDP, a unique lobbying group known as the Group of 20 (G-20), successfully lobbied for gender equality-related provisions in **Zimbabwe** during the country’s three-year constitution-making process (2009-2013). The G-20 included women activists, senior politicians from all parties, women parliamentarians and academics. This group became a key information source on gender equality, women’s rights and the Constitution, which was signed into law by the President of the Republic of Zimbabwe on 22 May 2013. Strategies employed by the G-20 included:

- Providing experts to conduct training sessions on international standards and comparative constitutions
- Developing 14 common principles to advocate for across the spectrum of women’s rights—including reproductive rights, protection from domestic violence, marriage equality and equality in political representation
- Production of substantive advocacy materials—pamphlets and other education materials
- Conducting public awareness campaigns throughout Zimbabwe
- Transforming the women’s position paper into proposed constitutional language by a G-20 sub-committee
- Distribution of the constitutional language to the Constitutional Select Committee (COPAC) members
- Lobbying government officials, political party leaders, members of the COPAC committee, the COPAC drafters and the general public

Sources: UN Women, [“Zimbabweans say yes to new Constitution strong on gender equality and women’s rights”](#), (19 April 2013); UN Women, [“Women make up more than one-third of Zimbabwe’s new Parliament”](#), (4 September 2013); and Claudia Flores and Patricia A. Made, [The Politics of Engagement: Women’s Participation and Influence in Constitution-making Processes](#), pp. 2, 19, (UN Women, n.d.)

##### BOX A.1.2 The role of the courts in fighting discrimination in Botswana

In 1992, the High Court of **Botswana** in *Unity Dow v. Attorney-General (Botswana)* relied on CEDAW and the African Charter on Human and Peoples’ Rights to overturn a discriminatory citizenship law. The Court of Appeal affirmed the holding. The case triggered constitutional reforms in the definition of discrimination, leading to a powerful wave of legislative changes to citizenship and marriage laws. Women were given the right to pass their citizenship on to their children and to their foreign spouse. *Unity Dow* herself became a judge in Botswana. In 2012, the Botswana High Court relied on *Unity Dow* in *Mmusi and others v. Ramantele and Another* to strike down a customary law of patrilineal inheritance known as *Ngwaketse*, despite a constitutional “claw back” clause regarding women’s right to inherit property. *Mmusi* made it clear that women had equal rights to men to inherit property.

Sources: [Unity Dow v. Attorney-General](#), Botswana, (1991, BLR 233 HC) and [Mmusi and others v. Ramantele and Another](#), Botswana, (2012, 2 BLR 590 HC).

### **BOX A.1.3 Consultative constitutional reforms in Uganda**

When democracy was restored in **Uganda** in 1986, due to the populist nature of the National Revolutionary Movement (NRM) government, the country's turbulent experiences of the prior two decades of conflict, and the grave human rights abuses and lack of democratic governance by previous governments, the NRM sought to create an inclusive, democratic and safeguarded constitution. A constitutional commission was formed that included a wide variety of experts. The Commission carried out extensive consultations and educational activities throughout the country and with special interest groups including women, youth, people with disabilities, the elderly, religious groups and the kingdoms of Uganda, in order to draft a constitution based on the views of the people.

One of the first tasks of the reconstruction process was for the government to regain international legitimacy. In doing so, it looked to international law, recognizing international human rights standards and integrating these standards into the country's legal framework. Consultations with the people also indicated their agreement with international treaties that advanced their rights and national interests, and the need to incorporate them in the constitution. As a result, the Constitution is a virtual replica of the Universal Declaration of Human Rights and the subsequent human rights treaties to which Uganda is a party.

The inclusion of two strong, knowledgeable women lawyers on the Constitutional Commission and the additional advice of expert lawyers who were familiar with the international conventions were key to the outcome of the constitutional process, as these individuals were able to successfully articulate Uganda's international obligations and advocate for a constitution that included human rights and women's rights.

Women's organizations facilitated the involvement of women in the constitution building process by holding "gender dialogues" and participating in workshops held by the Constitutional Commission. Women expressed concern about their right to own and inherit property and to have custody of their children, about violence against women and children and their lack of access to education, credit, land and employment. Women working on proposals for the new Constitution referred specifically to CEDAW's concepts of equality to advocate for inclusion of these principles, and this is reflected in a number of key provisions in the Constitution.

The recommendations of the Constitutional Commission were reviewed and voted on by the Constituent Assembly, of which fifty-two (18%) of the delegates were women who, supported by the women's movement, were instrumental in ensuring that key gender provisions were included in the constitution. Although they faced resistance at times, they used several strategies including having men introduce their proposals, and boycotting the Assembly when they did not get their way.

A constitutional review was completed in 2003 to deal with some of the unresolved issues of the 1995 Constitution. Women's groups were consulted during the process and, having seen the workings of CEDAW and further armed with UNSCR 1325, were further able to advocate for women's rights. Thus a key amendment was included that established 18 as the minimum age for marriage and provided that women and men have equal rights at marriage, during marriage and at the dissolution of marriage.

Source: Julie L. Arostegui and Veronica Eragu Bichetero, [Women, Peace and Security: Practical Guidance on Using Law to Empower Women in Post-Conflict Systems – Best Practices and Recommendations from the Great Lakes Region of Africa](#), p. 34, (Washington, D.C., Women in International Security, 2014).



#### BOX A.1.4 The participatory approach of the Constitutional Commission in Rwanda

**Rwanda** followed the model of Uganda in its constitution making process. In 2003 a Constitutional Commission was established to write a permanent constitution. Out of the 12 members of the Commission, three were women. The process was comprehensive and included widespread consultations, mobilization and civic education. Given the deep ethnic divides that had caused the conflict and genocide, the main priorities in establishing the Constitution were: equitable power sharing; establishing a pluralistic democratic regime; fighting against genocidal ideology and all its manifestations; eradication of ethnic and regional divisions and promotion of national unity; equality among Rwandans and between men and women; establishment of a government committed to citizen welfare and social justice; and the resolution of conflict through dialogue and consensus.

The participatory approach adopted by the Constitutional Commission allowed significant input by women and women's organizations. The women's movement actively mobilized to ensure that equality was a cornerstone of the document. The umbrella organization, Collectifs Pro Femmes/Twese Hamwe and its member NGOs worked with women parliamentarians and the Ministry of Gender and Women in Development to advocate for women's issues. These organizations not only carried on a lobbying campaign but also worked to disseminate information about the draft constitution to women's organizations throughout the country, holding consultations, meetings and trainings on the proposed provisions. They advocated strongly for the inclusion of principles of equality and women's rights for a gender sensitive constitution, integrating gender policy and the inclusion of women in decision-making processes into the constitution. In their lobbying efforts women leveraged international instruments such as the International Bill of Rights and CEDAW, stressing the government's obligations as states parties and their duties to report under these instruments. The result is a constitution that incorporates the principles of gender equality and the elimination of all forms of discrimination against women and provides a strong legal framework for mainstreaming gender, with specific reference to CEDAW.

Source: Arostegui and Bichetero, [Women, Peace and Security: Practical Guidance on Using Law to Empower Women in Post-Conflict Systems](#), p. 35.

## Making and reforming laws

#### BOX A.1.5 An example of the formalization of informal law in Ghana

The laws of **Ghana** shall comprise—(a) this Constitution; (b) enactments made by or under the authority of the Parliament established by this Constitution; (c) any Orders, Rules and Regulations made by any person or authority under a power conferred by this Constitution; (d) the existing law; and (e) the common law. (2) The common law of Ghana shall comprise the rules of law generally known as the common law, the rules generally known as the doctrines of equity and the rules of customary law including those determined by the Superior Court of Judicature. (3) For the purposes of this article, “customary law” means the rules of law which by custom are applicable to particular communities in Ghana.

Source: [Constitution of the Republic of Ghana 1992 with amendments through 1996](#), Arts. 11(1)-(3).

## Formal laws

### BOX A.1.6 Domestic implementation of CEDAW in the Philippines

In 2009, the Government of the **Philippines** enacted a gender equality law, the Magna Carta of Women (Republic Act No. 9710), which specifically incorporates CEDAW into domestic law to eliminate discrimination against women. The purpose of the law is to uphold women's human rights as recognized under international instruments and specifically to localize the provisions of CEDAW. The law guarantees a wide range of women's rights, including the right to protection from all forms of violence; political participation and representation; equal treatment before the law; equal access to education; comprehensive health services; and equal rights in marriage and family relations. It also includes specific commitments, such as increasing the number of women in civil service to achieve a 50-50 gender balance by 2014. In addition to guaranteeing substantive rights, the law also mandates that the State take steps to review, amend or repeal existing laws that are discriminatory toward women.

Source: Philippines, An Act Providing for the Magna Carta of Women, Republic Act No. 9710, (14 August 2009), in Philippine Commission on Women, [Magna Carta of Women: Implementing Rules and Regulations](#), pp. 1-30, (Manila, 2010).

### BOX A.1.7 Brazil and Morocco introduce gender equality laws including specific implementation arrangements

The Maria da Penha Law of **Brazil** introduced new penalties and classifications of acts of violence against women into national legislation, setting out a holistic approach to the problem by means of specialist institutions. Before the approval of this law, domestic or family violence was considered to be a minor matter punishable under the Law of Civil and Criminal Courts, which deals with crimes that are defined as being of lesser offensive potential (Law 9,090/1995), the sanctions for which were light and largely financial. With the entry into force of the Maria da Penha Law, more severe prison sentences were established for bodily or physical injuries. This also included other kinds of violence and stipulated specific processes through the intervention of specialist institutions (defence units, advocacy centres, public defenders and courts). After a decade's application of this law, the most notable impact has not been the punishments for those committing acts of gender-based violence but rather the large number of complaints and the imposition of protective measures for women.

The adoption a new Family Code (*Moudawana*) in **Morocco** in 2004 led to the creation of a new family court system. UNDP, together with UNICEF and UN Women, developed a joint programme to assist the Moroccan Ministry of Justice to ensure its effective implementation. A professional unit was created within the Ministry to provide continuous on-the-job training for family court personnel as well as a new information management system within the family section courts. The programme established a mediation and reconciliation system within five pilot family section courts and recruited social workers to link women seeking justice with the court system.

Sources: Alina Ramirez, [Brazil Case Study: Innovative Strategies in a Complex Context](#), Regional Evaluation of Access to Justice as a Prevention Mechanism to End Violence against Women 2011-2015, prepared for UN Women, p. 9, (Leitmotiv, 2016); Presidency of the Republic of Brazil, Special Secretariat for Women's Policies, [Maria de Penha Law: Law n. 11.340 of August 7, 2006 – Retrains domestic and family violence against women](#), pp. 10-21, (Brasília, 2006); [The Moroccan Family Code \(Moudawana\) of February 5, 2004](#), (Human Rights Education Associates, n.d.); and UN Women Multi Country Office, "Summary of women's access to justice programmes", (2015). (Unpublished). See Leitmotiv, [Regional Evaluation of Access to Justice as a prevention mechanism to end violence against women 2011-2015](#), prepared for UN Women, p. 16, (Seville, 2016).

#### **BOX A.1.8 Women's CSOs in Turkey work to strengthen and reform the civil code**

When the Government of **Turkey** ratified CEDAW in 1985, the women's movement seized the opportunity to lobby for reform of the civil code. Throughout the 1990s, feminist advocates built the movement, highlighting how the civil code violated Turkey's own constitutional guarantee of gender equality, as well as its commitments under CEDAW. By April 2000, a coalition government had prepared a draft civil code, integrating women's demands for full gender equality, but it was blocked by an alliance of conservative parliamentarians. The most controversial aspect of the women's demands was related to matrimonial property. Opponents claimed that the proposal that property acquired during the marriage should be divided equally was against Turkish traditions, would destroy the family, increase divorce rates and ultimately destroy Turkish society. The women's movement responded by bringing together a broad coalition of more than 120 NGOs from all over the country. Women's rights organizations, representing different sectors of society and from different ideological viewpoints, came together to campaign on a common platform. One of the coalition's most successful tactics was to gain the support of the media, sparking public debate about the role of women in society and raising awareness of women's rights. The new civil code, passed in 2001, is based on the principle of equal rights and responsibilities within the household.

Source: UN Women, [Progress of the World's Women 2011-2012: In Pursuit of Justice](#), p. 31, (New York, 2011).

### **Informal laws**

#### **BOX A.1.9 Recognizing the diversity of women's justice preferences in Afghanistan**

The perspectives of women in **Afghanistan** on how their human rights should be articulated and implemented highlights the importance of cultural legitimacy for any attempts at legal reform. In her interviews with Afghan women between 2001 and 2003, Dr Huma Ahmed-ghosh found that while women were keen to have their rights, they wanted those rights within the "framework of Islam" and not as a cultural imposition from the West. For example, one interviewee, Orzala Ashraf, who works at an NGO called Humanitarian Assistance for Women and Children in Afghanistan, believed that the Quran offered women enough rights for them to negotiate their rights, but it was fundamentalist interpretations that prevented women from claiming those rights and from educating themselves. Dr Habiba Sorabi, former Afghanistan Minister for Women's Affairs, shared a similar view, claiming that Islam is here to stay in Afghanistan and women want rights within the Islamic framework, including rights to education and employment.

Source: Huma-Ahmed-ghosh, "[Voices of Afghan women: Human rights and economic development](#)", International Feminist Journal of Politics, vol. 8, No. 1, pp. 122-124, (2006).

#### **BOX A.1.10 The role of traditional and religious leaders in reforming religious laws in Afghanistan**

As the majority of people seek justice through informal justice systems, especially in conflict and post-conflict settings, religious and traditional leaders can play an important role in protecting and promoting women's rights. Legal orders which apply religious, customary or indigenous laws tend to be dominated by men and perpetuate patriarchal interpretations of culture, provide differential protections to men and women and rarely punish gender-based violence in particular. However, customary law is adaptable and can change in ways that reflect evolving values in society. For example, in **Afghanistan**, religious leaders are among the traditional "gatekeepers" for making local decisions, especially with respect to women's rights. While at the national level women rights have encountered resistance, at the local level religious leaders have shown interest in protecting

women's rights within an Islamic framework. Civil society organizations have been working with Islamic scholars regionally to develop a curriculum on Women's Rights in Islam. Imams who have participated in the project have referenced in their sermons women's religious and legal rights to familial inheritance, employment, education, participation in political life, and decision-making over their own bodies. While it is difficult to gauge the effect of these sermons, impact studies of various projects show that rates for resolving cases in favor of women disputants improved three-fold.

Sources: UN Women, [Preventing Conflict Transforming Justice Securing the Peace: A Global Study on the Implementation of United Nations Security Council resolution 1325](#), p. 120, (New York, 2015). See United Nations, Human Rights Council, [Report of the Working Group on the issue of discrimination against women in law and in practice](#), para. 54, 2 April 2015, A/HRC/29/40.

#### **BOX A.1.11 Customary law reform led by traditional leaders in Kenya, Namibia and Somaliland**

In **Kenya**, traditional leaders have increased responsibility for protecting and enforcing constitutional rights, including women's rights to land and other productive resources. In one community, elders in Ol Posimoru drafted a new local constitution (known as a *katiba*) that protects women's property rights. In **Namibia**, traditional authorities in some areas have supported widows in asserting their rights to remain on their deceased husbands' communal land and resisting efforts by relatives to remove them. Traditional elders in **Somaliland** have revised elements of Somali customary law (*xeer*) with the aim of bringing it into greater alignment with both Islamic law (*shari'a*) and international human rights standards. Supported by the Danish Refugee Council, the elders initiated a process of dialogue culminating in Regional and National Declarations in the two de facto autonomous regions, which contain revisions to *xeer* in a number of key areas. Research indicates that six years after the first dialogues commenced, the Declarations could already be linked to certain positive changes in customary justice, including the abolition of harmful practices such as "widow inheritance", advancements in women's inheritance rights, and a shift towards individual and away from collective responsibility for serious crimes.

Sources: OHCHR and UN Women, [Realizing Women's Rights to Land and Other Productive Resources](#), pp. 31-32, (Geneva and New York, United Nations, 2013) and Maria Vargas Simojoki, "Unlikely Allies: Working with Traditional Leaders to Reform Customary Law in Somalia", in *Enhancing Legal Empowerment: Working with Customary Justice Systems: Post-Conflict and Fragile States*, Working Paper Series, No. 2, p. 1, (Rome, International Development Law Organization (IDLO), 2011).

#### **BOX A.1.12 Lobbying for legal frameworks to address equality in family law in South Sudan**

In **South Sudan** there is a critical need to establish legal frameworks to protect women and girls. However, there is a great deal of resistance because of customary law. Early marriage and dowry have been identified by stakeholders interviewed as two of the greatest obstacles facing women in the country. According to the Human Rights Commission, much of GBV in the country is based on dowry and it needs to be outlawed. The HRC and women's groups are advocating for the permanent constitution to address equality in family law for women. They are also lobbying the parliament and the public to ensure the enactment of family law, especially establishing rights in divorce, which until now has been handled in traditional and cultural ways, outlawing dowry or at least creating uniform dowry law, establishing a minimum marriage age and guaranteeing women the right to be involved and consulted in marriage processes including negotiations and marriage agreements.

Source: Arostegui and Bichetero, [Women, Peace and Security: Practical Guidance on Using Law to Empower Women in Post-Conflict Systems](#), p. 45.

## Justice sector policies and budgets

### BOX A.1.13 The outcomes of a desk review of the justice sector policy environment globally

UN Women's desk review of the justice sector policy environment revealed the existence of national justice and security sector strategies in at least 22 countries. These are: Afghanistan, Algeria, Andorra, Aruba, Bosnia and Herzegovina, Cameroon, Ethiopia, Guyana, Indonesia, Jamaica, Moldova, Papua New Guinea, Philippines, Rwanda, Samoa, Sierra Leone, State of Palestine, Tanzania, Timor-Leste, Tunisia, Uganda and Vanuatu. The judiciary of four countries (Guatemala, Papua New Guinea, Philippines and Uganda) have sector-specific gender strategies in place, while nine countries (Afghanistan, Bosnia, Cambodia, Madagascar, Myanmar, Pakistan, Papua New Guinea, Trinidad and Tobago and Uganda) also have National Gender Strategies or Policies which include components on justice delivery for women.

Source: UN Women, "Desk Review of Justice Sector Strategies from a Gender Perspective", (2015). (Unpublished).

### BOX A.1.14 Gender-sensitivity in the Justice Sector Strategic Plan for Timor-Leste

The Justice Sector Strategic Plan for **Timor-Leste** 2011-2030 includes a detailed assessment of the challenges facing women in their efforts to access justice, including limited awareness. Under its Thematic Area 5, the Plan seeks to bring justice closer to the people, offering them access to justice, particularly in the districts, including raising the awareness of the population regarding laws, rights and available justice services, and guaranteeing the interaction between the formal and informal justice systems. This means that the principle of non-discrimination, the sensitivity to issues of gender and the protection of vulnerable groups and human rights will be guaranteed in the justice sector within 5 years. To achieve this, the plan seeks to ensure that awareness of gender is incorporated into all programmes and activities of the justice sector. For example, gender focal points will be established in justice sector institutions and judicial actors will receive training on women's rights and gender equality. Human resource policies will also be developed with particular consideration to women, in order to attract and retain more qualified professionals and to minimize the impact of early dropouts from training courses. The importance that Timor-Leste attaches to access to justice is demonstrated by its decision to align the Justice Sector Strategic Plan with the country's Strategic Development Plan 2011-2030, as is the case with other sector plans such as education and health.

Sources: Timor-Leste, Ministry of Justice, [Justice Sector Strategic Plan for Timor-Leste 2011-2030](#), pp. 30, 31-33, 39, 91-92, (Dili, Timor-Leste, 2010); Timor-Leste, [Strategic Development Plan 2011-2030](#), pp. 14-32, 33-43, 176-180, (Dili, 2011); Timor-Leste, Ministry of Education, [National Education Strategic Plan 2011-2030](#), pp. 51-52, (Dili, 2011); Timor-Leste, Ministry of Health, [National Health Sector Strategic Plan 2011-2030: Towards a Healthy East Timorese People in a Healthy Timor-Leste](#), p. x, (Dili, Taliti, 2011).

### BOX A.1.15 Budgetary measures to support implementation of laws in Nepal

Specific measures at the budget level can also be designed to drive the implementation of laws to support gender equality and women's access to justice. For instance, **Nepal** aimed to increase women's access to the ownership of land by granting a 10 per cent tax exemption in 2008 to drive the implementation of laws on property and inheritance. The exemption created incentives for families to share property with women in the family and was later increased by 25 per cent and 30 per cent in cities and rural areas respectively. The result was significant: in the 2001 census, 11 per

cent of households reported land owned by women, whereas by 2009, the figure had increased to 35 per cent of households.

Source: UN Women, [Progress of the World's Women 2011-2012: In Pursuit of Justice](#), p. 22.

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

### BOX A.1.16 Depicting the multidimensional nature of the justice and security sector in Uganda

JLOS is a sector wide approach adopted by the Government of **Uganda** to bring together institutions with closely linked mandates of administering justice and maintaining law and order and human rights, into developing a common vision [and] policy framework, unified on objectives and plan over the medium term. The sector comprises of: the Ministry of Justice and Constitutional Affairs, which also hosts the JLOS Secretariat; the Ministry of Internal Affairs; the Judiciary; the Uganda Police Force; the Uganda Prison Service; the Directorate of Public Prosecutions; the Judicial Service Commission; the Ministry of Local Government, which oversees the Local Council Courts; the Ministry of Gender, Labor and Social Development, which spearheads gender-responsive legal and policy reform initiatives and is in charge of juvenile justice, labor and probation services; the Uganda Law Reform Commission; the Uganda Human Rights Commission; the Law Development Centre; the Tax Appeals Tribunal; the Uganda Law Society; the Centre for Arbitration and Alternative Dispute Resolution; the Uganda Registration Services Bureau; and the Directorate of Citizenship and Immigration Control.

Source: Uganda, The Judiciary, "[Justice Law and Order Sector](#)," (last updated June 2013) and Uganda, JLOS, [The Third JLOS Strategic Investment Plan \(SIPIII\) 2012/13-2016/17](#), p. 73.

## They are available

### BOX A.1.17 The use and impact of mobile courts and justice services in Nicaragua and Honduras

Approaches to increase access to justice that have shown positive results in areas underserved by the formal system are mobile courts and the use of paralegals. In **Nicaragua** in the early 2000s, mobile courts and community-based paralegals were credited with a 10 percent reduction in crime where the scheme operated. Another successful example of the use of Peace Justices and mobile courts to provide better access to justice, especially for the most disadvantaged groups, was in **Honduras**, as part of a project to modernize the judicial branch. Project results include (1) enhanced access to justice for vulnerable groups (30,000 annual users), first-instance courts in rural zones (1,000 annual users), and mobile courts in urban-marginal areas (7,000 annual users); (2) specialized service to 10,000 women in family courts; (3) improved protection to 15,000 women and children against domestic violence; (4) specialized service to 1,500 persons from vulnerable groups; (5) establishment of an integrated financial management system that promotes transparency and efficiency of the courts; (6) development of the judicial career with all the manuals for the selection, classification, and evaluation of personnel that will allow the transparent and competitive selection of 3,200 personnel; (7) adoption of a new management model for case management that will allow monitoring and evaluation of 1,200 judges; and (8) improved services to internal and external users of the courts through an IT (information technology) system and judiciary information kiosks.

Source: The World Bank, [World Development Report 2011: Conflict, Security and Development](#), pp. 154, 175, (Washington, D.C., 2011).

### **BOX A.1.18 The impact of capacity development of informal justice institutions on women's access to justice in Papua New Guinea**

In 1994 the People and Community Empowerment Foundation Melanesia, an NGO in **Papua New Guinea**, launched a programme of dispute resolution training in line with the principles and processes of Bougainville customary justice. An assessment of the programme in 2010 sought to understand whether the training had been successful in advancing legal empowerment in a way that was perceived as locally legitimate and that preserved the positive aspects of customary law. It was found that the training improved the satisfaction levels of both men and women, yet in those areas where there were differences in men and women's responses, the impact of the training on this gender gap was neutral. This is partly explained by the intervention's focus on better mediation techniques rather than the application of substantive rights. In a context of generalized gender discrimination, negotiated settlements and minimal recognition of legal rights present particular risks for female disputants. Furthermore, the training did not adequately address power asymmetries. As a result, female users of the dispute resolution system were far more likely than male users to find it hard to express their views. Where the training did make significant gains in legal empowerment was by providing women with the skills and opportunities to become mediators. The establishment of women in decision-making roles is a legal empowerment outcome in itself, and it was found that women mediators dealt with issues of gender, particularly gender-based violence, in a different and more empowering way than most male mediators and chiefs. The study concluded that while increased participation in dispute resolution and strengthened procedural rights are crucial for access to justice, these efforts must be complemented by awareness of and capacity to assert substantive legal rights.

Source: Adapted from Naomi Johnstone, "Bush Justice in Bougainville: Mediating Change by Challenging the Custodianship of Custom", in *Working with Customary Justice Systems: Post-Conflict and Fragile States*, Erica Harper, ed., pp. 19-20, 22, 26-28, (Rome, IDLO, 2011).

## **They are accessible**

### **BOX A.1.19 Caveat on the benefits of lower level hierarchies to women**

The distinction between lower and higher courts, and their comparative accessibility to women, should not blur potential violations of women's rights that may occur across all court hierarchies. Lower courts located in rural areas for example, may not be well equipped to provide quality services. They could also be beset by corruption due to limited supervision and furthermore may not attract female justice actors due to the challenges associated with female migration. In some instances, laws can mandate a judge to issue orders which amount to a violation of women's rights. For example, Section 40(3) of the Muslim Personal Law Act of **Sudan** (1991) provides that "the guardian of a minor girl cannot conclude her marriage contract unless there is permission from the judge. The guardian has to prove that the marriage will benefit the minor girl, that the husband is suitable and the husband pays the dowry usually paid to women of her status."

Source: Equality Now, Beijing +20: Ending Sex Discrimination in the Law, *Words & Deeds: Holding Governments Accountable in the Beijing +20 Review Process*, 4th ed., p. 16, (New York, 2015).

### **BOX A.1.20 Fee waiver programmes, accessibility to courts and use of ICT in Indonesia**

State funding for religious court fee waiver programmes and the establishment of circuit courts was increased in **Indonesia** in 2008. It is estimated that, from 2007 to 2010, there was a 14-fold increase in the number of poor people accessing religious courts through the fee waiver program, and a



fourfold increase in the number of people accessing circuit courts in remote areas. As a result, within a period of three years, this intervention led to a significant increase in the number of people living in remote areas, poor people and women accessing the justice system. This intervention was coupled with the development of a web data management system that provides an overview of the total number of cases where fee waivers were applied. This system was established in 2008 with support from the Australian Agency for International Development (AusAID). This inexpensive system works on the basis of data sent by courts via SMS to a central database in Jakarta that generates reports that are then available on the Internet. As a result of good data collection and management, there is now a much better understanding of the impact of fee waiver programmes on court access.

Source: Cate Sumner, Matthew Zurstrassen and Leisha Lister, "[Increasing Access to Justice for Women, the Poor, and Those Living in Remote Areas: An Indonesian Case Study](#)", Justice for the Poor, Promoting Equity and Managing Conflict in Development, Briefing Note, vol. 6, No. 2, pp. 1, 5-6, (Washington, D.C., The World Bank, 2011).

#### **BOX A.1.21 Examples of United Nations system support for legal services and assistance**

Legal assistance and representation services aimed primarily at victims of domestic violence and other forms of SGBV are being supported in a range of field settings and often in partnership with civil society groups. In **Afghanistan** and **Iraq**, UNDP is establishing Legal Help Centres in the provinces; also in Afghanistan, UN Women has developed a paralegal manual and training to establish a base of paralegal/legal assistance for rural men and women focusing on women's rights. The UN Operations in **Côte d'Ivoire** has established six legal aid clinics with the National Women's Jurists Association of Côte d'Ivoire. In **Sudan**, the African Union-United Nations Mission in Darfur (UNAMID) is facilitating legal aid assistance to female inmates being held on remand and in prison, and training community-based paralegals. In the **State of Palestine**, UNDP is supporting civil society groups in providing pro bono legal aid, counselling and awareness-raising activities for women. UNHCR [United Nations High Commissioner for Refugees] trains paralegals and court support workers in a variety of field operations.

In **Viet Nam**, UNODC trained 120 law enforcement officers and legal aid providers to provide assistance for survivors of violence against women in 12 provinces. Through the "One United Nations" framework, UNODC partnered with other United Nations agencies to provide support for the amendment of the law on legal aid.

Sources: UN Women and UNDP, [Improving Women's Access to Justice: During and After Conflict: Mapping UN Rule of Law Engagement](#), p. 37, (New York, 2014) and United Nations, ECOSOC, Report of the Secretary-General, [Use and application of United Nations standards and norms in crime prevention and criminal justice](#), para. 34, 8 March 2017, E/CN.15/2017/9.

#### **BOX A.1.22 Legal aid services for women in Sudan, Togo and Zambia**

In **Sudan**, the Sudanese authorities, with the support of [UNICEF], piloted a Family and Child Protection Unit, which provided legal and other services to female and child victims, witnesses and accused persons. In **Togo**, the Group for Reflection and Action: Women, Democracy and Development employs lawyers and paralegals to assist both suspects and victims, including in police stations. The Law Association of **Zambia** established the National Legal Aid Clinic for Women to provide free legal services to indigent women and children. The clinic is present and has permanent employees and offices in all three provinces. The clinic has employed up to 10 lawyers on a full-time basis.

Sources: UNODC, [Handbook on Improving Access to Legal Aid in Africa](#), Criminal Justice Handbook Series, pp. 80, 84, (New York, United Nations, 2011) and UNODC and UNDP, [Early Access to Legal Aid in Criminal Justice Processes: A Handbook for Policymakers and Practitioners](#), Criminal Justice Handbook Series, pp. 24, 81, (New York, United Nations, 2014).

## **BOX A.1.23 Selected innovative examples from UNDP programming**

### **Capacity-building initiatives for justice institutions in Bangladesh**

UNDP **Bangladesh** supported the Activating Village Courts in Bangladesh Project—Local Government Division, with the aim of setting up, supporting and strengthening village courts in 350 Union Parishads (the smallest government unit in Bangladesh) across the country. The project seeks to improve access to justice for disadvantaged and marginalized groups, especially the rural poor and women, and enhances human rights systems and processes in Bangladesh. It additionally seeks to empower citizens to resolve their disputes at the local level in an expeditious, transparent and affordable manner. Finally, it aims to strengthen local government institutions to be responsive to local needs and offer legal services through well-functioning village courts. UNDP's interventions contributed to improved access to justice and legal services for women. Village courts provided an alternative avenue for women to access justice—almost 7,000 women accessed village court justice in 2014 and women were involved in 14 per cent of village court decision-making processes (an increase from 11 per cent in 2013). In addition, interventions by women development forums, established with UNDP programme support, addressed 183 cases of sexual harassment and 303 cases of violence against women and stopped 417 early marriages in 2014.

Source: UNDP, "Inventory on Violence Against Women, 2014-2016", p. 10, (2016). (Unpublished).

### **Comprehensive access to justice services for SGBV in Goma, Eastern DRC**

Improving access to legal aid and service delivery for survivors of SGBV—including the provision of medical, psychosocial and economic assistance—is an important component of their overall access to comprehensive justice. In Eastern **DRC**, UNDP supports a large network of legal aid clinics to tackle impunity, particularly for SGBV crimes. These clinics include medical, psychosocial and legal aid, and more recently have begun to address the social reintegration problems faced by SGBV victims through psychosocial support, literacy classes, socio-economic support and education of community leaders on attitudes towards survivors. One-stop centers that offer survivors a range of services in one location, such as medical care, psychological counseling, access to police investigators and legal assistance, are proving to be a successful model that integrates legal services with survivors' broader needs, through a coordinated approach between health professionals, who are often the first point of contact, and police.

Source: UN Women, [A Global Study on the Implementation of United Nations Security Council resolution 1325](#), p. 122.

### **Increased access to justice for women and minorities through the application and promotion of ADR mechanisms in Kosovo**

In 2016 alone, UNDP helped 651 women resolve their disputes through mediation, of which 139 beneficiaries were from non-majority communities. UNDP also supported the Ministry of Justice to draft the new Law on Mediation, which was approved in the first reading by the Assembly of **Kosovo** in December 2016. The revised law provides a more efficient, effective, and financially sustainable mediation system, whereby the citizens can resolve their disputes in a much faster and cost-efficient way. The law provides that dispute settlements of the citizens' self-referred cases are legally binding. In addition, the law obliges the parties in the dispute to try mediation first, before entering a formal judicial process. In 2016, the number of cases resolved through mediation increased to 812 cases compared to 747 cases in 2015. Once implemented, the reformed law will enable more cases to be resolved, further improving and sustaining people's access to justice.

### **Improved access to legal aid and justice services in rural areas of the Kyrgyz Republic**

This initiative was undertaken through pilot projects in the Osh and Chui provinces of the **Kyrgyz Republic** in 2016. The pilot projects provided free legal aid to 18,091 people and advised 16,807

people on topics such as land disputes, inheritance, recovery of alimony, payment of taxes, and real estate. Furthermore, the Ministry of Justice reached remote areas with the UNDP-supported mobile legal aid initiative commonly known as the “Solidarity Bus.” The mobile initiative visited 173 village municipalities, where 3,486 free legal consultations were provided to 3,386 people (55 percent female). The state registration service also used a mobile initiative to reach 1,607 people (54 percent female) and helped 1,208 people from the rural communities obtain legal documents to secure their legal identity for their rights to education and other basic services.

#### **Institutionalization of legal aid desks in Pakistan**

The Khyber Pakhtunkhwa Provincial Bar Council in **Pakistan** formally adopted the legal aid desks and recognized the Legal Aid Committees as official committees of the Bar Council. This development was key for enabling poor and marginalized segments of the population to access free legal aid. In 2016, 7,009 community members (3,290 women) accessed free legal aid. UNDP also facilitated a wider dialogue and discussion on the role of community-based paralegals in Pakistan. Key stakeholders have called for the full recognition of paralegals in communities, governments, and the legal system. UNDP supported the development of a new certificate programme at the University of Malakand and trained 170 paralegals (49 percent women), contributing to the realization of the 2030 Agenda for Sustainable Development.

#### **Mobile courts to reach remote areas and bridge informal and formal justice mechanisms through local mediation techniques in Somalia**

In 2016, mobile courts adjudicated 1,233 cases (251 criminal and 79 civil), 330 of which the Benadir Region Mobile Courts processed at the federal level. UNDP also supported radio programmes and awareness sessions to provide information on the availability and use of legal aid services to 667,890 people in Mogadishu, Kismayo, Baidoa, and Puntland, as well as 4,180 (1,421 women and 2,759 men) in **Somaliland**. Additionally, women and girls in Puntland received education about legal rights, women and children’s rights, refugee rights, SGBV, and gender equality, as well as the function and mandate of the formal justice system in relation to customary justice.

Source: UNDP, 2016 Annual Report, [Global Programme for Strengthening the Rule of Law and Human Rights for Sustaining Peace and Fostering Development](#), pp. 40-41, (New York, 2017).

## **They are accountable**

### **BOX A.1.24 An example of a domestic violence data tracking system in Albania**

With support from UNDP, an online tracking system for domestic violence cases was established and installed at central and local level in **Albania** in mid-2014 as an important cornerstone in monitoring and ensuring that pertinent legislation is implemented and that cases receive due inter-disciplinary attention. The investment in setting up the national electronic system for tracking domestic violence cases, as well as the capacity building of civil servants to use the system, has contributed to making institutions more responsible for and aware of fulfilling their legal obligations on information sharing, reporting, and improving the coordination between them. The tracking and reporting mechanism was implemented in four municipalities in 2015. An estimated 44 per cent of municipalities now have coordinated community response mechanisms in place. This has increased the trust of citizens in reporting gender-based and domestic violence to the police: statistics show a 30 per cent increase from 2014 in reported cases and a 35 per cent increase in requests to the police to issue protection orders for domestic violence survivors. There is also a 24 per cent increase in arrests of perpetrators of family crimes.

Source: UNDP, “Inventory on Violence Against Women, 2014-2016”, p. 13.

## Women participate in justice institutions

### BOX A.1.25 Indigenous authorities in Ecuador perform a jurisdictional role

The authorities of the indigenous communities, peoples, and nations shall perform jurisdictional duties, on the basis of their ancestral traditions and their own system of law, within their own territories, with a guarantee for the participation of, and decision-making by, women. The authorities shall apply their own standards and procedures for the settlement of internal disputes, as long as they are not contrary to the Constitution and human rights enshrined in international instruments. The State shall guarantee that the decisions of indigenous jurisdiction are observed by public institutions and authorities. These decisions shall be subject to monitoring of their constitutionality. The law shall establish the mechanisms for coordination and cooperation between indigenous jurisdiction and regular jurisdiction.

Source: [Constitution of the Republic of Ecuador, 2008 with amendments through 2015](#), Art. 171.

### BOX A.1.26 Women as decision makers and their impacts on community-level justice in Burundi and Papua New Guinea

In **Burundi**, a country slowly emerging from decades of conflict, UN Women has supported an initiative to incorporate women into the circle of *bashingantaha*, traditional elders responsible for conflict resolution at the community level, which had previously been a strictly male domain. The *bashingantaha* are instrumental in the maintenance of community cohesion and the restoration of peace in their collines, the smallest administrative units in the country. Through sensitization of leaders on women's rights and the amendment of the *bashingantaha* charter, women became accepted as part of the institution, taking part in decision-making. They now make up 40 percent of the committee members of the *bashingantaha*. As a result, awareness of sexual and gender-based violence and other violations of women's rights has increased. Burundian women's organizations have been campaigning for a new law to guarantee women's inheritance rights. Although resistant at first, *bashingantaha* leaders have been speaking out in public in support of the proposed law, including on local radio, and have become important allies in the campaign.

In **Papua New Guinea**, women have been accepted as village court officials and play an active role in monitoring decisions. This was following rights awareness-raising activities involving women, as well as village courts and village leaders, highlighting the important linkages between women's representation, education programmes and engaging with culture to change attitudes.

Source: UN Women, [Progress of the World's Women 2011-2012: In Pursuit of Justice](#), pp. 74, 77.

### BOX A.1.27 Women police in Liberia advocate for greater leadership roles

With support from UN Women, the Liberian Female Law Enforcement Association held a symposium that brought together all the stakeholders involved in the security sector, including senior managers. The key highlights included a discussion regarding the challenges facing women in security institutions. For example, in the **Liberia** National Police there were no females in executive positions and only 16 females (among 126 males) in supervisory roles, as well as 78 female college graduates in the entire work force. The Association succeeded in lobbying for the appointment of two senior female officers within both the Liberia National Police and the Executive Mansion Protection Services, including one who is currently third rank in the Liberia National Police.

Source: UN Women, "Analysis of Country Annual Reports", (2016). (Unpublished).

#### **BOX A.1.28** Examples of interventions for supporting women to enter the justice sector

There is a range of activity taking place that focuses on women's access to legal education, such as UNDP support in the **State of Palestine** to a female lawyers' network through the Palestinian Bar Association, and UN Women's support to an association of lawyers (NORMA) in **Kosovo**. In **South Sudan**, UNMISS [United Nations Mission in South Sudan] is focusing on women's employment at the highest levels in all sectors of the justice system, and in the north UNAMID is assisting female law students to sit bar examinations in Khartoum. In **Timor-Leste**, UNDP is implementing a gender equality grant for female trainees in the Legal Training Centre, as well as conducting a gender awareness campaign to increase the number of female justice actors.

In 2015, UN Women **Nepal** provided law scholarships to 20 female students for a 5-year B.A/LL.B. course at Nepal Law Campus to increase the representation of women and disadvantaged groups in the legal sector through affirmative action in the long run. The students were provided additional tuition classes and the opportunity to participate in workshops on gender equality and justice to increase their knowledge and leadership skills.

Sources: UN Women and UNDP, [Improving Women's Access to Justice: During and After Conflict](#), p. 41 and UN Women, "Analysis of Country Annual Reports".

## Legally empowering women

### Support and partner with civil society organizations

#### **BOX A.1.29** The services and programmes of FIDA-Ghana, a women lawyers association

The International Federation of Women Lawyers of **Ghana** (FIDA-Ghana) was established in 1974 to provide pro bono services to indigent women and children with property rights, inheritance, violence, child maintenance and child custody representing the cases most frequently addressed. Through its legal aid services, FIDA-Ghana integrates justice and development in ways that benefit marginalized and excluded women and children. The organization undertakes rural outreach and training of community members as paralegals who also support the organization of training and outreach. Its legal centre handles cases on maintenance, marital issues, compensation to partners following separation of common law spouses, property or inheritance (estate) and legal advice. Between 2010 and 2014, the FIDA legal aid centre in Accra handled 5,276 cases of which 4,764 were reported directly to the centre and 512 were handled by paralegals in rural areas.

Source: FIDA-Ghana, "Legal Aid Progress Report", (2015). Report prepared for UN Women. (Unpublished).

#### **BOX A.1.30** Timap for Justice in Sierra Leone

The approach by Timap for Justice, a not-for-profit organization offering free justice services in sites across **Sierra Leone**, has demonstrated important results. Paralegals backstopped by lawyers have assisted communities to address disputes and grievances since 2003. Qualitative research has shown that Timap's interventions have empowered clients (especially women) to claim their rights. Community perceptions of institutional fairness and accountability of the police, traditional leaders, and courts also improved as a result of Timap's work. Building on Timap, donors and the government of Sierra Leone joined with nongovernmental organizations and community-based groups in 2010 to develop a national approach to justice services, including a front line of community paralegals and a smaller core of supporting lawyers.

Source: The World Bank, [World Development Report 2011](#), p. 154.

### **BOX A.1.31 An example of empowering women through legal aid in Liberia**

Action Aid **Liberia** supports the Access to Justice for Women project, which is being implemented in three districts in the southeast of the country with local partners Tyiatien Health and Association of Female Lawyers in Liberia. The programme, which includes legal aid, has a holistic approach to women's access to justice and gender equality outcomes, recognizing that change will not be achieved by the provision of legal aid alone. Over the past year the project has achieved significant positive outcomes for women:

- Increase in the understanding of women in the target communities on inheritance and rape laws, referral mechanisms for accessing justice and UN resolutions 1325 and 1820.
- Increase in the number of women who demonstrated a willingness to access justice through the formal justice system (particularly for cases of rape, inheritance and persistence of non-payment of child support) by 45%.
- Establishment of two mediation groups, which have trained a total of 23 women in conflict mediation skills. The women trained to run these mediation sessions are now able to also provide informal level legal aid through the settling of domestic violence and domestic dispute cases in the community.
- Establishment of two women's forums and training of trainers for 39 women on women's legal rights and national and international protection laws. These 29 women have reached a further 471 women who are now demanding inclusion at the community and domestic level, including in the council of elders, in community decision-making roles and in conflict resolution.

Source: Action Aid Liberia, "[Access to Justice for Women](#)", (accessed 15 March 2018).

### **BOX A.1.32 Supporting and partnering with CSOs and CBOs in Sudan**

The UNDP Access to Justice and Rule of Law programme in **Sudan**, in collaboration with the Ministry of Justice and UN Police, has trained 40 paralegals, including 9 women, on access to justice and human rights at national and state levels. Trainings bring together judges, lawyers, police and prison officers, custodians of customary norms and community activists to strengthen their knowledge on laws and the court system. Between 2004 and 2007, UNDP and its partners established 12 legal aid centers and paralegal groups across the Three Areas, Darfur and Kassala. Each centre has a women's paralegal group that focuses on dealing with GBV issues and there are women only legal advice sessions. In 2007, 550 additional cases were carried out by the legal aid lawyers in Sudan resulting in some major successes (including cases on rape, murder and acquittals of women charged with adultery). While running the programme, UNDP found that community-based paralegals were increasingly perceived as a conduit for increasing citizens' voices and as social change agents.

Sources: UNDP, Bureau for Crisis Prevention and Recovery, Concept Note, [Strengthening Women's Security and Access to Justice: Implementing UNDP's Eight-Point Agenda for Women's Empowerment and Gender Equality in Crisis Prevention and Recovery](#), p. 9, (New York, 2010) and UNDP, "[Paralegals bring justice to women in South Sudan](#)", (accessed 15 March 2018).

## **Education on women's rights**

### **BOX A.1.33 Legal awareness and education on women's rights in Viet Nam: A television series and writing competition**

In **Viet Nam**, within the framework of the project "Strengthening the capacity of law enforcement and justice sector officers to respond to domestic violence", implemented by UNODC in collaboration with the Ministry of Public Security and the Ministry of Justice, a 10-episode television series called

Breaking the Silence was broadcast twice on national television. The series raised awareness about the unacceptability of domestic violence, the different forms of violence and the role of the law enforcement sector in protecting victims and holding abusers accountable. The awareness-raising campaign also included a writing competition called “Say no to domestic violence”; prizes were awarded and the best of over 1,500 awareness-raising stories on domestic violence were published.

Source: United Nations, ECOSOC, Commission on Crime Prevention and Criminal Justice, Report of the Secretary-General, [Strengthening crime prevention and criminal justice responses to violence against Women](#), para. 54, 2 February 2012, E/CN.15/2012/13.

## Considerations for crisis-affected contexts

### Women in post-conflict reforms

#### **BOX A.1.34** Peace hut initiative in Liberia offers women secure spaces to discuss important issues in post-conflict settings

UNDP and UN Women support peace huts across **Liberia**. This is where women gather to discuss matters that affect their day to day lives. This is where the reconciliation and resolution of conflicts takes place, where rural women can openly and safely discuss issues of inequality and together take decisions on peace and security. From resolving cases involving pregnancy and abandonment, to counselling survivors of domestic violence or rape, the peace hut initiative in Liberia has grown since 2011. The Liberian National Police works with the peace huts to improve the prevention of crimes and violence against women by providing mobile phones. Women were instructed to keep their phones charged at all times and use them to alert the police when any type of security problem arose, including domestic violence and other types of violence against women and girls. As the peace huts are evolving as a place to resolve conflict, they are becoming increasingly more inclusive of men and boys. UN Women and partners supported the creation of “anti-rape” football clubs for boys in some of the peace hut communities and held focus group meetings with male leaders and adolescent boys. At first, the peace huts focused on a process of “shedding the weight” and counselling women who had experienced grief and trauma as well as supporting ex-child soldiers after the civil war. Then, in 2006, peace hut women began hearing cases. The methodology is based on the traditional “Palava” hut system: the complainant and accused get to air their respective grievance and defence, then the local leader helps them reach an agreement that both consider fair and peace is restored. The role and participation of women in the peace hut for the maintenance of peace in communities is increasingly being appreciated and women in the communities now see themselves as crucial players in peacebuilding and conflict resolution.

Source: UN Women, “[From Conflict Resolution to Prevention: Connecting Peace Huts to the Police in Liberia](#)”, (19 September 2012).

## Appendix IV: Additional resources

- United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, [Rome Statute of the International Criminal Court](#), (1998)
- United Nations Security Council Resolution 955, [Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and](#)



Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994, (1994)

- United Nations Security Council Resolution 827, Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, (1993)
- International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), (1977)
- ICRC, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), (1977)
- United Nations General Assembly Resolution 3074(XXVIII), Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity, (1973)
- United Nations General Assembly Resolution 2391(XXIII), Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, (1968)
- United Nations General Assembly Resolution 260A(III), Convention on the Prevention and Punishment of the Crime of Genocide, (1948)
- ICRC, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, (1949)
- ICRC, Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, (1949)
- ICRC, Geneva Convention relative to the Treatment of Prisoners of War, (1949)
- ICRC, Geneva Convention relative to the Protection of Civilian Persons in Time of War, (1949)

# ENDNOTES

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- 7 g7+, *Note on the Fragility Spectrum*, p. 4, (Kinshasa, 2013).
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- 10 United Nations, *Conflict Analysis Practice Note*, p. 2, (New York, 2016).
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- 12 Ibid., pp. 15-16.
- 13 Ibid., pp. 24-25.
- 14 Ibid., p. 15.
- 15 Ibid., p. 25.
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- 17 United Nations, *Conflict Analysis Practice Note*, p. 4 and United Nations, *Integrated Assessment and Planning Handbook*, p. 25. The substantive nature of a Strategic Assessment is usually ensured by dedicating about 2-3 months from inception to conclusion. However, if required it can also be conducted on an accelerated basis, sometimes within a few weeks. See United Nations, *Integrated Assessment and Planning Handbook*, p. 20.
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- 19 United Nations, *Conflict Analysis Practice Note*, p. 2.
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- 31 For a full list of ILO conventions that concern women workers see Wikigender, "ILO Instruments on Labour Standards concerning Women Workers", (2015), available from <https://www.wikigender.org/wiki/ilo-instruments-on-labour-standards-concerning-women-workers/> (accessed 15 March 2018).
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- 49 Ibid. Discriminatory succession provisions reflect poorly on the current state of gender equality in both formal and informal institutions.
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- 105 See Guideline 9 in A/RES/67/187, Annex, para. 52. To improve access to legal aid for women, Guideline 9 recommends incorporating a gender perspective into all policies, laws, procedures, programmes and practices relating to legal aid; taking steps to ensure that, insofar as possible, female defendants, the accused and victims, are assisted by female lawyers; and the provision of legal aid, advice and court services in all legal proceedings to female victims of violence so as to ensure access to justice and avoid secondary victimization. Before the adoption of Resolution 67/187, the Conference on Legal Aid in Criminal Justice: the Role of Lawyers, Non-Lawyers and other Service Providers in Africa had issued the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa of 2004. These Principles and Guidelines envisage that legal aid is provided at no cost, not only for those without sufficient means but also when the interests of justice so require. Legal aid is relevant across all legal domains, formal and informal systems and in conflict, post-conflict and development settings. For instance, the Special Rapporteur on the independence of judges and lawyers has clarified that the notion of beneficiaries of legal aid should not only include defendants in criminal proceedings but should also include (a) any person whose rights or freedoms have been violated as a result of an act, or a failure to act, perpetrated by a State actor; and (b) any person who participates in judicial or extrajudicial procedures aimed at determining rights and obligations “in a suit at law”. See United Nations, Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers*, Gabriela Knaul, para. 88, 15 March 2013, A/HRC/23/43.
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the higher ranks of the judiciary. Gender biases and the lack of family-friendly policies force a high number of female judges to quit, or limit their opportunities to advance in their career.

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- 132 Ibid., p. 59.
- 133 Ibid., p. 60.
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- 135 Ibid.
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- 144 UN Women, UNICEF and UNDP, *Informal Justice Systems: Charting a Course for Human Rights-Based Engagement*, p. 230.
- 145 UN Women, Dashboard, Global Gender Equality Constitutional Database.
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MODULE

2

**Marriage, Family and Property Rights**

# 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			

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Above: Mongolia. Child and her adoptive parents. © UNICEF Mongolia/Andy Brown.

# 1.0 Summary

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## 1.1 Why marriage, family and property rights?

The family domain is among others, a space in which women's rights are violated. Women assume various roles and responsibilities as wives, mothers and daughters and in these contexts, hold multiple identities as single women, adolescent, pregnant and young mothers, women in polygamous or monogamous marriages, elderly women and widows. Unequal power relations between men and women are accentuated at the family level and affect the extent to which women are empowered to make choices and exercise agency. Areas of concern include the patriarchal structure of society, which also entails the perception that women are dependents of male household members; the exercise of male authority in the household (e.g., where the law recognizes a husband's right to demand obedience from his wife, control her movements or enter into contracts on her behalf); inheritance practices that favour males over females; and discriminatory marital property arrangements.

This Module elaborates on programming in the context of Article 16(1) of the [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW), which seeks to advance "appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations". In this Module, the concept of "property rights" is discussed in the limited context of marriage and family relations, in contrast to the broader context of property acquisition. For this purpose, "property" includes both movable property (e.g., bank accounts and personal effects) and immovable property (e.g., land and buildings).

Data from countries such as Colombia, Jordan and Peru demonstrates that women tend to be the largest cohort of claimants in family-related court cases (see Section 3.1). Marriage, family and property rights cut across a range of economic, social, cultural, political and civil domains that can considerably impact upon women's ability to access justice. These rights include equality of rights in marriage, divorce, parental authority and responsibilities; women's ability to acquire, change and retain their nationality in marriage, or transfer it to their spouses and children; equality before the law; equal rights to choose a domicile or residence; recognition of women's unpaid care work; and legal capacity to conclude contracts and to own and administer property.<sup>1</sup> Furthermore, marriage, family and property rights often overlap with other rights, such as the right of protection from various forms of violence (e.g., early marriage, widow inheritance and domestic violence), food security and girls' education.<sup>2</sup>

Falling under the umbrella of personal law, forms and concepts of marriage and family can vary by country as well as by geographical area within a country.<sup>3</sup> This Module highlights programming considerations for enhancing women's access to justice to enforce rights that international standards afford in the domain of family law. Similar to Module 1, guidance is presented through the lens of the three programming entry points of: (1) creating an enabling environment for women's access to justice; (2) creating effective, accountable and gender-responsive justice institutions; and (3) legally empowering women.

There is growing evidence showing that women tend to represent the highest proportion of claimants in family disputes. Family law is, therefore, a critical avenue for transforming women's lives

This Module unpacks subtle violations of women's rights in the private domains of marriage and family. It also examines property relations as a cross-cutting issue for married and unmarried women within the context of the family



## 1.2 Definitions

**Alimony:** Financial provision from one spouse or partner to another, based on an order of a court or other justice institution.

**Civil law system:** Civil law States adopt a system in which national and international law are viewed as a single entity. Accordingly, once ratified, treaties automatically become part of domestic law and can be applied by the courts, without precluding the enactment of legislation. The constitutions of several States that are influenced by the civil law (e.g., France and Senegal) take one step further and declare that international treaties prevail over domestic law and, in case of conflict between the two, the former takes precedence. This is linked to the “monist approach” (see Module 1) in which international human rights treaties are regarded as an integral part of the legal system.

**Common law system:** Common law States do not automatically incorporate treaties such as CEDAW into domestic law. Treaties are first approved by their respective parliaments and following that, specific legislative measures are taken to reflect the principles and content of treaties in the domestic legal system. This is known as the “dualist approach” (see Module 1) because it involves a two-tier process of treaty ratification and actual legislative reform. The courts of such States are also not bound to apply treaties in their decisions, although an increasing number do so.

**In loco parentis:** Standing in for a parent or in the place of parent.

**Land tenure security arrangements:** A set of interventions by formal State structures or informal community/traditional institutions that seek to protect different types of interests in land that a person may possess. This may include situations where an individual or group of individuals are outright owners through purchase or inheritance from a purchaser; a person who has leased the land for a period of time; a person who enters into a profit or crop sharing arrangement; or a person who has been granted rights of access to land by virtue of being a member of a land-owning family or lineage.



Above: Morocco. The village of Ait Sidi Hsain, near Meknes. © World Bank/Arne Hoel.

**Lineage system:** A lineage refers to the line through which a person's descent (ancestry) is traced. A lineage system refers to the operation of the lineage and how it relates to its members and vice versa. In functional terms, the lineage defines the roles, duties, responsibilities, privileges as well as the manner in which property is distributed among and between members and non-members of the lineage.

### 1.3 Different forms of marriage

Programming must be informed by the different forms in which marriages and marital property regimes exist, in view of their legal implications on attaining equality in marriage, family and property relations. In no hierarchical order, marriages and related property regimes are presented below and in Box 2.1 respectively.

**Statutory/civil marriages:** Statutory/civil marriages are contracted under State laws, which set out the conditions that must be met for a marriage to be valid. These conditions may include the minimum age at which prospective parties can marry; different modalities for formalizing the marriage; marital property regimes; maintenance, upbringing of children and parental obligations; divorce; and property distribution and child custody arrangements upon divorce. Such marriages vary from one jurisdiction to another depending on the cultural, traditional, religious and historical experiences of a country, and can imply State recognition of a diversity of marriages—including monogamy, polygamy and same-sex marriages. An essential feature of statutory/civil marriage is the guarantee of official supporting documentary evidence of its fact or existence. Statutory/civil marriages tend to be more common among educated, urban and elite women and men, due to the costs associated with arrangements and documentation.

**Traditional and religious marriages:** Traditional and religious marriages are contracted in accordance with specific customary practices or religious rites, respectively, which define the conditions and processes of the marriage. In many parts of the world, traditional as well as certain religious marriages are potentially polygamous in nature. State recognition and regulation of such marriages may also vary by country, including in monogamous and polygamous contexts. Whether or not contracted under statute or religious or traditional arrangements, polygamy has been described by CEDAW [General Recommendation No. 21: Equality in Marriage and Family Relations](#) (CEDAW GR 21) as a contravention of a woman's right to equality with men, in view of the serious emotional and financial consequences for a woman and her dependents.<sup>4</sup> Additionally, CEDAW [General Recommendation No. 27 on Older Women and Protection of their Human Rights](#) (CEDAW GR 27) provides that: "Older wives are often neglected in polygamous marriages once they are no longer considered to be reproductively or economically active."<sup>5</sup> In CEDAW [General Recommendation No. 29 on Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women \(Economic consequences of marriage, family relations and their dissolution\)](#) (CEDAW GR 29), the Committee was careful to note that polygamy must be abolished through a two-pronged approach: firstly, by protecting the rights of women in existing polygamous marriages and secondly, by discouraging future polygamous marriages.<sup>6</sup> The Committee's view is consistent with the African Union's position in the [Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#) (Maputo Protocol), that "monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage

Marriage is not a linear or monolithic institution. Its different forms present both opportunities and challenges for women



and family, including in polygamous marital relationships are promoted and protected”.<sup>7</sup> Although registration of traditional and religious marriages is being encouraged by State law and regional instruments, such as the Maputo Protocol,<sup>8</sup> CEDAW GR 29 cautions against using registration as the sole means of proving their existence, since they may also be “substantiated by production of a marriage contract, witness accounts of the rituals or other means, as appropriate in the circumstances.”<sup>9</sup>

**Informal, de facto or common law unions:** Informal, de facto or common law unions refer to arrangements in which the parties involved cohabit over a period of time without formalizing their relationship through one or more of the steps described above. Such unions tend to be officially recognized in most parts of Europe and the Americas and less in Africa and Asia. CEDAW GR 21 and CEDAW GR 29 point out that such unions are protected under the ambit of the marriage and family life provisions of Article 16 of the Convention.<sup>10</sup> This is because, as stated in CEDAW GR 29 “women may be exposed to economic risks when a cohabiting relationship ends, including when they have contributed to maintaining a household and to building other assets.”<sup>11</sup>

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Article 2. States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.

Article 16(1). States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; (c) The same rights and responsibilities during marriage and at its dissolution; (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount; (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights; (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount; (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation; (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

Source: CEDAW, Arts. 2, 16

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**Other forms of marriages:** Diverse forms of marriages may exist outside of the scope of any of the above. They include seasonal marriages contracted by some agricultural communities primarily for securing conjugal/spousal labour during agricultural peak periods.<sup>12</sup>

Although distinct in themselves, marriage arrangements can also be fluid, allowing for individuals to lawfully occupy more than one marital space at a given time.

### BOX 2.1 Marital property regimes

**Separation of property:** All assets and income acquired by the spouses both before they marry and during the marriage remain the separate property of the acquiring spouse. At the time of divorce or the death of one of the spouses, each spouse retains ownership of all assets and income brought to the marriage or acquired during marriage by that person and any value that has accrued to that property.

**Partial community of property:** Assets acquired before marriage are regarded as the separate property of the acquiring spouse, and assets and income acquired after marriage, with a few exceptions specified by law, are regarded as joint property of the couple. This regime also applies to cases where assets acquired before marriage and assets acquired during marriage are regarded as the separate property of the acquiring spouse but the accrued value of the property acquired by any of the spouses is considered joint property. At the time of dissolution of the marriage, the joint property or its accrued value is divided equally between the spouses.

**Full community of property:** All assets and income whether brought into the marriage and acquired during the marriage, with a few exceptions specified by law, become the joint property of the couple. If the marriage is dissolved, all joint property is divided equally between the spouses.

**Deferred full or partial community of property:** The rules of full or partial community of property apply at the time the marriage is dissolved; until then, separation of property applies.

**Other:** This occurs in economies where the default property regime does not fit any of the four descriptions above.

Source: World Bank Group, [Women, Business and the Law 2016: Getting to Equal](#), p. 52, (Washington, D.C., 2015).

Marital property regimes determine the proportions in which property acquired prior to and during marriage will be distributed on the termination of the marriage

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

### 2.1 International law

International legal frameworks and policy guidance on marriage, family and property rights call on countries to set standards of equality of treatment between men and women in marriage, family and property relations. In addition to CEDAW, United Nations General Assembly Resolution 2200A(XXI), [International Covenant on Civil and Political Rights](#) and [International Covenant on Economic, Social and Cultural Rights](#); United Nations General Assembly Resolution 1040(XI), [Convention on the Nationality of Married Women](#); United Nations General Assembly Resolution 1763A(XVII), [Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages](#); and related United Nations General Assembly resolutions and recommendations represent the key international human rights treaties.<sup>13</sup> The African region relies on the Maputo Protocol in addition to these global instruments.

A total of nine general comments and general recommendations of treaty bodies provide global guidance on issues that are explored in this Module. They consist of the following: the CEDAW Committee—CEDAW GR 21, CEDAW GR 27, CEDAW GR 29, CEDAW [General](#)

International legal standards on the protection of women's equal rights in marriage, family and property relations serve as a solid foundation for national law and policy-setting

[Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict situations](#) (CEDAW GR 30), [CEDAW General Recommendation No. 33 on Women's Access to Justice](#) (CEDAW GR 33), [CEDAW General Recommendation No. 34 \(2016\) on the Rights of Rural Women](#) (CEDAW GR 34); CEDAW and the Committee on the Rights of the Child—[Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices](#); the Human Rights Committee—[General Comment No. 19: Article 23 \(The Family\) Protection of the Family, the Right to Marriage and Equality of the Spouses](#); and the Committee on Economic, Social and Cultural Rights—[General Comment No. 20: Non-discrimination in Economic, Social and Cultural Rights](#).

Targets and Indicators of the [Sustainable Development Goals](#) (SDGs) which broadly relate to marriage, family and property rights, as well as those of CEDAW GR 30 and CEDAW GR 33, are highlighted in Table A.2.1 in the Appendices.

## 2.1.1 Typical programming challenges/opportunities

- The implementation of relevant human rights standards can be hindered by reservations to human rights treaties (see Module 1). An estimated 30 States have expressed reservations to a core obligation under CEDAW, namely Article 2 (eliminating discrimination against women) and Article 16 (eliminating discrimination against women in all matters relating to marriage and family relations).<sup>14</sup> For example, Algeria's reservations to these Articles ensure that the Convention does not supersede the provisions of its Family Code.<sup>15</sup> Israel has similarly expressed a reservation to Article 16 "to the extent that the laws on personal status which are binding on the various religious communities in Israel do not conform with the provisions of that article."<sup>16</sup>
- Provisions of international conventions are not automatically incorporated into the domestic laws of a State. In dualist legal systems, international treaties require approval, adoption and translation into law by parliament (see Module 1). Extensive consensus-building on the legislative process, although beneficial in itself, could suffer from weak political support for particular standards.

## 2.1.2 Programming considerations and options

Advocate for the withdrawal of reservations to CEDAW and other international standards by:

- Monitoring the status of State reservations to Article 2 and Article 16 of CEDAW, as well as the concluding observations and recommendations of the CEDAW Committee to States on the withdrawal of such reservations.
- Reservations to CEDAW impact upon every aspect of women's rights. It is critical therefore to work in close partnership with women's advocates, ministries of justice, national women's machineries and other stakeholders to develop proposals and time-bound roadmaps for the withdrawal of all such reservations. Where resources and country context permit, such proposals could also include relevant women's rights-related reservations which have been expressed in relation to other human rights treaties.

Reservations to Article 2 and Article 16 of CEDAW hamper the realization of women's equal rights in marriage and family life, as well as in respect to property

Programming interventions must prioritize the withdrawal of reservations to CEDAW and other standards and norms



Above: Sudan. Lawyer from Nyala. © UN Photo/Olivier Chassot.

- Sharing best practice success stories on the withdrawal of reservations through South-South and North-South cooperation and utilizing entry points afforded by regional bodies such as the African Union, ASEAN and the League of Arab States to place this issue on various agendas.<sup>17</sup>
- Supporting CSOs (including those at grass-roots level) to advocate for the withdrawal of reservations, and report on progress from their perspective, through their Alternative Reports to the CEDAW Committee.

## 2.2 Domestic law

### 2.2.1 Constitutions

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Provide explicit constitutional protection for formal and substantive equality and for non-discrimination in the public and private spheres, including with regard to all matters of personal status, family, marriage and inheritance law, and across all areas of law

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Source: CEDAW GR 33, para. 42(a).

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Broad constitutional provisions on non-discrimination and equality before the law serve as important legal foundations for rights related to marriage, family and property. To date, 182 out of 195 constitutions (93 per cent) contain provisions on marriage and family life.<sup>18</sup> These provisions generally relate to the protection of maternity and the family as the basic unit of society. Similarly, 183 constitutions (94 per cent) contain provisions on the right to own property and inherit, as well as provisions on land tenure security arrangements.<sup>19</sup> Recognition of unpaid domestic work is expressed in the constitutions of Bolivia, Cambodia and Ecuador (see Table 2.1). This is supported by the right to social security, which represents a breakthrough in the recognition of this type of work in which women tend to be invisible in systems of national accounts, both within and outside the context of marriage.

Efforts must be made to domesticate international and regional standards through constitutional reforms

Constitutions provide the legal foundation for equality in marriage, family and property rights

**TABLE 2.1** Examples of constitutional provisions on the value to be placed on unpaid care work (with emphasis added)

<a href="#">Constitution of the Kingdom of Cambodia 1993 with amendments through 2008</a>	<a href="#">Constitution of the Republic of Ecuador 2008 with amendments through 2015</a>	<a href="#">Constitution of the Bolivarian Republic of Venezuela 1999 with amendments through 2009</a>
The work of housewife at home shall have <i>equal value as the remunerated work</i> done outside the home. Khmer citizens of both sexes shall have the <i>right to enjoy social security</i> and other social benefits as determined by law. (Excerpt of Article 36)	The State shall guarantee and ensure the full and effective exercise of the <i>right to social security, which includes persons who carry out unpaid work in households</i> , livelihood activities in the rural sector, all forms of self-employed and who are unemployed. (Excerpt of Article 34)	The State guarantees the equality and equitable treatment of men and women in the exercise of the right to work. The State recognizes <i>work at home as an economic activity that creates added value and produces social welfare and wealth. Housewives are entitled to Social Security</i> in accordance with law. (Article 88)

### 2.2.1.1 Typical programming challenges/opportunities

- Although wide-ranging constitutional provisions impact on marriage, family and property rights, an in-depth analysis is yet to be undertaken to determine their impact on gender relations and women’s rights.
- Discriminatory marriage and family provisions are also evident in constitutions. The CEDAW Committee has been concerned by the references to women as mothers in several constitutions.<sup>20</sup> Eleven constitutions exclude marriage, divorce and inheritance from constitutional guarantees on equality and non-discrimination.<sup>21</sup> Through “claw back” clauses, matters of marriage, divorce and inheritance can be fully determined by customary and personal laws, regardless of whether the latter discriminates against women. For example, Article 33(1) of the [Constitution of the Republic of The Gambia 1996 with amendments through 2004](#), recognizes that “*all persons shall be equal before the law.*” However, by Article 33(2), it also notes that “*subject to the provisions of subsection (5), no law shall make any provision which is discriminatory either of itself or in its effect.*” Sub-section 5(c) of the same article states that Article 33(2) shall not apply to any law in so far as that law makes provision with “*respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law.*”<sup>22</sup>
- Women’s legal rights in marriage, family and property can be further compromised when constitutions are overridden by customary law and personal law.
- Legal equality in marriage and family signals a major shift in gender relations. For this reason, broad support for such provisions may be limited.

Constitutions may subject equality and non-discrimination clauses to customary and personal laws that discriminate against women



Above: Thailand. A family of women at Mae Salong, H'mong hill tribes. © UN Photo/Kibae Park.

- Gender advocates focus on major normative provisions at the expense of other important substantive rights and protections. Although important protections can be drawn from broader provisions, such as on equality and non-discrimination, this may be insufficient since “less sought-after provisions”, such as those on citizenship and marriage and family, can impact women more directly.

### 2.2.1.2 Programming considerations and options

Women possess rights in “private domains”. These must be amplified in constitutions and constitutional reform processes through actions such as:

- Undertaking an analysis of the marriage, family and property rights dimensions of relevant constitutions from a gender perspective.
- Supporting women’s CSOs in advance of constitutional reform processes to identify opportunities and entry points for strengthening existing marriage, family and property rights in constitutions or through the introduction of new provisions.
- Advocating for existing and new provisions to recognize women as rights-holders rather than passive recipients of State protection. This could, for example, involve the inclusion of texts that emphasize childcare as a joint parental obligation, or explore new grounds in such areas as constitutional recognition of unpaid care work.
- Reviewing the World Bank’s biennial data on the relationship between constitutional provisions on non-discrimination or equality and (a) customary law and (b) personal law.<sup>23</sup> Given the influence of customary and personal laws in shaping marriage, family and property rights, an appreciation of their status in constitutions, particularly in relation to equality and non-discrimination provisions, will be important considerations for constitutional reforms.
- Advocating for the repeal of “claw back” clauses and other discriminatory provisions that impact upon women’s rights in marriage (e.g., citizenship) and ensuring the

Undertake an analysis of the implications of existing constitutional provisions that directly or indirectly impact upon equal rights in marriage, family and property relations

Constitutional provisions on equality and non-discrimination must prevail over those that relate to customary, personal and religious laws



Formal laws related to marriage, family and property rights consist of a range of codes and statutes as required by the particular legal system

Legal discrimination against women in marriage, family life and property permeates through such matters as male guardianship, citizenship, divorce, child custody and maintenance and distribution of property

supremacy of equality and non-discrimination clauses over customary law and personal law.

- Ensuring the creation and sustained capacity of constitutional review bodies, which play the role of safeguarding women's equal rights in relation to marriage, family and property, including ensuring that constitutions are interpreted and enforced in accordance with human rights standards.
- Promoting the full and inclusive participation of women from all walks of life in constitutional reform processes (including rural, urban, poor and young women) to ensure that their lived experiences in all contexts of marriage and family life are heard and that these catalyse and shape reform processes and their content.

## 2.2.2 Formal and informal laws

### 2.2.2.1 Formal laws

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Adopt written family codes or personal status laws that provide for equal access to justice between spouses or partners irrespective of their religious or ethnic identity or community, in accordance with the Convention and the Committee's general recommendations

Source: CEDAW GR 33, para. 46(a).

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Whereas a constitution may contain broad language that mandates gender equality or non-discrimination on the basis of sex, legislation would further elaborate on what gender equality and non-discrimination mean in the context of marriage (e.g., ownership of marital property, rights to divorce and choice of residence). In practice, laws relating to marriage, family and property rights are reflected in domestic frameworks, which are shaped by the legal system in question. They include frameworks such as family codes, civil codes and personal status laws in civil law systems, as well as matrimonial causes, marital property laws and inheritance legislation in common law systems. The courts have also been influential in interpreting both formal and informal laws in relation to women's rights in this field where discrimination in law is common. Below are some of the most problematic areas of law:

- **Male guardianship over women:** Women are accorded guardianship status in a number of legal systems on the assumption and harmful stereotype that they are subordinate to and will be cared for by a man—by a father, uncle, brother, son and husband—throughout their lives. In such contexts, men are deemed to be heads of households, breadwinners and owners and managers of family productive assets.
- **Citizenship and nationality:** Although 74 constitutions defer to domestic legislation in citizenship matters,<sup>24</sup> women do not always have the legal right to pass on their nationality to their spouses and children in legislation. Twenty-five countries discriminate against women in their ability to confer nationality to their children. In addition, over 50 countries deny women equal rights with men to acquire, change or retain their nationality, or confer their nationality on their non-national spouse.<sup>25</sup> Statelessness can arise when a woman's experience of conflict intersects with discriminatory nationality rights. Stateless women and girls face heightened risks of abuse in times of conflict because they do not enjoy the protection that flows from



citizenship, including consular assistance, access to social services and participation in political processes.<sup>26</sup>

- **Impact of male authority on marriage and divorce:** Male authority assumes that husbands are the heads of households, or legal representatives of households, and possess the authority to make decisions on behalf of the family or to exclusively administer property without consulting or seeking spousal consent.<sup>27</sup> Such power can be transferred to a son or other male family member in the absence of a husband. The exercise of male authority in domestic settings can be sanctioned by law and extends to State sanction of male household supervision, wife obedience, the right of a husband to grant his wife permission to leave the house, the husband's right to choose the family residence, object to the wife's choice of profession and enter into contracts on the wife's behalf.<sup>28</sup> Discriminatory divorce laws can leave women impoverished and at risk of violence and exploitation, particularly where the wives and children have no means of sustenance outside of the family. Fault-based divorce regimes draw a direct link between grounds for divorce and the financial consequences of divorce. As a result, women deemed at fault in divorce are generally not provided alimony or other forms of financial support. Apart from being used by husbands to eliminate any financial obligation towards their wives, in many legal systems, fault-based divorce regimes may include different standards of fault for wives and husbands, such as requiring proof of greater infidelity by a husband than by a wife. Fault-based economic frameworks therefore frequently work to the detriment of the wife, who is usually the financially dependent spouse.<sup>29</sup>
- **Management of marital property:** Marital regimes determine spouses' rights to the marital home and access to other property (e.g., money, securities, vehicles, retirement income or businesses income) during and after a marriage or relationship breakdown. A woman's right to property depends on the marital property regime, which may exist by default or which the parties may be able to choose by contract (see Box 2.1). Some countries do not acknowledge a woman's right to own an equal share of property with her husband during a marriage or when that marriage ends. Even when that right is recognized, legal precedent or custom may limit a woman's right in practice. Sometimes, property that is owned by a woman or jointly owned with her husband can be managed by him and in such situations, he may not have a legal obligation to consult her prior to or after disposing of or entering into a transaction in respect of that property. To determine a woman's share in marital property, some countries place greater emphasis on financial contributions that she has made to the acquisition of that property and diminish other non-monetary contributions, such as raising children, caring for elderly relatives and discharging household duties. This is discriminatory because such contributions often enable the husband to earn an income and increase his assets, overlooking the unpaid contributions that women make in and outside of the household. Non-recognition of unpaid care work, which is primarily done by women, is a structural barrier to women's human rights in the family and contributes to women's poverty.<sup>30</sup> Financial and non-financial contributions should therefore be accorded the same weight.<sup>31</sup>
- **Child custody and maintenance:** Article 7(1) of United Nations General Assembly Resolution 44/25, [Convention on the Rights of the Child](#), recognizes that every child has a right to know and be cared for by both parents. Under CEDAW, women are accorded the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children.<sup>32</sup> In practice, however, women's

parental rights in the context of divorce may depend on lineage rules governing status and family relations. Due to the tracing of lineage membership through the female line, matrilineal societies tend to provide women with greater rights over children compared to patrilineal, which limit such rights to fathers, based on male lineage. In some Islamic settings, three principles guide child custody on divorce: (1) the mother possesses priority child custody rights as long as she does not remarry; (2) in situations where both parents profess different religions, child custody will be granted to the parent who follows the Islamic faith; and (3) when the child is past the age of minority (7 years), that child will be given the option of choosing which parent she/he would prefer to have custody.<sup>33</sup>

- **Inheritance:** While discriminatory practices relating to inheritance are often rooted in informal or customary law (see Section 2.2.2.2), legislation can also limit women's rights to inheritance through preference for male family members over females. Section 103 of the [Tunisia Personal Status Code of 1956](#), for example, states that: "there are three cases that apply to immediate daughters: (1) a sole daughter inherits half of the estate; (2) two or more daughters collectively inherit two thirds of the estate; (3) where there are any sons, the male inherits twice as much as the female."<sup>34</sup> Furthermore, lack of knowledge of property rights and inheritance rights are often major obstacles to protecting the property rights of widows.<sup>35</sup> This is compounded by the high costs of legal proceedings, long distances to courts and cumbersome court procedures, all of which place widows in vulnerable situations.<sup>36</sup>

#### 2.2.2.1.1 Typical programming challenges/opportunities

- All legal domains (e.g., constitutional, civil, family, criminal, administrative—see Module 1) are interrelated, and reforms in one area of law may not have the desired impact if other areas of law continue to discriminate against women. For example, women may have an equal right to divorce, but may be deterred from exercising that right if the law that determines how marital property is distributed upon the dissolution of marriage discriminates against them.
- In plural legal systems, reforms in marriage, family and property laws through formal legislation are often contested by different religious and traditional sects, which sanction patriarchal marital and property norms in such contexts.

#### 2.2.2.1.2 Programming considerations and options

Advocate for the reform of existing discriminatory laws and the enactment of new laws. Reforms must prioritize:

- The repeal of discriminatory laws that are rooted in the notion of male power and dominance. These include: provisions on male marital power and heads of household; restrictions on equal inheritance rights; restrictions on women's movements; free choice of domicile; the ability for women to acquire, change or retain nationality, or transfer it to their spouses and children; practices of child marriage, widowhood rites and widow inheritance; fault-based divorce laws; and any legal impediments to alimony, child custody and child maintenance. Where applicable, advocate for a unified family/marriage/inheritance regime that provides for a common means of protection to women of all backgrounds.

Legal domains may be disconnected, legislative reform processes are often slow, laws may reflect discriminatory norms and there may be insufficient political will for reforms

Programming should advocate for legal reforms that protect women's marriage, family and property rights holistically by addressing all interrelated laws



Above: Myanmar. Woman walking home from work along the road from Naypyitaw. © World Bank/Markus Kostner.

- Full or partial community of property as the default marital property regime. Ensure the joint administration of marital property, particularly as it relates to immovable property, and ensure that clear informed written consent of spouses is a requirement for the transfer or sale of such property.<sup>37</sup>
- The enactment of anti-discrimination and protective laws to reduce human rights violations against diverse groups of women. For example, the OHCHR and Joint United Nations Programme on HIV/AIDS [International Guidelines on HIV/AIDS and Human Rights](#) recommends that “laws should be reviewed and reformed to ensure equality of women regarding property and marital relations and access to employment and economic opportunity, so that discriminatory limitations are removed on rights to own and inherit property, enter into contracts and marriage, obtain credit and finance, initiate separation or divorce, equitably share assets upon divorce or separation, and retain custody of children.”<sup>38</sup> The Joint Programme also recommends that “the age of consent to sex and marriage should be consistent for males and females and that the right of women and girls to refuse marriage and sexual relations should be protected by law.”<sup>39</sup>
- Equal rights of spouses and partners under any of the marital arrangements discussed in Section 1.3. In particular, women in customary or de facto unions should enjoy the same property and inheritance rights as women married under civil law.<sup>40</sup>
- Institutionalization of marriage contracts as a protective mechanism to enable women to contract out of discriminatory personal laws and practices that might otherwise apply.
- Proposals for laws on will-making (testamentary dispositions) to allow individuals to decide who inherits their self-acquired property. Such dispositions could be an important safeguard against inheritance discrimination.<sup>41</sup>

Programming should also support the implementation of laws that are designed to fully protect women's rights

- The full legislative recognition of unpaid work performed by women in households and family enterprises. Such contributions, although of a non-financial nature, should be considered in property distribution upon termination of the marriage, whether by death or divorce.
- Language that ensures that equal rights between men and women in marriage are not subordinated to religious or customary norms or practices. In addition, ensure that women are allowed the option to select the type of marriage and marital regime of their choice in the protection of their rights.
- Mechanisms that protect women from harmful divorce regulations. For example, Section 7 of Pakistan's [Muslim Family Laws Ordinance, 1961](#) provides that a man wishing to divorce his wife must, after the pronouncement of *talaq* (repudiate) three times, provide written notice of his actions to the Arbitration Council with a copy to his wife. With this, the Council attempts reconciliation within 30 days and if this fails, the divorce takes effect 90 days after the serving of the initial notice or at a later date if the wife is pregnant at the time.<sup>42</sup>
- Equal property tenure rights for women and men, including the right to inherit and bequeath these rights. This may require removing all forms of discrimination related to tenure rights, including those resulting from change of marital status, lack of legal capacity and lack of access to economic resources. Such State actions should be consistent with their existing obligations under relevant national law and legislation and international law and with due regard to voluntary commitments under applicable regional and international instruments.<sup>43</sup> An important justification for policy reinforcement includes the need for women to protect property acquired from family sources through government land tenure security interventions, which may include land title registration and certification.

**In promoting legal reform, consider factors that strengthen the implementation of laws:**

- Reflect on the means of enforcement and clearly spell out the institutions that are responsible for their implementation. The CEDAW Committee's concluding observations and recommendations to Albania for instance, noted that the lack of implementation of Law No. 33/2012, which provides for joint ownership by both spouses of property acquired during marriage, was continuing to deepen discrimination against women in matters of inheritance.<sup>44</sup>
- Be realistic and distinguish between different types of individual and group entitlements. For example, as an individual, a woman can lay claim to only self-acquired property, jointly-acquired property or property handed down to her as a gift or through inheritance. She may also be allowed limited user rights to her own extended family/lineage immovable property, while in the case of her husband's family/lineage property she would generally exercise the right of usage of such property on behalf of her children. Nevertheless, it is also important to explore progressive developments taking place globally. The [Fiji Family Law Act, 2003](#) for instance, provides that in matters of divorce, where land is held under native laws, the husband, his family or *mataqali* (a Fijian clan or landowning unit) must compensate the woman to the extent of its value had it been commercially available land.<sup>45</sup>
- Consider the circumstances of women in monogamous, polygamous and de facto unions as well as the complex interactions between nuclear and extended family

settings. Women's views on how their rights must be protected under these circumstances may differ; legal remedies sought should, as far as possible, be guided by the women directly affected.

### **BOX 2.2 An example of discriminatory divorce law**

Under Sharia law, only husbands have the right to divorce (by *talaq*). This gives him unilateral power to divorce his wife without giving any reason, whereas the woman must assign good reasons as a basis. Women have three limited options open to them in divorce: *mubarah*, whereby the husband has leverage and is not bound to consent to her release; *khul*, whereby she buys her release by returning her dower; and *talaq-e-tafwaz*, which confers upon her the right to divorce her husband if he delegates such power to her. Fault-based divorce therefore results in economic frameworks that frequently work to the detriment of women who are usually the financially dependent spouse and who are then subject to discriminatory rules on child custody and the right to remarry.

Source: Niaz A. Shah, "[Women's Human Rights in the Koran: An Interpretive Approach](#)", Human Rights Quarterly, vol. 28, No. 4, pp. 892-893, (2006).

- Promote education and awareness of laws relating to marriage, family and property, and in particular laws pertaining to women's rights, protections and avenues for accessing justice. This should include national awareness campaigns preceding, during and after constitutional and legislative reforms, to build awareness on their purpose and content across all sectors of society.

### **2.2.2.2 Informal laws**

In settings in which there is no unified family code and in which there exist multiple family law systems, such as civil, indigenous, religious and customary law systems, ensure that personal status laws provide for individual choice as to the applicable family law at any stage of the relationship. State courts should review the decisions taken by all other bodies in that regard.

Source: CEDAW GR 33, para. 46(c).

Marriage, family and property relations are impacted by issues beyond those described in Module 1. Under both customary and religious laws, lineage systems serve as a basis for rights, privileges and duties within the family, including identity, decision-making in lineage affairs, property distribution, child custody and child maintenance. Although lineage systems may differ by country, the two most well-known are the matrilineal and patrilineal. The first traces descent through a female ancestor and the second through a male ancestor. Women tend to wield influence through lineage and as political leaders in matrilineal descent systems and are often able to access lineage lands with greater ease compared to women of patrilineal systems. In the latter, women rarely feature as leaders or wield political influence.

The differences between the opportunities and restrictions that women face in matrilineal and patrilineal communities often disappear once women marry. Regardless of lineage, marriage can result in an automatic subordination of the status of the woman to that of the man, primarily because it is common for a woman to migrate from her lineage to join her husband's lineage or place of residence. As a "stranger" to her husband's

Lineage systems dictate status, opportunities, privileges, roles and responsibilities for both male and female family members

Under customary law, marriage is a defining moment for a woman because she is deemed a “stranger” from the perspective of her husband’s family and lineage

Consensus on reforms can be hindered by the diversity of informal norms

Exploring potential harmonization between formal and informal sources of law can serve as an important step towards reform

Effective justice and security sector policies and budgets must be multidimensional in scope and impact

lineage, a wife does not acquire absolute user rights to her husband’s lineage land or to his personal property.

Under some customary law settings, wives are also under an obligation to assist their husbands in their economic pursuits without remuneration. Upon his death, she is not automatically entitled to property that she may have assisted in acquiring through her labour, unless she can prove financial contribution. Under both lineage systems, the extended family of a deceased man holds greater rights over his property to the disadvantage of the nuclear family. In the same manner, sons and nephews possess superior inheritance rights over family and lineage property compared to daughters and nieces. For example, in Nigeria, the practice of *Nnewi* dictates that “where a man dies without sons but has daughters ... a daughter must remain unmarried and bear children who effectively become her dead father’s heirs to inherit and carry on the male lineage.”<sup>46</sup>

In some cases, women are considered chattel themselves. This is exemplified in practices such as levirate marriage, which involves a woman being passed on as “property” to another man (usually her brother-in-law) on the death of her husband.

#### 2.2.2.2.1 Typical programming challenges/opportunities

- The diversity of customary and religious norms that govern marriage and family can impact upon the ability of a State to build consensus on reforming those aspects that hinder women’s rights.

#### 2.2.2.2.2 Programming considerations and options

Mediate the concerns and interests of formal and informal justice institutions in plural legal systems through interventions such as:

- Advocating for the codification of customary and religious marriage and family laws to facilitate alignment with national law and international human rights standards. Starting points could be commentaries already produced by scholars and clerics. This codification exercise should feed into the process of designing and adopting unified family codes and property regimes that take both formal and informal normative frameworks into account.
- Contesting discriminatory informal laws in formal courts through strategic litigation (see Box A.2.9 in the Appendices).
- Documenting positive customary and religious principles and practices that are supportive of women’s rights in relation to marriage, family and property and fostering continued dialogue aimed at harmonizing formal and informal laws.

## 2.3 Justice sector policies and budgets

Justice and security sector policies and budgets can support the enforcement of marriage, family and property rights and the protections enumerated in legislation and constitutions. To ensure effectiveness, there must be mutually reinforcing linkages between justice and security sector policies and budgets and other sector policies. For example, property rights in marriage can be reinforced by justice and security sector policies as well as policies on land tenure, land administration, food security and agriculture (see Figure 2.1). Policy harmonization between the justice and security



sector and land tenure and administration is necessary for mitigating discrimination in land tenure arrangements, including those resulting from change of marital status, lack of legal capacity and lack of access to economic resources.<sup>47</sup>

By way of example, [The Uganda National Land Policy](#) includes a commitment to protect the rights of women to inherit and own land through equality or property ownership between women and men before, during and upon the dissolution of the marriage. Three key elements of this commitment are as follows:

1. Design and implement a regime of matrimonial property law aimed at the protection of spouses.
2. Make legal provision for joint or spousal co-ownership of family land and the matrimonial home.
3. Amend the 1906 [Succession Act \(Cap. 162\)](#) to provide for the right to succession and inheritance of family land by women and children.<sup>48</sup>

**FIGURE 2.1** Protecting women’s property rights through cross-sectoral policy linkages



Marriage, family and property rights cut across different policy domains

### 2.3.1 Typical programming challenges/opportunities

- The marriage, family and property rights components of justice and security sector strategies may be viewed as the responsibility of one State agency (e.g., the national women’s machinery), rather than a shared obligation among several institutions.





Above: Nepal. Father holds his crying 22-day-old son, in a building in the earthquake-affected town of Singati. © UNICEF/Brian Sokol.

Marriage and family issues may be relegated as social issues and therefore, less of a national priority

- Marriage, family and property rights may be perceived as a “women’s issue” and therefore not attract sufficient political will among policymakers for effective translation of legislation into policy.

### 2.3.2 Programming considerations and options

Justice and security sector policy design must include the following:

- Respect for the rights and needs of women in diverse family contexts.
- Situating marriage, family and property rights in the national context as an issue of central importance to the implementation of the SDGs.
- Budgeting for the accelerated enforcement of equitable family and property laws through the strengthening of relevant justice, law and order and social service institutions in a cross-sectoral manner.
- Intersectoral capacity development interventions that bring together all relevant stakeholders (e.g., justice, land title, land administration and agricultural extension officers) and through these, the promotion of continuous dialogue and collaboration across sectors.

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

The full realization of women’s rights in the context of marriage, family and property relations as provided for by international law, constitutions, legislation and policy will

Policy design must consider marriage, family and property rights as matters of central importance to sustainable development

require an effective and systematic application of such standards and norms across the justice chain. The ways in which justice institutions enforce these rights will have far-reaching consequences on women’s ability to access justice for violations that occur across varying contexts within a country. Module 1 outlines the six dimensions of access to justice—justiciability, availability, accessibility, good quality, the provision of remedies for victims and the accountability of justice systems.<sup>49</sup> It highlights that these six overlapping dimensions provide a structured framework for comprehensive analysis of women’s access to justice generally and help in assessing the extent to which justice institutions are effective and accountable to women. This Section highlights how five out of the six dimensions are applicable within the context of marriage, family and property relations.<sup>50</sup>

### 3.1 Availability

The availability of justice institutions, judicial or quasi-judicial mechanisms across a State’s territory<sup>51</sup> to deal with family disputes takes on even greater urgency as a growing number of studies demonstrate that poor women tend to be the larger cohort of claimants in family law. In Jordan, for example, 71 per cent of legal aid cases involve women and this rises to 94 per cent in cases of family law (see Table 2.2).<sup>52</sup>

**TABLE 2.2** Breakdown of legal aid cases by type and sex in Jordan

	Administrative	Criminal	Civil	Family	Total
Male	41%	40%	65%	6%	29%
Female	59%	60%	35%	94%	71%

Source: Paul Prettitore, *Delivery of Justice Sector Services to the Poor. How are Middle East Governments Addressing Gaps?*, p. 7. (Washington, D.C., The World Bank, 2013).

Similarly, a study of the justice sector in Peru found that there was a significant impact on poor families, with 73.3 per cent of child support cases presented by women and 67 per cent of domestic violence cases not reaching a judgement in the courts.<sup>53</sup> This led the World Bank to include the strengthening of the operational capacities of family courts and referral systems in a review of its project design.<sup>54</sup> Another study on access to quality family justice in Indonesia on general and religious courts found that the poorest sections of Indonesian society face significant barriers in bringing their family law cases to court. Nine out of 10 female heads of household living under the Indonesian poverty line were unable to access the courts for their divorce claims, mainly due to financial reasons such as court fees and transportation costs.<sup>55</sup> A more recent household survey of legal needs in Colombia also found that family cases affect women more than men by 11 percentage points (26 per cent of women and 15 per cent of men).<sup>56</sup>

#### 3.1.1 Typical programming challenges/opportunities

- Being within the lower hierarchy of the court system, family courts, generally, cannot compete with higher level courts (particularly those which generate income such as commercial courts) for State resources.

Institutions that protect and enforce marriage, family and property-related laws should be available and well-resourced across a State’s territory because they address women’s most common justice needs

Family courts cannot compete with higher courts for State resources

Innovative approaches, such as multiple purpose courts, can address several issues affecting women in one setting

Women who are deprived of financial support for themselves and their children will most likely be unable to pursue claims in court due to cumulative and overlapping financial burdens

### 3.1.2 Programming considerations and options

Generate knowledge and evidence on the extent of availability of justice institutions for settling marriage, family and property disputes by:

- Utilizing country assessments and situation analyses (see Module 1 and Module 5) to generate data on the distribution of lower level justice institutions and local courts and the ratio of relevant populations by sex to these courts. Determine from this analysis the impact that their lack of availability would have on women's ability to seek justice and protect their rights.
- Using such data to advocate and lobby among local and national government partners (including ministries of justice and ministries of finance) for the establishment of courts that can address multiple and interrelated issues, such as marriage, family, domestic violence and property disputes.

## 3.2 Accessibility

Consider the creation, within the same institutional framework, of gender-sensitive family judicial or quasi-judicial mechanisms to deal with issues such as property settlement, land rights, inheritance, dissolution of marriage and child custody

Source: CEDAW GR 33, para. 46(b).

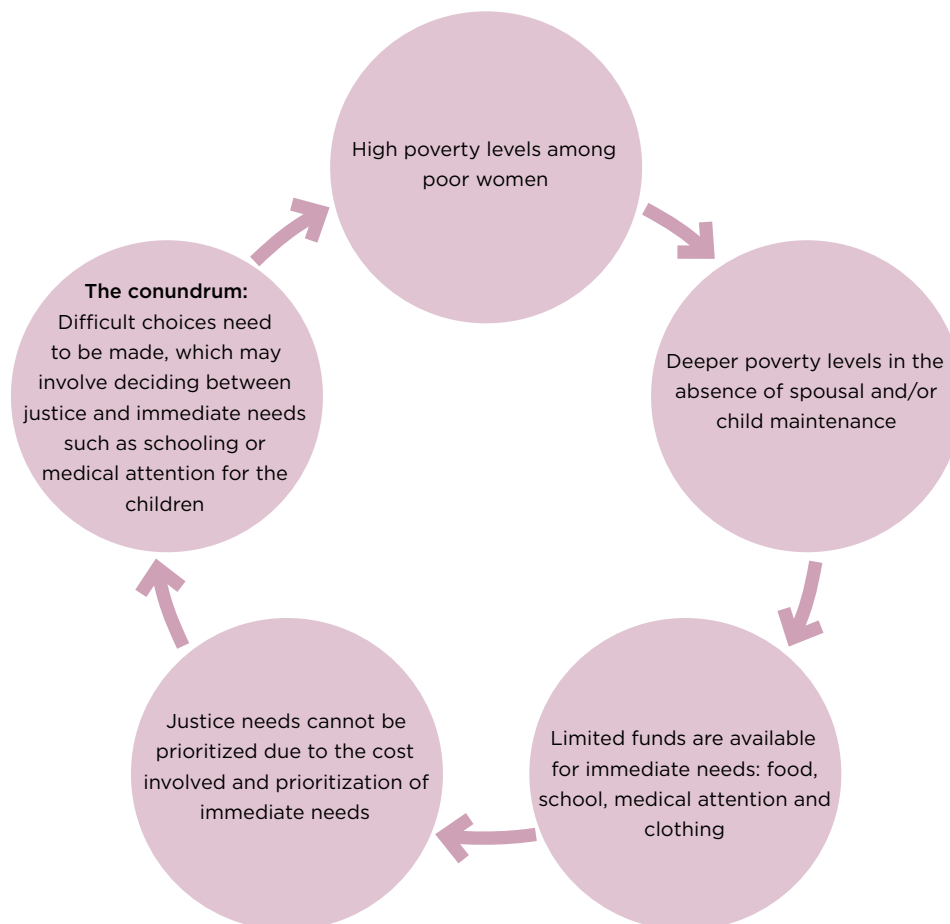
Accessibility in the context of marriage, family and property rights is paramount, because women may face the double burden of lack of financial resources to access the justice system and lack of child and/or spousal maintenance and alimony (see Figure 2.2). In some instances, women claimants may also be survivors of violence, and in this context, may need to access multiple points across the justice chain. To address the potential challenges of navigating the justice system, streamlined processes and procedures



Above: Haiti. Woman at home with her daughter. © World Bank/Dominic Chavez.

should be devised to limit the necessity of frequent trips, particularly where economic or time constraints make such trips a burden in themselves.

**FIGURE 2.2** The cycle of deprivation and economic barriers to accessing justice



### 3.2.1 Typical programming challenges/opportunities

- Women who are “doubly burdened” and lack the resources to address both household and justice needs will experience additional barriers to accessing justice if they live in hard to reach areas (e.g., mountainous or hilly regions and locations with poor road infrastructure) and/or belong to a particular ethnic group and for such reasons are confronted by both geographical and linguistic barriers in pursuit of their rights.

### 3.2.2 Programming considerations and options

Address economic inaccessibility through special funds and legal aid by:

- Advocating for national social protection schemes that provide financial assistance to women who cannot afford to go to court. Such schemes should cover the cost of transportation to judicial and quasi-judicial institutions and provide waivers on fees and filing costs.
- Supporting the provision of legal aid in the family law context. This should be accompanied by a means testing eligibility criteria that is based on a woman’s real

Legal aid and other forms of social protection must be available to poor women and administrative processes should not present additional barriers

income or disposable assets, and an administrative process to obtain legal aid that is free and simple.<sup>57</sup> A broad range of legal services, such as legal information, legal advice and legal representation should be available (see Module 1).

- Ensure that facilities are “family-friendly” since women are most likely to attend court proceedings with their children. Appropriate waiting areas must therefore be provided to mothers (and other women standing in locus parentis, such as grandmothers), including those who are pregnant or lactating. Such facilities must also be “child-friendly” to ensure the safety and security of children who have accompanied their mothers or other relatives as claimants or witnesses.

### 3.3 Good quality

Justice institutions that deal with marriage, family and property rights must adhere to international standards of competence, efficiency, independence and impartiality. CEDAW GR 33 recommends the adoption of indicators to measure women’s access to justice as well as innovative and transformative justice approaches, including, when necessary, broader institutional reforms. This includes the protection of privacy, the use of technology for capturing evidence remotely, making proceedings available in written form to claimants and the protection of all persons involved in proceedings.<sup>58</sup>

#### 3.3.1 Typical programming challenges/opportunities

- Even where laws prohibit discrimination against women, they may still be interpreted in a discriminatory manner due to personal bias among justice personnel. Eliminating such discriminatory attitudes is a long-term process, which requires long-term investments.
- Family courts are perceived to belong to the chain of “social welfare” institutions and stand the risk of not receiving adequate State funding to function effectively (e.g., by fixing dysfunctional docket systems).
- Timeliness of both processing and enforcement of remedies as well as lack of privacy can also impact on women’s access to quality services. Delays can result from inadequate human resource capacity, the challenge of transmitting information across the justice chain, difficulties associated with collecting evidence and overlaps or gaps in institutional mandates.

#### 3.3.2 Programming considerations and options

Tackle systemic issues by:

- Addressing delays in the administration of justice, particularly in the hearing of cases by the courts. This can be done by improving record management skills of administrative and finance departments; fast-tracking cases involving special groups such as pregnant women and lactating mothers; and strengthening the use of ADR mechanisms to reduce delays.
- Ensuring ease of referrals within and across family courts, violence courts, social welfare institutions and probation services, and promoting effective coordination between them.

Benchmarks that ensure competence, efficiency, independence and impartiality of family and other related courts must be promoted

The quality of justice services can be negatively impacted by prejudice, delays and lack of privacy for women claimants and their witnesses

Measures that simultaneously address the capacity gaps of rights-holders and duty-bearers can result in systemic change

- Exploring the integration of dispute resolution, legal aid, child custody orders, protection orders and social services to minimize referrals along the justice chain.

Assess capacity gaps in the delivery of quality services. Interventions could include:

- The provision of training to formal and informal justice actors, including to those whose mandates bear on women’s property rights (e.g., agencies responsible for housing, land titling, land administration, agricultural extension, immigration and asylum).
- Where law reform processes are slow, promote judicial activism among justice actors and support women’s legal and human rights organizations to pursue public interest litigation to enforce international standards.

### 3.4 Remedies

The broad range of remedies that CEDAW GR 33 recommends include restitution or reinstatement, compensation (financial or in-kind) and maintenance and rehabilitation, which may include medical and psychological care or other social services.<sup>59</sup> In matters related to marriage, family or property rights, the understanding of appropriate remedies should be sufficiently broad to include incidental costs (e.g., transportation and childcare) that women may incur in the process of pursuing justice. Furthermore, “remedies for civil damages and criminal sanctions are not mutually exclusive”.<sup>60</sup> Additional steps that ensure the safety of women and their families must be considered by strengthening family law remedies and protection and restraining orders.

#### 3.4.1 Typical programming challenges/opportunities

- Legislation may not specifically provide for remedies that are appropriate for women whose rights in marriage, family and property relations have been violated.
- When respondents fail to comply with orders to pay alimony or maintenance, women and children can be left destitute in the absence of a State-specific fund to pre-finance outstanding claims (see Box A.2.13 in the Appendices).
- Formal and informal courts may reinforce customary and religious norms that deny women’s rights in marriage, family and property arrangements.

#### 3.4.2 Programming considerations and options

Within the context of formal and informal justice proceedings, consider:

- The domestic and unpaid care work of women in assessing damages, alimony and property distribution.<sup>61</sup>
- Advocating for and supporting the creation of women-specific funds to pre-finance monetary awards to women from individuals and/or entities who are either unwilling or have delayed in discharging their legal obligations.<sup>62</sup> Such interventions can serve as workaround social protection measures to protect women from hardship in the event of delayed or unenforced monetary awards.

Remedies secure transformative change for women through enforcement of rights in marriage, family and property laws, as well as through rulings

Legislation and rulings may not always be enforced due to resource constraints among justice institutions

Programming should support the creation of women-specific funds to pre-empt delays in payments from relevant parties





Above: Moldova. Joint Information and Services Bureau representative consults elderly women on their social entitlements in district of Singerei. © UN Women/Janna Sofroni.

Accountability sustains investments made in family law justice institutions and ensures their integrity

Delays and corruption are serious considerations in rural settings

Work to institutionalize oversight mechanisms, complaints procedures and administrative data collection

## 3.5 Accountability

Accountability establishes systems to promote availability, accessibility, good quality and the provision of remedies.<sup>63</sup> For this to be effective, justice institutions must be audited to establish their independence, efficiency and integrity.<sup>64</sup> In their regular operations, complaints mechanisms that have been established within justice institutions (see Module 1) should treat matters of marriage, family and property disputes with urgency and ensure that the tendency for women to represent the majority of claimants in such situations is not used as a basis for dismissing such complaints. The collection and publication of data on case management, completion rates and outcomes will also be essential for ongoing policy design and advocacy.

### 3.5.1 Typical programming challenges/opportunities

- In rural settings, delays and corruption could be escalated by the absence of an effective system of decentralization that ensures adequate resourcing for data collection, supervision and monitoring of justice institutions.

### 3.5.2 Programming considerations and options

To promote accountability among family law and related justice institutions:

- Advocate for the creation or strengthening of existing local level justice institutions that deal with family, violence and property disputes among local government partners through adequate resourcing, the establishment of oversight mechanisms and the collection and analysis of data.<sup>65</sup>
- Agree on national indicators for monitoring types of cases disaggregated by the sex of the complainant, frequency of adjournments and average duration of a case; use such data to rectify anomalies and improve justice service delivery.



- Given the potential magnitude of family law cases instituted by women, equip and support quasi-judicial bodies and CSOs with the means of addressing a percentage of the disputes as first responders.
- Produce resource materials for judges on good practice case law involving marriage, family and property rights. These can include case books, consolidation of relevant statutes, rules of procedure and evidence and details of customary and religious laws that impact on women in these areas. Such resources may also include examples of good practices adopted by courts in handling marriage, family and property cases in a time-sensitive manner.

## 3.6 Women participate in justice institutions

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

Source: CEDAW GR 30, para. 69(b).

As the majority of claimants in marriage and family disputes in many instances, women must be provided with meaningful opportunities to participate in the delivery of justice in this field, as well as in all other areas of justice administration.

### 3.6.1 Typical programming challenges/opportunities

- Belonging to families themselves, women in justice institutions contend with the challenges of unequal power relations as it relates to their own marriage, family and property dealings.
- Cultural and religious norms may exclude women from public sector employment or restrict their ability to preside over cases involving men, or issue orders and rulings against them.
- Women may not be in a position to accept postings to rural communities where the majority of lower courts are situated, due to cultural and religious views that do not allow women to lead men (in this case male household members) in migration.

### 3.6.2 Programming considerations and options

Promote family-friendly and inclusive work environments in justice institutions, including by:

- Advocating for human resource and affirmative action policies that support equal representation of women in public sector family courts at all levels, and ensuring that personnel who are posted to rural areas are provided with childcare and other forms of assistance to ensure that they can maintain in regular contact with their families.
- Consensus-building among chiefs, elders and religious leaders aimed at achieving the effective participation of women in lineage affairs and dispute resolution.

Women are best placed to appreciate and address issues that affect them the most

Women in justice institutions face the challenges of restrictions on their agency and on their autonomy

Human resource and affirmative action policies can address the particular problems that women justice actors face

## 4.0 Legally empowering women

### 4.1 Women participate in legal reform processes

The participation of women in legal reform processes and legislative bodies can be an effective trigger for reforms in marriage, family and property rights because women are best placed to articulate issues that affect them. In Rwanda, female parliamentarians have been credited with reforms in inheritance and property (the 1999 Succession Act), equality in land ownership (the 2004 National Land Policy and 2005 Land Law) and the criminalization of marital rape.<sup>66</sup> Similarly, in Tanzania, where women comprise 31 per cent of parliamentarians, a 2004 amendment to the Land Act granted women equal access and rights to loans, credit and land.<sup>67</sup>

#### 4.1.1 Typical programming challenges/opportunities

- In countries where diverse ethnic and religious groups exist, acceptance of change, including the legal empowerment and increased participation of women, may not be forthcoming. This is because gender equality in marriage, family and property relations through law reform can be one of the most contentious social issues in many societies and if achieved, can represent a seismic shift in gender relations.

#### 4.1.2 Programming considerations and options

Ensure women's meaningful and active engagement at all stages of reform processes. Programming interventions could include:

- The participation of women in the analysis of existing laws, policies and programmes and how these impact their daily lives.
- Securing consensus on language and content in laws and policy formulation with the involvement of broad coalitions of women's groups.
- Leveraging support for and from women parliamentarians, and providing them with evidence of the legal needs of women and the effects that the lack of enforcement of women's rights in marriage, family and property relations can have on the achievement of gender equality, as well as the well-being of families and society.

### 4.2 Support and partner with civil society organizations

As noted in Module 1, CSOs play a significant role in the provision of legal aid to indigent women in need of legal assistance. Their wealth of knowledge on the key issues that affect women on a daily basis should be recognized and harnessed to inform programming, and CSOs should be partnered with and supported in carrying out programmes. As described by the example of Pemberdayaan Perempuan Kepala Keluarga (PEKKA), an Indonesian women's CSO (see Box A.2.15 in the Appendices), such organizations often undertake a range of activities to advance marriage, family and property rights. PEKKA collects data on marriage and divorce, coordinates a network of trained paralegals who help marriages and divorces gain legal standing and advocates for reforms at both the local and national levels.

Women should be included in legal reform processes for both normative and strategic reasons

Reforms that result in significant shifts in gender relations will be resisted

Safe spaces, created for women to participate in the shaping of laws that impact their everyday lives, can prove very beneficial

CSOs possess a wealth of experience in securing women's marriage, family and property rights and are therefore important allies

## 4.2.1 Typical programming challenges/opportunities

- CSOs which specialize in marriage and family settlement disputes are often based in urban areas and do not possess the human or financial means of extending their services into rural communities.

## 4.2.2 Programming considerations and options

Strengthen the capacities of CSOs to engage as effective actors in transforming laws and policies related to marriage, family and property relations, through such measures as:

- Identifying strategic entry points for drawing domestic and international attention to the challenges and opportunities of enforcing women's rights in the areas concerned.
- Enhancing the capacities of CSOs to appreciate global and regional standards and norms relating to women's marriage, family and property rights, including the nature and scope of reservations to human rights treaties and advocating for their removal.
- Active monitoring of CEDAW Committee and other treaty body concluding observations and recommendations in these priority areas and reporting on progress in their Alternative Reports.
- Supporting CSOs, including women lawyers associations and bar associations with financial resources to scale up and expand legal aid to women claimants (see Module 1).

## 4.3 Education on women's rights

While legal literacy rates are often low for both women and men, the former tend to be more severely impacted by limited knowledge of their rights and the institutions that have been established to protect and enforce them. A study of the extent of legal literacy among women and men in Kazakhstan, Kyrgyzstan and Tajikistan found that awareness of the official legal requirements of a religious marriage was limited among both groups.<sup>68</sup> However, the impact was more pronounced on women whose rights to pursue marital property and parental-related claims upon the breakdown of the marriage depended on legal recognition.<sup>69</sup> For changes in the legal environment and institutions to be transformational for women in marriage, family and property rights, women must be aware of both their rights and how these rights can be protected, exercised and enforced. Legal awareness interventions should be geared towards making such rights easy to understand for women and communities.

### 4.3.1 Typical programming challenges/opportunities

- Education on women's rights cannot be effective where existing laws on specific rights are discriminatory.
- Rights in marriage, family and property relations may not be embodied in one single law. Where such rights are scattered across different laws, the absence of simplified versions that consolidate all relevant aspects into one single text could render such laws inaccessible to women, especially when they are illiterate.
- Furthermore, existing laws may not be available in the local languages of various ethnic groups.

CSOs are nevertheless limited by constraints in human and financial resources

Create strategic entry points within the human rights system that are relevant to CSOs

Promoting awareness on women's rights and legal literacy can generate greater demand for justice among women

Laws should be made accessible to different population groups and audiences through simplification and translation into multiple languages and through local channels

Conflict can often result in significant shifts in gender roles in the context of marriage and family

Marriages that take place during conflict may not be lawful as these may occur within the context of SGBV

### 4.3.2 Programming considerations and options

Support strategies to strengthen awareness about laws and ways for making them more accessible by:

- Ensuring that women receive appropriate information on their rights as enshrined under international law, emphasizing the importance of reforming discriminatory marriage, family and property laws.
- Publishing and disseminating texts relating to marriage, family and property laws in simplified forms and in local languages; working to promote a better appreciation of these laws through channels such as local theatre, community radio, television and social media; leveraging platforms such as community events and national and local celebrations (e.g., International Day of Families, International Women’s Day) which could provide entry points for reinforcing key messages.
- Engaging with and seeking commitments from community and religious leaders to reform customary and religious norms that reinforce the subordination of women in marriage, as well as within the broader context of family and property relations.

## 5.0 Considerations for crisis-affected contexts

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Ensure that economic recovery strategies promote gender equality as a necessary precondition for a sustainable post-conflict economy and target women working in both the formal and informal employment sectors; design specific interventions to leverage opportunities for women’s economic empowerment, in particular for women in rural areas and other disadvantaged groups of women; ensure that women are involved in the design of those strategies and programmes and in their monitoring; and effectively address all barriers to women’s equitable participation in those programmes

Source: CEDAW GR 30, para. 52(b).

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(a) Prevent, investigate and punish gender-based violations such as forced marriages, pregnancies, abortions or sterilization of women and girls in conflict-affected areas; (b) Adopt gender-sensitive legislation and policies that recognize the particular disadvantages that women face in claiming their right to inheritance and their land in post-conflict contexts, including the loss or destruction of land deeds and other documentation owing to conflict.

Source: CEDAW GR 30, paras. 65(a)-(b).

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Households and communities are transformed by conflict-related displacement, conscription and casualties, frequently leaving women as the head of the family in what are often deeply patriarchal societies.<sup>70</sup> Assumptions regarding women’s inferior status within the family adversely impact their security during periods of conflict and post-conflict. Women and girls may be forced into marriage to placate armed groups, for protection or for financial security.<sup>71</sup>

At the same time, while the absence of a male head of household due to conflict increases care burdens and vulnerability for women and girls, these demographic shifts

also present new and important opportunities for women's engagement in spheres and activities typically dominated by men, including male-dominated economic activities.

It is challenging but necessary to consolidate and build upon gains made in gender equality and women's empowerment and to prevent a reversion to pre-conflict norms that relegate women to the domestic sphere and reinforce gender stereotypes. This is especially important as peacebuilding and post-crisis recovery efforts have tended to focus on building the economic space for men, rather than for both men and women, to reengage and reintegrate into their communities through job creation and expansion of opportunities.<sup>72</sup> Disruption of social relations in conflict can also impact existing social safety nets. Women are therefore placed in vulnerable situations if no attempt is made to replace such safety nets with institutions and mechanisms that would ensure the provision of security and justice.

Without productive assets, such as land, credit, tenure, skills training or information, women's power to build peace and promote recovery from conflict is seriously impaired. In the context of displacement and return, family loss or separation, they are often only able to access their land and other property through the men in their family.<sup>73</sup> Young, widowed, single or divorced women are particularly likely to experience difficulties in accessing land and sustaining such rights. Women ex-combatants suffer stigmatization, especially if pregnant from sexual violence. Even when laws provide for equal rights to inherit property, women may be unaware of this or lack the legal documentation to claim such property. In addition, few women will possess the social and economic resources that they require to pursue legal claims in formal or informal institutions.<sup>74</sup> Especially in instances where many of the survivors of conflict are women, it becomes urgent to reform land titling and address issues with land inheritance.

Marriage, family and property interventions for women affected by conflict must therefore include efforts at securing their land tenure, the provision of other economic empowerment support (such as access to credit, access to land and housing and reforming land titling), strengthening the legal environment to protect women from domestic violence and other acts of impunity and continuing rehabilitation programmes for both male and female war combatants.

**Gains in gender equality should be consolidated during the transition to post-conflict**

**Securing women's economic empowerment and policy formulation that aims to protect women from protracted impunity are critical in post-conflict contexts**

# APPENDICES

## Appendix I

**TABLE A.2.1** Policy and human rights considerations related to marriage, family and property rights in the SDGs, CEDAW GR 30 and CEDAW GR 33

SDG Targets and Indicators	CEDAW GR 30	CEDAW GR 33
5.1 End all forms of discrimination against all women and girls everywhere 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 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 group and place of occurrence 5.3. Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation 5.3.1 Proportion of women aged 20-24 years who were married or in a union before age 15 and before age 18 5.3.2 Proportion of girls and women	<b>Creating an enabling environment for women's access to justice</b>	
	65(a) Prevent, investigate and punish gender-based violations such as forced marriages, pregnancies, abortions or sterilization of women and girls in conflict-affected areas; (b) Adopt gender-sensitive legislation and policies that recognize the particular disadvantages that women face in claiming their right to inheritance and their land in post-conflict contexts, including the loss or destruction of land deeds and other documentation owing to conflict.	46(a) Adopt written family codes or personal status laws that provide for equal access to justice between spouses or partners irrespective of their religious or ethnic identity or community, in accordance with the Convention and the Committee's general recommendations; 66 In view of the fundamental importance of women's access to justice, the Committee recommends that States parties withdraw their reservations to the Convention, in particular to articles 2 (c), 5 (a), 15 and 16.
	<b>Effective, accountable and gender-responsive justice institutions</b>	
	52(c) Ensure that sexual and reproductive health care includes access to sexual and reproductive health and rights information; psychosocial support; family planning services, including emergency contraception; maternal health services, including antenatal care, skilled delivery services, prevention of vertical transmission and emergency obstetric care; safe abortion services; post-abortion care; prevention and treatment of HIV/AIDS and	46(b) Consider the creation, within the same institutional framework, of gender-sensitive family judicial or quasi-judicial mechanisms to deal with issues such as property settlement, land rights, inheritance, dissolution of marriage and child custody;

<p>aged 15-49 years who have undergone female genital mutilation/cutting, by age</p> <p>5.4. Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate</p> <p>5.4.1 Proportion of time spent on unpaid domestic and care work, by sex, age and location</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>other sexually transmitted infections, including post-exposure prophylaxis; and care to treat injuries such as fistula arising from sexual violence, complications of delivery or other reproductive health complications, among others;</p> <p>(d) Ensure that women and girls, including those who may be particularly vulnerable to HIV, have access to basic health services and information, including HIV prevention, treatment, care and support;</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><b>Legally empowering women</b></p>		
	<p>52(b) Ensure that economic recovery strategies promote gender equality as a necessary precondition for a sustainable post-conflict economy and target women working in both the formal and informal employment sectors; design specific interventions to leverage opportunities for women’s economic empowerment, in particular for women in rural areas and other disadvantaged groups of women; ensure that women are involved in the design of those strategies and programmes and in their monitoring; and effectively address all barriers to women’s equitable participation in those programmes;</p>	<p>46(c) In settings in which there is no unified family code and in which there exist multiple family law systems, such as civil, indigenous, religious and customary law systems, ensure that personal status laws provide for individual choice as to the applicable family law at any stage of the relationship. State courts should review the decisions taken by all other bodies in that regard.</p>



## Appendix II: Country case studies

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

#### Constitutions

##### **BOX A.2.1** Examples of constitutional clauses which support gender equality in marriage, family or property

The Constitution of **Bolivia** 2009 provides that the State has the obligation to “promote policies aimed at eliminating all forms of discrimination against women in the access to, ownership and inheritance of land.” In **Brazil**, the 1988 Constitution as amended in 2017 and Law 8629 of 1993 state that both women and men, regardless of their marital status, can be allocated property rights or concessions under the agrarian reform, either individually or jointly. The Constitution of the Republic of **Ecuador** 2008 with amendments through 2015 provides that “the State shall guarantee equal rights and equal opportunity to men and women in access to property and decision-making in the management of their common marital estate.” The Constitution of **Japan** 1946 provides that “with regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.” The Constitution of **Paraguay** 1992 with amendments through 2011 provides among the fundamental principles of the agrarian reform, for women's participation in reform plans on the basis of equality with men and support for rural women.

Sources: [Constitution of the Plurinational State of Bolivia 2009](#), Art. 402; [Constitution of the Federative Republic of Brazil 1988 with amendments through 2017](#), Art. 189; Brazil, Law 8629/93, Art. 19, (25 February 1993); [Constitution of the Republic of Ecuador 2008 with amendments through 2015](#), Art. 324; [Constitution of Japan 1946](#), Art. 24; and [Constitution of the Republic Paraguay 1992 with amendments through 2011](#), Art. 115.

#### Formal laws

##### **BOX A.2.2** Examples of male authority provisions in the Family Code of the DRC

Law 87-010 on the Family Code of the **DRC**:

- Article 444. The husband is the head of household. He must protect his wife; she must obey her husband.
- Article 448. The wife must obtain the permission of her husband on all legal acts which require her to provide a service that must be given in person.
- Article 450. Subject to the exceptions below and those contained in the matrimonial regime, the wife cannot appear in court on civil matters, acquire, sell or undertake commitments without the authorization of her husband. If the husband refuses to authorize his wife, authorization may be given by a judge. The husband can give general authorization, but he still retains the right to revoke it.
- Article 454. The wife is obliged to live with her husband and follow him wherever he sees fit to reside; the husband is obliged to accommodate her.
- Article 497. Property acquired by the wife in the exercise of a profession separate from that of her husband and resulting savings constitute assets that she manages and administers. If the management and administration of such property by the woman affects the harmony and the

pecuniary interests of the household, the husband can undertake them. The woman may appeal the decision at the peace court.

Source: DRC, [Law 87-010 on the Family Code](#), (1987).

### **BOX A.2.3 Examples of marital property regimes in Brazil, Cambodia, Ethiopia and South Africa**

The 2002 Civil Code of **Brazil** provides for the equality of rights and duties of spouses and for the application, in the absence of prenuptial agreements, of a regime of partial community of property, with each spouse having equal rights to administer common property and to administer her or his own separate property. **Cambodia's** Marriage and Family Law of 1989 also provides for partial community of property as the default regime, noting that a wife and husband have equal rights to use, obtain benefits and manage joint property. Each spouse is allowed to use the joint property in accordance to need and joint property may be sold or donated only with the consent of both spouses. The law also provides that a woman has equal rights with her husband in divorce and that wives and husbands have equal rights to common property after marriage.

The Revised Family Code (2000) of **Ethiopia** provides for partial community of property, as well as joint administration of marital property. Consent of both spouses is mandatory for the transfer of common property. The law also provides that, in the event of dissolution, common property will be divided equally between the spouses. The Matrimonial Property Act of 1984 radically reformed **South Africa's** law of marital property. Prior to its passage, a husband's "marital power" and both the community of property and separation of property regimes existed in South Africa. As the South African Law Reform Commission clarified, under this system, "courts were given a discretion in distributing marital estates to avoid the inequity (that is especially likely to arise in cases of separation of estates) of one spouse leaving the marriage empty-handed." The Act prescribes a default marital property regime of community of property for all civil marriages, in the absence of an antenuptial contract stating otherwise. Under a community of property regime, all of a couple's assets and liabilities are pooled and shared equally by the spouses, irrespective of whether they were acquired before or during the marriage, unless expressly excluded by a donor or testator. All profits and losses are borne equally by the spouses and each spouse assumes joint control with his or her partner over the estate. Significantly, even where couples choose to opt out of the default marital property regime of community of property by antenuptial agreement, they are automatically subject to a default marital property regime of "accrual" (also referred to as a "community of gains"), unless they also expressly exclude such a regime.

Source: OHCHR and UN Women, [Realizing Women's Rights to Land and Other Productive Resources](#), pp. 34-35, (Geneva and New York, United Nations, 2013).

### **BOX A.2.4 Examples of legal reform on cohabitation and male authority in Botswana, Jamaica, Mozambique, Namibia, Trinidad and Tobago and Turkey**

**Botswana's** Abolition of Marital Power Act of 2004 provides for equality of marital powers for couples married within community of property. In **Jamaica**, the 2003 Family Property (Rights of Spouses) Act, which entered into force in 2006, recognizes the rights of women living in a cohabitation arrangement with a man for at least five years. Legislation has also been adopted via **Mozambique's** new Family Law of 2004, which established gender equality in all aspects of family law. On customary marriages more generally, Mozambique's Family Law of 2004 stipulates the obligation to register customary or religious marriages with civil authorities and recognizes de facto marriages, or common-law marriages. It also recognizes customary law marriages and non-formal unions, and women married under custom can claim marital property. **Namibia** took a similar

approach in its Married Persons Equality Act of 1996, which abolished the marital powers of the husband and placed spouses on an equal footing. **Trinidad and Tobago's** Cohabitation Relationships Act of 1998 also provides for the jurisdiction of courts to make orders in respect of interests in property and maintenance for a man or woman who are or have lived together as husband and wife on a bona fide domestic basis, even though they were not married to each other. Cohabitants have similar rights to property as married spouses. Under **Turkey's** Civil Code of 2001, the husband is no longer considered to be the head of the household, and husband and wife have equal status within marriage.

Source: OHCHR and UN Women, [Realizing Women's Rights to Land and Other Productive Resources](#), pp. 34, 36, 39.

#### **BOX A.2.5 Examples of legal reform on inheritance in Andorra, Malawi and Zambia**

The Qualified Marriage Act of **Andorra** abolishes the requirement for widowed and divorced women to wait for a 300-day period before remarrying, as recommended by the CEDAW Committee in its concluding observations. In **Malawi**, the Deceased Estates Act of 2011 declares any property-grabbing by a deceased spouse's relatives to be a criminal act and subject to criminal prosecution. **Zambia's** Intestate Succession Act of 1989 imposes criminal penalties on those who wrongfully deprive rightful heirs of their property. Zambia also established a special victim support unit within its police force to protect women from property-grabbing after the death of a spouse and enforce their rights. This unit has been described as "an innovation that has helped to curb incidences of property-grabbing. The dissemination of its activities through women's NGOs, ... and the media, is enabling women to realize that they are not completely helpless when confronted with such situations."

Sources: United Nations, CEDAW Committee, [Concluding Observations on the Combined Second and Third Periodic Reports of Andorra](#), para. 5, 28 October 2013, CEDAW/C/AND/CO/2-3 and OHCHR and UN Women, [Realizing Women's Rights to Land and Other Productive Resources](#), p. 27.

#### **BOX A.2.6 Recommended reforms by the CEDAW Committee for Afghanistan and the United Kingdom**

**Afghanistan:** The Committee is concerned about the existence of multiple legal systems with regard to marriage and family relations in the State party and their discriminatory impact on women. It is concerned that, despite the amendments to the Shia Personal Status Law, discriminatory provisions remain, such as the requirement of the husband's authorization for his wife to leave home. It is also concerned about discriminatory provisions under civil law and customary practices, such as the husband's legal right to authority over his wife and children. It is also concerned at unequal and limited rights for women to divorce and obtain guardianship of children under the Civil Law. It is concerned that women are deprived of their inheritance rights owing to their subordinate role in society and domination by their male relatives. It is concerned at the low registration of marriages and divorces, which prevents women from claiming their legal rights. The Committee is concerned at the persistence of child and forced marriages and that the minimum age of marriage for girls is set at 16. It is also concerned that polygamy is permitted under certain circumstances. In line with its General Recommendations No. 21 and No. 29, on Article 16 of the Convention, the Committee recommends that the State party: (a) Repeal discriminatory provisions against women in the Shia Personal Status Law and the Civil Law; and amend relevant legislation to raise the minimum age of marriage for girls to 18 years; (b) Ensure that the draft family law provides equal rights for women and men in all matters relating to marriage and family relations, in particular with regard to their

responsibilities within the family, property and inheritance, divorce and custody of children; (c) Conduct awareness-raising campaigns targeting women to make them aware of their rights with regard to family relations and marriage; (d) Take measures to facilitate the procedure to register marriages and divorces, and ensure that marriage and family law cases are adequately handled and heard by civil or family courts; (e) Take the legislative and policy measures necessary to abolish polygamous marriages.

**United Kingdom:** The Committee recalls its previous concluding observations and notes the proposals set out in the report of the Law Commission entitled “Cohabitation: the financial consequences of relationship breakdown”. The Committee is concerned at the lack of progress made in this area and that the rights of women in de facto relationships with regard to matrimonial property and benefits may, therefore, not be adequately safeguarded. The Committee urges the State party to expedite efforts to undertake reforms with a view to protecting the property rights of women upon the breakdown of marriage or of de facto unions, in line with general recommendation No. 29, on the economic consequences of marriage, family relations and their dissolution and article 16 of the Convention.

Sources: United Nations, CEDAW Committee, [Concluding Observations on the Combined Initial and Second Periodic Reports of Afghanistan](#), paras. 42-43, 30 July 2013, CEDAW/C/AFG/CO/1-2 and United Nations, CEDAW Committee, [Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland](#), paras. 64-65, 30 July 2013, CEDAW/C/GBR/CO/7.

#### **BOX A.2.7 UNDP, UNICEF and UN Women support family courts in Morocco**

The adoption of **Morocco's** new Family Code in 2004 led to the creation of a new family court system. UN Women, UNDP and UNICEF developed a joint programme to assist the Moroccan Ministry of Justice to ensure its effective implementation. A professional unit was created within the Ministry to provide continuous on-the-job training for family court personnel and a new information management system was created within the family section courts. The programme established a mediation and reconciliation system within five pilot family section courts and recruited social workers to link women seeking justice with the court system.

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

## **Informal laws**

#### **BOX A.2.8 Women's land rights and traditional leaders in Namibia**

In **Namibia**, much of the rural population lives on communal land owned by the State and customarily allocated to members of the community by traditional leaders. Under pre-independence customary law, women's access to land was primarily through their husbands, fathers or some other male relative. Under the Communal Land Reform Act of 2002, there are no bars to gender equality in the allocation of communal land—but there is no direct articulation of the principle of non-discrimination, nor any affirmative action for women. Land continues to be allocated by traditional leaders, with the allocations being ratified by community land boards, about one third of whose members should be women. A study of 10 villages under the jurisdiction of a single community land board found that 40 per cent of the applications for land rights originated from single, widowed or divorced women, with the average age of the female applicants being about 60. The study noted that both the community land board and the local traditional authorities in this particular location were actively encouraging women to apply for land rights.

Source: OHCHR and UN Women, [Realizing Women's Rights to Land and Other Productive Resources](#), p. 22.

### **BOX A.2.9 Reforming discriminatory informal laws in formal courts: Case studies from Botswana, Kenya, Nigeria, South Africa and Tanzania**

The courts have been a vehicle for challenging discriminatory customary laws. Most recently, in October 2012, in the case of *Mmusi and Others v. Ramantele and Another*, the **Botswana** High Court ruled that the customary laws which provided for male-only inheritance of the family home were discriminatory and illegal under the Constitution. In **Kenya**, in the *Ntutu* case (2008), the High Court heard arguments by the sons of the deceased that *Masai* customary law of succession does not recognize the rights of daughters to inherit the estate of their fathers. However, in rendering its decision, the Court applied international human rights treaties ratified by Kenya, as well as previous case law. The Court upheld the right of the daughters to inherit equally from the assets of the estate. In *Mojekwu v. Mojekwu*, the Court of Appeal of **Nigeria**, similarly held that the *Nnewi* custom of *Oli-ekpe* (prohibiting the inheritance rights of females and providing that the eldest male in the family will inherit) was discriminatory and any form of societal discrimination on grounds of sex was held unconstitutional and against the principles of an egalitarian society. In the *Bhe* case, the Constitutional Court of **South Africa** found that the practice of male primogeniture (the custom of the firstborn male inheriting the entire estate), as provided for under customary law, was discriminatory and classified as unconstitutional all legislation that allowed such discriminatory laws to be applied. Following this decision, South Africa enacted the Reform of Customary Law of Succession and Regulation of Related Matters Bill, which gave customary widows and daughters and widowers and sons equal inheritance rights. Another similar example is the case of *Epharrahim v. Pastory & another*, in which the High Court of **Tanzania** invalidated customary norms preventing women from selling land.

Source: OHCHR and UN Women, [Realizing Women's Rights to Land and Other Productive Resources](#), p. 29.

## **Justice sector policies and budgets**

### **BOX A.2.10 Budget increases and fee waivers for religious courts in Indonesia**

In response to a study in **Indonesia**, the Access and Equity Study, the Religious Courts' budget was increased by Rp 23 billion (3 million USD) for court fee waiver schemes (prodeo cases) and more circuit courts in order to assist those living in rural and remote areas to access courts for family law cases. A further Rp 12 billion (1.5 million USD) was granted in the 2009 State budget allocation for the Religious Courts, despite an overall reduction in the Supreme Court budget due to the global financial crisis. This represented an 18-fold increase over the previous two years in the Religious Court budgets for court fee waiver schemes and the holding of circuit courts. In 2009, the State Ministry of National Development Planning launched the National Access to Justice Strategy. Action plans outlined in the Strategy have been integrated into the Medium-Term Development Plan 2010–2014.

Source: Cate Sumner and Tim Lindsey, [Courting Reform: Indonesia's Islamic Courts and Justice for the Poor](#), Paper No. 31, pp. xx, 30, (New South Wales, Lowy Institute for International Policy, 2010).

### **BOX A.2.11 The Justice, Law and Order Sector Investment Plan III (2012-17) in Uganda**

The JLOS in **Uganda** includes 17 government agencies that have justice and law enforcement mandates. Many policy shifts envisaged in the JLOS plan are relevant to women's rights and family law, including a legislative emphasis on impact through improvements in enforcement; seeking innovations to bridge the gap between formal and informal justice systems as a majority of the populace observe the latter; specifically prioritizing land justice, family justice, transitional justice,

gender-based violence and workers' rights; and prioritizing and funding special programmes to target groups vulnerable due to gender, age, poverty, etc. Key process shifts in the justice sector strategy include investing more funding at the of lowest levels of justice service delivery in order to increase the physical and functional presence of JLOS primary institutions in all districts for faster, rights-based service delivery. Another shift is a commitment to strengthen work with the civic actors like NGOs and communities, the “demand” side of justice.

Source: Uganda, JLOS, “[Strategic Investment Plan \(SIP III\)](#)”, (2015), (accessed 15 March 2018) and [The Third JLOS Strategic Investment Plan \(SIP III\) 2012/13-2016/17](#), pp. xi-xiii, (Kampala, 2013).

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

### Good quality

#### **BOX A.2.12 UN Women support for training on women’s human rights, family law and land rights**

UN Women provided training to government staff and civil society groups in **Kyrgyzstan** and **Tajikistan** to improve gender-sensitivity and increase understanding about women’s human rights, especially women’s land rights. The Convention on the Elimination of All Forms of Discrimination against Women was used as a key reference to discuss State obligations to remove discrimination against women and empower them and show how this could translate into actions in the national context. Laws governing land rights were examined in detail to illustrate their different impact on men and women and show how they could directly or indirectly give rise to inequalities and discrimination. Local government was an especially important target for capacity development activities. In Kyrgyzstan, almost 400 heads of village councils attended workshops to discuss the Law on Agricultural Land Management and provisions in other laws such as the civil, family and land codes that were relevant to women’s property and inheritance rights. These local officials also heard directly from women whose land rights had been violated and learned about the State’s obligations to women under the Convention. In addition, 70 village and district-level land specialists were trained in women’s land rights and data collection techniques to better enable them to respond to rural women’s concerns and give them accurate information and advice on land issues.

Source: UN Women, “Analysis of Annual Country Reports”.

### Remedies

#### **BOX A.2.13 Examples of alimony funds from Egypt and the State of Palestine**

The ability of justice systems to provide meaningful remedies for women is especially important in the area of family law where women often have limited access to legal representation. Innovative programming can include strategies that guarantee the payment of alimentary support. Alimony funds, such as those developed in **Egypt** and the **State of Palestine**, ensure that alimony and child support are paid in situations where court decisions are not enforced.

##### **Programme Summary**

##### **Mandate**

To provide payments for alimony and child support when court decisions are not enforced

##### **Reason for Establishment**

There are numerous problems with the enforcement of judicial decisions in a timely and effective manner

#### Funding

- Reimbursement from debtor, with financial penalties, through automatic salary reductions for civil servants, and liens on bank accounts and motor vehicles
- Administrative fees levied on registration of births, marriages and divorces
- Government contributions
- Private donations

#### Beneficiaries

- West Bank and Gaza – 150 beneficiaries (2007-2009); 400 beneficiaries (2009-2010)
- Egypt – official data is unavailable; anecdotal information points to a limited number of beneficiaries

Source: Prettitore, [Delivery of Justice Sector Services to the Poor. How Are Middle East Governments Addressing Gaps?](#), p. 17.

## Legally empowering women

### Women participate in legal reform processes

#### BOX A.2.14 Women parliamentarians in Rwanda promote legal reform

In **Rwanda**, the presence of women in parliament has been a pivotal factor in achieving progressive legal reform on land, marriage and inheritance. At 51 percent, the level of women's parliamentary representation in Rwanda is the highest in the world. Rwanda's Forum of Women Parliamentarians brought women together to develop strategies for change. Working with the Women's Ministry and women's civil society organizations, the Forum pushed through the 1999 Law on Matrimonial Regimes, Liberalities and Successions, which established women's right to inherit land for the first time. The legislation includes the principle that women may own and inherit property on an equal basis with their brothers, and requires that couples registering their marriage make a joint commitment to shared ownership of marital property.

Source: UN Women, [Progress of the World's Women 2011-2012: In Pursuit of Justice](#), p. 41, (New York, 2011).

### Support and partner with civil society organizations

#### BOX A.2.15 CSO in Indonesia promoting rights education and helping women formalize marriages and divorce

In **Indonesia**, the women's NGO Pemberdayaan Perempuan Kepala Keluarga (PEKKA) has worked to help women formalize marriages and divorces through the religious court system. In a survey of their members, PEKKA found that fewer than 50 percent of respondents had marriages that were legally recognized, and that the high fees and lack of rural courts were a disincentive for women to seek divorce. Through the provision of rights education and the development of a network for trained paralegals, PEKKA helps women access the religious courts to formalize their marriages and divorces. They have additionally lobbied the government and have contributed to decisions by the Supreme Court increasing the number of circuit courts in remote areas and waiving court fees for the poor.

Source: UN Women, [Progress of the World's Women 2011-2012: In Pursuit of Justice](#), p. 75.



**BOX A.2.16 The positive impact of partnerships with CSOs in India and Uganda**

In **India**, single women have organized across the country, resulting in the formation of the National Forum for Single Women’s Rights. The National Forum has advocated for the rights of single women to enjoy their land and property rights with respect to both their natal and marital homes, and have advocated that single women should be allotted land to build a house. In **Uganda**, UN Women support for the work of the Uganda Association of Women Lawyers (FIDA Uganda) since 2011 has contributed to building the capacity of cultural leaders in two post-conflict sub-regions of the country, Acholi and Karamojong, to administer family justice through a gender-responsive lens. It has funded the documentation of cultural gender principles and land tenure customary principles supporting women’s land rights and the development of a case management handbook for traditional leaders and local councils; facilitated training in case management and documentation; and supported the documenting of the application of this knowledge by the informal justice institutions. This guidance in the adjudication of family and land cases by customary institutions has contributed to bridging the gap between formal and informal justice systems and advancing understandings of women’s human rights in the latter, resulting in more women winning land and family cases in these rural communities.

Sources: OHCHR and UN Women, [Realizing Women’s Rights to Land and Other Productive Resources](#), p. 20 and Uganda Association of Women Lawyers, “Annual Report to UN Women Uganda”, (2016). (Unpublished).

## Appendix III: Additional resources

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- 10 Ibid., para. 30 and A/49/38., para. 18.
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MODULE

3

**Ending Violence Against Women**

# 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			



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**Above:** Sudan. A Misseriya woman stands in front of a thatched shelter. © UN Photo/Tim McKulka.



# 1.0 Summary

## 1.1 Why violence against women?

As one of the most common crimes committed against women, violence against women is a severe violation of women's entitlement to the full and equal enjoyment of all human rights

SDG Target 5.2 on the elimination of violence against women is critical for achieving gender equality and the empowerment of women. Violence against women is a grave violation of the fundamental human rights of women and girls and remains one of the most common crimes committed against them. Existing data on violence against women from sources such as UNFPA, UNICEF, UNODC, UN Women and WHO acknowledges that violence against women continues to be a global pandemic and therefore a matter of critical concern.<sup>1</sup> Violence can occur in different private and public spaces, including on the internet and through other evolving technologies. It is rooted in historical inequalities between women and men, and can cause significant physical, social, psychological and economic harm to women.<sup>2</sup>

Women who face multiple and intersecting forms of discrimination are at greater risk of being subjected to violence. For instance, the Special Rapporteur on the rights of indigenous peoples finds that indigenous women are significantly more likely to experience rape than non-indigenous women and more than one in three indigenous women are raped during their lifetime.<sup>3</sup> Similarly, persons with an actual or perceived sexual orientation and gender identity that diverges from a particular social norm are often targeted for violence. The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity highlights killings, rapes, mutilations, torture, cruel, inhuman and degrading treatment, arbitrary detentions, abductions, harassment and physical and mental assaults as particularly widespread.<sup>4</sup>

While violence against women has gained a great deal of attention in justice programming in comparison to other areas of women's rights, its magnitude and accompanying impunity towards violations of women's rights demands a scaling up of programmatic interventions. Within this context, it becomes necessary to carefully ensure that both women and justice and security sector institutions are respectively well equipped to claim and respond to the rights and needs of women.

This Module considers access to justice in the context of violence against women broadly rather than in its particular forms, and explores specific programming challenges and considerations when dealing with the criminal justice system, including by:

- Elaborating on how 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) can be used to address violence against women more broadly in the design, implementation and monitoring of women's access to justice programmes.
- Proposing measures that can be undertaken to help ensure the creation of strong, accountable and gender-responsive justice institutions for sustained peace in countries that are transitioning from conflict into development settings.

This Module provides programming guidance on supporting women and justice actors to address violence against women in its broad sense

- Addressing the protection of women from SGBV during the transition from crisis to post-conflict and development.

Justice delivery is not a singular event. Rather, it is a chain of processes outlined in Table 3.1 that seek to ensure that women are able to access remedies for violations of their rights. It is important for programmers to be aware of the challenges that women face as they transition across each step of the justice chain and for guidance to be provided on what must be done to eliminate discrimination and impediments to accessing justice.

**TABLE 3.1 Challenges for women survivors of violence along the justice chain**

Justice chain	Challenges for women survivors of violence
<b>Prevention</b>	<ul style="list-style-type: none"> <li>• Not all forms of violence against women may be criminalized (e.g., marital rape).</li> </ul>
<b>Early detection and reporting</b>	<ul style="list-style-type: none"> <li>• The onus is often on the survivor to file charges, make a formal denunciation or specifically request prosecution, either in law or practice.</li> <li>• Prevalent gender bias and stereotypes by law enforcement personnel results in non-reporting of SGBV against women.</li> </ul>
<b>Investigation</b>	<ul style="list-style-type: none"> <li>• Statutes of limitation or other legal prescriptions bar survivors from pressing charges after a certain period of time.</li> <li>• Survivors are often required to wait long hours at police stations. They are also interrogated numerous times by male police officers, examined by male forensic officers, treated disrespectfully and deprived of privacy when being interrogated and providing statements.</li> <li>• Circumstantial evidence is often inadmissible, making the survivor the sole source of evidence.</li> <li>• Evidentiary rules frequently treat physical evidence as essential to proceeding with a criminal charge, which is challenging in such cases where there is delayed reporting or the violence involved is psychological, emotional or economic in nature.</li> <li>• There is often no access to immediate, urgent or long-term protection measures, as well as risk assessments or safety plans for survivors.</li> <li>• Survivors are regularly required to testify several times and often in the presence of the accused.</li> <li>• The police may request payment for transportation and fuel (gas/petrol) to investigate the crime.</li> <li>• In many countries, survivors are given a set of forms by the police to submit to health services for medical examination (as part of the process of gathering evidence) as well as for purposes of prophylaxis care. Sometimes such forms are not user-friendly for medical examiners and may not yield the required information that is needed for evidence purposes.</li> </ul>
<b>Pretrial</b>	<ul style="list-style-type: none"> <li>• Most survivors are unfamiliar with the criminal justice process, do not have access to legal aid services and are therefore uninformed of what is expected of them.</li> </ul>

Programming should be informed by the challenges that women survivors of violence face along the justice chain

<b>Decision to prosecute</b>	<ul style="list-style-type: none"> <li>• Criminal procedure and court administration generally do not allow for the particular vulnerability of women survivors to be taken into consideration, as such, their specific needs are often not accommodated.</li> </ul>
<b>Trial and sentencing</b>	<ul style="list-style-type: none"> <li>• Judicial practice or existing procedural requirements often lead to decisions that are not survivor-friendly, which results in alienating survivors from the process and leading them to withdraw the case or give up. Attrition rates thereby increase and conviction rates decrease.</li> <li>• Evidentiary rules may allow cross-examination on sexual or personal history, require corroboration or allow for adverse inference resulting from delayed reporting.</li> </ul>
<b>Corrections</b>	<ul style="list-style-type: none"> <li>• Survivors are not informed of the release of the offender, even when both survivor and offender are from the same community.</li> </ul>

## 1.2 Evolving concepts and terminologies

Understanding the framing of violence against women and how this has evolved over time enhances the contextualization of women’s access to justice programming in this field. The CEDAW Committee’s recent recommendation, [General Recommendation No. 35 on Gender-Based Violence against Women, Updating General Recommendation No. 19](#) (CEDAW GR 35), frames violence against women within the overall context of discrimination against women as defined by United Nations General Assembly Resolution 34/180, [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW).<sup>5</sup>

CEDAW GR 35 also emphasizes that specific acts of gender-based violence can amount to torture or cruel, inhuman or degrading treatment within the context of United Nations General Assembly Resolution 39/46, [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#). These acts include: “violations of women’s sexual and reproductive health and rights, such as forced sterilization, forced abortion, forced pregnancy, criminalization of abortion, denial or delay of safe abortion and/or post-abortion care, forced continuation of pregnancy, and abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.”<sup>6</sup>

Definitions of violence against women have evolved over the years in different legal frameworks and contexts. The following definition of the United Nations General Assembly Resolution 48/104, [Declaration on the Elimination of Violence against Women](#), was reaffirmed by the [Agreed Conclusions of the 2013 Commission on the Status of Women \(CSW\) on the elimination and prevention of all forms of violence against women and girls](#):

“Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”<sup>7</sup>

Violence against women is defined in various ways and has evolved over the years, culminating in CEDAW GR 35 in 2017



The term “gender-based violence” refers to “violence that is directed against a woman because she is a woman or that affects women disproportionately”, including “acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”<sup>8</sup>

Violence against women is broad in scope, encompassing, but not limited to, the following:

- Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, FGM/C and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.<sup>9</sup>
- Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.<sup>10</sup>
- Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.<sup>11</sup>
- Often ignored economic violence, which is recognized by the United Nations High Level Panel on Women’s Economic Empowerment. The Panel adopts the definition of UN Women’s Virtual Knowledge Centre to End Violence against Women and Girls: “acts such as the denial of funds, refusal to contribute financially, denial of food and basic needs, and controlling access to health care, employment, etc.”<sup>12</sup>

These definitions have been elaborated upon over time to consider other relevant dimensions of violence against women.

The [BDPfA](#), adopted at the Fourth World Conference on Women, expanded the definition of gender-based violence to include: violations of the rights of women in situations of armed conflict, including systematic rape, sexual slavery and forced pregnancy; forced sterilization, forced abortion and coerced or forced use of contraceptives; and prenatal sex selection and female infanticide. It further recognized the particular vulnerabilities of women belonging to minorities: the elderly, the displaced, indigenous, refugee and migrant communities and women living in impoverished rural or remote areas, or in detention.<sup>13</sup>

The CEDAW Committee and Committee on the Rights of the Child [Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices](#) defines harmful practices as “persistent practices and forms of behaviour that are grounded in discrimination on the basis of, among other things, sex, gender and age, in addition to multiple and/or intersecting forms of discrimination that often involve violence and cause physical and/or psychological harm or suffering.”<sup>14</sup>

The [Rome Statute of the International Criminal Court](#) classifies rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity as crimes against humanity “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”<sup>15</sup>



Above: Tanzania. Women claim their space in the electoral process. © UN Women/Stephanie Raison.

### 1.2.1 Definitions

**Administrative reparations:** A programme which aims at providing reparations (see definition of “reparations”), primarily financial compensation, to survivors without requirements of resorting to the judicial system or dependency on the funds handed over by perpetrators.<sup>16</sup>

**Due process:** A collection of rights to which a person who is seeking justice or against whom justice is sought, is entitled. These ensure that fair and impartial treatment is received before, during and after judicial processes and that outcomes meet international standards.

**Essential services:** A core set of services provided by the health-care, social service, police and justice sectors. The services must, at a minimum, secure the rights, safety and well-being of any woman or girl who experiences gender-based violence.<sup>17</sup>

**Femicide:** The process of conceptualizing the phenomenon of the killing of females because they are females gained importance in the 1970s when Diana Russell coined the expression “femicide”. This expression emerged as an alternative to the neutral term “homicide” with the political objective of recognizing and making visible the discrimination, oppression, inequality and systematic violence against women that in its most extreme form culminates in death. According to Russell’s definition, femicide applies to all forms of sexist killing that is “motivated by a sense of entitlement to or superiority over women, by pleasure or sadistic desires toward them, or by an assumption of ownership of women.”<sup>18</sup>

It should be noted that United Nations General Assembly Resolution 68/191 and Resolution 70/176, both related to taking action against gender-related killing of women and girls, use the terminology “gender-related killing of women and girls”, recognizing

Words and phrases which are not defined in the text of the Module are defined here

that this is criminalized in some countries as “femicide” or “feminicide” and has been incorporated as such into national legislation in those countries.<sup>19</sup>

**Feminicide:** Building upon the concept of femicide, the Mexican researcher Marcela Lagarde coined the term “feminicide”. She defined it as the act of killing a woman based only on the fact that she is female, but she conferred on this concept a political meaning aimed at denouncing the lack of response from the State in these cases and the failure to fulfil its international obligations, including the duty to investigate and punish. Therefore, for Lagarde, feminicide is a State crime. It speaks to a “fracture in the rule of law that favors impunity.” The concept refers to the full set of facts that characterize the crimes and disappearances of girls and women in cases in which the response of the authorities is one of omission, inertia, silence and a failure to act to prevent and eradicate these crimes.<sup>20</sup>

**Gross violations of international human rights law:** Gross violations, together with genocide and crimes against humanity, are often seen to support the premise that individuals may be held liable for human rights violations reaching the threshold of these crimes. One of the first texts to provide examples of such gross violations was the [Vienna Declaration and Programme of Action](#) (Vienna Declaration) of the World Conference on Human Rights in 1993.<sup>21</sup> The Vienna Declaration offered a wider definition of such violations than had previously been available, and included cruel, inhuman and degrading treatment or punishment, summary and arbitrary executions, disappearances, arbitrary detentions, all forms of racism, racial discrimination and apartheid, foreign occupation and alien domination, xenophobia, poverty, hunger and other denials of economic, social and cultural rights, religious intolerance, terrorism, discrimination against women and lack of the rule of law. OHCHR considers a somewhat wider list, adding these to the above: to deny the right to a fair trial, including to presume a person guilty unless he proves his innocence; to deny freedom of thought, conscience and religion; to execute pregnant women or children; to permit the advocacy of national, racial or religious hatred; to deny to minorities the right to enjoy their own culture, profess their own religion or use their own language; or to deprive one of essential foodstuffs, essential primary health care, basic shelter and housing or the most basic forms of education.<sup>22</sup> Victims of gross violations of international human rights law and serious violations of international humanitarian law have a right to remedy and reparation, as outlined in 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](#).

**Reparations:** Reparations are a means to remedy, as far as possible, all the consequences of an illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.<sup>23</sup> Victims of gross violations of international human rights law and serious violations of international humanitarian law are entitled to full and effective reparation (consisting of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition) as appropriate and proportional to the gravity of the violation and the circumstances of each case.<sup>24</sup>

**Secondary victimization:** Secondary victimization is victimization that occurs not as a direct result of a criminal act but through the inadequate response of institutions and individuals to the victim.<sup>25</sup>



**Above:** Italy. Woman from Benin City in Nigeria, cries on a dormitory bed in the safe house where she now lives, on the outskirts of Taormina in Sicily. © UNICEF/Gilbertson.

**Serious violations of international humanitarian law:** Serious violations of international human rights law usually fall within the “Grave Breaches” regime of Article 147 of the ICRC [Geneva Convention IV relative to the Protection of Civilian Persons in Time of War](#) as well as those listed under Article 3 of all four Geneva Conventions. These cover willfully killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile power, or willfully depriving a protected person of the rights of fair and regular trial, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly. Victims of gross violations of international human rights law and serious violations of international humanitarian law have a right to remedy and reparation, as outlined in 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](#).

**Survivor:** Unless otherwise stated from other sources, this Module uses the term “survivor” to reinforce the agency and empowerment of affected women and girls. As noted by the ICJ, women human rights defenders tend to use the term survivor “as a way of reflecting the agency, resilience and courage of women and girls subjected to violence.” Other sources use the terms victim and survivor interchangeably. “Victim” connotes an attempt to recognize “the enormity of the system of gender-based discrimination that women and girls face”. “Survivor” celebrates the individual and recognizes the agency and empowerment of women and girls.<sup>26</sup>

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

International normative frameworks and guidance on addressing violence against women are by far the most comprehensive in relation to women's rights and must be translated into procedural and substantive domestic laws on the diverse manifestations of violence, the availability of remedies, as well as the establishment of institutions and services within reach of all women of all backgrounds. While responding to crimes committed by perpetrators, shifts in mindsets and institutional cultures are needed to ensure that women's rights and needs are placed at the centre of domestic law and practice.

### 2.1 International law

Global and regional standards and norms on violence against women generally aim at its prevention, elimination and redress.

In addition to the international frameworks mentioned above, global standards and norms include: United Nations General Assembly Resolution 3318(XXIX), [Declaration on the Protection of Women and Children in Emergency and Armed Conflict](#); United Nations General Assembly Resolution 55/25, [Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime](#); United Nations ECOSOC, [Recommended Principles and Guidelines on Human Rights and Human Trafficking](#); United Nations General Assembly Resolution 317(IV), [Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others](#); ICRC, [Geneva Convention IV relative to the Protection of Civilian Persons in Time of War](#); ICRC, [Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts \(Protocol II\)](#); and United Nations General Assembly Resolution 40/34, [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#). Mention must also be made of the [Agreed Conclusions of the 2013 CSW on the elimination and prevention of all forms of violence against women and girls](#).

At the regional level, references include: African Union, [Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#) (Maputo Protocol); OAS, [Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women "Convention of Belém do Pará"](#); ASEAN, [Declaration on the Elimination of Violence against Women in the ASEAN Region](#); ASEAN, [Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN](#); and Council of Europe, [Convention on Preventing and Combating Violence against Women and Domestic Violence](#) (Istanbul Convention).

Also relevant are the following global and regional policy guidelines for strengthening the implementation of the above standards and norms: 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](#), United Nations General Assembly Resolution 65/228, [Updated Model Strategies and Practical Measures on the Elimination](#)

Global and regional legal standards shape national laws and policies that are geared towards addressing violence against women

Global policy guidelines and the recommendations of human rights bodies also provide important guidance for strengthening responses to violence against women



of Violence against Women in the Field of Crime Prevention and Criminal Justice<sup>27</sup> and the UN Women and OHCHR, [Latin American Model Protocol for the Investigation of Gender-Related Killings of Women \(femicide/feminicide\)](#), a technical tool to aid in the investigation and prosecution of femicide/feminicide.

In addition to the CEDAW Committee, a number of other treaty bodies (e.g., [Human Rights Committee](#); [Committee against Torture](#); and [Committee on the Elimination of Racial Discrimination](#)), Special Procedures (e.g., the [Special Rapporteur on violence against women, its causes and consequences](#); the [Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#); the [Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence](#); the [Special Rapporteur on the rights of indigenous peoples](#); the [Special Rapporteur on the rights of persons with disabilities](#); and the [Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity](#)) and the [Working Group on the issue of discrimination against women in law and in practice](#) have actively monitored and issued recommendations to address violence against women in diverse contexts.

This Section furthermore relies on: CEDAW [General Recommendation No. 19: Violence against Women](#) (CEDAW GR 19); the CEDAW Committee and Committee on the Rights of the Child, [Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices](#); and CEDAW GR 35.

## 2.1.1 Typical programming challenges/opportunities

- The Special Rapporteur on violence against women, its causes and consequences observes “a general lack of understanding of States’ human rights obligations ... to combat and prevent gender-based violence”.<sup>28</sup>
- International standards challenge deeply-rooted norms which justify and perpetuate violence, particularly within the context of its location in the private domain, non-State interference and the culture of silence.
- The multidimensional nature of violence is reflected in diverse global and regional instruments. States are therefore expected to appreciate the scope of obligations that are set under international law and exercise political will to translate these obligations into comprehensive laws and policies.
- Reservations to various articles of CEDAW. For example, when a State enters a reservation to Article 2, which relates to the elimination of discrimination against women, it serves as a barrier to the implementation of international human rights norms such as the principle of non-discrimination, which underpins the fulfilment of all human rights. Additionally, reservations related to women’s equal rights to pass on their nationality to their children and spouses,<sup>29</sup> as well as those related to equal capacity to enter into contracts<sup>30</sup> and equality in marriage and family life,<sup>31</sup> can negate all efforts at implementing international standards on violence against women.

## 2.1.2 Programming considerations and options

The BDPfA and CEDAW serve as important programming tools for promoting positive attitudes towards women and initiating policies to combat violence against women.

Programming may face resistance if standards are perceived as externally imposed, there is a lack of political will or justice actors are not aware of their obligations

- The CEDAW Committee consistently requests States parties to report on measures being taken to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices, which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”<sup>32</sup> Investments must be made in supporting States in the implementation of this obligation through time-bound national policies that are defined and designed by national partners (e.g., national gender machineries, ministries of justice, law reform commissions, civic education groups, traditional/religious institutions and CSOs).
- Eliminating all forms of violence against women and girls requires a comprehensive and coordinated set of actions in prevention and response, as well as in tackling underlying and root causes.
- National Plans of Action (NPAs), which have been developed in response to the BDPfA Critical Area of Concern on violence against women, must be revised on a regular basis in response to evolving global and regional obligations (see Section 2.3).
- Advocate for the withdrawal of all reservations to CEDAW, using entry points (e.g., nationality, marriage and family life) as may be useful at country level (see Module 1 and Module 2).
- Fully utilize the concluding observations and recommendations of human rights treaty bodies and the UPR on actions that a State must take to address and combat violence against women, including in the context of women’s access to justice.

## 2.2 Domestic law

### 2.2.1 Constitutions

Constitutions are important for addressing violence against women as their content may either hinder or support its elimination at the national level. State accountability for eliminating violence against women is anchored in constitutional guarantees of non-discrimination, equality before the law and broader gender equality provisions where they exist. A total of 183 constitutions (94 per cent) contain a broad range of provisions on the protection of all persons from various forms of abuse, exploitation, acts of torture, inhuman/degrading treatment or punishment and crimes against humanity.<sup>33</sup>

#### 2.2.1.1 Typical programming challenges/opportunities

- Broader provisions on violence are not generally complemented by specific provisions on violence against women, as currently presented in some constitutions (e.g., Ecuador, Ethiopia, Malawi, Nepal and Tunisia).

#### 2.2.1.2 Programming considerations and options

Constitutional reforms present opportunities for anchoring specific provisions on violence against women in constitutions. To do so effectively:

- Integrate the results of national surveys, which provide evidence of the scale and scope of violence to inform future constitutional reform efforts. Use this data and global and regional instruments as a basis for advocating for specific constitutional

Programming should advocate for the implementation of global and regional standards and policy guidelines

Constitutions serve as important frameworks for articulating a State’s condemnation of violence against women in line with international standards

Constitutional reform efforts should advocate for specific provisions on violence against women



Legislation is the channel through which the transformational intentions of global and regional standards and norms on violence against women are realized

There may be insufficient political will, legislative reform processes are often slow and discriminatory standards are deeply embedded in legal frameworks

language on the protection of women from violence as well for a social policy justification for change among politicians and constitutional review commissions and related bodies.

- Forge broad partnerships for the incorporation of specific language, or the repeal of language, which may be discriminatory, and work to generate public attention and support for the elimination of provisions, which reinforce the private nature of crimes of violence against women. The importance of partnerships was exemplified during the recent constitutional reform process in Malawi, which resulted in the review of a constitutional provision on the minimum age of marriage of girls from 15 to 18 years. To achieve this, UN Women mobilized the United Nations system, parliament (including the women’s caucus), traditional authorities (including a female traditional ruler who goes by the description, “Child Marriage Terminator”) and CSOs.<sup>34</sup>

## 2.2.2 Formal and informal laws

### 2.2.2.1 Formal laws

In contrast to constitutional provisions on violence against women, more States have enacted laws to address specific forms of violence. To date, 132 countries have equalized the minimum age of marriage (without parental consent) at 18 years or older, protecting girls from child marriage; at least 140 countries have passed legislation on domestic violence; 144 countries have passed laws to make workplaces and public spaces safer for women by prohibiting sexual harassment;<sup>35</sup> and 43 countries have outlawed FGM/C by law or constitutional decree.<sup>36</sup> This data indicates the potential for new laws and a necessity to reform existing laws which are discriminatory towards women.

#### 2.2.2.1.1 Typical programming challenges/opportunities

- The lack of connectivity between laws on violence and other areas of legislation, such as those relating to family law and access to land and resources (see Module 2) or labour and immigration, can stall efforts at providing comprehensive services to survivors of violence, in addition to addressing the consequences of such violence.
- Criminal laws, criminal procedures and evidentiary laws may not be sufficiently aligned with legislation on violence. As a result, effective laws on violence against women may coexist with other legal provisions and procedures which do not allow women to testify on an equal basis as men or force them to marry the perpetrator. In other situations, specific gaps in criminal laws, such as the non-criminalization of marital rape continue to exist.
- The Special Rapporteur on violence against women, its causes and consequences finds that protection orders could be delayed and women are often not informed of their right to apply for such orders.<sup>37</sup>
- Across Federal States, violence laws and protection orders may vary from the federal law in substance, procedure and enforceability across different state jurisdictions and therefore cannot be mutually reinforcing where a violence case involves more than one administrative area.

- Women survivors of gender-based violence are often required by national law to enter into mediation processes involving men who were towards them, especially in cases of family-related violence, divorce and child maintenance and custody disputes. Social stigma and pressure to keep families together, as well as women's lack of economic empowerment, heavily influence a woman's decision to reconcile with those who have inflicted violence upon her. Law enforcement also tends to minimize offences in the belief that domestic violence is a private matter, discouraging survivors from pursuing cases.
- Even where strong laws are in place, the challenges related to enforcement and implementation persist.

#### 2.2.2.1.2 Programming considerations and options

Reform of legislative frameworks on violence against women should be undertaken as part of a comprehensive reform of the legal framework on women's rights, rather than as a separate undertaking. Key issues to consider include:

- A determination of which laws require reform for each area of women's rights, and complementarities across laws.
- The extent to which criminal, family, immigration, labour and health laws are harmonized within a country and reflect relevant international conventions.
- Whether the State has mandatory birth registration to facilitate the identification of survivors by age and parentage.
- Whether the minimum age of marriage is set at 18 years of age, with or without parental consent.
- Whether the definition of violence against women is broad enough to cover women's experiences of violence in the global context as well as in the particular context of the country concerned.
- Whether women can pursue civil as well as criminal remedies against perpetrators, as the complex nature of violence against women often requires a response that combines the two.<sup>38</sup>
- If fines imposed on the offender will cause financial hardship to the survivor and/or her children, for instance where the offender maintains a continuing obligation to pay child support or alimony or the survivor and her children are continuing to live with the offender.<sup>39</sup> When fines are imposed, they should be combined with treatment and supervision of the perpetrator through protection orders and probation.<sup>40</sup>
- Whether the law authorizes the police and other law enforcement agencies to enter premises and conduct arrests in cases of violence against women and to take immediate measures to ensure the safety of survivors. The primary responsibility for initiating investigations and prosecutions should reside with the police and prosecution authorities and not survivors.<sup>41</sup>

Identify ways in which procedural and evidentiary laws (see Module 1) discriminate against women survivors and the changes that are needed to better prevent and protect women from violence. Key issues to consider include whether:

**Programming should analyse and assess evidentiary, procedural and substantive laws to ensure that they better protect women and support the ability of survivors to claim their rights**

- Entry points for reforms exist, based on the initial country assessment (see Module 1).
- Discriminatory provisions exist with regards to “honour” or “provocation”, and whether there are provisions that allow charges to be dropped if the perpetrator selects the option of marrying the survivor.
- The credibility and sexual history of a complainant can be introduced in both civil and criminal proceedings when unrelated to the case or in bad faith.
- There are obstacles to ensuring that evidence of prior acts of violence, abuse and exploitation by the perpetrator are considered during court proceedings.
- In cases of sexual abuse of girls and adolescents, the law excuses accused persons on the grounds of a subjective assessment that the survivor might have attained the age of majority.
- Sentences are overly lenient and not commensurate with the gravity of crimes.<sup>42</sup>
- Existing statutes of limitations are not restrictive in character and provide sufficient time for survivors to report crimes committed against them.<sup>43</sup>

Ascertain that women can testify in criminal proceedings and that there are adequate measures in place to facilitate the delivery of such testimony. Such measures could include:

- Protecting privacy, identity and dignity, establishing robust witness and survivor protection programmes, ensuring safety during legal proceedings and avoiding secondary victimization.<sup>44</sup>
- Taking into account the vulnerability of survivors in decisions concerning non-custodial or quasi-custodial sentences, the granting of bail, conditional release, parole or probation, especially when dealing with repeat and dangerous offenders.

Ensure that legislation contains appropriate sanctions, remedies and an adequate implementation framework with clear lines of institutional accountability. Specific steps could include:

- The formulation of provisions which direct the relevant government body or ministry to develop protocols and standards as an integral part of comprehensive and timely implementation.
- The integration of clear sanctions and remedies, including rehabilitation of perpetrators of violence.
- Provisions which permit the police and courts to issue and enforce protection and restraining orders, as well as powers to enter the premises to remove the perpetrator from the domicile.

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### **BOX 3.1 Elements for model domestic/family violence legislation**

An objects section (also called a purposes section) is a broad statement at the start of the legislation identifying its main aims. It is an opportunity to make a strong symbolic message about the unacceptability of domestic violence and additionally it provides an important

guide for justice actors in their interpretation and application of the legislation. A good practice objects section will state, at the outset, that violence against women is a form of discrimination and a violation of women's human rights. Other good practice aims include the prevention and reduction of the incidence and consequences of domestic violence, making perpetrators accountable for their actions and maximizing safety for children and adults who have experienced or who are at risk of family and domestic violence.<sup>45</sup>

A comprehensive and clear definition of what constitutes domestic and family violence is a key component of domestic and family violence legislation. The definition determines when a survivor can access the remedies provided by the legislation and sets a community standard of what behaviour constitutes domestic and family violence. The definition of domestic and family violence must take into account both physical and non-physical violence and be non-exhaustive to ensure the inclusion of all forms of violence.

Domestic and family violence legislation must be directed at the protection of persons who have, or have had, a domestic relationship with the perpetrator rather than those who experience violence from a stranger. This is because the legislation is primarily aimed at protecting survivors from further violence from the perpetrator. Domestic and family violence can occur between persons in a range of personal and domestic relationships, including past relationships, where there are power imbalances including intimate relationships (even if they do not constitute a legal marriage within specific jurisdictions including customary and same-sex relationships), dating, between family members including extended family, persons who are cared for by another person and domestic help in the home.

Good practice provisions cover protective, preventive, remedial and punitive measures. Protective measures include protection orders, occupation orders, duties on the police to assist survivors and obligations on the State to ensure survivors have access to medical services, counselling, safe houses and other essential services. It may include interim family law orders for custody of children and spousal and child support. Remedial measures include compensation orders. Preventative measures include obligations on the State to educate and raise awareness. Punitive measures include prosecuting perpetrators in the criminal justice system through the establishment of domestic violence offences with serious penalties. A strong enforcement mechanism for the breach of protective and other orders is also essential.

It is critical that practitioners appreciate the linkages between good practice domestic and family violence legislation and good practice family law legislation, which can enable survivors, who might otherwise face poverty, find alternative means of sustenance.

Police are often the first on the scene at domestic and family violence related incidents and therefore placing positive duties on the police can be critical to ensuring the safety of women and children. Domestic and family violence legislation should place duties on the police to respond to and investigate every report of domestic violence and, when they attend a domestic and family violence incident, to inform survivors of their right to apply for a protection order.

Domestic and family violence legislation should place positive obligations on the State to provide services for survivors, to modify and change behaviour and attitudes, and to compile statistics and to conduct research on the extent, causes and effects of domestic violence.

Source: Christine Forster, "Expert Paper on Domestic Violence Legislation", (2016). Prepared for UN Women. (Unpublished).

Informal laws can reinforce or guard against the patriarchal underpinnings of violence against women

Ideas about violence against women could be perceived as externally imposed, and securing shifts in attitudes can therefore be an enduring and complex process

Programming should prioritize areas of informal laws that can hinder the effective implementation of various violence laws

## 2.2.2.2 Informal laws

While programming must acknowledge the positive dimensions of customary and religious norms, in-depth knowledge of certain aspects and practices that can justify and form the basis for the occurrence and perpetuation of violence against women must also be examined and addressed.

### 2.2.2.2.1 Typical programming challenges/opportunities

- In some settings, various forms of violence against women are justified in the name of custom and/or religion and not considered punishable. These include honour crimes, harmful traditional practices such as sorcery-related violence and violence against older women, dowry related violence, virginity testing and FGM/C.
- Some societies are also known to hold myths which blame women and girls for crimes committed against them.
- Furthermore, the 20-year review of the BDPfA reveals that social norms which perpetuate or justify discrimination and violence serve as a major obstacle to ending violence against women. It finds that victim blaming attitudes are widespread across all countries: data from 37 developing countries shows that 21 per cent of women believe that a husband is justified in beating his wife if she argues with him.<sup>46</sup> Similarly, 27 per cent of women believe that a husband is justified in beating his wife if she neglects the children.<sup>47</sup> While those surveys collected data from women about their attitudes, surveys of men also reveal high levels of acceptance of violence against women. A 2010 survey conducted in 15 out of 27 countries of the European Union asked whether women's behaviour was a cause of domestic violence against women. The proportion of individuals who agreed with this statement averaged 52 per cent and ranged from 33 to 86 per cent across countries.<sup>48</sup>

### 2.2.2.2.2 Programming considerations and options

Using steps outlined in Section 3.2.2.2.2 of Module 1, programming interventions must focus on forging close partnerships with customary and religious leaders, including men and boys, to identify and reform customs, attitudes and beliefs which perpetuate violence. Specific lines of action could include:

- Where acts of violence against women have been identified by local stakeholders as rooted in customary and religious norms, work with them to identify specific areas requiring attention, and prioritize these areas for collective assessment and review.
- A communications strategy that highlights customary and religious laws as important sources of law, while ensuring collaboration with formal sector institutions and compliance with State laws due to the complexity of violence and its impact on women.
- In evaluating the national context (Module 1), determine how women survivors of violence can be best protected. This will require an assessment of the various entry points for collaboration between the formal and informal sector and agreements on referral pathways between them in support of such processes. Such an arrangement should also include strict limits on the jurisdiction of informal institutions as it relates to specific cases of violence.

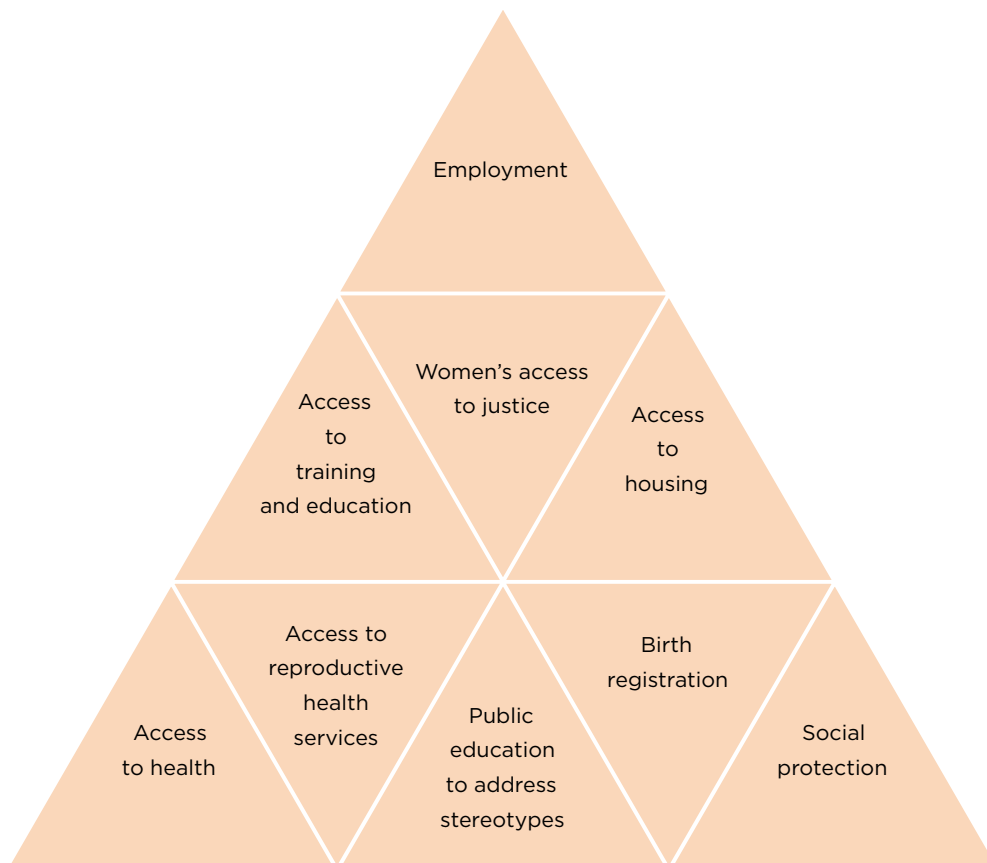
- Institute multi-stakeholder national and community dialogues on different dimensions of violence, such as FGM/C, rape and domestic violence, with eventual agreements on alignment between community norms and State laws.

## 2.3 Justice sector policies and budgets

Although there are a growing number of NPAs on combating violence against women in response to BDPfA commitments, policy response to violence against women is best served when integrated into broader national development plans and justice and security sector strategies and budgets. Coordinated justice and security sector policies are important to women’s access to justice in the context of violence against women. This is because the implementation of legislation relating to violence against women is contingent upon adequate prioritization, planning, budgeting and monitoring of relevant justice services and institutions. Addressing violence against women, moreover, requires focusing on women’s rights holistically to ensure that all related public sector institutions are effectively coordinated and in tune with women’s priorities and the obstacles they confront (see Figure 3.1). Adequate and sustained funding are required for the implementation of legislation at both the national and local levels, as well as the training of key actors, the establishment of services, data collection and public awareness interventions.

Justice sector policy design is important for identifying and budgeting for strategic interventions to address violence against women at all levels of national and local government

**FIGURE 3.1** Policy areas that impact women facing gender-based violence



Other sector policies can enhance the effectiveness of justice and security sector policies as they relate to addressing violence against women

A range of justice and security sector policies that impact women's access to justice in the context of violence against women include:

- **Criminal justice policies:** Violence against women cannot be addressed only by the criminal justice system. Therefore, a coordinated and integrated justice response is an essential component for preventing and addressing the persistent impunity. "Such policies must promote a comprehensive, multidisciplinary, coordinated, systematic and sustained response to violence against women in order to increase the likelihood of successful apprehension, prosecution and conviction of the offender, contribute to the well-being and safety of the victim and prevent secondary victimization."<sup>49</sup> Sound criminal justice policies must include consolidated financial arrangements for the protection of survivors of violence, the provision of remedies and rehabilitation, as well as the rehabilitation of perpetrators of violence. Policies must furthermore promote decentralized planning and implementation, accompanied by effective coordination between national, sub-national and local institutions and referral systems between and across agencies and CSOs which provide justice services to survivors.
- **Criminal justice sub-sector policies:** In addition to sector-wide policies, it should also be possible for individual criminal justice institutions to develop their own sub-sector specific policies. Policies must counter traditional reluctance to arrest suspects in domestic violence cases and must ensure that the burden of arrest is not placed on the survivor. Pro-arrest policies should be part of a coordinated multi-agency approach in order to ensure that the survivor will not be disempowered by the policies in question.<sup>50</sup> For example, sub-sector policies can stipulate clear limits on the withdrawal of violence cases by prosecutors. Policies should also provide guidance on how to deal with survivors who face risks to their safety and security.

- 
1. Parties shall take the necessary legislative and other measures to adopt and implement State-wide effective, comprehensive and co-ordinated policies encompassing all relevant measures to prevent and combat all forms of violence covered by the scope of this Convention and offer a holistic response to violence against women.
  2. Parties shall ensure that policies referred to in paragraph 1 place the rights of the victim at the centre of all measures and are implemented by way of effective co-operation among all relevant agencies, institutions and organisations.
  3. Measures taken pursuant to this article shall involve, where appropriate, all relevant actors, such as government agencies, the national, regional and local parliaments and authorities, national human rights institutions and civil society organisations.

Source: Council of Europe, [Convention on Preventing and Combating Violence against Women and Domestic Violence](#), Art. 7, 11 May 2011, Council of Europe Treaty Series No. 210.

- **Inter-agency policies:** Criminal justice institutions must also partner and ensure cross-synergies with non-justice institutions such as ministries of health, education, civil/vital registration, NHRIs and CSOs. For example, a national system of compulsory, accessible and free birth registration is vital for verification and prevention of harmful practices, including child marriage. In some countries NHRIs are mandated to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by women and children, in a confidential, gender-sensitive and child-friendly manner. Educational and health institutions



should be informed about the importance of reporting actual incidents of violence or the risk of such incidents. Furthermore, prevention and response to violence entails the provision of universal, free and compulsory primary school enrolment and ensuring regular attendance, discouraging dropping out, the elimination of existing gender disparities and supporting access for the most marginalized girls, including those living in remote and rural communities. In implementing these obligations, consideration should be given to making schools and their surroundings safe, friendly to girls and conducive to their optimal performance.<sup>51</sup>

- **Crime prevention:** Crime prevention should be at the centre of every strategy to end violence against women. Interventions should be multisectoral and must address the root causes of violence and de jure and de facto discrimination against women in all spheres of life. It should involve a wide range of stakeholders such as communities, religious and community leaders, civil society and women's organizations, men, boys, young people, the media and the private sector. Interventions must include addressing attitudes and behaviours which cause and escalate violence, including the reform of gender stereotypical educational curricular and promoting women's safety in communities.<sup>52</sup>

### 2.3.1 Typical programming challenges/opportunities

- The lack of attention to multiple and intersecting forms of discrimination that women face often means that policies and programmes for combating violence against women are not responsive to the needs and experiences of marginalized and excluded women.
- Cutbacks in social services due to austerity measures have produced negative impacts on women seeking violence support services. As a result, despite the existence of NPAs or laws that address violence against women, States have generally not been able to allocate adequate resources for their implementation.
- Despite increasing efforts, insufficient attention has been focused on preventing the occurrence of violence against women and girls; in this context, persisting discriminatory social norms and gender stereotypes remain major obstacles to eliminating violence against women.

### 2.3.2 Programming considerations and options

Use broader national development plans and justice and security sector strategies as hooks and entry points for financing NPAs and making them visible.

- The overall policy environment on ending violence against women could be strengthened by anchoring prevention and response in broader policy frameworks, such as national development plans and health, education, security and justice policies.
- In this context, NPAs can be designed as the more detailed operational frameworks for violence prevention and elimination, with specific indicators and budget lines in national development plans and strategies to ensure that violence against women is not marginalized in overall national development and justice sector planning and budgeting.

Limited State resources and lack of political will pose significant challenges for implementing relevant policy frameworks

Ensure cross-sectoral engagement and allocate resources to sectors which support prevention, mitigation and remedial actions on violence

- State commitment to the implementation of violence legislation (e.g., legislation related to human trafficking, domestic violence, FGM/C) should be expressed through implementation arrangements and specific budgetary allocations at national and local levels.
- Integrate the cost of violence interventions in justice and security sector strategies and create budget lines for them in the national budget.

Work with States to ensure that criminal justice policies effectively respond to violence against women, and empower criminal justice actors to better implement their mandates across the entire justice chain. This can be undertaken through:

- The development of justice and security sector plans involving a range of State and non-State stakeholders that deal with one or more violence situations.
- Enhancing regular communication and integrated approaches to working together and partner with other groups outside of the criminal justice system. Coordination minimizes fragmentation across criminal justice agency mandates, and ensures that decisions that are made throughout the criminal justice process take into account the interests of the agencies involved.<sup>53</sup> Due consideration should be given to the mandate of each institution and service provider, with a view to promoting synergies during and at various stages of the process.<sup>54</sup>
- Encouraging and supporting interdepartmental cooperation through inter-agency working groups/committees, memoranda of understanding among justice actors and systems for the regular exchange of information. Clear mechanisms must be put in place for coordination of activities and to ensure open lines of communication and decision-making.

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

To secure the rights provided for in international law, constitutions and legislation, programming must consider whether justice and security sector institutions are equipped to prevent and respond to violence, including facilitating women’s ability to navigate across the justice chain. Process matters for how survivors experience justice: the manner in which they are treated when accessing services and the information they receive along the way will, in the end, play a significant role in determining justice outcomes. For this reason, justice and security sector institutions which deal with different forms of violence must meet the criteria of being available, accessible, able to provide appropriate and enforceable remedies, good quality and accountable.



Above: Nepal. Girl in a UNICEF-supported child-friendly space in a camp for earthquake-displaced people in the town of Charikot. © UNICEF/Brian Sokol.

Effective, accountable and gender-responsive justice institutions are critical pillars for preventing and responding to violence against women

## 3.1 Availability

CEDAW [General Recommendation No. 33 on Women's Access to Justice](#) (CEDAW GR 33) observes that availability in relation to cases of violence against women should be aimed at securing appropriate services such as “financial aid, crisis centres, shelters, hotlines and medical, psychosocial and counselling services”.<sup>55</sup>

### 3.1.1 Typical programming challenges/opportunities

- Rural and remote communities tend to be deprived of comprehensive justice services, impacted by seasonal cycles (e.g., rainy seasons), limited infrastructure (e.g., poor roads and physical structures), high costs of transportation and difficulties in attracting highly-skilled personnel.
- Fragmentation and lack of comprehensiveness of justice services across justice and security sector institutions due to inadequate coordination of the criminal justice sector.
- Although CSOs play an important role in the provision of services to survivors of violence, many are constrained by budget cuts. In some countries, CSOs have had their licences revoked based on a decision by the State to curb their activities.
- Related to the above, the Special Rapporteur on violence against women, its causes and consequences notes that “many States tend to perceive the establishment of shelters or support for non-governmental organizations running shelters as voluntary commitments and not as part of their human rights obligations based on international human rights treaties. This situation is related to the lack of full incorporation and implementation of CEDAW and the failure to adopt comprehensive and holistic approaches to integrated services to combat and prevent violence against women.”<sup>56</sup>

### 3.1.2 Programming considerations and options

Consider innovative approaches to service delivery, such as:

- The establishment of mobile sexual violence courts and legal aid clinics, “one-stop” centres, remote or settlement-based help desks and free or subsidized hotlines including mobile phone devices that are appropriate to the local context. These can extend justice services to remote areas, improve crime reporting among women, enhance legal aid delivery and lead to the reduction of attrition.

Support the establishment of specialized services such as:

- Dedicated integrated arrangements in which prosecutors, police, judges and social services are coordinated in their decisions and approaches to tackling situations of violence. This should be coupled with integrated and specialized violence institutions such as prosecution offices, police units and courts.
- Supporting lawyers, police, judges and other justice actors to develop expertise when dealing with cases of SGBV to improve the responsiveness of the system to reduce delays and attrition.

The availability of justice institutions determines whether women survivors of violence can be protected in a timely manner

Services tend to be fragmented and concentrated in urban areas

Innovative interventions such as mobile courts, “one-stop” centres, specialized institutions and a comprehensive package of services can address gaps in service delivery

### Take into account global commitments.

- The [Agreed Conclusions of the 2013 CSW on the elimination and prevention of all forms of violence against women and girls](#) call for multidisciplinary and gender-sensitive preventive and protective measures, such as emergency barring orders, protection orders and access to shelters, in the context of strengthening multisectoral services, programmes and responses to violence against women. These include State and independent women’s shelters and counselling centres, 24-hour hotlines, social aid services, “one-stop” centres, child services and public housing services to provide low-threshold, easily accessible and safe assistance for women and children, as well as protection and support.
- Other important essential services include pregnancy testing, emergency contraception, abortion services, treatment for sexually transmitted diseases, treatment for injuries, post-exposure prophylaxis and psychosocial counselling for survivors of sexual violence. These are provided by particular government bodies, departments or ministries with specific mandates to prevent and address violence against women.
- The Istanbul Convention requires that States provide “victims with appropriate support services so that their rights and interests are duly presented and taken into account”.<sup>57</sup> Professional services, including interpretation and translation, must be offered by individuals who are qualified and who appear to be and are impartial. It should be noted that these services are critical not only in the legal context (e.g., at hearings, when giving testimony and providing affidavits), but also when working with health-care providers and social workers.
- The [Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice](#)<sup>58</sup> call on States to establish, fund and coordinate a sustainable network of accessible facilities and services for emergency and temporary residential accommodation, health services, including counselling and psychological care, legal assistance and other basic needs for women and their children who are survivors of violence or who are at risk of violence.
- While services can be provided by either the State or by non-State organizations, the obligation is on the State to ensure the provision of comprehensive, quality and non-discriminatory services countrywide. Some of the recommended standards for specific forms of services are highlighted in Box 3.2.

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#### **BOX 3.2** Minimum standards of availability of support services for survivors

Take effective measures to protect women against secondary victimization in their interactions with law enforcement and judicial authorities, and consider establishing specialized gender units within law enforcement, penal and prosecution systems.

One national women’s phone hotline where all complainants/survivors of violence may get assistance by phone around the clock and free of cost from where they may be referred to other service providers; one shelter/refuge place for every 10,000 inhabitants, providing safe emergency accommodation, qualified counselling and assistance in finding long-term accommodation; one women’s advocacy and counselling centre for every 50,000 women,

which provides proactive support and crisis intervention for complainants/survivors, including legal advice and support, as well as long-term support for complainants/survivors, and specialized services for particular groups of women (such as specialized services for immigrant survivors of violence, for survivors of trafficking in women or for women who have suffered sexual harassment at the workplace), where appropriate; one rape crisis centre for every 200,000 women; and access to health care, including reproductive health care and HIV prophylaxis.

Sources: CEDAW GR 33, para. 51(c) and Division for the Advancement of Women (DAW)/DESA, [Handbook for Legislation on Violence against Women](#), p. 31, (United Nations publication, Sales No. E.10.IV.2).

## 3.2 Accessibility

Justice institutions must be physically, geographically, financially and linguistically accessible to women as a basic precondition for a case of violence to be reported. In addition, these same conditions must be present throughout the justice chain to ensure that a case is effectively initiated and concluded. For instance, women who experience varied forms of disabilities (see Module 1) must be assured that they can gain access to justice institutions in ways that address their rights and needs in line with United Nations General Assembly Resolution 61/106, [Convention on the Rights of Persons with Disabilities](#). Indigenous and minority women must have their linguistic and cultural needs met in accordance with United Nations General Assembly Resolution 61/295, [Declaration on the Rights of Indigenous Peoples](#) and United Nations General Assembly Resolution 47/135, [Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities](#). Information to survivors on how and where to locate and utilize justice services (e.g., courts and shelters) is also integral to accessible justice services.

### 3.2.1 Typical programming challenges/opportunities

- Although protection from violence, investigation, prosecution and redress are functions of the State, women often incur out-of-pocket expenses related to funding their own travel as well as that of witnesses. Compared to civil and family proceedings, the due process that is afforded to perpetrators often leads to criminal cases proceeding at a slow pace. Upholding the rights of perpetrators is an essential feature of criminal justice. Therefore, the potential for such due process rights to prolong criminal cases needs to be factored into programme design.
- In most countries, legal aid resources are directed to perpetrators of crime. According to the UNODC and UNDP [Global Study on Legal Aid, Global Report](#), only 61 per cent of United Nations Member States analysed indicated that legal advice and court services are provided in all legal proceedings to female survivors of violence.<sup>59</sup> This means that survivors of gender-based violence will most likely not have access to such services and even when they do, such services may not always be sufficient to address the specific needs and circumstances of survivors.
- The complexity of actors and institutions involved in the administration of justice can lead to case attrition, especially when accommodation for the varying needs of women is not made and when there is limited information provided to women about how to navigate the system.

As a protective measure, survivors of violence should be able to access justice within reasonable proximity

Survivors of violence incur direct and indirect costs when seeking protective and responsive measures from justice institutions and may not be eligible for legal aid because in practice such services are more readily available to perpetrators



Above: Kazakhstan. Woman and her children at a crisis centre in Temirtau. © UN Women.

### 3.2.2 Programming considerations and options

Ensure that State regulations, procedures and practice allow survivors to access legal services.

- As noted in Module 1, legal services are broader than legal aid. The [Essential Services Package for Women and Girls Subject to Violence, Core Elements and Quality Guidelines](#) defines it to “include legal aid as well as legal services provided by prosecutors to victims, particularly as in some jurisdictions the victim does not have separate standing in criminal proceedings.”<sup>60</sup>
- The [Handbook for Legislation on Violence against Women](#) recommends that court support should include the right to be accompanied and represented by a specialized complainants/survivors’ service and/or an intermediary, free of charge and without prejudice to their case, as well as access to service centres in the courthouse to receive guidance and assistance in navigating the legal system.<sup>61</sup>
- The United Nations General Assembly Resolution 67/187, [United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems](#), provides that States take applicable and appropriate measures to ensure the right of women to access legal aid, including: (a) introducing an active policy of incorporating a gender perspective into all policies, laws, procedures, programmes and practices relating to legal aid to ensure gender equality and equal and fair access to justice; (b) taking active steps to ensure that, where possible, female lawyers are available to represent female suspects, accused and prisoners; and (c) providing legal services, including translation of legal documents and court support services in all legal proceedings to all women who have been affected or involved in crime to ensure access to justice and avoid secondary victimization.<sup>62</sup>

Programming could provide training to justice actors on violence against women, support the establishment of specialized services and provide legal aid



- Free legal services must be complemented by free health services (e.g., for medical examinations and treatment), psychosocial support and counselling.

### 3.3 Good quality

Indicators of good quality include the ability of the criminal justice system to guarantee privacy, safety and fair proceedings to survivors and their witnesses. Stereotyping and gender bias among justice actors can significantly impact their ability to deliver impartial services to survivors of violence as well as the resilience of survivors to exercise their rights throughout the course of a case that is pending at any point of the justice chain as described in Box 3.3.

#### **BOX 3.3 The nature and impact of stereotyping and gender bias on women's access to justice**

Stereotyping and gender bias in the justice system have far-reaching consequences for women's full enjoyment of their human rights. They impede women's access to justice in all areas of law, and may have a particularly negative impact on women victims and survivors of violence. Stereotyping distorts perceptions and results in decisions based on preconceived beliefs and myths rather than relevant facts. Often, judges adopt rigid standards about what they consider to be appropriate behaviour for women and penalize those who do not conform to those stereotypes. Stereotyping also affects the credibility given to women's voices, arguments and testimony as parties and witnesses. Such stereotyping can cause judges to misinterpret or misapply laws. This has far-reaching consequences, for example, in criminal law, where it results in perpetrators not being held legally accountable for violations of women's rights, thereby upholding a culture of impunity. In all areas of law, stereotyping compromises the impartiality and integrity of the justice system, which can, in turn, lead to miscarriages of justice, including the revictimization of complainants.

Judges, magistrates and adjudicators are not the only actors in the justice system who apply, reinforce and perpetuate stereotypes. Prosecutors, law enforcement officials and other actors often allow stereotypes to influence investigations and trials, especially in cases of gender-based violence, with stereotypes undermining the claims of the victim/survivor and simultaneously supporting the defence advanced by the alleged perpetrator. Stereotyping can, therefore, permeate both the investigation and trial phases and shape the final judgement.

Source: CEDAW GR 33, paras. 26-27.

#### 3.3.1 Typical programming challenges/opportunities

- Myths and gender stereotyping are major obstacles to creating high quality justice services.
- Improving the quality and capacity of justice institutions to deal with violence against women is a long-term process which requires corresponding long-term commitments in financial and human resources.
- Procedures and standards to protect the privacy of women petitioners may not be in place. In the context of violence against women, this lack of privacy can expose survivors to reprisals.

Good quality justice services are those which respond to the needs of survivors and ensure that justice institutions are equipped to address such needs on a continuous basis

The quality of justice must be assured at all levels, which requires long-term investment



- The absence of a culture of administrative data collection among justice and security sector institutions impedes the ability of agencies to compare progress in administering justice to survivors over time and therefore to conduct an assessment of areas for improvement.

### 3.3.2 Programming considerations and options

Ensure that systematic and ongoing gender-sensitive trainings are available.

- Training should focus on imparting skills to address the varied forms of violence that women face and should be provided to all sectors—the police, investigators, forensic experts, public prosecutors, judges, lawyers, parliamentarians, health workers, education professionals, social workers and asylum and immigration authorities.<sup>63</sup>
- The training should ensure that staff are gender-sensitive in their approach to addressing the rights and needs of survivors. The curriculum should include awareness of applicable human rights standards and norms; the causes, nature and extent of violence; challenging myths around SGBV; the effects of violence on survivors; the needs of survivors; survivors' experience with the justice system; and addressing the needs and rights of women who face various forms of intersecting discrimination.
- These trainings should aim at changing the attitudes and behaviours of relevant justice actors towards survivors of violence by addressing bias, stigma and the perception and treatment of violence as a private matter.
- Trainings can be bolstered through integrated training sessions that include a cross section of justice and security sector actors and CSOs in the field of justice delivery, with the goal of strengthening inter-agency dialogue and appreciation of the benefits of cross-sectoral collaboration.
- The impact of training must be monitored on a regular basis through assessments of the types of decisions being made by justice actors and how such decisions are impacting on attrition and conviction rates.

To assess whether institutions are providing good quality services to survivors of violence, determine whether:

- Violence-related cases are dealt with in a timely manner. Technical assistance to partner institutions should aim at developing measures for timely and expeditious legal proceedings and fast-tracking of specific cases and/or for specific groups of women, where appropriate.
- Coordination mechanisms consisting of representatives of the justice, social service and health-care sectors and CSOs exist, including members from marginalized groups and other relevant stakeholders.
- Attrition rates have reduced or increased and the reasons for such trends.
- Survivors are treated or examined by a forensic doctor without requiring the consent of another person or party, such as a male relative.<sup>64</sup>
- Continuous improvement by sectors, informed by regular monitoring and evaluation, is being undertaken to deliver quality services to women and girls experiencing

violence, relying on collection, analysis and publication of comprehensive data on violence against women and girls in formats that can be used to assess and promote the provision of quality services.<sup>65</sup>

- Restorative justice processes offer the same or greater measures for protection of survivors' safety as is expected in criminal proceedings. Factors to examine include whether the case has been assessed as low risk to the survivor's safety; the survivor has been fully informed and consented to the process; and referrals to restorative justice have been made following perpetrators being charged with the crime.<sup>66</sup>
- Medical personnel are trained to detect the physical and psychosomatic presentations of various forms of violence, so that they can discretely provide the necessary care or referral to which the survivor is entitled. Training must also extend to the ability to interpret the subtle ways in which different cultures communicate abuse, especially sexual abuse and wife beating. Referral systems should link medical personnel to the criminal justice system and service providers such as CSOs, which provide various support and outreach services.
- Medical rehabilitation programmes are based on a gendered understanding of harms suffered to enable the full treatment and recovery of female and male survivors including survivors of sexual violence, those with gynecological injuries and children born due to sexual violence and enslavement. Programmes emerging after the transitional justice phase should also recognize the geographic and financial inaccessibility for many survivors requiring surgical rehabilitation, including for fistula repair and other costly and specialized treatment.
- Referral systems across institutions are supported by appropriate protocols and documentation. For example, a survivor of violence should be provided with a Police Form by the police to attend a medical facility for a medical examination which could be used in evidence as proof of the crime. Such Forms must be easy to fill in by medical personnel and should contain appropriate sections to guide a court of law in appreciating the circumstances of the crime and the impact that it had on the survivor.

#### Support systems reform and capacity development.

- Systems analysis can be undertaken to assess the causes of backlogs and delays in both the broader justice system as well as in specialized institutions and to understand the most effective interventions or reforms needed to speed up justice processes and proceedings. These may include simplifying procedural rules, hiring more judicial officers and establishing special courts to adjudicate matters pertaining to violence against women.
- Building the sensitivity and capacity of justice system actors is important for ensuring fair and meaningful access to justice for survivors. Enforcement of violence legislation depends on the capacity of the police (including police recruits, front-line police, police working in management and administrative roles), the prosecutor and the judiciary (including judges, courtroom personnel and clerks) to understand the nature and dynamics of violence against women, to respond to survivors appropriately and sensitively and to understand legislation fully in order to implement it as intended.

Analyse institutional barriers, including processes and behaviours among justice actors

Effective remedies instill confidence in justice institutions among survivors of violence and their families and prevent future acts of violence by serving as a deterrent

Remedies for acts of violence against women are multifaceted and can cut across criminal, family and civil domains

### 3.4 Remedies

Survivors of violence are entitled to prompt redress for the harm that they have suffered in line with international standards and norms. A range of remedies may be applicable in violence-related cases. They include restitution (reinstatement); compensation (whether provided in the form of money, goods or services) and rehabilitation (medical and psychological care, social and health services including sexual, reproductive and mental health for complete recovery); satisfaction; and guarantees of non-repetition. Remedies should be adequate, promptly attributed, holistic and proportionate to the gravity of the harm suffered and should take account of the survivor's agency, wishes and decisions, safety, dignity and integrity.<sup>67</sup>

Typically, criminal justice processes do not adequately compensate survivors for harm caused. For this reason, survivors can also pursue claims in a civil court for damages and/or compensation as appropriate. Protection orders (also known as restraining/non-molestation orders) can be granted by a court, the police or other authorized person to prohibit a perpetrator from harming, contacting or harassing the affected person or from possessing weapons.<sup>68</sup>

States are also expected to establish specific reparations funds, administrative reparations schemes (without prejudice to survivors' rights to seek judicial remedies) and transformative reparations programmes that help to address the underlying discrimination or disadvantage which caused or contributed significantly to the violation.<sup>69</sup>

Survivors of conflict-related sexual violence face considerable obstacles in obtaining access to effective remedies, including reparations. The devastating physical and psychological impact of sexual violence, compounded by the stigma attached to it, often prevents survivors from seeking or obtaining redress due to fear of ostracization by families and communities. Ensuring that reparations are just and adequate requires a full understanding of the gendered nature and consequences of the harm suffered for both males and females. In addition, consideration of gender inequalities in operationalizing reparations should be undertaken to ensure that reparations provisions do not exclude, marginalize or penalize women or men. Gender-based discrimination can be compounded by discrimination on other grounds, including actual or perceived sexual orientation or gender identity, ethnicity, race, age, political affiliation, class, caste, marital status, nationality, religion, disability or other status, placing certain groups of individuals at even greater disadvantage.

The majority of women will most likely not receive appropriate remedies and reparations from transitional justice mechanisms, even where such mechanisms are well functioning. Therefore, justice programmers should be especially attentive to ensuring that justice and security systems and institutions which are (re)established in the transformation and development phases are attuned to the unresolved nature of violations suffered, and are capable of ensuring these women's rights are upheld moving forward.

The [Guidance Note of the Secretary-General, Reparations for Conflict-Related Sexual Violence](#) provides a policy and operational perspective for United Nations engagement in the area of reparations for survivors of SGBV. Also see 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. The following principles provide guidance on the work of the United Nations, in support of States' initiatives to design and implement reparations:

1. Adequate reparation for survivors of conflict-related sexual violence entails a combination of different forms of reparations.
2. Judicial and/or administrative reparations should be available to survivors of conflict-related sexual violence as part of their right to obtain prompt, adequate and effective remedies.
3. Individual and collective reparations should complement and reinforce each other.
4. Reparations should strive to be transformative, including in design, implementation and impact.
5. Development cooperation should support States' obligation to ensure access to reparations.
6. Meaningful participation and consultation of survivors in the mapping, design, implementation, monitoring and evaluation of reparations should be ensured.
7. Urgent interim reparations to address immediate needs and avoid irreparable harm should be made available.
8. Adequate procedural rules for proceedings involving sexual violence and reparations should be in place.<sup>70</sup>

### 3.4.1 Typical programming challenges/opportunities

- Most remedies and reparations efforts around the world have failed to systematically incorporate the specific needs and concerns of women and girls.<sup>71</sup> For example, violence legislation may not provide for remedies or may not be fully aligned with international standards; domestic violence may not be viewed as a crime; and remedies for rape may only be understood in terms of addressing damage to the survivor's reputation and potential marriage prospects.
- The provision of remedies and the rehabilitation of survivors of violence tends to be viewed as a State's welfare obligation rather than from the perspective of women's agency and empowerment.
- Treaty bodies and regional human rights adjudicative mechanisms possess limited means of enforcing their decisions. States may be named and shamed through such instruments and processes but cannot be sanctioned for non-compliance with decisions and orders.
- In many societies, women are compelled to comply with community standards that prioritize family/community cohesion over individual accountability through informal mediation processes. It is also common for the police or other criminal justice officials to mediate incidents of domestic violence, or refer survivors to mediation processes that are not in line with international standards and norms.

Existing regimes which determine remedies may not take into account the particular experiences of survivors of violence

The provision of remedies should be guided by global standards and relevant laws, and justice institutions must ensure that remedies are fully enforced

Alternative dispute resolution is an inherently risky option for women, particularly when used in resolving violence cases

### 3.4.2 Programming considerations and options

Assess the extent to which existing remedies in both formal and informal systems address the needs and rights of survivors of violence. Issues to consider could include whether:

- Procedural and substantive aspects of the right of survivors to reparations are defined as broadly as possible within the national legal framework and where possible, considered as part of guidelines on sentencing and hearings.<sup>72</sup> The survivor's actual damages and costs incurred as a result of the crime are given as expansive a meaning as possible, including physical and mental damage as well as loss of social benefits and opportunities such as employment, education and health.<sup>73</sup>
- Various violence laws include provisions on monitoring of enforcement by specific State institutions and sanctions for breaches of protection and probation orders by perpetrators.
- Remedies include rehabilitation of survivors through measures such as medical and psychological care and other social services.<sup>74</sup>
- Offender rehabilitation programmes prioritize the safety of survivors. They must also be based on an assessment of the offender's suitability, provision for court supervision and court sanctions for breaches of court orders.<sup>75</sup> For effectiveness, rehabilitation programmes should be: adequately funded; equipped with trained staff to ensure timely monitoring and immediate enforcement; accredited with an organization that can solicit survivor feedback; and committed to working within a gendered structural analysis of violence against women, rather than a simplistic individualized process that addresses anger management.<sup>76</sup>
- "Intangible losses" arising from sexual violence are taken into account. This could include the social cost of a perceived loss of "purity" and accompanying ostracism from families and communities.
- Advocacy on the provision of remedies and rehabilitation of survivors of violence is based on the end goal of empowering women as rights-holders. For instance, the Special Rapporteur on violence against women, its causes and consequence, recommends that services such as shelters should be "places of empowerment for women. They should be oriented towards victims' rehabilitation and women's empowerment. Support should be given to help women live independently in long-term, sustainable, adequate housing and to guarantee their rehabilitation and empowerment. Shelters should never be used by the State as a form of protective custody and States should ensure that measures to guarantee women's safety are taken in full consultation with and the consent of the woman involved."<sup>77</sup>

### 3.4.3 Alternative dispute resolution

As noted earlier, family violence cases are routinely resolved informally as a result of custom and community pressures on women not to pursue formal recourses or seek punitive measures, especially against a spouse or intimate partner. This may however lead to further violations of women's rights and a culture of impunity because ADR processes are often informed by patriarchal values.<sup>78</sup> ADR increases the risk of secondary victimization in violence cases since it removes such cases from judicial scrutiny, presumes that both parties have equal bargaining power, reflects an assumption that both parties are equally at fault and reduces offender accountability.<sup>79</sup>

Standards and norms outlined in Box 3.4 discourage the use of ADR processes to address criminal acts against women.

#### **BOX 3.4 International guidance on ADR**

CEDAW GR 33 prohibits any ADR processes, including mediation and conciliation in relation to all forms of violence against women. CEDAW GR 35 further elaborates that the “use of those procedures should be strictly regulated and allowed only when a previous evaluation by a specialized team ensures the free and informed consent of victims/survivors and that there are no indicators of further risks to the victims/survivors or their family members. Procedures should empower the victims/survivors and be provided by professionals specially trained to understand and adequately intervene in cases of gender-based violence against women, ensuring adequate protection of the rights of women and children and that interventions are conducted with no stereotyping or revictimization of women. Alternative dispute resolution procedures should not constitute an obstacle to women’s access to formal justice.”

The CSW recommends that Member States “take the necessary legislative and/or other measures to prohibit compulsory and forced alternative dispute resolution processes, including forced mediation and conciliation, in relation to all forms of violence against women and girls”.

The Istanbul Convention prohibits “mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence” that are covered by the Convention.

Sources: [CEDAW GR 33](#), para. 58(c); [CEDAW GR 35](#), para. 32(b); CSW 57, [Agreed Conclusions of the 2013 CSW on the elimination and prevention of all forms of violence against women and girls](#), sect. A(g), (4-15 March 2013); Council of Europe, [Convention on Preventing and Combating Violence against Women and Domestic Violence](#), Art. 48(1). DAW/DESA, [Handbook for Legislation on Violence against Women](#) recommends an explicit prohibition of mediation by law in all cases of violence against women, both before and during legal proceedings.

The example from Afghanistan (see Box A.3.7 in the Appendices), however demonstrates that there could be challenges in effective implementation of international standards at the national level.

Existing tools therefore provide practical measures for safeguarding a woman’s rights when she chooses ADR or when it is inevitable. United Nations ECOSOC Resolution 2002/12, [Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters](#) has established fundamental safeguards and minimum requirements, including those concerning the qualifications, training and assessment of facilitators and assurance that neither the survivor nor the offender should be coerced, or induced by unfair means, to participate in restorative processes or to accept restorative outcomes. In this context, procedures must be put into place to protect women from force, pressure or intimidation in matters of mediation or restorative justice. For example, the [Essential Services Package for Women and Girls Subject to Violence, Core Elements and Quality Guidelines](#) sets out the following minimum standards:

- The mediation is undertaken by trained and qualified mediators
- A validated risk assessment has determined that the woman is not at high-risk

Although international standards prohibit the use of ADR in the resolution of violence cases, national contexts, women’s views and progressive realization must be used as implementation benchmarks

- The victim/survivor is fully informed of the process and approves of and consents to the mediation
- The process offers the same or greater measures of protection of the victim/survivor's safety as the criminal justice process
- The perpetrator has accepted responsibility
- Sanction from a formal justice service provider is available<sup>80</sup>

In addition, “the Blueprint for Action: an Implementation Plan for Criminal Justice Systems to Prevent and Respond to Violence against Women” in [Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women](#) recommends that referral to the restorative justice process should only be made after the perpetrator has been charged with a crime and approval has been granted by the prosecutor or investigative judge.<sup>81</sup>

## 3.5 Accountability

In the context of criminal justice administration, accountability is maintained through the monitoring of institutions and personnel to ensure that they are functioning and that justice services are available, accessible, of good quality and that appropriate and effective remedies are provided to survivors.

### 3.5.1 Typical programming challenges/opportunities

- In comparison with household data, a culture of administrative data collection within justice and security sector institutions is less common due to the budgetary implications.
- In settings such as hospitals and schools, women and girls may not be willing to provide details on signs of abuse detected in the course of routine medical examinations or in other contexts.
- Impunity, executive interference and corruption among justice actors can significantly reduce the accountability of a system, and lead to resistance towards programming that is aimed at improving the functioning of systems and making them more effective for women to access justice.

### 3.5.2 Programming considerations and options

Invest in administrative data collection in family and domestic violence courts, with an emphasis on:

- Expedited docketing, caseload management and timely survivor notification for effective case management.
- Gathering information about the performance of justice institutions with respect to violence against women from stakeholders such as survivors, justice actors and women's organizations and making the needed adjustments based on this information to improve justice services. Monitoring can also contribute to improving the evidence base for violence against women, as at present limited data exists on the

Accountable justice institutions monitor their performance and standards continuously to ensure their effective response to violence

Political will is required for allocating resources to administrative data collection, as well as for tackling corruption

Programming should support States to establish systems of data collection, analysis and reporting





Above: Côte d'Ivoire. Student in class at a French-Arabic school in the town of Korhogo, in the South West of the country. © UNICEF/Frank Dejongh.

occurrence of violence against women or the responsiveness of justice systems to this violence.

- Strengthening data collection by evaluating the completeness and accuracy of vital registration and justice system data (e.g., from police, prosecution services, courts) on fatal and non-fatal violence, disaggregated by age, sex, homicide mechanisms and the survivor-perpetrator relationship. There should also be strengthening of data collection on referral for cases of violence to hospitals and clinics.
- Good practice institutional reporting with salient components. Reporting should be mandatory and regular, review in detail the measures adopted to implement violence-related legislation, demonstrate progress made towards the objectives of each adopted measure and identify obstacles to the full achievement of the objectives and establish a clear mandatory follow-up procedure to respond to identified gaps. The process should ensure that the reports are collated and centralized for review by a recognized State agency that is tasked with providing national direction based on the findings of such reports.<sup>82</sup>
- Consulting women's groups and CSOs to advocate for legislation, policies and programmes in the criminal justice system and "create supportive environments that encourage women to claim their rights, report crimes committed against them and actively participate in criminal justice processes, and take measures to prevent retaliation against women seeking recourse in the justice system."<sup>83</sup> This can include community meetings to discuss issues, concerns and ideas on the creation of gender-responsive justice institutions, systems and programmes, complaint and oversight mechanisms and enhanced transparency around priority setting, and resource allocation and feedback procedures. The results of these efforts can be used to inform law reform and changes within the justice, law and order sector.

The inclusion of women in legal reform processes is necessary for ensuring greater sensitivity to the needs of women survivors of violence and for supporting efforts to eliminate violence against women

Cultural barriers, weak political will, stigma or lack of agency can pose challenges for programming

- Designing specific regulations to ensure mandatory reporting of incidents of violence and abuse that professionals and other groups may encounter in their interaction with survivors. Individuals providing services for women and children, especially medical personnel and teachers, are uniquely placed to identify actual or potential survivors of harmful practices, taking into account survivor-centred rules pertaining to disclosure, privacy and confidentiality.
- Supporting oversight bodies such as parliaments and NHRIs to hold State bodies accountable for lack of compliance with international and domestic standards related to violence against women. Accountability can be further enhanced when stakeholders participate in the design, implementation and monitoring of such services.

## 3.6 Women participate in justice institutions

While increasing the number of women in justice institutions is no guarantee of a corresponding increase in women's access to justice, there is evidence to suggest that increasing the number of female judges, female police and other front-line justice sector officials can create more conducive environments for women in courts and make a difference to the outcome of sexual violence cases.<sup>84</sup> In a study of 39 countries, the presence of women police officers was shown to result in greater reporting of sexual assault.<sup>85</sup> In Liberia, after an all-women police unit was deployed, rates of reporting of gender-based violence and the recruitment of women into the police force increased.<sup>86</sup> Gender-responsive programming within the justice, law and order sector should therefore provide opportunities for the participation of women and girls, including survivors of violence across all phases of programme design, implementation and monitoring.

### 3.6.1 Typical programming challenges/opportunities

- Societal perceptions about the security sector often relegate women to secretarial and administrative functions. Specific positions are often regarded as inappropriate for women to occupy because they require appearing in public, working directly with men or working in roles traditionally reserved for men (e.g., crowd control). In addition, when women dominate institutions such as “one-stop” centres, their professional progress and promotion could be stalled or delayed due to the specialized nature of their duties and the perception that institutions established to address predominantly “women's issues” are not part of the mainstream justice and security sector (see Section 4.1.6.1 of Module 1).

### 3.6.2 Programming considerations and options

Use evidence and research from household surveys and country assessments (see Module 1 and Module 5) to make a case for parity in operational and decision-making positions in the criminal justice system, using the following means:

- Working with government and related actors to shape and implement affirmative action targets or quotas as part of the broader affirmative action policy of the State to include women in formal justice sector institutions (e.g., policymakers, police officers, judges) in a sustained manner.

- Promoting women’s leadership in these institutions as an important component of recruitment, promotion and retention.
- Providing targeted professional development to women duty-bearers in institutions
- Promoting peer support mechanisms and associations among female policymakers, lawyers, judges, police officers and other stakeholders.
- Partnering with educational institutions (e.g., law schools, police academies, continuing legal education and training programmes) and professional associations (e.g., legal education boards, law societies, bar associations) to develop and implement strategies for encouraging female intake.
- Engaging with stakeholders to prepare and present recommended candidates for the consideration of justice and security sector appointment committees.
- Exploring avenues for promoting women’s inclusion in informal justice systems. Advocacy among traditional and religious leaders could include reforming the presumption that only men can hold leadership positions as Chiefs or Imams and in this context new norms and processes could be considered for selecting leaders.

Programming should explore avenues for promoting women’s inclusion in informal justice systems

## 4.0 Legally empowering women

The causes of harmful practices are multidimensional and include stereotyped sex-and gender-based roles, the presumed superiority or inferiority of either of the sexes, attempts to exert control over the bodies and sexuality of women and girls, social inequalities and the prevalence of male-dominated power structures. Efforts to change the practices must address those underlying systemic and structural causes of traditional, re-emerging and emerging harmful practices, empower girls and women and boys and men to contribute to the transformation of traditional cultural attitudes that condone harmful practices, act as agents of such change and strengthen the capacity of communities to support such processes.

Source: United Nations, CEDAW Committee and Committee on the Rights of the Child, [Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/General Comment No. 18 of the Committee on the Rights of the Child on harmful practices](#), para. 17, 14 November 2014, CEDAW/C/GC/31-CRC/C/GC/18.

Gender-based violence is intrinsically linked to harmful gender stereotypes and attitudes. As a result, eliminating violence against women, and realizing the full positive impact that changes in the enabling environment can have, involves working to eliminate the views that underpin violence against women in the first place. What is more, exclusion in other spheres because of gender discrimination, like household decision-making and education, can result in women’s marginalization and put them at greater risk of violence. Therefore, empowering women and communities to recognize and address harmful stereotypes, and to participate in the decision-making processes and institutions that define their rights, is necessary for the elimination of violence against women.

Eliminating violence against women necessarily involves working to eliminate views and stereotypes that can lead to and underpin such violence

## 4.1 Women participate in legal reform processes

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

Source: CEDAW GR 30, para. 46(b).

The voices of survivors of violence must be heard and reflected in legal reform processes. Programming should support coalition-building among stakeholders to sustain and make such processes effective

Safeguarding women's active participation in legal reform processes is a necessary step towards ensuring that such processes are sensitive to the needs of women survivors of violence, and that they work to effectively prevent and eliminate violence. Legal reform processes should aim at representing diverse interests, including those of women and survivors of violence, as they have insights that other stakeholders may not have. Women's participation in legal reform processes can contribute to the inclusion of specific provisions in constitutions and laws that serve to enable justice institutions and women themselves to pursue appropriate remedies. In Northern Ireland, for instance, the participation of the Northern Ireland Women's Coalition in party talks leading up to the Good Friday Agreement is credited with the inclusion of both women-specific and survivor-specific provisions in the final text.<sup>87</sup>

Beyond law reform, survivors of violence must not be treated as passive participants in proceedings affecting them. They must be informed of their role and the scope, timing and progress of the proceedings. Their views and concerns must be presented and considered at appropriate stages of the proceedings where their personal interests are affected. The [Essential Services Package for Women and Girls Subject to Violence, Core Elements and Quality Guidelines](#) highlights the need to provide survivors with an opportunity to articulate the physical and psychological impact of their experience of violence during the sentencing of the perpetrator. It furthermore allows survivors a role in sentencing through a broad range of methods that suit individual needs (e.g., written or oral victim impact statements or victim impact reports undertaken by experts such as social workers).<sup>88</sup>

### 4.1.1 Typical programming challenges/opportunities

- The culture of silence and stigma associated with violence tends to perpetuate the exclusion of the voices of survivors in legal and policymaking processes. In instances where survivors participate, there is often harmful media exposure and backlash. Survivors are therefore generally invisible in consultation processes as well as in the design, implementation and monitoring of violence laws and policies.
- The practice of allowing survivors to present impact statements in courts is absent from the criminal justice practice and culture of many countries.

### 4.1.2 Programming considerations and options

Amplify the voices and perspectives of women, encourage coalition and relationship-building by:

- Using the convening advantage of the United Nations to bring together lawmakers who have an interest in promoting criminal justice reform; women lawmakers who are strong advocates for laws and policies that address the needs of survivors; and

Women often lack voice and agency due to the general culture of silence surrounding violence. This can be addressed through dialogue and effective partnerships with the media

human rights defenders. Such relationships will help bolster women’s credibility and strengthen their inclusion in legal reform processes.

- Victim impact statements should be promoted as an integral part of legal proceedings and in addition, must be incorporated into violence laws and policies.

## 4.2 Support and partner with civil society organizations

As noted in the [Essential Services Package for Women and Girls Subject to Violence, Core Elements and Quality Guidelines](#), “civil society organizations, women’s groups, faith and community leaders often play a key role in mobilizing community efforts to raise awareness about the prevalence of violence against women and girls and the community’s role in responding to and preventing violence.”<sup>89</sup>

The legal empowerment of women is achieved by programming that supports women as rights-holders, and helps advocates and activists to claim their rights and achieve sustained change to laws and practices. These measures improve both the voice and agency of women, and lead to sustainable outcomes. Consultations with women’s groups should be initiated to develop programmes that identify and address obstacles, ensure that the context is right and guarantee protection from reprisals and ostracism as a result of advocacy.

Advocates, practitioners and human rights defenders can use best practice recommendations from the international and regional human rights systems to seek justice after violence has been committed and to build strategies to create and sustain structural change. These efforts should include innovative strategies to inform girls and women of their rights and to train and sensitize officials and politicians. Children and young people can receive education on equality between men and women, non-violent conflict resolution and age-appropriate comprehensive sexual education.<sup>90</sup>

Advocacy can include measures by CSOs to improve effective reporting and investigation of crimes, including by drawing attention to systemic barriers such as: delayed or lack of attendance by police on the scene; justice actors insisting on corroboration of women’s testimony by other witnesses before filing a report; police or hospital staff requesting money from survivors to provide forms, reports or medical tests or to pay for fuel to interview witnesses; justice actors failing to properly file incident reports, or interview or apprehend the perpetrator; abuse of police bail including bribery; and other considerations. Advocacy and public interest litigation are expensive and slow, but often represent the only alternative for achieving structural and lasting change in circumstances where the State cannot or will not fulfil its obligation to address violence against women.

### 4.2.1 Typical programming challenges/opportunities

- Both CBOs and CSOs have limited human resources and financial management capacity. This can be a challenge for ensuring effective compliance with United Nations requirements on accounting, procurement and recruitment.

CSOs are important agents of change. They are often familiar with the terrain and can inform locally relevant interventions

CSOs may not possess the requisite capacities due to limited resources

- It can be difficult to identify which organization is the best fit based on programmatic priorities alone, particularly when there are multiple (or even limited) organizations working on similar initiatives.

## 4.2.2 Programming considerations and options

Build the capacities of CSOs to strengthen knowledge and application of international standards and good practices aimed at increasing protections for women from violence.

This may include:

- Advocating for the protection of human rights defenders; monitoring their progress, success stories and the measures taken by the State to protect them.
- Strengthening the role of CSOs in the violence referral system by prioritizing funding and resources for their activities, including: legal services; the provision and maintenance of shelters; advocacy and legal awareness; research and strategic litigation; and complaints before international human rights bodies, including in terms of addressing impunity and the availability of remedies at the national and international levels.
- Supporting advocacy efforts of CSOs in the context of States' compliance with the judgements and recommendations of human rights treaty bodies and special procedures.
- South-South and North-South cooperation and sharing of experiences from other human rights defenders and CSOs on sustaining advocacy and resource mobilization.
- Fostering the development of networks of CSOs (including coalitions) at the national and regional levels, and supporting the development of strategic relationships with NHRIs.
- Promoting women-run media as a means of expanding safe and dedicated spaces for women to share their concerns on public platforms.

## 4.3 Education on women's rights

States parties have an obligation to challenge and change patriarchal ideologies and structures that constrain women and girls from fully exercising their human rights and freedoms. For women to overcome social exclusion and poverty, which increases their vulnerability to exploitation, harmful practices and other forms of gender-based violence, they need to be equipped with the skills and competencies that are necessary for asserting their rights, including autonomy in making informed decisions and choices about their own lives. In this context, education is an important tool for empowering women to claim their rights.<sup>91</sup> Female retention and completion of formal education and the prevalence of harmful practices are closely connected as literacy is needed for accessing information about existing law and justice systems.<sup>92</sup>

The State must deliver awareness-raising programmes to the public as well as among justice and security actors and other service providers for purposes of changing attitudes and supporting behaviour change. Community information and training sessions can also improve communications and trust, and increase the likelihood that community members will report violence.<sup>93</sup>





Above: Vietnam. A H'mong family in Sin Chai hill tribe in the village of Sapa. © UN Photo/Kibae Park.

Telecommunications form a critical part of measures to empower women and ensure that they have access to information in a timely and cost-effective way. SDG 5 Target 5(b) calls for States to enhance the use of enabling technology, in particular ICT, to promote the empowerment of women. One global study found that 93 per cent of women felt safer and 85 per cent felt more independent because of the security offered by owning a mobile phone.<sup>94</sup> However, care should be taken with regard to the impact of information technology on human rights defenders, monitoring staff and journalists who are engaged in investigations and monitoring activities that are politically sensitive or viewed as threatening, in which case, women can be placed at a heightened level of risk as a result of their activities.<sup>95</sup>

### 4.3.1 Typical programming challenges/opportunities

- Entrenched attitudes, behaviours and practices that support or condone violence and prevent survivors from accessing the formal legal system are pervasive across all societies.
- The culture of silence surrounding SGBV requires investments in appropriate communications strategies for different audiences.
- Cultural change is a long-term process which requires sustained programming for effectiveness. Similar to considerations for reforming informal law (see Section 2.2.2.2), these norms and values are drawn from deep-rooted community practices that require incremental change over a long period of time. Current funding and programme cycles are relatively short-term and may not sustain long-term intergenerational change.
- Weak political will among cultural agents to support changing attitudes and norms. Programming to prevent and address violence against women could be perceived

Interventions which aim at changing deep-rooted attitudes and behaviours require long-term investments



as threatening the power and influence of the cultural agents themselves and as a result they may be reluctant or resistant to change.

- Programming cannot assume that all women will rally behind efforts to eliminate violence against women, especially when practices are rooted in cultural norms. This is because women are not a monolithic group and may include individuals and groups who are not in favour of reforms.
- Cultural change is viewed as imposing external standards and norms. Therefore, if programming is not executed in a culturally appropriate way, and with local dialogues, it risks facing pushback from communities.

### 4.3.2 Programming considerations and options

Disseminate information on the impact of violence on women and society at large. Programming could:

- Conduct mass information campaigns about women's rights and violence against women. These outreach campaigns can take the form of open-air information sessions, radio outreach, community dialogues or engagement with youth clubs, women's groups, traditional and religious structures and men and boys.<sup>96</sup> To ensure cultural appropriateness and maximum impact, community members should be consulted on the design of both content and approach for these campaigns.<sup>97</sup>
- Inform lawyers, activists and other human rights defenders about relevant international and regional human rights laws and standards on the measures that States are required to take to prevent and provide remedies for violence, and to hold accountable those responsible for acts of domestic and family violence.
- Implement age-appropriate human rights education programmes in schools to sensitize young children of all sexes on the unacceptability of violence in schools and society in general. The design of textbooks must be revised to ensure that they do not perpetuate stereotyped views of women and girls. Furthermore, teachers must be sensitized on approaches to teaching that convey the needs and rights of women and girls among both teachers and students. The conduct of teachers, as well as the content of teaching and learning, must promote gender equality and women's empowerment (see CEDAW, Article 10 (c)).

Identify and engage gatekeepers to define a roadmap for addressing norms and practices which drive or serve as risk factors for violence against women.

- Invest time and resources into developing a strategy for cultivating local buy-in that is informed, shaped and executed in partnership with CSOs, professional associations and other women-driven entities.
- Work with community and religious leaders who possess the capacity and legitimacy to mobilize their communities for dialogue and reform of harmful norms.
- Promote the visibility of women in senior authority roles as a mechanism for driving social change.
- Identify features of informal laws which are supportive of combating violence against women and use them to frame information advocacy messages and develop pathways for reforming local norms.<sup>98</sup>

Explore opportunities presented by telecommunications technology to increase reporting and enhance security.

- This could include a national phone hotline service and/or online information and chat services that are available 24/7.
- The confidentiality of these services should be a foundational concern, especially when using ICT systems that are not foolproof.

## 5.0 Considerations for crisis-affected contexts

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.

Source: CEDAW GR 30, paras. 46(c)-(d).

**Consider the context:** Conflict exacerbates violence against women, and leaves them even more vulnerable to abuse, including rape (both generally and as a weapon of war), early and forced marriage and domestic violence. Women and girls' unique conflict-related harms demand redress, and importantly, there is a need to identify and transform the underlying and current conditions giving rise to those harms. Otherwise these conditions are likely to multiply such harms in their present and future. For instance, the CEDAW Committee finds that stateless women and girls face heightened risks of abuse in times of conflict because they do not enjoy the protection that flows from citizenship, including consular assistance, and also because many are undocumented and/or belong to ethnic, religious or linguistic minority populations.<sup>99</sup>

Additionally, justice systems often break down in times of conflict, leaving women few options for recourse when they have survived violence. Women are accordingly left in a double bind in crisis-affected contexts, as they are more likely to experience violent crimes and less likely to receive justice. Programming must therefore critically assess ways in which to respond to women's particular needs and vulnerabilities in conflict-affected settings. In moving from the transition to the transformation and resilience phases, the scope of access to justice programming tends to be limited by the human and material capacity of the formal legal system, which is often incapable of managing a series of violations so massive and systematic that they challenge the underlying legal order itself.<sup>100</sup> In addition, trust and confidence in public institutions may have waned, particularly in the context of the justice, law and order sector, which often fails to protect women in times of crisis.<sup>101</sup> The weak and patriarchal condition of the sector is especially felt by women and girls who are often significantly structurally, politically and symbolically disadvantaged.

**Operate in a continuum:** The IASC [Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action: Reducing Risk, Promoting Resilience and Aiding Recovery](#) (Guidelines) is an important United Nations reference for assisting humanitarian actors and communities affected by armed conflict, natural disasters and other

Crisis situations contribute to the breakdown of protective institutions, such as the family and formal and informal justice institutions

humanitarian emergencies to coordinate, plan, implement, monitor and evaluate essential actions for the prevention and mitigation of SGBV across all phases of the humanitarian response.

The Guidelines underscore a duty among actors to protect those affected by the crisis, including protection from SGBV. It calls for effective coordination and action during the earliest stages of emergency preparedness and recommends that justice support and services must be available to women and girls. It furthermore determines that the goal of humanitarian action should be to: (a) reduce the risk of SGBV through prevention and mitigation strategies across all areas of humanitarian response from pre-emergency through to recovery stages; (b) promote resilience through strengthening of national and community-based systems that prevent and mitigate SGBV, and by enabling survivors and those at risk of SGBV to access care and support; and (c) aid recovery of communities and societies by supporting local and national capacity to create lasting solutions to the problem of SGBV.<sup>102</sup>

It is critical for programming to address the potential legal impediments to equality under the law.<sup>103</sup> Areas of concern should include inheritance law, land and property rights, child marriage and domestic violence. In many contexts, women are prevented from holding land or property titles through discriminatory formal and informal laws. Gender-responsive property restitution should include women's right to ownership of land, housing and other assets, and must be complemented by efforts at reforming social norms which prevent women from property ownership.<sup>104</sup>

As countries emerge from conflict into development, the justice process often precedes formal institutional (re)development, as the contours of institutional design are greatly influenced by developments that take place in advance. Therefore, as a State or community begins its transition away from a period of conflict or authoritarian rule, a gender-responsive process necessitates that measures are taken to address impunity with the active participation and engagement of female survivors of violence and their advocates at the earliest point possible. Crucial to a gender-responsive process is the explicit inclusion of women's access to justice as an underlying tenet within the justice, law and order sector mandates. Clear reference to women's access to justice in sector mandates affirms institutional obligations, and thereby places pressure on the State to proactively and consistently approach their work with a gender lens. At the same time, it provides women's rights activists with a foothold to advocate for greater inclusion, participation and oversight.

**Be sensitive to the needs and circumstances of survivors of SGBV:** It should be recognized that many survivors of specific violations, particularly sexual violence, may have chosen to remain silent about the harms that they endured during the crisis and rebuilding and reform stages, fearing that revealing the truth may potentially leave them worse off than silently suffering. Accordingly, avenues should remain open for them if they elect to receive services without being forced into public truth-telling.<sup>105</sup> Time limits on claiming reparation should not be unduly restrictive, evidentiary standards should be relaxed<sup>106</sup> and creative approaches should be employed to reach survivors who feel unable to access justice services. Critically, survivors should have recourse to technical assistance (such as trained counsellors and specialists) to help them with the administrative steps needed to obtain remedies or other forms of support. Beyond legal

Survivors of violence must receive protection, support and assistance across all stages of crisis, post-crisis and recovery

Survivors of violence may choose to remain silent about the harms they endured during conflict because trust in justice institutions has eroded

needs, efforts must be made to address the medical, psychosocial and economic needs of survivors. This will require access to appropriate reproductive and maternal health services (e.g., addressing pregnancies arising out of enslavement or other forms of sexual violence and exploitation during combat); provision of appropriate child support; assistance in claiming and rebuilding property (e.g., inherited land, existing farm land and places of residence); and long-term social protection where women are compelled to transition as heads of households.<sup>107</sup>

**Promote the participation of survivors:** Survivors must be involved in all aspects of peacebuilding, institutional reforms and constitutional and legislative reform processes. This can be done through well-coordinated outreach campaigns that ideally begin during the crisis and rebuilding phases and continue as the society begins to move into the transitional and transformation stages. Outreach is a two-way process that involves engaging with survivors and their representatives. It should uphold the dignity of survivors, forming part of a process that aims to strengthen their social recognition and acceptance, and is responsive to women and girls' high levels of illiteracy, poverty, poor access to transportation and financial institutions and the deep social fractures (gender, ethnic, language, class, religion, urban/rural or sub-regional differences) that impede their access to justice. Justice and security sector institutions should facilitate outreach by working together with survivor-led groups or CSOs that are known and trusted by survivors and marginalized communities.

**Sustain transitional justice and avoid slippage into impunity:** Programmes should proactively combat the tendency for SGBV to escalate in post-crisis contexts.<sup>108</sup> The shift of public violence into the private sphere frequently accompanies transitions to "peace"—as men project their aggression and hostility, and exploit the opportunity to experiment with the new-found boundaries of what can acceptably be done to women in domestic settings. As transitional justice and subsequent programming efforts seek to remedy the effects of prior harms, development partners and practitioners should ensure that implementation is accompanied by a series of substantive protection measures, which can help to ensure the prevention of and redress for widespread domestic (and broader gender-based) abuse in the aftermath of conflict.

**Support the implementation of the recommendations of Truth Commissions:** The CEDAW Committee has often been concerned that the recommendations of Truth and Reconciliation Commissions in relation to repatriations and post-conflict protective measures for women are not implemented, suggesting the need for sufficient funds be allocated to implementing such recommendations (e.g., reform of discriminatory formal and informal laws and the rebuilding of justice institutions from a gender perspective) for the effective and full rehabilitation, reintegration into society and compensation of women and girls affected by SGBV through reparations programmes.<sup>109</sup>

**Reparations:** As countries move out of conflict and into transition, transformation and development phases, it is critical that justice programmers are also aware of the remedies and reparations that are due to women. In the transitional period, most women will not have received remedies and reparations for the crimes and harms they suffered, even if transitional justice mechanisms are functional. Therefore, programmers should be especially attentive to ensuring that justice systems and institutions that are (re)established in the transformation and development phases are attuned to the

Survivors and their advocates should be fully engaged in all transitional, recovery and reconstruction efforts

Formal and informal justice institutions should build on transitional justice efforts, including Truth Commissions, to forestall further violations of women's rights

Reparations must be context-specific and relevant to the diverse needs and experiences of women

unresolved nature of violations suffered and are capable of ensuring that women's rights are upheld. In this context, it is important to bear in mind that not every country will decide to submit to a formal war crimes tribunal to address atrocities. Colombia, Guatemala and Uganda are using their respective regular courts to carry out this function.<sup>110</sup> In such instances, it becomes necessary for the United Nations system to provide comprehensive support to national justice systems to appreciate international standards related to reparations and ensure that such safeguards are fully reflected in domestic legislation and practice. Family reunification and proper burial of the dead is likely to take decades and will extend well beyond any transitional justice period. Therefore, one form of redress that often plays a critical role in post-conflict transition is the “search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed”.<sup>111</sup> Until these processes are undertaken, many survivors may remain in legal, cultural, emotional and/or spiritual turmoil.

# APPENDICES

## Appendix I

**TABLE A.3.1** Policy and human rights considerations related to ending violence against women 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>5.3 Eliminate all harmful practices, such as child, early and forced</p>	<p><b>Creating an enabling environment for women’s access to justice</b></p> <p>38(a) Prohibit all forms of gender-based violence by State and non-State actors, including through legislation, policies and protocols; (b) Prevent, investigate and punish all forms of gender-based violence, in particular sexual violence perpetrated by State and non-State actors, and implement a policy of zero tolerance; ... (e) Allocate adequate resources and adopt effective measures to ensure that victims of gender-based violence, in particular sexual violence, have access to comprehensive medical treatment, mental health care and psychosocial support; ... (g) Invest in technical expertise and allocate resources to address the distinct needs of women and girls subject to violence, including the impact of sexual violence on their reproductive health;</p>	<p>51(a) Exercise due diligence to prevent, investigate, punish and provide reparation for all crimes committed against women, whether by State or non-State actors; (b) Ensure that statutory limitations are in conformity with the interests of the victims; ... (d) Take appropriate measures to create supportive environments that encourage women to claim their rights, report crimes committed against them and actively participate in criminal justice processes, and take measures to prevent retaliation against women seeking recourse in the justice system. Consultations with women’s groups and civil society organizations should be sought to develop legislation, policies and programmes in those areas; (e) Take measures, including the adoption of legislation, to protect women from Internet crimes and misdemeanours; ... (h) Review rules of evidence and their implementation, especially in cases of violence against women, and adopt measures with due regard to the fair trial rights of victims and defendants in criminal proceedings, to ensure that the evidentiary requirements</p>

<p>marriage and female genital mutilation</p>		<p>are not overly restrictive, inflexible or influenced by gender stereotypes;</p>
<p>5.3.1 Proportion of women aged 20-24 years who were married or in a union before age 15 and before age 18 5.a Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws</p> <p>5.a.1 (a) Proportion of total agricultural population with ownership or secure rights over agricultural land, by sex; and (b) share of women among owners or rights-bearers of agricultural land, by type of tenure</p> <p>5.c Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels</p> <p>Goal 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><b>Effective, accountable and gender-responsive justice institutions</b></p> <p>38(c) Ensure women's and girls' access to justice; adopt gender-sensitive investigative procedures to address gender-based violence, in particular sexual violence; conduct gender-sensitive training and adopt codes of conduct and protocols for the police and military, including peacekeepers; and build the capacity of the judiciary, including in the context of transitional justice mechanisms, to ensure its independence, impartiality and integrity; (d) Collect data, and standardize data collection methods, on the incidence and prevalence of gender-based violence, in particular sexual violence, in different settings and with regard to different categories of women; ... (f) Develop and disseminate standard operating procedures and referral pathways to link security actors with service providers on gender-based violence, including one-stop shops offering medical, legal and psychosocial services for sexual violence survivors, multipurpose community centres that link immediate assistance to economic and social empowerment and reintegration, and mobile clinics;</p>	<p>16(b) In cases of violence against women, ensure access to financial aid, crisis centres, shelters, hotlines and medical, psychosocial and counselling services;</p> <p>29(f) Provide capacity-building programmes for judges, prosecutors, lawyers and law enforcement officials on the application of international legal instruments relating to human rights, including the Convention and the jurisprudence of the Committee, and on the application of legislation prohibiting discrimination against women.</p> <p>51(c) Take effective measures to protect women against secondary victimization in their interactions with law enforcement and judicial authorities, and consider establishing specialized gender units within law enforcement, penal and prosecution systems; ... (i) Improve the criminal justice response to domestic violence, including through recording of emergency calls taking photographic evidence of destruction of property and signs of violence and considering reports from doctors or social workers, which can show how violence, even if committed without witnesses, has material effects on the physical, mental and social well-being of victims; (k) Develop protocols for police and health-care providers for the collection and preservation of forensic evidence in cases of violence against women, and train sufficient numbers of police and legal and forensic staff to competently conduct criminal investigations;</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>16.3.1 Proportion of victims of violence in the previous 12 months who reported their victimization to competent authorities or other officially recognized conflict resolution mechanisms</p> <p>16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels</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 effective, accountable and gender-responsive justice institutions

#### Availability

##### **BOX A.3.1 Extending women's access to justice for SGBV in Sierra Leone**

Recognizing the need to significantly enhance rural women's access to justice in **Sierra Leone**, UNDP's Access to Justice Programme took a multi-pronged approach to address the hurdles facing gender-sensitive justice. The programme helped strengthen civil society organizations' capacity, including the capacity of hundreds of women community leaders, to protect women and children from SGBV, protect and improve women's access to land and property rights and monitor and evaluate the performance of the justice sector on these issues. They also provided legal aid to women and their communities at local court levels, where most cases in the formal system are handled. In more remote areas, UNDP supported mobile courts, which have greatly increased the number of cases brought forward and resolved. The Legal Aid Scheme has delivered legal assistance to impoverished citizens seeking justice. Finally, they supported the operation of SGBV Saturday courts in two of the largest cities, to handle SGBV cases in a timely manner.

Sources: UNDP, [Strengthening the Rule of Law in Crisis-Affected and Fragile Situations](#), Global Programme Annual Report 2013, pp. 16-17, (New York, 2014) and UNDP, "Inventory on Violence Against Women, 2014-2016", pp. 12, 30, (2016). (Unpublished).

##### **BOX A.3.2 The United Nations supports Vulnerable Persons Unit in Timor-Leste**

In 2000, the UN Police Force (UNPOL) in **Timor-Leste** created a Vulnerable Persons Unit (VPU) to investigate cases of domestic violence, sexual violations, crimes against children and human trafficking. The VPU is now a critical component of the National Police Force of Timor-Leste. Its dedicated officers are valuable resources for communities, encouraging reporting and prosecution through their personal assistance to survivors and direct engagement at the grassroots level. A complementary network of thirty-five community centers across Timor-Leste offers survivors mediation, physical and emotional recovery services, legal assistance and skills training. The centers have also become spaces for capacity building and for women's organizations to meet, thus evolving into an empowerment resource for all women, and not solely survivors of gender-based violence. While this approach has been successful, more resources are sorely needed to broaden its impact—VPU officers still lack sufficient vehicles and other equipment, making it difficult to access survivors in remote areas.

Source: UN Women, [Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council resolution 1325](#), p. 181, (New York, 2015).

#### Accessibility

##### **BOX A.3.3 UNDP support to specialized courts dealing with gender-based violence**

UNDP is working with **Zambia's** judiciary to operationalize the first two fast-track gender-based violence courts in the country. These courts handled 224 cases in 2016, training 65 magistrates and 310 prosecutors and police officers with the support of UNDP. Additionally, 195 traditional leaders

and local court adjudicators were trained in adjudicating gender-based violence cases, which contributed to the establishment of anti-gender-based violence “one-stop” centres in 11 chiefdoms. One Chief also established a gender-based violence court in his chiefdom. These efforts have led to an increase in gender-based violence reporting from 15,153 in 2014 to 18,088 in 2015, including from men, indicating an increased understanding among the public of legal redress.

Source: UNDP, “Inventory on Violence Against Women 2014-2016”, p. 13.

## Good quality

### **BOX A.3.4 The work of Physicians for Human Rights in DRC and Kenya**

In **DRC** and **Kenya**, the Physicians for Human Rights (PHR) Program on Sexual Violence in Conflict Zones works to support redress for survivors of sexual violence by enhancing the abilities of the local health and legal communities to prosecute sexual violence crimes. Through a series of training workshops, PHR collaborates with local experts to train doctors, nurses and psychosocial trauma and recovery counsellors in the collection of forensic evidence of sexual violence, including documenting health consequences, assuring appropriate treatment and supporting legal assistance and advocacy. Beyond health professionals, PHR recognizes that police officers, lawyers and judges need support to properly assess cases of sexual violence and effectively interact with health workers and survivors. Therefore, PHR also works to strengthen the capacities of the law enforcement and legal communities, and connects members across sectors to facilitate an informal regional support network among stakeholders working to combat sexual violence. By enhancing the prospect that evidence can hold up in a court of law, and ensuring that survivors are treated with dignity and respect, the trainings aim to increase the likelihood that perpetrators are held accountable, survivors receive redress and future violations do not occur.

Source: Physicians for Human Rights, “[Program on Sexual Violence in Conflict Zones](#)”, (2017), (accessed 15 March 2018).

### **BOX A.3.5 Examples of UNODC support to build the capacity of police and prosecution services responding to violence against women**

UNODC is supporting national and regional capacity-building efforts to enhance gender-sensitive criminal justice responses to violence against women. In the Asia-Pacific region, UNODC delivered a Training of Trainers on Effective Prosecution Responses to Violence against Women for prosecutors from 10 South-East Asian countries, in collaboration with UN Women and the **Thailand** Institute of Justice. In **Kenya**, UNODC developed a training curriculum on “Ending Sexual and Gender-based Violence: The Role of the Prosecutor” and organized a series of training-of-trainers courses for prosecutors, followed by peer training conducted by the participants at the local level. Through a multi-year police reform programme, UNODC is assisting the Kenyan National Police in gender mainstreaming, strengthening capacity to respond to gender-based violence and enhancing oversight mechanisms. In **Egypt**, UNODC developed training manuals for all relevant criminal justice actors and is conducting training of senior prosecutors and forensic doctors to support changes in attitudes and practices in handling cases of violence against women. UNODC also supported the Office of the Prosecutor General to put in place a data management system for violence against women cases and supported the National Council of Women’s complaints office through the provision of training for staff to act as advocates for survivors.

Sources: United Nations, ECOSOC, Commission on Crime Prevention and Criminal Justice, Report of the Secretary-General, [Use and Application of United Nations Standards and Norms in Crime Prevention and Criminal Justice](#), para. 27, 2 March 2015, E/CN.15/2015/8; *Ibid.*, [E/CN.15/2016/9](#), para. 28, 18 March 2016; and *Ibid.*, [E/CN.15/2017/9](#), paras. 32, 51, 8 March 2017.

## Remedies

### **BOX A.3.6 An example of efforts at rehabilitating perpetrators of violence in Georgia**

There is growing evidence that working with male perpetrators—alongside intervention and protection for women—is essential to reducing domestic violence. Moreover, perpetrator programs are increasingly acknowledged as a key gap in effective service delivery. In 2017, UN Women in partnership with the Ministry of Corrections and Probations of **Georgia** and with the generous support of the European Union conducted a workshop on the development of a Rehabilitation Program for Perpetrators of Violence against Women and Domestic Violence.

The workshop aimed at drafting the Rehabilitation Program for Perpetrators of Violence against Women and Domestic Violence and building the capacity of national actors, including representatives of the Ministry of Corrections and Probation and local non-governmental organizations, on implementing rehabilitation programs in line with internationally established standards and best practices. The initiative sets out to address a key gap in the delivery of preventive interventions and treatment programs for perpetrators of VAWG/DV, a commitment undertaken by the government of Georgia under the Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence ratified by Georgia in June 2017.

The program drafting process is complemented by efforts to introduce legislative amendments to the Code of Criminal Procedure and Code of Administrative Procedure to ensure that the rehabilitation program is used as an alternative sentence for domestic violence perpetrators and/or a pre-condition for parole, as well as one of the restrictive conditions under a protective order. The draft legislative amendments have already been drafted with UN Women's technical support and will be submitted to Gender Equality Council of the Parliament of Georgia for further discussion and initiation by the end of 2017.

The initiative is supported within the framework of the “Unite to Fight Violence against Women” project—a three-year multi-pronged action funded by the European Union and implemented by UN Women aiming at preventing violence against women and domestic violence and eliminating its causes and consequences in Georgia.

Source: UN Women, “[Rehabilitation Program for Perpetrators of Violence against Women and Domestic Violence Underway](#)”, (8 December 2017).

### **BOX A.3.7 ADR and violence against women in Afghanistan**

A 2015 report from the United Nations Assistance Mission in **Afghanistan** (UNAMA) and OHCHR, Justice through the Eyes of Afghan Women: Cases of Violence against Women Addressed through Mediation and Court Adjudication, documents the experiences of 110 Afghan women who are survivors of violence (UNAMA/OHCHR report). The women sought justice through the judicial system and non-judicial mechanisms, including mediation, across the country between August 2014 and February 2015. The majority of cases were brought to mediation; only 5 per cent of the resolved cases resulted in criminal prosecution and/or sanctions against the perpetrators. The formal legal framework in Afghanistan provides limited options for women facing violence because of its focus on criminal penalties for perpetrators and the lack of legal provisions for obtaining restraining orders and civil remedies. The UNAMA/OHCHR report found that women preferred mediation in informal settings because of corruption, abuse of power and lack of professionalism in formal justice institutions, as well as cultural and family pressures that discourage formal complaints. Women stressed the value of mediation as a swift form of conflict resolution and the majority were concerned with obtaining civil redress, such as divorce, custody settlements and with safety, as opposed to criminal

sanctions. They feared negative economic and social consequences for them and their families and noted their economic dependency on perpetrators coupled with weak legal protection of their property and other rights. These served as key factors impeding survivors of violence from taking action against abusers. For example, women who flee their marital homes after complaining to the authorities about violence will often have nowhere to go if the house belongs to the husband. The report recommended that the Government of Afghanistan adopt legal, institutional and policy reforms to better protect Afghan women facing violence. These include expanding the civil remedies available, strengthening the capacity of the criminal justice system to protect survivors, adopting common standards across judicial mechanisms and adopting common standards as well as applying the 2009 Law on the Elimination of Violence against Women more effectively. The Secretary-General's Special Representative for Afghanistan and head of UNAMA noted at the time of the release of the UNAMA/OHCHR report that "mediation of violence against women cases require support and monitoring so they are guided by principles of consent, safety, impartiality and inclusivity."

Sources: UNAMA and OHCHR, [Justice through the Eyes of Afghan Women: Cases of Violence against Women Addressed through Mediation and Court Adjudication](#), (Kabul, 2015) and OHCHR, ["Afghanistan: Reforms Needed to Ensure Justice for Women Victims of Violence - UN Report"](#), (19 April 2015).

## Legally empowering women

### Support and partner with civil society organizations

#### **BOX A.3.8 The voice of women in community-led media channels in Fiji and Uganda**

In **Fiji**, the feminist media network FemLINKPACIFIC uses radio and television-based dialogue to draw rural women and government officials together to discuss development and human security challenges, providing a unique public platform for women to share their ideas and perspectives with government decision-makers and the public alike. FemLINKPACIFIC has played a key role in supporting women's participation in peacebuilding in the region, and in informing the development and implementation of the Pacific Regional Action Plan on Women, Peace and Security. Another example is MAMA FM, a community radio station in **Uganda** and one of a handful of women-run radio stations in the world. In order to ensure that women from marginalized communities without access to a radio are able to listen, they organized "women's listening clubs" in 15 districts of Uganda—spaces for women to gather, listen and discuss. MAMA FM's media channel is an example of how media can be a doubly-powerful tool, spreading messages of gender equality and women's empowerment at the grassroots level, all while bringing women together to build and strengthen networks of peacebuilders and decision-makers.

Source: UN Women, [A Global Study on the Implementation of United Nations Security Council resolution 1325](#), pp. 290-291.

#### **BOX A.3.9 CSOs engage in public litigation and advocacy on sexual violence in Ethiopia**

With support from the international advocacy organization Equality Now and the Ethiopian Women Lawyers Association (EWLA), a young girl named Makeda and her father based in **Ethiopia** sued in 2003 for compensation after the girl was abducted and raped at the age of 13, and then forced to sign a marriage certificate which conferred impunity on her rapist. The legal case ultimately did not succeed before the courts, but in 2005, Ethiopia repealed the law allowing rapists to go unpunished if they marry their victim. A complaint was then filed with the African Commission on Human and Peoples' Rights on behalf of Makeda in 2007, arguing that the Ethiopian government's failure to

punish Makeda's rapist is a violation of its obligations under the African Charter on Human and Peoples' Rights. In 2014, the African Commission found the case admissible, and in 2016, nearly 15 years later, the Commission issued a landmark ruling that Ethiopia had failed to protect the child and prevent her abduction, rape and forced marriage, and requesting payment by the State of \$150,000 to Makeda for pain and suffering. The State was also requested to implement measures to deal with marriage by abduction and rape; and for Ethiopia to implement judicial training and report back to the Commission.

Source: Adapted from Equality Now, "[Makeda's Case: Rape, Abduction and Forced Marriage](#)", (accessed 15 March 2018).

### **BOX A.3.10 Advocacy, empowerment and voice for girls in Kenya**

The case of *C.K. et al. v. Kenya* (8/2012) was initiated by the efforts of lawyers at the Federation of Women Lawyers (FIDA-Kenya) working at a Kenyan shelter for women and girls, an international team of volunteer lawyers and Kenyan constitutional counsel, in collaboration with the Kenya National Human Rights Commission. The case was a challenge against the State brought by petitioners—all young girls, some as young as three months old—who had been raped. The evidence and the proceedings took more than 18 months to prepare and the proceedings were brought against the Kenyan police, the Director of Public Prosecutions and the Minister of Justice for failing to adequately investigate allegations of rape and defilement. The Court found for the petitioners and held that the police must enforce Kenyan laws that prohibit defilement (rape) and that police are required to enforce the law by investigating cases, interviewing witnesses and suspects and arresting alleged perpetrators in accordance with internationally accepted practices. As a result, there has been training with and for Kenyan police on how to handle rape cases and investigations, and a new mobile app to teach and empower girls to know and act on their legal rights.

Sources: [C.K. et al. v. the Commissioner of Police/Inspector General of the National Police Service et al.](#), Petition No. 8 of 2012 and Joseph Boinnet, Kagwiria Mbogori and Fiona Sampson, "[160 Girls Show the Way for Survivors of Rape](#)", Daily Nation, (24 April 2016).

## **Education on women's rights**

### **BOX A.3.11 Deploying HeForShe for tackling violence against women with an example from Malawi**

Created by UN Women, HeForShe is a solidarity movement for gender equality. It was launched in September 2014 by United Nations Secretary-General Ban Ki-moon and UN Women Global Goodwill Ambassador Emma Watson. Its unique and targeted platform uses online, offline and mobile technology to identify and activate men to become change agents towards the achievement of gender equality. The HeForShe commitment affirms gender equality is not only a women's issue but a human rights issue that requires the active participation of men and boys. So far, 1.6 million people have made HeForShe commitments and there have been more than 1 billion actions for gender equality.

The HeForShe platform offers targeted tools and interventions to educate men and boys, encouraging them to evaluate and evolve their own attitudes and proactively intervene wherever there is discrimination or violence. For example, HeForShe offers three actionable steps that men and boys can take to eliminate gender-based violence in their communities: reporting bullying and

abuse online, educating themselves through free, digital resources and being an active bystander. HeForShe uses Voices Against Violence, a non-formal education programme by UN Women and the World Association of Girl Guides and Girl Scouts, to provide young people with the tools to prevent gender-based violence before it starts. These kinds of educational curricula can be used to support access to justice programming, therefore supporting normative change in communities and building coalitions around ending gender-based violence.

**Malawi** has one of the highest rates of child marriage in the world, with 1 in 2 girls married before her 18th birthday. The HeForShe movement is enlisting the support of men and boys to end this harmful practice and support the reform of marriage and family law in Malawi. The HeForShe IMPACT 10x10x10 programme engages key decision makers in governments, corporations and universities around the world to make commitments for gender equality and drive change from the top. When the President of the Republic of Malawi, Arthur Peter Mutharika, became a HeForShe Head of State IMPACT Champion, he committed to take groundbreaking steps to eliminate child marriage and made it a national priority. In 2015, Malawi passed the Marriage, Divorce and Family Relations Act, an important step towards ending child marriage. Malawi commits to fully implementing this law, and has already established a dedicated Task Force on Ending Child Marriage, which will report directly to the President. The Task Force will have several key responsibilities: collect and report data on the average marriage age, escalate challenges or lagging progress, and convene stakeholders from across the country. Additionally, the government will establish Marriage Courts at district level to handle cases and monitor the implementation of the Act. Finally, the government commits to amending the register of marriage.

Sources: HeForShe, [In Brief: HeForShe – UN Women Solidarity Movement for Gender Equality](#), (New York, HeForShe and UN Women, n.d.); World Association of Girl Guides and Girl Scouts and UN Women, [Voices Against Violence: Handbook for Group Leaders](#), (New York, 2013); UN Women, [HeForShe](#), (2016); HeForShe, [“Take Action Violence”](#), (2016); HeForShe, [“Head of State IMPACT Champion Arthur Peter Mutharika President of the Republic of Malawi”](#), (2016). All HeForShe Internet sources accessed 15 March 2018.

#### **BOX A.3.12 Working to address FGM/C in Senegal**

An example of a holistic approach is the social change programme run by Tostan, a CSO based in **Senegal** which focuses on two types of activities: an education programme to educate a group of women in a village and a social mobilization strategy that, in some cases, leads to a public declaration rejecting a harmful practice. The education campaign includes FGM/C as one session but is bolstered by sessions on problem solving, hygiene, leadership, child development, etc. The education programme is taught through establishing community classes in villages, in which about 30 women attend sessions three times a week over a period of one to two years. A facilitator is recruited by Tostan to teach the education programme in the local language. The leaders of the village convene a meeting of all the villagers and inform the community about the programme that Tostan would like to implement. The other major component encourages public declarations as a way for communities to publicly announce the abandonment of traditional practices, such as FGM/C. Evaluation shows that most villages that participated in the programme held a public declaration expressing their intention to abandon these practices, and many do end the practice following a public declaration.

Source: Nafissatou J. Diop, Amadou Moreau and Hélène Benga, [Evaluation of the Long-term Impact of the TOSTAN Programme on the Abandonment of FGM/C and Early Marriage: Results from a Qualitative Study in Senegal](#), p. 1, (Dakar, Population Council, 2008).



## Considerations for crisis-affected contexts

### BOX A.3.13 Searching for the disappeared in Argentina

In **Argentina**, in the aftermath of one of the earliest and most well-known cases of State-led enforced disappearance campaigns, family members and those intimately connected to the disappeared were forced to subsist in a state of legal limbo for years, unable to process their loved ones' wills, sell their apartments or close their bank accounts. Their only option was to declare their loved one "presumed dead", a decision that afforded no recognition of State responsibility, and therefore was so beset with psychological anguish and political capitulation that most—except the most economically destitute—were unwilling to take it. But in 1994, a new status of "forcibly disappeared" was created, which offered a legal equivalency to death for the purposes of civil matters, but stopped short of declaring the person dead. This new legal category availed family members of their right to access the property of their loved ones, but perhaps more importantly, it was a step that offered both implicit recognition of their suffering and some measure of institutional support to move beyond their psychological limbo (if and when they were ready to do so).

Source: Dyan Mazurana and Bretton J. McEvoy, "Enhancing Women's Access to Justice from Transition to Transformation and Resilience", p. 29, (2017). Expert paper prepared for UN Women. (Unpublished).

### BOX A.3.14 Justice for war crimes committed against indigenous women in Guatemala

The prosecution of crimes committed during **Guatemala's** 36-year civil war has been undertaken through its national courts, rather than through special war crimes tribunals. A key component of UN Women Guatemala's work has been providing support and technical assistance for strategic court cases, working with CSOs and public institutions with responsibilities and obligations in this field for the judicial advancement of these cases, especially those related to sexual violence in the context of the armed conflict (strengthening transitional justice processes). A critical victory was achieved on 27 January 2016 with the guilty verdict against two members of the military accused of war crimes occurring in 1982 and 1983; crimes of sexual slavery, rape, forced disappearances, ill-treatment and discrimination against 11 Mayan Q'eqchi' women, who were living around the Sepur Zarco detachment in the department of Izabal. This verdict represented an important achievement after many years of struggle, in which actors and forces from a wide and diverse range of areas were joined to create synergies and mutual complementarities. UN Women Guatemala was part of this sum of efforts, the result of which not only set a precedent at a global and historical level, it being the first time that sexual violence was tried as a war crime in a national court, but also, even more importantly, strengthened the rule of law, generated advances in guarantees of non-repetition and repaired the dignity of women in the country.

Sources: UN Women, "[Sepur Zarco: In pursuit of truth, justice, and now reparations](#)", (22 October 2017) and Leitmotiv, [Guatemala Case Study: Advances in and Challenges For Specialized Justice](#), Regional Assessment of Access to Justice as a preventive mechanism to end violence against women 2011-2015, prepared for UN Women, pp. 14-17, (n.p., 2016).

### BOX A.3.15 The Moroccan Equity and Reconciliation Commission

The Equity and Reconciliation Commission of **Morocco** broke from traditional inheritance law, which would have provided daughters with half the amount granted to sons, and instead recommended equal payments to female and male family members. The recommendation of the Commission was subsequently implemented as proposed by the Moroccan State. This achievement was

complemented by the 2004 reform of the Moroccan Family Code and the 2011 adoption of a new constitution in Morocco that guarantees gender equality. Despite these gains, however, inheritance in Morocco remains rooted in Islamic tenets, with legislation stipulating that men receive double the inheritance of their female relatives. Morocco's National Human Rights Council (CNDH), entrusted to follow up on the Commission's recommendations, is continuing to push for gender-equitable reform. Women activists and UN Women are working to encourage and support the CNDH to use these prior accomplishments and international law as a basis to challenge Moroccan inheritance law and ensure equality and non-discrimination before the law for women and girls. The CNDH recommends in its 2015 report: "amend the Family Code in order to give women equal rights in marriage, divorce, relationships with children and inheritance, in accordance with Article 19 of the Constitution and Article 16 of CEDAW".

Sources: Conseil National des Droits de l'Homme, [Gender Equality and Parity in Morocco: Preserving and Implementing the Aims and Objectives of the Constitution](#), Executive Summary, p. 4, (Rabat, 2015) and Mazurana and McEvoy, "Enhancing Women's Access to Justice from Transition to Transformation and Resilience", p. 25.

## Appendix III: Additional resources

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- UN Women, [The Change-Makers: A Young Activist's Toolkit for Ending Violence against Women and Girls](#), (2014)
- United Nations, [Guidance Note of the Secretary-General, Reparations for Conflict-Related Sexual Violence](#), (2014)
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MODULE

4

**Women in Conflict with the Law**

# 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			
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**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).

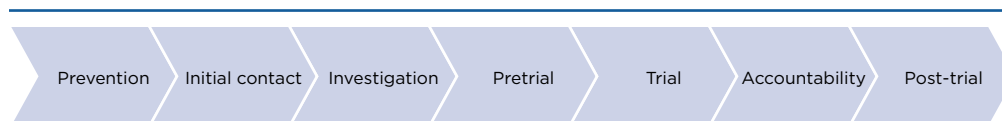
Furthermore, globalization is having an increasing impact on the volume and characteristics of crime.<sup>5</sup> For example, trafficked women may find themselves in conflict with the law when they are accused of committing crimes that are: (1) directly linked to their status as trafficked persons; (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>

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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.

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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

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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).

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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.

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#### **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

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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

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

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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.
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- 17 Ibid., Annex, para. (c).
- 18 Ibid., Annex, para. (f).

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- 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.
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- 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.
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- 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).



MODULE

5

**Programming at the Country Level**

# 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			

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Above: Cambodia. A woman from the Jarai tribe smoking a pipe. © UN Photo/John Isaac.

# 1.0 Summary

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## 1.1 Why country level programming?

Development requires transformational change at the country level, achievable through effective programming by United Nations Country Teams (UNCTs). Therefore, identifying entry points for enhancing women's access to justice within the programming cycle of UNCTs is critical for strengthening the gender dimensions of the United Nations system's work on access to justice for all. Using the UNCT as an organizational focal point promotes the leveraging of mandates, synergies and accountability across and within United Nations funds, programmes and agencies on gender equality and women's empowerment.

This Module provides guidance on how best to advance women's access to justice through the step by step modality of the UNDAF roadmap.<sup>1</sup> It identifies opportunities and approaches for aligning with the three entry points of women's access to justice programming: creating an enabling environment for women's access to justice; creating effective, accountable and gender-responsive justice institutions; and legally empowering women. It also reflects the four UNDAF principles for integrated programming, elaborated in Module 1: leave no one behind; human rights, gender equality and women's empowerment; sustainability and resilience; and accountability.<sup>2</sup>

## 1.2 Why is integrating women's access to justice in the programming cycle important?

The programming cycles (or roadmaps) of UNCTs are the institutional frameworks for milestone setting and the delivery of technical assistance at country level. The programming cycle of each agency is linked to the UNDAF, which is expected to reflect the national development priorities of governments.

United Nations General Assembly Resolution 71/243, [Quadrennial Comprehensive Policy Review of Operational Activities for Development of the United Nations System](#) recognizes the importance of partnerships and programmatic coherence to minimize duplication, promote cooperation between development partners and enhance individual agency mandates, while connecting programming to shared principles across the United Nations system.<sup>3</sup> These shared principles, opportunities, mandates and entry points for women's access to justice programming are highlighted in this Module.

Integrating women's access to justice into the programming cycle ensures that it is given appropriate attention and prominence and is effectively addressed at the country level

## 2.0 New generation of UNDAFs

"New generation of UNDAFs" is a term that is used in the [United Nations Development Assistance Framework Guidance](#) to establish the expectation that all new UNDAFs will respond to the imperatives of the 2030 Agenda for Sustainable Development and the complex and interconnected nature of the [Sustainable Development Goals](#) (SDGs).<sup>4</sup> In



In addition to human rights and the 2030 Agenda framework, all country level programming must be anchored in:

- The Report of the Secretary-General, [Repositioning the United Nations Development System to Deliver on the 2030 Agenda: Ensuring a Better Future for All](#), (2017)
- United Nations Security Council Resolution [2282](#), (2016)
- United Nations Resolution 70/262, [Review of the United Nations Peacebuilding Architecture](#), (2016)

These three instruments strengthen the focus of the United Nations on prevention and sustaining peace as important pillars of rule of law. Furthermore, in their design and implementation, all UNDAFs should demonstrate and explain how the outcomes respond to gender inequalities and contribute to the advancement of women and girls through, among other areas, access to justice.

A desk review of UNDAFs demonstrates that access to justice, more broadly, tends to be reflected as a cross-cutting theme of the entire UNDAF, or alternatively, integrated into a number of objectives such as democratic governance, rule of law or institution-building. A number of new generation UNDAFs have reflected women's access to justice in their planning frameworks (see Table A.5.1 in the Appendices).

While access to justice can serve as a rallying point for United Nations system engagement, its lack of distinct prominence in UNDAFs can result in women's access to justice (as part of the broader justice agenda) being marginalized or minimized in UNDAF planning, unless a corporate decision is made to prioritize it. One way of ensuring the visibility of women's access to justice is to ensure that it is fully anchored in the four UNDAF principles and identifiable opportunities and entry points, as elaborated in Box 5.1.

#### **BOX 5.1 Linking women's access to justice to the UNDAF principles**

##### **Leave no one behind**

- Design tailored services for groups, including marginalized and excluded groups of women
- Justice must be accessible in hard to reach and underserved areas

##### **Human rights, gender equality and women's empowerment**

- Use of the principle of non-discrimination to address discrimination in access to justice services
- Promote the collection of sex disaggregated administrative and household data on the reach of justice services
- Use the recommendations and observations of the human rights system in programming
- Advocate for women's participation in justice sector reforms and delivery

##### **Sustainable development and resilience**

- Strengthen capacities of formal and informal justice institutions and respond to national capacity assessments and strategies

##### **Accountability**

- Enhance monitoring of justice delivery
- Institute performance benchmarks for each justice institution and the justice sector as a whole



## 2.1 Integrated Strategic Frameworks

UNDAFs are the dominant strategic planning tool in development contexts. However, where there is an integrated United Nations presence, a peacekeeping mission or a political mission, such missions and UNCTs are required to develop an Integrated Strategic Framework (ISF).<sup>5</sup> ISFs promote United Nations mission/UNCT collaboration and reflect the shared objectives and means through which the United Nations will promote peace consolidation.<sup>6</sup> The essential elements of the Secretary-General's Policy on Integrated Assessment and Planning contain the minimum and mandatory requirements for the integrated conduct of assessments and planning in both conflict and post-conflict settings (see Box 5.2).<sup>7</sup>

### BOX 5.2 ISFs and Integrated Assessment and Planning

#### A. Purpose and rationale

2. Integrated assessment and planning processes are intended to maximise the individual and collective impact of the context-specific peace consolidation activities of the UN system. There are important systemic constraints to integration within the UN, but, at a minimum, the political, peacekeeping, humanitarian, human rights and development entities of the organization share a common analysis and agree on a set of common strategic objectives for peace consolidation as a starting point for planning and implementing their responses in conflict and post-conflict settings.

...

#### C. Scope

7. The requirements set out in this policy apply in all cases where a multi-dimensional peacekeeping operation or field-based Special Political Mission is deployed alongside a UN country team, or where such presence is being considered.

8. This policy focuses on the peace consolidation activities of the UN as defined in each particular context and in line with Security Council mandates and the relevant mandates of UN entities, agencies, funds and programmes. UN activities in response to critical needs in areas other than peace consolidation fall outside the scope of this policy.

Source: Adapted from United Nations, [Policy on Integrated Assessment and Planning](#), pp. 1-2, (New York, 2013).

ISFs are country-led and country-owned frameworks for transitions out of fragility, based on compacts prepared under [A New Deal for Engagement in Fragile States](#) (New Deal).<sup>8</sup> As previously mentioned in the Introduction, the five PSGs developed under the New Deal are: (1) legitimate politics; (2) security; (3) justice; (4) economic foundations; and (5) revenue and services.<sup>9</sup> Synergies with post-conflict and peace-building processes will depend on the country context. The only existing example of an ISF is that of the United Nations Assistance Mission in Somalia, which although under revision, serves as a good example of how an ISF can integrate the gendered dimensions of justice content and results. This is reflected under the third Results Area (PSG 3: Justice) of Somalia's [Integrated Strategic Framework 2014-2016](#) (see Box A.5.1 in the Appendices).

The UNDAF roadmap cycle consists of a country analysis, strategic prioritization, implementation, monitoring and evaluation

## 3.0 The programming cycle of UNCTs

The programming cycle of each UNCT is linked to the national development priorities of governments. In this context, UN agencies, funds and programmes are enabled to explore opportunities for leveraging and influencing both national planning and joint country level planning processes, as offered through UNDAFs and ISFs. In addition to the [United Nations Development Assistance Framework Guidance](#) on integrated programming, UNCTs should reference UNDG, [Resource Book for Mainstreaming Gender in UN Common Programming at the Country Level](#) as the primary guidance on the effective integration of gender equality perspectives into planning (see Box 5.3).

### BOX 5.3 Undertaking a gender analysis in CCAs and integrating gender perspectives into UNDAFs

Integrating gender in the CCA means understanding the dynamics of power relationships between men and women, their access to and control over resources, their activities, and the constraints they face relative to each other, with a view to subsequently developing results that *challenge and transform* those power relationships. A gender analysis focuses on the reasons for the current division of labour and their effect on the distribution of rewards, benefits and incentives. Furthermore, gender analysis provides information that recognizes that gender, and its relationship with ethnicity, culture, class, age, sexuality, gender identity, disability, and/or other status, is important in understanding the different patterns of involvement, behaviour and activities that women and men have in economic, social, political and legal structures. Gender analysis involves examining the enabling and constraining factors for gender equality, and the potential impact (both positive and negative) of certain development interventions on existing gender roles and strategic gender interests, as well as, humanitarian and peacebuilding dimensions, multi-hazard disaster risks and climate change along with associated gender considerations in response and resilience systems ... When priority gender issues have been identified, a deeper analysis of root causes of gender inequality can point to potential policy and programming responses ... In addition, a financial analysis to map the financial landscape is undertaken during the CCA process, and a gender analysis should be integrated here.

Source: UNDG, [Resource Book for Mainstreaming Gender in UN Common Programming at the Country Level](#), p. 20. (New York, 2018).

## 3.1 Entry points, priorities and milestones to mainstream gender into CCAs/UNDAFs in the context of women's access to justice

### 3.1.1 Securing women's access to justice in the roadmap

The [United Nations Development Assistance Framework Guidance](#) indicates that a roadmap is needed to: promote a smooth and transparent planning process; outline required and agreed steps that lead to the signing of the UNDAF with the government; identify the timing and nature of support required from stakeholders; and undertake dialogue with governments, partners and other stakeholders from the inception of the process. In addition to being aligned with the national planning cycle, roadmaps must highlight

Develop research questions to investigate women's access to justice for the CCA

overall direction, partnerships and implementation modalities. They serve as entry points for reflecting access to justice more broadly, as well as women's access to justice in particular, as development priorities.

### 3.1.2 The CCA and situation analysis on women's access to justice

The CCA (see Module 1) fosters a shared understanding of a country's national development situation and provides the situation analysis for the UNDAF. Based on the CCA, the UNDAF is the United Nations system's collective response to national development priorities over an agreed period, usually three to four years.<sup>10</sup> Together, the UNDAF and CCA are strategic planning tools for a common vision and shared strategy.<sup>11</sup> They aim to foster effective development assistance through joint action to support nationally defined priorities and avoidance of risks associated with lack of coordination. While the CCA is mandatory under the new [United Nations Development Assistance Framework Guidance](#), *the United Nations system is encouraged to undertake a separate targeted situation analysis of women's access to justice to underpin evidence-based UNCT programming*. A situation analysis on women's access to justice may be undertaken separately or as part of a broader situation analysis on access to justice. Situating women's access to justice within a broader national justice framework ensures that existing structures, systems and processes are adapted to address the specific barriers facing women in their efforts to access justice.

The roll out of any situation analysis should involve the UNCT, government and CSOs. It must also be linked to the CCA, the formulation or review of the government's justice and security sector strategy and the concluding observations and recommendations of the CEDAW Committee, other treaty bodies and the UPR on access to justice and related issues. As a corollary, a comprehensive situation analysis on women's access to justice can also inform fragility assessments, UNCT confidential reports to the CEDAW Committee and the UPR.

The three dimensions of women's access to justice programming outlined in this Toolkit do not only provide entry points for programming, but also pillars for the design of strategic documents such as funding proposals, terms of reference for women's access to justice-related assignments, briefing notes for senior staff and institutional messaging. The following checklists must be used to define the rationale and undertaking of a situation analysis, which is based on the three programming entry points of this Toolkit:

#### Situation analysis and the enabling environment for women's access to justice<sup>12</sup>

- Describe the status of the ratification and domestication of international human rights instruments, especially those that affect women's access to justice.
- Assess and describe the political context, and where relevant, the crisis context.
- Describe the policy environment: the status of justice sector-wide and sub-sector policies, gender-sensitive budgets and associated indicators.
- Describe the legal environment: the progress and gaps in legislative and constitutional reforms, including a clear, analytical description of the legal system and justice institutions; progressive case law, the existence of gender equality and

Checklist for the enabling environment for women's access to justice



Above: Nepal. Wife and husband live in a temporary shelter for earthquake survivors. © UN Women/ Narendra Shrestha.

“claw back” clauses in the constitution and sources of law; and practices that govern semi-formal and traditional justice systems.

- Identify existing customary and social norms which impede the implementation of women’s rights.
- Determine the reasons for limited implementation and enforcement of existing laws and the value added of additional legal reforms.
- Describe the socioeconomic situation of the population who live below the poverty line by sex.
- Identify women who are most at risk of vulnerability and exclusion and due to such factors are unlikely to claim their rights.
- Determine the budgetary allocation to the justice and security sector and women’s access to justice in particular.

### **Situation analysis and effective, accountable and gender-responsive justice institutions**

#### *Infrastructure:*

- Existence of institutional protocols for effective vertical and horizontal coordination, including with traditional and customary justice systems.
- A step by step description of the institutional arrangements of the justice sector (e.g., the sub-sectors which make it up) and other relevant sectors (e.g., social welfare), with an emphasis on the agency responsible for coordination, as well as relevant organs that are responsible for convening technical and administrative processes and appointments.

- The description should focus on all types of systems (formal, semi-formal and informal) and legal domains (constitutional, criminal, family, civil and administrative).
- A description of the court hierarchy, and the extent to which women access the various levels, including within traditional justice systems.
- An analysis of specialized units within justice institutions (e.g., family courts, land courts, small claims courts, “one-stop” centres).
- Ratio of lower courts to population and number of physical structures which serve as justice institutions within a particular locality.
- Assessment of gaps in capacity and roles of justice institutions and other actors (e.g. social services, security, CSOs) in performing their preventive and protective functions.
- Accessibility and reasonable accommodation for the elderly, persons with disabilities, pregnant and lactating mothers and children.
- Availability of training curricula on women’s rights and access to justice, and integration of materials into standard teaching and coaching programmes among training institutions for administrative staff, operational staff and decision makers.

*Human resources and training:*

- Number of personnel trained and retrained in women’s rights annually by sex.
- Ratio of judges, police, prison staff, investigators, prosecutors and forensic experts to population.
- Percentage of judges, police, prosecutors and prison officers who are female.
- Existence of public sector human resource performance standards that include commitments to the implementation of women rights.

*Special measures and accessibility:*

- Availability of court waivers and legal aid.
- Availability of “one-stop” centres and mobile courts.
- Linguistic accessibility for indigenous and minority women.
- Confidentiality and special spaces for women, including the elderly and nursing mothers.
- Accessibility for persons with disability (e.g., physical access, provision of hearing aids and braille).

*Data and accountability:*

- Record-keeping, case management through administrative data collection, availability of institutional performance indicators.
- User surveys and relevant household data on justice delivery.
- Institutionalization of feedback mechanisms for justice users.
- The extent of reduction or increase in attrition rates in criminal, civil or family cases.

- The extent of reduction or increase in the rate of female imprisonment.
- Monitoring/oversight roles for independent NHRIs, ombudsperson and observatory institutions.
- Monitoring decisions that have an impact on women's access to justice, for example, through bench books and judicial records.
- Results of annual and midterm reviews of justice policies, as well as strategic use of data and results to support revised policies and benchmarks.
- Cross-tabulation of the ratio of staff to population, ratio of lower courts (criminal, civil and family) to population by geographical area and sex and access to court waivers, legal aid and mobile courts.

### Situation analysis and legally empowering women

- Use poverty analysis and other social, economic and political indicators to determine where the poorest women are located and establish who among them are left behind.
- Quantify average or median incomes, information on assets (e.g., land, housing and savings accounts).
- Assess women's time burdens, including productive and domestic workloads and unpaid care work.
- Analyse the vulnerability of relevant groups based on, among other things, the intersection of gender and poverty, ethnicity, race, religion, indigenous status, disability, age and geographic location—particularly of women living in rural and remote areas.
- Obtain perception data pertaining to the justice system and its effectiveness with regards to domestic and family violence.
- Determine the frequency of crime reporting, utilizing demographic and health surveys and criminal justice statistics.
- Describe traditional and religious institutions and actors, and entry points for engagement.
- Assess evidence of engagement with religious and traditional leaders, and their impact on the implementation of women's rights.
- Describe the impact of social and cultural practices and norms which obstruct women's access to formal and informal justice.
- Identify paralegal organizations and CSOs at national and community levels which provide legal services to women.
- Identify major social norms and harmful practices that hinder women's accessibility to formal and informal justice.
- Map out women-owned media and other media (including at community level), which focus on promoting women's rights.
- Monitor the existence and number of human rights defenders and the protective mechanisms put in place by the State to ensure their rights.





Above: Côte d'Ivoire. Children with special needs attend class in a school located in the village of Doyagouine, in the North East of the country. © UNICEF/Frank Dejongh.

- Identify the number of women who have access to ICT, such as radios and mobile phones.
- Determine women's percentage share of positions among police, prosecutors, judges and religious and traditional leaders at all levels.
- Determine the extent to which women, CSOs and CBOs are with and are utilizing international and regional human rights instruments and communications procedures.

### 3.1.3 Strategic prioritization

An UNDAF theory of change describes how specific development outcomes resulting from interventions proposed by the UNCT can be realized, as well as the pathways that are available to facilitate that change. Specific elements of the three programming entry points of women's access to justice, as outlined in this Toolkit, can be used to contribute to the UNDAF theory of change. UNCTs must prioritize their justice interventions based on the following questions:

- Where are the poorest and most vulnerable women located in the country?
- Who are more likely to face obstacles (institutional, procedural and cultural) when seeking justice?
- What are the justice needs that these women care about the most (e.g., small to medium commercial claims, marriage, divorce and alimony, child custody and maintenance, property or violence)?
- Which justice forums (formal, informal, hybrid) are the most accessible to women physically, geographically, financially, linguistically and who are the main justice actors?

Programming should prioritize women who are left behind

Checklist for vulnerability analysis in the context of access to justice



- What other forums are available but not as accessible and who are the main justice actors?
- What are the main barriers affecting women’s demand for justice (e.g., low levels of rights awareness, gender-discriminatory customary norms and stereotypes, including those that impact on women who defend their rights through recourse to justice)?
- What capacity-enhancing initiatives will support both duty-bearers and rights-holders?
- Are there sector and sub-sector justice policies in place? Who are the stakeholders?
- Are justice policies gender-responsive, and if not, what are the entry points for making them so?
- If justice policies are in place, are they gender-responsive, and if not, what are the entry points for reform? If no such policies are in place, are there opportunities for building support for justice policy development, especially with the involvement of key CSOs, government actors and the United Nations?

The justice components of the UNDAF must also be aligned and coherent with the priorities of government as laid out in national development plans, NAPs, NPAs and other institutional frameworks. Priority must be given to realizing goals and outcomes that correspond to problems identified in the situation analysis, while also taking into account national goals and the comparative advantages of UN entities engaged in the process. Table 5.1 highlights potential priorities for crisis-affected countries.

**TABLE 5.1 Potential priorities for crisis-affected countries**

Justice chain	Programme priorities
<b>(Re)establishing justice programmes</b>	<ul style="list-style-type: none"> <li>• Direct engagement of female survivors and their advocates should begin prior to and during the re-establishment of justice programming (e.g., within peace processes, truth commissions), as the contours of subsequent programmes are often greatly influenced by their predecessors.</li> <li>• Victim-centred groups—including women’s, disability, survivors’ and human rights groups—should seek to build broad coalitions and strive for relative uniformity in messaging.</li> <li>• Advocacy and messaging should be grounded within the legal obligations of the governing State or de facto power, linking international principles and precedent to national law and striving to domesticate and effectively concretize rights locally.</li> <li>• Advocates should seek to understand the financial and political mechanisms that resource the justice, law and order sector institutions, and in coalition with other victim-centred groups, advocate in advance for dedicated gender-specific budget line items and special funds.</li> </ul>

<p><b>Defining justice programme mandates</b></p>	<ul style="list-style-type: none"> <li>• Women’s access to justice should be unambiguously listed as an underlying tenet within all justice, law and order programme mandates.</li> <li>• Definitions of “victim” should reflect principles of non-discrimination and the lived realities of affected populations, and should encompass more than “the person(s) toward whom the acts are directly intended”.</li> <li>• A harms-based approach of vulnerability may help to prioritize those survivors upon whom a rights violation has had the most life-altering effects, such as widows, the war wounded, forced mothers (and their children) and other survivors of sexual violence and those abducted or forcibly conscripted.</li> <li>• Sexual violence must be an explicit violation triggering remedy and reparation, but the scope of harms mandating redress should also seek to incorporate other types of gender-based violence and their complex, overlapping and multiplying effects.</li> <li>• Violations demanding redress should include more than the civil and political rights violations of immediate bodily harm, and should also reflect the exacerbating consequences of economic, social and cultural rights violations.</li> </ul>
<p><b>Designing justice programmes</b></p>	<ul style="list-style-type: none"> <li>• Justice programme design and implementation should begin with survivors’ priority needs and be situated within their local and lived realities, taking care not to empower traditional practices that justify and enable discrimination against women and children in particular.</li> <li>• Justice programmes should include women survivors, women’s rights advocates and victim-focused CSOs as full participants in the design, implementation, monitoring and evaluation of their programmes.</li> <li>• Justice programme design and implementation should strive for a relative equilibrium across the forms of justice, including restorative and retributive, symbolic and material.</li> <li>• Justice programmes should seek to address the potential legal impediments—formal and customary—to the equality of women and girls, including inheritance law, land and property rights, child marriage and domestic violence.</li> <li>• Development programming may effectively complement, but cannot replace, the explicit and personalized remedy and reparation due to survivors.</li> <li>• National duty-bearers should, at least in part, own and resource justice programmes.</li> <li>• Within budgeting processes, advocates should press for dedicated gender-specific budget line items and special funds to support women’s access to justice and gender-responsive justice, law and order institutions.</li> </ul>

- Proactive efforts should be made to minimize the unjustified raising of expectations through transparent, active outreach and effective coordination across justice mechanisms.
- Justice programme design and implementation should consider the impacts on, and potential inclusion of, non-beneficiaries, recognizing and proactively planning for the ways that non-beneficiary spouses, parents, extended family and community members may effectively support or inhibit beneficiary repair.
- Justice programme design and implementation should refrain from labelling whole groups as perpetrators, instead focusing on individual liability with an appreciation for complex roles and identities.

Source: Dyan Mazurana and Bretton J. McEvoy, “Enhancing Women’s Access to Justice: From Transition to Transformation and Resilience”, pp. 2-3, (2017). Expert paper prepared for UN Women. (Unpublished).

### 3.1.4 Implementation

Sustained technical support to government and CSOs is required to implement the objectives and targets contained in justice and security sector policies, including those informed by the CEDAW Committee’s concluding observations and recommendations and national development frameworks. This process should be executed in partnership with other agencies. A checklist of actions for participating in justice and security sector planning and design is presented below:

- Use results from the targeted situation analysis of women’s access to justice to influence decision-making in favour of women at each stage of the planning, implementation and monitoring process.
- Develop policies with clear targets and indicators that address gender-related structural barriers, including women’s participation as justice actors at all levels.
- Ensure the integration of a multi-year budget and promote a United Nations System-wide Action Plan on access to justice broadly, and include critical budget lines for issues related to women’s access to justice.
- Review and consolidate recommendations on women’s access to justice from human rights treaty bodies, the UPR and relevant Special Procedures, and include them in targets, indicators and work plans.
- Ensure that targets and indicators are informed by those of the SDGs and PSGs and fully aligned with CEDAW [General Recommendation No. 33 on Women’s Access to Justice](#) (CEDAW GR 33) and other relevant international standards and norms.
- Based on these indicators, undertake gender audits of existing policies and use the findings as a baseline for all phases of implementation and monitoring.
- Use the results of the gender audit to influence decision-making, including resource allocation.
- Provide technical and financial support to selected strategic aspects of the plan, and demonstrate to the government what works by using lessons learned that can



Above: Côte d'Ivoire. Students in a confessional school in the village of Man, in the North East of the country.  
© UNICEF/Frank Dejongh

show positive impacts on justice policy and practice, as well as on legislative and judicial reform.

- Encourage wide participation of women in planning, and leverage space for CSOs, NHRIs and gender-focused institutions to support implementation and oversight of justice sector strategies.
- Advocate for the approval of budget lines which address structural barriers to women's access to justice among relevant committees of legislatures (e.g., finance, justice, legal and constitutional affairs and gender) through separate and joint briefing sessions ahead of budget readings.

For sustainability purposes, all programme interventions should be designed as illustrative models for ultimate government adoption and integration into justice policy and practice. Programming should therefore be informed by research and best practices which suggest that initiatives are demonstrably cost-effective, sustainable, replicable and capable of being taken to scale. Such efforts should be linked to evaluations, knowledge sharing/exchange platforms and communities of practice. The UN Women Multi-Country Office in Morocco used such an approach to promote the integration of social workers in family justice administration (see Box A.5.2 in the Appendices).

### 3.1.5 Monitoring and reporting

The monitoring framework of the UNDAF should also be informed by the monitoring framework of the government's justice and security sector strategy. In both cases, emphasis should be placed on availability, accessibility, good quality, accountability and remedies. Baselines, milestones and targets are, however, dependent upon reliable data, the availability of which is critical for effective justice delivery. UNCTs could therefore

Programming should be illustrative of what can work and be sustained in a given country context

The final step of the UNDAF cycle

support justice institutions such as family and domestic violence courts to collect and analyse data related to their services and the backlog of cases.

An excellent example is UN Women's technical support to the Samoan Family Court and Family Violence Court. The [Family Safety Act 2013](#) established a specialized Family Violence Court in 2014. An integrated, coordinated model allows the Court to combine criminal family violence charges with related family law matters. This type of model addresses a range of issues in a more comprehensive way and allows for "one-stop shopping" for families involved with the justice system. Samoa implements a monitoring and evaluation system that is designed to enable the court to monitor its own performance and to capture data for other statistical purposes. Data is currently being generated on 11 indicators and is used to inform practice on an ongoing basis (see Box A.5.3 in the Appendices).

Furthermore, UN Women and the Council of Europe have collaborated to map existing indicators on access to justice in general through wide consultations on specific indicators that support women's access to justice in particular.<sup>13</sup> These indicators can support partners in measuring, reporting and evaluating women's access to justice programming. Results should be documented systematically in order to continuously assess lessons learned and areas for improvement in justice delivery.

### 3.1.6 Evaluation and documentation of lessons learned

UN agencies are encouraged to include assessments of the results of their justice programming in midterm reviews of their respective country programmes, UNDAFs and ISFs. Such results should be shared widely through and for South-South and North-South learning and cooperation. Indicators for women's access to justice evaluations can be drawn from the checklist on situation analysis in Section 3.1.2.

## 3.2 Different programming scenarios

Anchoring women's access to justice initiatives in justice programming is ideal, but country contexts, funding situations and development priorities may require other entry points for women's access to justice programmes. In some cases, agencies and UNCTs may need to integrate women's access to justice programming into broader national access to justice programmes, or specific women's empowerment programmes (e.g., Ending Violence against Women and/or Women's Economic Empowerment). Examples of each scenario are elaborated below.

### Scenario 1: Women's access to justice as part of broader national access to justice programmes

When women's access to justice initiatives are integrated and become part of broader access to justice programmes, they can provide more leverage for investing in sustainable interventions for women. In this context, women's access to justice priorities are sustained because they are anchored in a broad overhaul of the justice system. Table 5.2 illustrates a range of opportunities and entry points for integrating women's access to justice into broader justice interventions.

Follow up after  
the UNDAF cycle

Women's access  
to justice  
programming  
can be part of  
broader national  
access to justice  
programming

**TABLE 5.2** Integrating women’s access to justice into broader justice programmes

Sub-sector	Potential interventions	Areas to consider for integrating women’s rights across sub-sectors
<b>Police</b>	<ul style="list-style-type: none"> <li>• Police vetting and recruiting</li> <li>• Police reforming, restructuring, training and strengthening</li> <li>• Training in community policing</li> <li>• Monitoring local police services to ensure observance of the principles of democratic policing</li> <li>• Assistance in developing public information strategies</li> <li>• Assistance with basic administrative and financial management arrangements for the local police services, determination of a fair and equitable police salary scale</li> <li>• Provision of personnel for positions where local capacity is lacking</li> </ul>	<ul style="list-style-type: none"> <li>• Support justice sector strategy development</li> <li>• Support the reform of discriminatory laws and procedures</li> <li>• Affirmative action in recruiting, legal education and training</li> <li>• Administrative data collection</li> <li>• Development of protocols on protecting women as survivors and accused</li> <li>• Creation of women-only facilities and spaces as necessary, for different purposes</li> <li>• Making women professionals available for sensitive procedures such as searches and medical examinations</li> <li>• Instituting complaints procedures with special desks for women and available linguistic services</li> </ul>
<b>Judicial capacity</b>	<ul style="list-style-type: none"> <li>• Recruiting judges and magistrates</li> <li>• Training of judges or magistrates in judicial responsibilities, ethics, human rights, local law relevant to their jurisdiction and legal procedures</li> <li>• Training in lawyering techniques, e.g., how to run a courtroom, move cases along, keep track of files, write opinions and manage heavy caseloads efficiently</li> </ul>	
<b>Prisons</b>	<ul style="list-style-type: none"> <li>• Upgrading prison infrastructure and corrections operational capacity</li> <li>• Assisting in the preparation of laws on prisons, prison policies and regulations</li> <li>• Assisting in the preparation and adoption of human rights policies and guidelines for prison officials and in the implementation of relevant human rights instruments</li> <li>• Selecting, vetting and training local corrections personnel</li> </ul>	

	<ul style="list-style-type: none"> <li>• Human rights training for police and penal system officials, provision of personnel for positions where local capacity is lacking</li> <li>• Monitoring issues such as bribery, corruption, manipulation and abuse of power</li> <li>• Developing reporting procedures to address abuses</li> <li>• Inspection or oversight of the correctional system</li> </ul>	<ul style="list-style-type: none"> <li>• Fast-tracking processes for special groups of women, such as pregnant women, lactating mothers, elderly women and adolescents</li> <li>• Ensure accessibility of persons with disabilities</li> <li>• Sub-sector budgets to reflect barriers to women's access to justice</li> <li>• Promote integrated services and referral systems</li> <li>• Create awareness on the rights of women</li> <li>• Develop sustained partnerships with CSOs, including bar associations and women only legal aid groups</li> </ul>
<b>Prosecutor capacity-building</b>	<ul style="list-style-type: none"> <li>• Recruitment and training of prosecutors</li> <li>• Capacity-building of prosecutor's office</li> </ul>	
<b>Legal education</b>	<ul style="list-style-type: none"> <li>• Infrastructure and capacity-building for law schools, professional legal training organizations, judicial training centers and bar associations</li> <li>• Provision of personnel for positions where local capacity is lacking</li> </ul>	
<b>Ministries of justice, interior and defence</b>	<ul style="list-style-type: none"> <li>• Infrastructure support and capacity training of ministry staff, provision of personnel for positions where local capacity is lacking</li> </ul>	
<b>Criminal law reform</b>	<ul style="list-style-type: none"> <li>• Advice on codification or bringing criminal law provisions in line with IHR [international human rights] standards</li> </ul>	
<b>Traditional and customary law</b>	<ul style="list-style-type: none"> <li>• Vetting for compliance with IHR standards, possible codification</li> </ul>	
<b>Legal education in criminal law</b>	<ul style="list-style-type: none"> <li>• Infrastructure and capacity building for law schools, professional legal training organizations, judicial training centers and bar associations</li> <li>• Providing personnel for positions where local capacity is lacking</li> </ul>	
<b>Peacekeeping measures</b>	<ul style="list-style-type: none"> <li>• Deployment of UN Police or international judges</li> </ul>	

Source: Adapted from Kirsti Samuels, "[Rule of Law Reform in Post-Conflict Countries: Operational Initiatives and Lessons Learnt](#)", Social Development Papers: Conflict Prevention & Reconstruction, No. 37, p. 9, (Washington, D.C., World Bank, 2006).



## Scenario 2: Access to justice as part of a broader women's empowerment programme

It is also possible for women's access to justice programmes to serve as a critical enabler and as a means of implementing general or thematic women's empowerment programmes. [SDG 5](#) provides a useful framework for bringing together a wide range of women's empowerment programmes under one or more thematic areas. Potential entry points for making SDG 5 "justice responsive" are presented below:

### *SDG 5. Achieve gender equality and empower all women and girls*

Target 5.1 End all forms of discrimination against all women and girls everywhere.

- Reform all discriminatory substantive and procedural laws.

Target 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.

- Eliminate discrimination in access to the criminal justice system.
- Improve the capacities of criminal justice actors for women as survivors of crime and women in conflict with the law.

Target 5.3 Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation.

- Work with women's groups and religious and traditional leaders to change social norms and attitudes towards women and girls, and empower women and girls to claim their right to be protected from harmful traditional practices.
- Raise awareness and improve capacities on the rights of women and girls within communities and among informal justice actors.

Target 5.4 Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate.

- Address delays in court hearings through the recognition of the multiple roles and responsibilities that women and girls play in society.
- Create specialized family law courts to expedite action on family law cases.

Target 5.5 Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life.

- Promote women's participation in all sub-sector justice delivery at all levels.

Target 5.6 Ensure universal access to sexual and reproductive health and reproductive rights as agreed in 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.

- Fast-track cases affecting pregnant and lactating mothers.
- Respect the privacy of women and girls by ensuring the availability of separate facilities and by allowing bodily contact only with female justice officials.

Target 5.a Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property,

financial services, inheritance and natural resources, in accordance with national laws.

- Prioritize women’s personal laws and expedite claims related to marriage, divorce, inheritance and other forms of property rights.
- Expand the availability of small claims courts for cases of modest value and expedite hearings of such cases.

Target 5.b Enhance the use of enabling technology, in particular ICT, to promote the empowerment of women.

- Raise awareness on women’s rights through various technological mediums.
- Use appropriate and innovative technology, including SMS, to store and share data on case management.

Target 5.c Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.

- Support justice sector policy development.
- Mainstream justice into all gender budgeting efforts.
- Develop implementation action plans for all relevant laws.

Table 5.3 presents examples of opportunities and entry points for integrating women’s access to justice into the thematic area of SGBV in post-conflict settings.

**TABLE 5.3 Justice programming in post-conflict settings, including for cases involving SGBV**

Justice chain	Programme priorities
<p><b>Implementing justice programmes</b></p>	<ul style="list-style-type: none"> <li>• The process of <i>how</i> justice programmes are conceived, designed and implemented is as important as the delivery of tangible justice measures themselves.</li> <li>• Justice programme design and implementation should begin with meaningful victim engagement, where survivors have a real ability to influence process and outcomes. Outreach should be pursued through a range of media outlets and community focal points, and should be translated into local dialects, accessible to the illiterate and adopting creative approaches to reach the most marginalized.</li> <li>• Processes should be put in place to enable survivors of high stigma crimes—such as families of the disappeared, children forced to participate in fighting forces, survivors of sexual violence and children born of rape—to come forward in ways that do not publicly identify or stigmatize them as survivors of such crimes.</li> <li>• Outreach may be complemented by general public education campaigns, such as those in opposition to violence against women.</li> </ul>

- Procedural hurdles should be minimized to enable maximum accessibility, with implementation accounting for women and girls who are geographically distant, without sufficient economic resources or unable to leave livelihood/family obligations to reach office locations.
- Justice programmes should make all efforts to reach out and be accessible to survivors of sexual violence or children born of rape, as these groups may face significant economic, social and cultural barriers to coming forward.
- Evidentiary standards should be relaxed when processing reparations claims, especially in the case of sexual violence.
- Survivors should have the opportunity—if they so choose—to provide information in private or public forums, via testimony at a distance, via proxy and/or in the presence of others.
- Given the very real fear of reprisals, stigmatization or re-traumatization for many survivors, confidentiality must be assured when receiving victim statements or reparations claims. Gender-sensitive mental health counsellors, psychosocial workers and/or self-help groups should be available to survivors during and after such interfaces.
- Gender-sensitive, trained and experienced personnel are essential. It is also important to note that some female survivors may only feel comfortable talking to female staff.
- Personnel should be sensitive to the subtleties of less direct forms of expression, as especially with cases of sexual violence, survivors may not clearly state what occurred or use metaphorical language.
- Women may focus on the victimization of others. Without diminishing their emphasis on the well-being of their families, women should also be given the opportunity to speak of their own suffering, if and when they are ready to do so.

Source: Mazurana and McEvoy, “Enhancing Women’s Access to Justice: From Transition to Transformation and Resilience”, pp. 3-4.

## 4.0 Cross-cutting issues to consider during implementation

Cross-cutting considerations are relevant to programming for every legal domain, issue and stage of the justice chain.<sup>14</sup> The nine elements discussed below must be taken into account at each link of the justice chain to ensure optimal programme outcomes and women’s effective navigation of the justice system.

1. **Ensure a continuum between post-conflict and development:** Justice programming needs to shift from silos to integrated methods of working. As discussed in Module 1, efforts should be made to promote continuity in women’s protection across post-conflict and development phases. The latter stage should also ensure that justice institutions are equipped to deal with the uncertainties that may lead to renewed

Nine cross-cutting programming considerations for all interventions

Continuum across country contexts

Legal protection and justiciability

Gender-sensitive planning and coordination requires effective communication across the justice system

Programming must respond to women's need for legal assistance and related services

Enforcement is key to a State's ability to implement decisions in both the formal and informal sectors

Effective oversight and accountability of the justice system requires accurate data and statistics

conflict. In this context, particular attention must be paid to survivors of SGBV who must receive adequate remedies and be protected against further violations of their rights in both the public and private domains.

2. **Legal protection and justiciability:** The normative framework, as reflected in constitutions, national legislation and customary and religious norms, provides women with the rights and capacities to defend their interests. Legal protections must also be understood in a broad sense to include reform and enforcement of substantive and procedural laws as well as operational instruments.
3. **Gender-sensitive planning and coordination:** This important area requires effective centralized support as well as internal and external communication within and across justice sector actors and other public service units, including, for example, health care and social services. Coordination extends to engagement with CSOs that provide justice-related services, such as legal assistance and shelters.
4. **Legal assistance and related services:** Women need support across all formal and informal legal domains (see Module 1). They require assistance and support to initiate and to pursue justice, as well as to navigate justice systems and continue engagement with the justice process. This can range from legal information, assistance and representation from private lawyers, legal aid and/or paralegals. It also includes other forms of support, such as assistance and psychological services for survivors and victims (Module 3 and Module 4), which CSOs often provide.



Above: Tunisia. A pottery artist in her own right.  
© World Bank/Arne Hoel.

5. **Enforcement:** The ability of a State to implement decisions of both formal and informal justice institutions is a test of the justice sector's efficacy and whether it is fit for purpose. The absence of a strong and credible enforcement mechanism questions the integrity of the machinery of justice and places women in jeopardy at each step of the justice chain. Enforcement is also at the core of the human rights-based approach—as duty-bearers, States have the duty to respect, protect and fulfil the fundamental rights of their citizens. Enforcement measures are usually set out in legislation and implemented by justice institutions. Court registry officials usually have responsibilities to execute judgments. Enforcement mechanisms of communications procedures are, however, less stringent since treaty bodies issue non-binding recommendations.
6. **Oversight and accountability:** At each stage of the justice chain, there should be a body that is responsible for oversight and accountability. Higher courts generally supervise lower courts, and may have jurisdiction over informal or traditional mechanisms. Parliaments can fulfil oversight functions and monitoring can be undertaken by NHRIs and observatories managed by CSOs. Such bodies require access to

accurate data and statistics to monitor and evaluate each component of the justice chain and the justice system in general.

**7. Capacity-building of justice stakeholders:** A capacity development plan for justice stakeholders can be designed as part of the implementation of the UNDAF. Within this context, priority should be given to building on existing capacities and the capacity gaps identified in the situation analysis.<sup>15</sup> The undg estimates that new capacities could include: capacity to lead; capacity to hold, and be held to account; capacity to conduct multi-stakeholder processes; capacity to address inequalities; and capacity to develop partnerships and networks.<sup>16</sup> Capacity must be developed at national, sub-national and community levels and must include traditional and religious authorities, CSOs, the private sector and State actors. It should also be founded on national ownership, the political context and have a long-term objective.<sup>17</sup> Furthermore, women’s rights training programmes are critical for all justice chain actors, including administrative personnel. This requires systematic measures to ensure that women have access to legal information and legal support, and that this information is accessible to those who are poor and marginalized. Capacity-building is also achieved through measures to increase the participation of women in law schools, their role as lawyers, judges and traditional and/or customary decision makers, continuing legal education, as well as through measures to build CSOs that complement existing structures.

**8. Programming must be politically smart and attuned to the local context:** Undertaking business at the country level should be informed by historical perspectives on interventions (what has happened before and what is happening currently). This includes knowledge and understanding of the stakeholder landscape and using such knowledge to define objectives and priorities. Programmers must also consistently document results on a small scale and learn from their outcomes with a view to adapting and adjusting original priorities where necessary (Problem-Driven Iterative Adaptation).<sup>18</sup>

**9. Partnerships:** The Report of the Secretary-General, Peacebuilding and sustaining peace emphasizes that “the United Nations system needs to continue to strengthen cooperation and coordination for that purpose in the field through United Nations country teams and at United Nations Headquarters, in accordance with their respective mandates, with respect for national ownership and the priorities of countries affected by conflict, including through the overarching framework of the United Nations operational activities for development.”<sup>19</sup>

Women’s access to justice in all settings and development contexts is multidisciplinary in scope. With this in mind, effective partnerships with governments, CSOs and among UN agencies and programmes are needed to ensure comprehensive and gender-responsive justice sector reforms. This means that the United Nations system must draw on the sum of its parts and the comparative strengths of its entities to tackle the barriers that women face across the justice chain in each legal domain. As noted in the Introduction, women’s access to justice must be anchored in broader access to justice programming for it to thrive and be sustained. At country level, this would require strategic alliances with UNDP, which often plays the lead role in supporting States to fashion national justice and security sector agendas, frequently within the framework of democracy and governance.

Capacity development plans should include all justice actors and stakeholders

Programming should be context-specific and locally relevant

Leverage partnerships

#### **BOX 5.4 Assessing the comparative advantage of the United Nations system at country level**

Within the CCA, comparative advantage analysis informs the strategic positioning of the UN system's programmes in a country. It allows the identification of specific strengths that members of the UNCT bring individually and collectively in relation to other partners. The analysis considers capacity at the country, regional and headquarters levels. Comparative advantage includes the mandate to act, the capacity to act and the positioning to act. Comparative advantage analysis does not articulate the status quo, but rather is a forward-looking projection of capacities and positioning at the country level. It is not necessarily based on those activities with which the UN system is most familiar and comfortable, focusing instead on those where the UN system can best add value.

Source: UNDG, [United Nations Development Assistance Framework Guidance](#), p. 22, (New York, 2017).

In New Deal countries and other fragile States, the United Nations provides support through the GFP, which focusses on the police, justice and corrections areas in rule of law in post-conflict and other crisis situations. Established by the Secretary-General in 2012, the GFP is a hub through which United Nations field presences can access the capacities they need—in terms of strategic advice, technical expertise and seed funding to strengthen host countries' police, justice and corrections institutions. The GFP system serves as a reference point for shaping rule of law partnerships, particularly following peacekeeping missions, strengthened by the United Nations "Delivering as One" approach.

#### **BOX 5.5 Global Focal Point arrangement**

*The GFP fosters coherence between the development, peace and security and political pillars, sustaining peace and humanitarian action within the United Nations system:* Improving the quality of rule of law support offered by UN Missions and the UN Country Team.

*The GFP is active in 19 countries in transition, peacekeeping operations and emerging sustaining peace contexts.* The countries concerned are Darfur, Haiti, Liberia (transition settings); Afghanistan, Central African Republic, Colombia, DRC, Guinea Bissau, Iraq, Kosovo, Mali, Somalia, South Sudan (peace operations); Burkina Faso, Guinea, Sri Lanka, The Gambia, Syria Response, Yemen (emerging sustaining peace).

*The GFP actors:* DPKO and UNDP have been entrusted with the joint responsibility of convening the United Nations system for effective response to country level requests of system-wide relevance. Co-located partners are UN Women, OHCHR, UNODC and others that can contribute their expertise in accordance with their specialized roles and specific mandates for a coherent and coordinated response.

*The GFP provides comprehensive support services to the field:* *Advice* on assessments, planning, funding and partnerships; *knowledge* (e.g., comparative experiences on transitions, how to establish integrated UN structures, sector-wide strategies, multi-partner trust funds, results frameworks and monitoring and evaluation strategies, etc.); and *people* (e.g., deployments of specialized expertise). Through joint assessments, planning and programming, the GFP arrangement has been supporting a "One UN" approach to rule of law assistance, relying primarily on voluntary funding and striving to increase impact through reduced competition, encouraging innovation and leveraging expertise.

The GFP prioritizes the development of innovative institutional structures to improve rule of law support: The GFP has learned that coherent, nationally-driven rule of law support is often best achieved through a one rule of law structure. For example, in Somalia, the GFP supported the establishment of a single comprehensive and prioritized national sector-wide reform programme, implemented by a joint UN team (in which staff from several agencies are co-located, and work closely with staff from other UN entities through joint projects). There is one funding stream through a window of the Multi-Partner Trust Fund established under the New Deal compact.

Source: United Nations, [Fact Sheet: Global Focal Point for Police, Justice and Corrections \(RoL\)](#), (New York, 2017).

Both UN Women and OHCHR have co-located experts within the GFP arrangement. In 2013, UN Women co-located a Gender and Rule of Law expert within the GFP to facilitate collaboration among the GFP and UN Women headquarters and country and regional offices. The objectives of the co-locations are to integrate gender and human rights expertise, knowledge and capacity to improve women's access to justice and security in conflict and crisis settings, particularly in the context of the WPS agenda, to help strategize SGBV responses in United Nations protection of civilian strategies and to ensure gender mainstreaming and compliance with gender benchmarks and policies. Other partnerships related to crisis-affected programming include the network on [UN Action against Sexual Violence in Conflict](#); the [Inter-Agency Standing Committee](#) and its Reference Group on Gender and Humanitarian Action; and the [United Nations-World Bank Partnership Framework for Crisis and Post-Crisis Situations](#).

Constitutional assistance similarly requires the deployment of a combination of expertise across the United Nations system. The [Guidance Note of the Secretary-General, United Nations Assistance to Constitution-making Processes](#) suggests that this should be a collaborative effort in the mobilization and coordination of the requisite expertise under the convening mechanism of the Rule of Law Coordination and Resource Group, chaired by the Deputy Secretary-General and supported by the Rule of Law Unit, currently situated in the Office of the Secretary-General. The specifics cover: political facilitation (Department of Political Affairs/DPKO); procedural and substantive advice in peace processes, and electoral systems and processes (Department of Political Affairs); governance (UNDP); legal (Office of Legal Affairs); human rights (OHCHR); women, children and vulnerable and marginalized groups (UNICEF, UN Women and OHCHR); refugees, displaced and stateless persons as well as the prevention and reduction of statelessness (UNHCR); and public information (Department of Public Information).<sup>20</sup>

The United Nations system is furthermore unified in its support to SDG-related issues. The [Global Alliance for Reporting Progress on Peaceful, Just and Inclusive Societies](#) (Global Alliance) exists to support governments to undertake planning on all aspects of SDG 16 and related Targets and Indicators found throughout the 2030 Agenda—including women's access to justice. It is co-facilitated by four UN agencies (UNDP, United Nations Educational, Scientific and Cultural Organization, UNODC and UNHCR) and run by seven United Nations Member States,<sup>21</sup> three major global corporations<sup>22</sup> and three CSOs,<sup>23</sup> in close collaboration with more than thirty other UN agencies, Member States, private sector groups and CSOs. Together, Global Alliance members and partners operate a unique coordination platform which enables United Nations Member States to leverage planning, monitoring and reporting processes to ensure that women's access to



justice and other core strategies to advance peace, justice and inclusion are integrated into the heart of national development systems.<sup>24</sup> The work of the Global Alliance includes supporting all essential tasks to ensure that women's access to justice is well reflected in national planning, monitoring and reporting frameworks. These include:

- Identification, collection and analysis of relevant disaggregated data.
- Organization of multi-stakeholder consultations to enable all parts of society—including communities, local government, CSOs, private sector and national academia—to identify shared priorities.
- Development of evidence-based, nationally-owned national plans and monitoring and evaluation frameworks with robust components to promote peace, justice and inclusion.
- Provision of data analysis and visualization tools which, by making data accessible and usable for non-statisticians, ensure that data can inform policy and programming.
- Set up and functioning of vertical and horizontal coordination structures to enable government, civil society, the private sector, national academia, the United Nations and other international actors to jointly support planning, monitoring, reporting and implementation of effective initiatives to advance peace, justice and inclusion, including women's access to justice as a proven effective strategy to achieve SDG 16 and the entire 2030 Agenda.

Related to the work of the Global Alliance is the [Pathfinders for Peaceful, Just and Inclusive Societies](#), which is convened by the governments of Brazil, Sierra Leone and Switzerland and facilitated by New York University's Center on International Cooperation. It brings together Member States, international organizations, global partnerships, civil society and the private sector to promote the implementation of SDG 16. The Pathfinders initiative serves as a platform for generating increased commitments to peace, justice and inclusion and in this context launched [The Roadmap for Peaceful, Just and Inclusive Societies: A Call to Action to Change Our World](#) during the 72<sup>nd</sup> Session of the United Nations General Assembly to scale up political will, momentum, coherence, innovation, results and reporting.

Outside of these formal arrangements, it is also possible for UN agencies to leverage technical and financial resources to achieve a common aim, particularly through [joint rule of law programming between UN agencies in both GFP and non-GFP countries](#).

Among these are partnerships in Liberia and the State of Palestine (see Box A.5.4 in the Appendices). Future programming should also explore potential partnerships between UNICEF, UNFPA and UN Women in the establishment of courts which could serve as forums for dealing with multiple issues, such as family cases, domestic violence, juvenile justice cases and sexual offences.



Above: A Heiltsuk girl holding one of the paddles of the "Glwa", the Heiltsuk canoe. © UN Photo/John Isaac.

# APPENDICES

## Appendix I: Country case studies

### New generation of UNDAFs

**TABLE A.5.1** The integration of women’s access to justice in the UNDAFs of Afghanistan, Brazil and Ethiopia

Country UNDAF Year	Women’s access to justice-related content
<b>Afghanistan</b> 2015-2019	<ul style="list-style-type: none"> <li>• Functional provincial councils, established judicial system and enacted laws, including those protecting the rights of women and girls.</li> <li>• UNCT to support gender equality advocates, youth, academia and community and opinion leaders to develop their capacity to influence peacebuilding processes at the national and sub-national level.</li> <li>• <i>Expected results:</i> Increased accessibility, effectiveness and accountability of rule of law services reflected by the number of Afghans (in particular women, children and vulnerable groups) that receive Government provided legal aid; more efficient case recording, tracking and follow-up in police stations. Particular emphasis to be placed on community-orientated, child-sensitive and gender-responsive justice and policing services, SGBV, illicit trafficking and land rights violations.</li> </ul>
<b>Brazil</b> 2017-2021	<ul style="list-style-type: none"> <li>• Regarding the promotion of access to justice, two main areas will be addressed: the strengthening of institutions of the Justice System and their respective access mechanisms, and the promotion of alternative dispute resolution practices, contributing to the advancement of a culture of civic coexistence and peaceful conflict resolution that values gender, racial, ethnic and generational equality, especially with regarding access to and quality of care.</li> <li>• In the fight against violence against women, the Maria da Penha Law, passed in 2006, defined five types of violence against women: physical, sexual, psychological, moral and patrimonial. In addition, penalties against assailants became more stringent and determined the implementation of public policies for the prevention of violence. From then on, the Network to Assist Women in Situations of Violence (Rede de Atendimento à Mulher em Situação de Violência) has played a leading role in the policies for combating violence, aiming to bring together institutions responsible for preventing violence and implementing the law.</li> </ul>

	<ul style="list-style-type: none"> <li>• The identification and training of public safety and justice sector officers to deal with the theme of internal moral and sexual harassment and institutional racism and sexism, are essential to ensure effective action from a gender, race and ethnicity perspective.</li> <li>• <i>Outcome 6:</i> A peaceful, fair and inclusive society promoted through social participation, transparency and democratic governance, respecting the secularity of the State and ensuring human rights for all.</li> <li>• <i>Indicators:</i> <ul style="list-style-type: none"> <li>• 6.2: Number of reports of violence against women and girls registered by the violence and accidents surveillance system (age, type of violence and Federative Units)</li> <li>• 6.6: Deficit of public defenders in Brazil</li> <li>• 6.7: Deficit of vacancies in the Brazilian prison system</li> </ul> </li> </ul>
<p><b>Ethiopia</b> <b>2016-2020</b></p>	<ul style="list-style-type: none"> <li>• The UN will continue investing in national institution-building, particularly ... the development and strengthening of mechanisms to increase access to justice, especially for women children and other vulnerable groups.</li> <li>• The FDRE Rural Land Administration and Use Proclamation (2005) affords women the right to use rural land through land holding certificates. Regional states have followed suit and have issued their own land use and administration laws in conformity with the federal law.</li> <li>• The UN will continue to support the justice system to deliver accessible, efficient and accountable justice to all citizens, paying particular attention to children, women and other vulnerable groups of the population. The development of a national legal aid strategy, including the establishment and strengthening of existing legal aid clinics targeting the most vulnerable populations throughout the country, will be one of the key focus areas under this outcome.</li> <li>• <i>Outcome 11:</i> By 2020, key government institutions and other stakeholders apply enhanced capacities to ensure the rule of law; an efficient and accountable justice system; and the promotion and protection of human rights in line with national and international instruments, standards and norms.</li> <li>• <i>Output 11.1:</i> Enhanced institutional and technical capacity of the justice system to deliver accessible, efficient and accountable justice to all (with a focus on vulnerable groups).</li> <li>• <i>Indicators:</i> <ul style="list-style-type: none"> <li>• 11.1.1: National legal aid strategy and standards adopted</li> <li>• 11.1.2: Number of operational legal aid clinics</li> </ul> </li> </ul>

- *11.1.3*: Number of beneficiaries, particularly vulnerable groups, provided with free legal aid service, disaggregated by sex, disability, age and income status
- *11.1.4*: Number of operational child friendly and gender sensitive justice mechanisms (child-friendly benches, child protection units, special prosecutor units)
- *11.1.6*: Number of regions with structures in place for implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD)

Sources: [United Nations Development Assistance Framework for Afghanistan 2015-2019](#), pp. 15, 30, 32; [United Nations Sustainable Development Partnership Framework Brazil 2017-2021](#), pp. 36-39, 49; [United Nations Development Assistance Framework for Ethiopia 2016-2020](#), pp. 5, 11, 30, 94.

## Integrated Strategic Frameworks

### BOX A.5.1 ISF of Somalia

**Priority 1 – Key priority laws in the legal framework, including on the reorganization of the judiciary, are aligned with the Constitution and international standards:** An efficient, effective and transparent justice system will be an important element in the establishment of the rule of law in **Somalia**. The UN will support the FGS [Federal Government of Somalia] in building the capacity and efficiency of the Ministry of Justice and Constitutional Affairs to lead effective reforms of priority laws and further develop a human rights based legal framework. This will include the reorganisation of the judiciary, the establishment of independent, accountable and efficient justice institutions capable of addressing the justice needs of all people regardless of age, sex, and clan in compliance with human rights norms and standards, and with the Constitution.

**Priority 2 – Justice institutions start to address the key grievances and injustices of Somalis:** The UN will provide support to the FGS to coordinate efforts in the areas of justice and corrections. Specific attention will be given to establishment of justice institutions as foreseen in the Constitution, by setting up a functional case management system, providing support to enable the payment of regular salaries to justice and correction actors, strengthening the capacity of justice and corrections institutions and supporting the provision of technical assistance to the legislative process of drafting bills, laws and the necessary regulatory framework.

**Priority 3 – More Somalis have access to fair and affordable justice:** The UN will promote access to justice through a multi-pronged approach. This will focus on institution-building ... the establishment of systems compliant with human rights standards, and accountability and oversight systems as well as the provision of legal aid. The imperative for all programming will be to ensure that women and vulnerable groups such as children, IDPs [internally displaced persons], and refugee-returnees are properly protected and properly considered in all levels of strategy and decision-making. The UN will encourage dialogue around the possible linkages between [the] formal justice system and traditional justice mechanisms.

Source: United Nations Somalia, [Integrated Strategic Framework 2014-2015](#), p. 8, (2014).

## The programming cycle of UNCTs

### Implementation

#### BOX A.5.2 Programming in Morocco to integrate social work and family justice

From 2010 to 2014, the UN Women Multi-Country Office in **Morocco** developed a national project as part of the global Gender and Democratic Governance programme, supported by the Norwegian Government and the Catalan Agency for Development. In the first phase of the project, users' satisfaction surveys and increased support to social workers were used to develop a Charter on the Reform of the Judicial System. The Charter included access and quality of services for women and covered national and local levels, in partnership with the Ministry of Justice and Liberties, gender-focused institutions, CSOs and five pilot sections of family justice divisions. In addition to concrete institutional improvements, the results achieved by the Gender and Democratic Governance programme strengthened the partnership between UN Women and the Ministry of Justice and Liberties. In particular, the Ministry of Justice has institutionalized the position of judicial social workers to improve women's use of and access to family justice services.

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

## Monitoring and reporting

### **BOX A.5.3** Indicators measuring progress of justice delivery by sex in the Samoa Family Court and Family Violence Court

1. Number of cases filed
2. Number of cases disposed
3. Clearance rate
4. Timeliness
5. Pending: Disposal ratio
6. Age of pending
7. Outcome
8. Orders
9. Attendance rate
10. Workload efficiency
11. Data quality

Source: UN Women, “Samoa Family Court and Family Violence Court Monitoring and Evaluation Update Report”, (2015). Prepared by Loretta Pupualii. (Unpublished).

## Cross-cutting issues to consider during implementation

### **BOX A.5.4** United Nations partnerships in Liberia and the State of Palestine

#### **Liberia: UNDP, UNFPA, UNHCR, UNICEF, UN Women, WHO and the United Nations Mission in Liberia**

Sexual and gender-based violence (SGBV) was a pervasive problem in **Liberia** throughout the civil war and remains a widespread problem. Sexual violence including rape accounted for 73.9 per cent of sexual offences during the conflict in Liberia and 13 per cent after the conflict. Sexual offences have been the number one crime reported to the Liberian police and in 2007, 46 per cent of reported rape cases to the Liberian National Police (LNP) involved children under the age of 18. The high levels of SGBV related cases in Liberia, coupled with the prioritization of SGBV within the Government’s interim Poverty Reduction Strategy (PRS) necessitated a more comprehensive approach to address SGBV in Liberia.

The Government of Liberia/United Nations Joint Programme to Prevent and Respond to SGBV, or ‘JP on SGBV’, was designed in 2008 as a response to the high prevalence of SGBV in the country during and after the war, especially sexual and domestic violence ... Six agencies came together to start off the joint gender programme ... [which] also provided an opportunity for the United Nations to test out ‘Delivering as One’ through joint working.

The specific outcomes were designed under each the five pillars of Phase 1, with each pillar led by a United Nations agency. Areas where priorities were not sufficiently met in Phase 1 were identified and integrated into the design of Phase 2, for example, a need to extend outreach to communities and move from the Phase 1 focus on the provision of services to SGBV survivors to, in Phase 2, an increased focus on advocacy to reduce harmful traditional practices, increased community networks and to encourage men’s involvement, as well preventive strategies on GBV at community level, capacity-building of protection actors and establishing community-led preventive strategies such as legislation, and training of wider members of the society. Results include:

- Strengthened capacities of duty bearers to provide services and support to SGBV survivors through a series of trainings has built relevant skills among health workers and counsellors.

- Greater protection for survivors of SGBV, including the establishment of a safe haven for survivors in different parts of the country, through the safe homes model,<sup>25</sup> which is coupled with the integrated approach being adopted to link SGBV survivors to economic empowerment initiatives.
- Strengthened procedures and systems for handling of SGBV survivors, which are beginning to ensure that SGBV services are streamlined in Liberia, including the development and rolling out of the standard operating procedures for SGBV services, and referral pathways for psychosocial support.
- Increased public awareness of SGBV. Information campaigns have been a major thrust of the programme at national, counties and community level. Increased public awareness of SGBV has led to increased community involvement in GBV, reporting of GBV and start-up of initiatives such as cell phone reporting, establishment of county observatories.
- A strengthened justice system for SGBV survivors which has supported the prosecution of rape crimes (after the enactment and amendment of the rape law), and the establishment of the Criminal Court E dedicated to prosecution of SGBV crimes. These initiatives are providing some level of protection for survivors.

#### State of Palestine: UNDP/UN Women Joint Programming

In the **State of Palestine**, the weak rule of law negatively affects the lives of the entire population, with repercussions for vulnerable groups, including women and children. Insufficient capacity and lack of coordination among justice, security and protection actors exacerbate gaps and ambiguities in the legal frameworks of the West Bank, the Gaza Strip and East Jerusalem. These factors interact with discriminatory cultural norms to impair the functioning and efficiency of the rule of law system, especially for women.

The development and implementation of the large-scale UNDP/UN Women Joint Programme, “Strengthening the Rule of Law in the OPT: Justice and Security for the Palestinian People” (2014-2017) created a programmatic vehicle for achieving systemic change across the rule of law sector. The Joint Programme offers a comprehensive approach to rule of law assistance at the nexus of the justice and security sectors and pays significant attention to the integration of security sector governance and accountability interventions as part of a synchronized approach to rule of law. Programme interventions expand efforts to increase women’s access to justice, including by providing capacity development support to the Sharia courts, engaging with informal justice actors and processes to increase observation of international standards and monitoring their impact upon women and girls. To eliminate discrimination against women, the entire justice and security system must consider gender. Specialized services for women and girl survivors of violence must be provided. The Joint Programme provides a platform to address both areas. The close partnership among UN agencies ensures that all activities implemented are gender-responsive and increases the likelihood of reaching more non-traditional justice and security partners. The UN Women team provides support to government and CSO partners to address violence against women by increasing the gender-responsiveness of the justice chain through support to specialized services within the police, public prosecution and the judiciary.

Sources: UN Women, [Summary Case Study Report: Joint Evaluation of Joint Programmes on Gender Equality in the United Nations System – Joint Programme to Prevent and Respond to Sexual and Gender-Based Violence in Liberia](#), pp. 6-9, 13, 23, (New York, 2013) and UN Women State of Palestine, “Joint Programmes to Advance the Rule of Law and Women’s Access to Justice - the Palestine experience”, (2016). (Unpublished).



## Appendix II: Additional resources

- Craig Valters, Clare Cummings and Hamish Nixon, ODI, [Putting Learning at the Centre. Adaptive Development Programming in Practice](#), (2016)
- Rachel Kleinfeld, Carnegie Endowment for International Peace, [Improving Development Aid Design and Evaluation. Plan for Sailboats, Not Trains](#), (2015)
- Matt Andrews, Lant Pritchett, Salimah Samji and Michael Woolcock, OECD, [Building Capability by Delivering Results: Putting Problem-Driven Iterative Adaptation \(PDIA\) Principles into Practice](#), (2015)
- ILO, [Integrating Gender Equality in Monitoring and Evaluation of Projects: Guidance Note 4](#), (2014)
- David Booth and Sue Unsworth, ODI, [Politically Smart, Locally Led Development](#), (2014)
- UNODC, [Guidance Note for UNODC Staff. Gender Mainstreaming in the Work of UNODC](#), (2013)
- United Nations Evaluation Group, [Integrating Human Rights and Gender Equality in Evaluation - Towards UNEG Guidance](#), (2011)

# ENDNOTES

- 1 See UNDG, *United Nations Development Assistance Framework Guidance*, p. 20, (New York, 2017).
- 2 Ibid., pp. 9-12.
- 3 United Nations, General Assembly, Resolution 71/243, *Quadrennial Comprehensive Policy Review of Operational Activities for Development of the United Nations System*, para. 9, 21 December 2016, A/RES/71/243.
- 4 UNDG, *United Nations Development Assistance Framework Guidance*, p. 4.
- 5 The ISF document must include the main findings from integrated assessments of the conflict. For more information on the United Nations process of conducting integrated assessments see Module 1 and United Nations, *Integrated Assessment and Planning Handbook*, pp. 71-83, (New York, 2013).
- 6 The ISF can feed into the UNDAF or vice versa; in certain circumstances, only one document may be necessary if the requirements of both frameworks are met. For further information, see UNDG, *United Nations Development Assistance Framework Guidance*, p. 15.
- 7 Ibid. "An UN Integrated Presence means that there is a multidimensional peacekeeping operation or field-based special political mission deployed alongside an UNCT".
- 8 Compacts are planning mechanisms, drawn from multiple stakeholders and the public, and reviewed annually to ensure harmonization, donor coordination and the reduction of duplication and fragmentation in programming.
- 9 International Dialogue on Peacebuilding and Statebuilding, *A New Deal for Engagement in Fragile States, Fourth High Level Forum on Aid Effectiveness, Busan, Korea, 30 November 2011*, p. 2, (2011).
- 10 UNDAFs were instituted in 1997, as part of the reforms led by Secretary-General Kofi Annan.
- 11 Outcomes are defined, a programme results matrix is developed and a monitoring and evaluation framework is elaborated with specific, measurable, achievable, realistic and time-bound outcomes and outputs that comprise indicators, baselines, targets and means of identification. UN entities contribute to the attainment of these objectives by implementing activities in line with their mandates and comparative advantage. For more information see UNDG, *United Nations Development Assistance Framework Guidance*.
- 12 With a view to undertaking a comprehensive situation analysis of the enabling environment, the assessment could also rely on UNODC, "Gender in the Criminal Justice Assessment Tool", in *Criminal Justice Assessment Toolkit*, (New York, United Nations, 2010).
- 13 See Teresa Marchioni, *A Framework for Measuring Access to Justice Including Specific Challenges Facing Women*, (New York, 2015). Report commissioned by UN Women realized in partnership with the Council of Europe.
- 14 A substantial number of these considerations are adopted from UNDP, *Access to Justice Practice Note*, (New York, 2004).
- 15 For 10 principles on the effective use and development of national capacity in post-conflict contexts see United Nations, *United Nations Guidance Note for Effective Use and Development of National Capacity in Post-Conflict Contexts*, pp. 6-13, (New York, 2013).
- 16 Ibid., p. 34.
- 17 Ibid., pp. 6-12, 33-34.

- 18 Ibid., pp. 2-4 and see Matt Andrews, Lant Pritchett, Salimah Samji and Michael Woolcock, *Building Capability by Delivering Results: Putting Problem-Driven Iterative Adaptation (PDIA) Principles into Practice*, A Governance Practitioner's Notebook: Alternative Ideas and Approaches, pp. 125-126, 128, (Paris, OECD, 2015).
- 19 United Nations, General Assembly, Security Council, Report of the Secretary-General, *Peacebuilding and sustaining peace*, para. 5, 18 January 2018, A/72/707-S/2018/43.
- 20 United Nations, Guidance Note of the Secretary-General, *United Nations Assistance to Constitution-making Processes*, p. 7, (New York, 2009).
- 21 Cabo Verde, Mexico, Norway, Qatar, Sierra Leone, Tunisia and the United Kingdom.
- 22 Deloitte Ltd., LexisNexis and White & Case LLP.
- 23 New York University Center on International Cooperation, Transparency and Accountability Network and World Federation of United Nations Associations.
- 24 See RELX Group, SDG Resource Centre, "Global Alliance: Reporting Peace, Justice & Inclusion", (2018), available from <https://sdgresources.relx.com/ga/resources> (accessed 15 March 2018), or contact SDG16alliance@undp.org.
- 25 The safe homes model is an innovative approach to providing safe spaces for women in smaller communities that are unable to provide a full shelter service. See Women in Cities International, *Women's Safety Awards 2004: A Compendium of Good practices*, p. 12, (Montréal, 2004).



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