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**Thematic discussion on enhancing the functioning  
of the criminal justice system to ensure access to  
justice and to realize a safe and secure society**

## **Guide for the thematic discussion on enhancing the functioning of the criminal justice system to ensure access to justice and to realize a safe and secure society**

### **Note by the Secretariat**

The present discussion guide provides an overview of international standards, challenges and promising practices in enhancing the functioning of the criminal justice system, with the aim of ensuring access to justice and realizing a safe and secure society.

The guide highlights current developments and emerging issues for the attention of Member States and contains proposals for questions to guide the thematic discussion of the Commission on Crime Prevention and Criminal Justice.

\* [E/CN.15/2023/1](#).



## **I. Introduction**

1. The aims of ensuring access to justice and realizing a safe and secure society have been placed at the core of the commitments expressed in the 2030 Agenda for Sustainable Development, in particular Sustainable Development 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). Enhancing the functioning of the criminal justice system is essential to achieving those aims. Indeed, many of the targets under Goal 16 relate to criminal justice (e.g. prevention and reduction of violence and crime and promotion of the rule of law) and many of the indicators identified to measure progress under Goal 16 relate to the functioning of criminal justice systems (e.g. the proportion of victims of violence reporting their victimization to competent authorities, the proportion of unsentenced detainees in the overall prison population and the proportion of positions in the judiciary by sex, age, disability and population group).

2. At the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice, held in Kyoto, Japan, in March 2021, Member States discussed practical approaches to enhancing the functioning of criminal justice systems and promoting the rule of law. The Kyoto Declaration on Advancing Crime Prevention, Criminal Justice and the Rule of Law: Towards the Achievement of the 2030 Agenda for Sustainable Development highlights the need to safeguard victims' rights and protect witnesses and reporting persons and the importance of improving prison conditions and reducing reoffending, of mainstreaming a gender perspective into crime prevention and into criminal justice systems, and of addressing the vulnerabilities of children and youth in contact with the criminal justice system. It also addresses the improvement of criminal investigation processes to fulfil the rights of suspects and accused persons and obtain the best evidence for efficient investigations, and highlights the importance of fair treatment without discrimination and equality in accessing justice, including through access to legal aid and proportionate sentencing policies.

3. In line with the requirements identified in the Kyoto Declaration, a well-functioning criminal justice system that ensures access to justice and contributes to a safe and secure society needs to be efficient and accountable; to apply the law equally to all and treat fairly those who come into contact with it, be they victims, witnesses or alleged or convicted offenders; to be centred around the needs of victims and understand their trauma; and to be geared towards the prevention of violence and crime and the reduction of recidivism.

4. The Kyoto Declaration also emphasizes the importance of an evidence base for strategies to prevent crime and improve the delivery of justice. Establishing such an evidence base involves collecting and analysing relevant data – not only as a snapshot in time, but also as a baseline to measure progress, identify gaps, plan and implement long-term reform measures, review lessons learned, and, where needed, enable international organizations or bilateral partners to effectively tailor their assistance. In the absence of such a base, funds are spent on the basis of conjectures, which often leads to a suboptimal allocation of resources.

## **II. Enhancing the integrity and efficiency of the criminal justice system**

### **A. Integrity as a prerequisite for a well-functioning criminal justice system**

5. Corruption in its many forms continues to taint many criminal justice institutions, undermining their core values, credibility and ability to facilitate access to justice and prevent crime. The United Nations Convention against Corruption provides a comprehensive framework for States to build effective criminal justice

institutions that are free from corruption and operate on the principles of integrity, transparency and accountability.

6. With regard to the judiciary, article 11 of the Convention against Corruption calls for measures to strengthen judicial integrity. The United Nations Office on Drugs and Crime (UNODC) *Implementation Guide and Evaluative Framework for Article 11* was specifically developed to help States assess the level and effectiveness of their implementation of the requirements of the Convention. In 2018, UNODC launched the Global Judicial Integrity Network as a platform to promote experience-sharing and peer support among judges and judiciaries, to facilitate access to existing knowledge and resources and to identify and address emerging judicial integrity-related challenges. In the light of the global pandemic and the fast pace of innovation, the Network has also been raising awareness of emerging topics, including the links between judicial integrity and judicial well-being, the ethical use of new technologies and issues related to open justice and transparency.<sup>1</sup> In a development relevant to the integrity and inclusivity of judiciaries, the General Assembly adopted resolution 75/274, in which it declared 10 March the International Day of Women Judges.

7. Article 11 of the Convention also applies similar requirements to the prosecution services of States parties in cases where the prosecution is independent of the judiciary. In such cases, the *Implementation Guide and Evaluative Framework for Article 11* provides a tool for States to evaluate measures taken in the prosecution service to strengthen integrity, ensure independence, provide adequate conditions of service and be well equipped to meet criminal justice needs with objectivity and fairness. In addition, the guide recognizes the need to develop effective reporting mechanisms for stakeholders and beneficiaries of the criminal justice system to report potential misconduct or corruption in the prosecution service.

8. In addition to the provisions of the Convention against Corruption, detailed guidance and standards of conduct for criminal justice professionals can be found in the United Nations standards and norms in crime prevention and criminal justice, including: (a) the Code of Conduct for Law Enforcement Officials and the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, which outline the key responsibilities of law enforcement officials, highlighting their duty to serve the community and protect all persons against illegal acts while respecting and protecting human dignity and maintaining and upholding the human rights of all persons; (b) the Basic Principles on the Independence of the Judiciary, complemented by procedures for their effective implementation and the Bangalore Principles of Judicial Conduct; and (c) the Guidelines on the Role of Prosecutors, which are complemented by the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, developed by the International Association of Prosecutors.

## **B. Increased efficiency through multisectoral cooperation**

9. The criminal justice system alone cannot deliver justice. In addition to the need for the different criminal justice sectors – law enforcement, prosecution, the judiciary, prison and probation services – to communicate, exchange information and cooperate effectively, there is also a need for the involvement of multiple stakeholders in the delivery of justice, such as health services (including mental health services), social services and the education sector, as well as the private sector and civil society organizations. Approaches that involve stakeholders from different sectors working towards a common objective deliver more sustainable results.

10. In the area of justice for children, for example, promising diversion programmes for children accused of committing an offence rely on close cooperation between the police, prosecutors, the child protection system and community members.

<sup>1</sup> For more details, see [www.unodc.org/ji/](http://www.unodc.org/ji/).

Child-friendly, interdisciplinary and multi-agency structures have equally demonstrated a positive impact on meeting the needs of child victims of crime and reducing the risk of secondary victimization.

11. Promoting access to comprehensive and coordinated essential health, social, police and justice services has similarly shown significant value in breaking cycles of violence against women.<sup>2</sup> Another promising practice that illustrates the usefulness of coordinated, multisectoral responses to prevent gender-related killing and address gender-based violence is the in-depth review of femicide cases by multi-stakeholder committees, such as the domestic homicide and violent death review committees that exist in some jurisdictions.<sup>3</sup>

12. Likewise, in the treatment of offenders, inter-agency coordination is a prerequisite for fair and proportionate treatment by judicial authorities, which rely on information provided by professionals from various sectors. The assessments of offenders' needs, risks and circumstances conducted to guide decisions on appropriate criminal justice interventions require cooperation between criminal justice agencies and with health services, social services, victim support agencies and civil society organizations. In the transition of offenders from a custodial environment to the community, inter-agency cooperation and communication between prison and community-based services is also essential to ensuring the continuity of care throughout the social reintegration process. Moreover, the engagement of the private sector, employers and employment agencies, housing agencies and training institutions, as well as volunteers and civil society organizations, has proven critical in reducing recidivism after release.

### **C. The principled application of technology in the criminal justice system**

13. The Secretary-General's Road Map for Digital Cooperation<sup>4</sup> outlines a range of strategies for harnessing the positive developments of new and advanced technologies, including digital capacity-building, digital public goods, universal connectivity, digital inclusion, digital trust and security, digital human rights and digital cooperation.

14. In the context of the efficiencies offered by digitalization, in recent years there has been steady growth in the use of new and advanced technologies in the administration of criminal justice. Examples include e-filing systems, the digitalization of case files, virtual hearings and the online provision of legal aid. The physical distancing measures introduced in response to the coronavirus disease (COVID-19) pandemic precipitated an expansion in the application of those technologies as an important means of ensuring the continued operation of core criminal justice functions. As COVID-19-related restrictions are eased in many parts of the world, the architecture and practice of digitally mediated justice remain in place. Meaningful efforts to promote equal access to justice for all require recognition of both the obstacles and enablers of access to justice at all stages of the criminal justice process, including in all settings where technology plays a role in shaping justice outcomes.

15. Noting the potential for digitalization to make criminal justice systems "more effective, accountable, transparent, inclusive and responsive", the Kyoto Declaration also cautions against the improper use of such technologies, with the undertaking that "law enforcement, criminal justice and other relevant institutions will effectively and appropriately employ new and advanced technologies as tools against crime with adequate and effective safeguards to prevent the misuse and abuse of these

<sup>2</sup> Spotlight Initiative, "Rising to the challenge: impact report 2020–2021" (November 2021).

<sup>3</sup> United Nations Office on Drugs and Crime (UNODC), "Background paper on domestic homicide/femicide review committees" (forthcoming).

<sup>4</sup> [A/74/821](#).

technologies in this regard”.<sup>5</sup> In this context, it is timely to assess the evidence base regarding the benefits and potential risks, such as discrimination and interference with privacy and human dignity, of the application of various technologies in criminal justice settings, with a view to ensuring that the principled use of technology advances equal access to justice for all and upholds human rights.

### **III. Enhancing the inclusivity of the criminal justice system and ensuring equal application of the law to all**

#### **A. Promoting equality and non-discrimination in the criminal justice system**

16. Against the background of the principle of leaving no one behind, which spans all of the Sustainable Development Goals, the Secretary-General stated the following in his report entitled *Our Common Agenda*: “Justice is an essential dimension of the social contract. In all parts of the world, distrust is fuelled by people’s experience of inequality and corruption, and by their perception that the State and its institutions treat them unfairly. The 2030 Agenda promises to promote the rule of law and provide access to justice for all ... but many justice systems deliver only for the few.” In addition, he emphasized “the potential for transforming justice systems in ways that strengthen the bonds that hold our societies together”.

17. In the same spirit, the Kyoto Declaration emphasizes the role that crime prevention and criminal justice institutions play in preventing discrimination and the need to ensure “equal access to justice and application of the law to all, including vulnerable members of society, regardless of their status” and “treatment with respect and without discrimination or bias of any kind”.

18. Multiple forms of discrimination on the grounds of gender identity, race, socioeconomic status, sexual orientation, disability and other intersecting forms of discrimination create barriers to access to justice. Stereotypes, victim-blaming and stigmatization prevent victims of hate crimes or women victims of gender-based violence from seeking the redress and support that they need. Discrimination also results in the overrepresentation of marginalized and excluded groups, including people of African descent, Indigenous peoples and minority groups, in the prison population, with incarceration resulting in long-term health, social, educational and vocational problems for prisoners and their families, thereby aggravating marginalization and exclusion even further.

19. One important element in building and restoring trust between the criminal justice system and communities lies in ensuring that the criminal justice system is representative of the population it serves. UNODC data show that women professionals are underrepresented, especially in national police services, in which women make up only 10 to 20 per cent of personnel in most countries.<sup>6</sup> Addressing the lack of women professionals in high-level positions in police and other criminal justice institutions is also key. Women hold 45.9 per cent of presidencies in lower courts, but only 28 per cent in courts of appeal and 18.6 per cent in high courts in countries belonging to the Organisation for Economic Co-operation and Development.<sup>7</sup>

20. Efforts are being made around the world to increase the representation of minorities, Indigenous people and other groups that face specific barriers to access to justice. A study by the American Bar Association found that, in the United States of America, people of colour are underrepresented at all levels of the legal profession,

<sup>5</sup> General Assembly resolution 76/181, annex, paras. 8 and 16.

<sup>6</sup> UNODC, “dataUNODC”, Police personnel, Criminal justice system: police personnel, 2018. Available at <https://dataunodc.un.org/data/crime/Police%20personnel>.

<sup>7</sup> European Commission for the Efficiency of Justice, *European Judicial Systems: Efficiency and Quality of Justice*, CEPEJ Studies, No. 23 (2016).

from law school to the judiciary.<sup>8</sup> That underrepresentation can lead to a lack of understanding and empathy for the unique challenges and realities faced by racially marginalized communities and, in turn, bring about further inequality in the justice system. Efforts to increase representation must be accompanied by measures to ensure retention and inclusivity in the workplace and address discrimination in the workforce.

## B. Provision of quality legal aid services

21. Legal aid is a crucial component of procedural justice, which translates into access to justice for the poor, marginalized and disadvantaged, and, when provided at no cost, serves to protect those who do not have the means to defend and enforce their rights in the criminal justice system, namely, those who are detained, arrested or imprisoned, suspected, accused of or charged with a criminal offence, as well as victims and witnesses. The provision of legal aid services not only enhances the fairness of criminal justice systems. It also contributes to the efficient delivery of justice, as it helps to reduce the length of time during which suspects are held in detention, the number of wrongful convictions, the incidence of justice mismanagement and rates of reoffending and revictimization.

22. The crucial role of legal aid in enhancing the functioning of criminal justice systems was recognized in the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems in 2012.<sup>9</sup> As reaffirmed in the Kyoto Declaration, States should put in place “measures to ensure access to timely, effective, adequately resourced and affordable legal aid for those without sufficient means or when the interests of justice so require”.

23. As the United Nations Development Programme (UNDP)/UNODC *Global Study on Legal Aid*<sup>10</sup> revealed, progress in establishing national legal and policy frameworks can be observed across all development levels, while challenges remain, in particular with regard to enhancing the nationwide scope and quality of services, as well as reaching groups with specific rights and needs in the justice system, such as women and children. While various United Nations standards and norms<sup>11</sup> highlight the importance of ensuring that pretrial detainees and sentenced prisoners have access to legal advice, including through legal aid, timely access to independent counsel or legal aid providers is not consistently ensured for prisoners in many Member States, a deficiency that is all the more serious considering that detainees and prisoners are a particularly vulnerable and marginalized group subject to discrimination and exclusion.<sup>12</sup>

## C. Gender-sensitive criminal justice

24. Gender-based discrimination in the criminal justice system disproportionately affects women, who face significant barriers in accessing justice, whether they are victims, witnesses, alleged offenders or prisoners. In addition to gender inequality, intersectional discrimination and a lack of autonomy and agency of women, key drivers include institutional, policy and legislative failure to remove discrimination,

<sup>8</sup> American Bar Association, *Profile of the Legal Profession* (2020).

<sup>9</sup> General Assembly resolution 67/187, annex.

<sup>10</sup> See United Nations Development Programme and UNODC, *Global Study on Legal Aid: Global Report* (2016). To date, it is the only comprehensive global report on the status of legal aid in the world.

<sup>11</sup> Including the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules).

<sup>12</sup> United Nations System Chief Executives Board for Coordination, *Leaving No One Behind: Equality and Non-discrimination at the Heart of Sustainable Development – The United Nations System Shared Framework for Action* (New York, 2017).

gender bias, stereotyping, indifference and impunity. There is also a growing understanding of how persons with diverse gender identities and sexual orientations are impacted by discrimination in their access to justice, giving rise to a need to apply specific strategies to address such discrimination and barriers to justice.

25. As the Committee on the Elimination of Discrimination against Women highlights in its general recommendation No. 33 (2015) on women's access to justice, "the right to access to justice for women is essential to the realization of all the rights protected under the Convention on the Elimination of All Forms of Discrimination against Women. ... It encompasses justiciability, availability, accessibility, good quality, the provision of remedies for victims and the accountability of justice systems." The Committee further emphasizes the disproportionate criminalization of women owing to their situation or status, identity, having undergone an abortion or belonging to other groups that face discrimination.

26. Addressing gender-based discrimination against women in conflict with the law requires comprehensive interventions to address the obstacles that women face throughout the criminal justice chain, in line with the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), the Convention on the Elimination of All Forms of Discrimination against Women and related international standards and norms. Good practices include promoting gender-responsive legal aid services and prioritizing non-custodial measures for women wherever possible. Although prison systems tend to focus on the needs of a predominantly male population, the number of female prisoners showed a higher rate of increase (33 per cent) than that of male prisoners (25 per cent) between 2000 and 2019,<sup>13</sup> and women prisoners should be provided gender-specific health care, as well as childcare and rehabilitation programmes in female prisons.

27. Gender-based violence affects women and girls disproportionately. About one in three women worldwide has experienced sexual and other forms of violence.<sup>14</sup> Women are also much more likely than men to be killed by their intimate partners or family members.<sup>15</sup> However, crimes involving violence against women remain underreported and unlikely to end in conviction owing to gaps in criminal law and procedure and inadequate responses of criminal justice institutions and professionals, leading to impunity and secondary victimization of victims and survivors. The COVID-19 pandemic has further reduced access to essential police and justice services for women, despite the increased incidence of gender-based violence.<sup>16</sup>

## D. Age-sensitive criminal justice

28. Children differ from adults in their physical, mental and psychological development, and ensuring their access to justice, including engaging them as agents of change, should be understood as enabling their opportunities and the development of their full potential.<sup>17</sup> Children face greater challenges in accessing justice. They are

<sup>13</sup> UNODC, Data Development and Dissemination Section and Crime Research Section, "Nearly twelve million people imprisoned globally: nearly one-third unsentenced with prisons overcrowded in half of all countries", Data Matters Series, No.1 (Vienna, 2021).

<sup>14</sup> World Health Organization, *Violence against Women Prevalence Estimates, 2018: Global, Regional and National Prevalence Estimates for Intimate Partner Violence against Women and Global and Regional Prevalence Estimates for Non-Partner Sexual Violence against Women* (Geneva, 2021).

<sup>15</sup> UNODC and United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), "Gender-related killings of women and girls (femicide/feminicide): global estimates of gender-related killings of women and girls in the private sphere in 2021 – improving data to improve responses" (2022).

<sup>16</sup> UNODC, *The Impact of COVID-19 on Criminal Justice System Responses to Gender-based Violence against Women: A Global Review of Emerging Evidence* (2021).

<sup>17</sup> Jennifer Davidson and others, "Justice for children, justice for all: the challenge to achieve SDG16+ – call to action (Glasgow, United Kingdom of Great Britain and Northern Ireland,



dependent on the care of adults, are often unheard and may additionally face different types of systemic inequality, bias and discrimination.<sup>18</sup>

29. They therefore require child-sensitive justice systems that are specialized, meet their needs and ensure access to justice when their rights are violated.<sup>19</sup> To ensure that no child is left behind, it is crucial to address inequality and foster intergenerational partnerships that include children facing the greatest adversities, thereby building trusting and stronger communities and improving policies and responses to violence and crime.

30. Justice systems serve children better when they focus not only on resolution but on prevention and protection, thereby delivering positive outcomes for communities and societies, such as lower involvement in crime and lower risks of violence and rights violations. Ensuring safe and secure societies, now and into the future, hinges on responding effectively and robustly to the distinct needs and rights of children and including them in the search for solutions to the challenges their communities may face.

31. Young adults often represent a large proportion of people in contact with the law, with young men, for instance, constituting a large proportion of homicide victims and offenders. Increasing evidence of the need to address the developmental needs of young adults has led a number of countries to extend the scope of child justice systems to young persons over the age of 18.

32. Between 2019 and 2030, the number of persons aged 60 years or over is projected to grow by 38 per cent, from roughly 1 billion to 1.4 billion worldwide, thus surpassing the number of young people. The scale and pace of that increase will be greatest in the developing world.<sup>20</sup> Increased attention is being focused on addressing the needs of older persons regarding access to justice, including when they are confronted with elder abuse or belong to an ageing prison population. Several regional human rights mechanisms have acknowledged the specific justice needs of older persons, in particular following the adoption of the Inter-American Convention on Protecting the Human Rights of Older Persons.

## **E. Racial equity and equality in the criminal justice system**

33. Racial discrimination is specifically prohibited under international human rights law, including the International Convention on the Elimination of All Forms of Racial Discrimination. In 2001, Member States adopted the Durban Declaration and Programme of Action, stating that “victims of human rights violations resulting from racism, racial discrimination, xenophobia and related intolerance, especially in the light of their vulnerable situation socially, culturally and economically, should be assured of having access to justice, including legal assistance where appropriate, and effective and appropriate protection and remedies”.<sup>21</sup> The Committee on the Elimination of Racial Discrimination has devoted specific recommendations to the prevention of racial discrimination in the administration and functioning of the criminal justice system<sup>22</sup> and to the prevention of racial profiling by law enforcement officials.<sup>23</sup>

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CELCIS (Centre for Excellence for Looked After Children) Inspiring Children’s Futures, University of Strathclyde, 2019).

<sup>18</sup> [A/HRC/25/35](#), paras. 16–17.

<sup>19</sup> Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex).

<sup>20</sup> *World Population Prospects 2019* (United Nations publication, 2019).

<sup>21</sup> See [A/CONF.189/12](#) and [A/CONF.189/12/Corr.1](#), chap. I.

<sup>22</sup> General recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

<sup>23</sup> General recommendation No. 36 (2020) on preventing and combating racial profiling by law enforcement officials.



34. Challenges to achieving racial equality and equity in access to justice include biased laws, policies and practices that disproportionately affect individuals from marginalized communities, including through racially motivated wrongful allegations, charges, convictions and incarceration.<sup>24</sup> Ensuring racial equality and equity through the equal application of the law to all builds trust in the justice system, promotes social cohesion and creates conditions for a more stable and peaceful society.

35. The Human Rights Council, in its resolution 47/21, established the International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement. The 2023 report of the Mechanism will focus on the theme “Reimagining policing” and in particular on addressing systemic racism, in law enforcement and the criminal justice systems, closing trust deficits, strengthening institutional oversight, adopting alternative and complementary methods to policing and the use of force, and encouraging stocktaking of lessons learned.<sup>25</sup> In the same resolution, the Council requested the Mechanism to aim at “coordinating its work and further strengthening its participation, engagement and cooperation, as appropriate, with all relevant United Nations mechanisms, bodies and processes, including the United Nations Office on Drugs and Crime and the United Nations Congress on Crime Prevention and Criminal Justice”.<sup>26</sup>

## **F. Access to justice for people with disabilities**

36. The Convention on the Rights of Persons with Disabilities defines persons with disabilities as those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others. Such barriers in terms of access to justice include restrictions on the exercise of legal capacity; lack of physical access to justice facilities, such as courts and police stations; lack of accessible transportation to and from those facilities; obstacles in accessing legal assistance and representation; lack of information in accessible formats; paternalistic or negative attitudes questioning the abilities of persons with disabilities to participate during all phases of the administration of justice; and lack of training for professionals working in the field of justice. Even fundamental rights, such as the right to remain silent and the presumption of innocence, may be denied directly in law or policy or indirectly in custom and practice.

37. As noted in the International Principles and Guidelines on Access to Justice for Persons with Disabilities, developed by the Special Rapporteur on the rights of persons with disabilities,<sup>27</sup> the Convention on the Rights of Persons with Disabilities “rejects historically entrenched understandings of disability that deprive persons with disabilities of any means to exercise their will and preferences, which in many countries have effectively resulted in their being denied access to justice and procedural safeguards on an equal basis with others”. Indeed, article 13 of the Convention provides a road map for enhancing access to justice for persons with disabilities, as it requires States parties to “ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages”, and to that effect to “promote appropriate training for those working in the field of administration of justice, including police and prison staff”.

<sup>24</sup> Manuel Ramos Maqueda and Daniel L. Chen, “The role of justice in development: the data revolution”, Policy Research Working Paper, No. 9720 (Washington, D.C., World Bank, 2021).

<sup>25</sup> Forthcoming.

<sup>26</sup> Human Rights Council resolution 47/21, para. 11 (i).

<sup>27</sup> Available at [www.ohchr.org/en/special-procedures/sr-disability/international-principles-and-guidelines-access-justice-persons-disabilities](http://www.ohchr.org/en/special-procedures/sr-disability/international-principles-and-guidelines-access-justice-persons-disabilities).

## **IV. Ensuring that the criminal justice system is victim-centred**

### **A. The need for comprehensive national victim support, assistance and protection systems**

38. The support and protection offered to victims by the criminal justice system provide a reliable measure for the commitment to secure justice for all. According to the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, victims should be treated with compassion and respect for their dignity and should be provided with the necessary support and assistance to enable them to participate in the criminal justice process. The Kyoto Declaration further includes the commitment to “protect the rights and interests of victims of crime and make efforts to assist them at every stage of criminal justice proceedings, giving due attention to the special needs and circumstances of victims, including age, gender-specific and other needs, and disabilities, as well as to the harms caused by crime, including trauma, and endeavour to provide victims with the means that may assist in their recovery, including the possibility to obtain compensation and reparation”, and to “provide adequate resources and training to practitioners to strengthen their capacity to provide victim-centred assistance and support that take into account the specific needs of victims”.

39. However, in many contexts, victim support and assistance services remain limited, fragmented and underfunded, leaving victims without the support that they need in order to recover from trauma, access justice and rebuild their lives. To address these gaps in current systems, there is a need to establish comprehensive national victim support, assistance and protection systems with sustainable funding. Effective victim support services include a comprehensive range of interventions, such as psychosocial support, counselling, legal assistance, medical care, financial support, and safe accommodation, accessible free of charge to all victims, regardless of their background. Such systems also prioritize the needs and rights of victims, treating them with dignity, respect and empathy, ensuring their inclusion in decision-making processes and their access to information about their rights and the services available to them, and providing ongoing support and assistance throughout the criminal justice process. Civil society organizations and victims’ organizations can play an important role by providing valuable insights and expertise on the needs and experiences of victims and ensuring that systems are responsive to their diverse needs.

### **B. Access to justice for victims of terrorism**

40. The importance of access to justice for victims of terrorism has repeatedly been stressed in General Assembly resolutions. In its resolution [73/305](#), for example, the Assembly called upon States to “respect the dignity and legal rights of victims of terrorism, as provided for in domestic law, in criminal litigation and in gaining access to justice”.<sup>28</sup>

41. Like all victims, victims of terrorism should be given the possibility to effectively participate in judicial proceedings that allow their views and concerns to be presented and considered. Participation can take place in a variety of ways and may depend on the legal traditions and the criminal justice system of the country in question. The participation of victims may better enable criminal proceedings to take into account the different types of harm to individual victims and their different needs, expectations and priorities. In addition, such participation may provide victims with a sense of recognition and underline the human costs of terrorism.

42. In terrorism trials, special attention should be given to participation, as there is a risk that, in practice, it may be narrower than in ordinary cases, inter alia because of the security dimensions of the trial or the potentially large number of victims and

<sup>28</sup> General Assembly resolution [73/305](#), para. 13.

witnesses. Challenges can also arise for cross-border victims through, for instance, linguistic or cultural barriers or differences in legal traditions. Furthermore, it is important that prosecution efforts aim to expose the scale and gravity of the crimes committed by members of terrorist groups in order to establish individual accountability.<sup>29</sup>

### C. Access to justice for people victimized while on the move

43. Lacking sufficient safe, orderly and regular avenues for migration, people on the move often expose themselves to circumstances that endanger their physical and mental integrity, including violence and abuse, in their search for safety and opportunity. They may become victims of crime perpetrated by smugglers and human traffickers, for example.<sup>30</sup> Although any person on the move who is a victim of a crime has the right to access justice without discrimination of any kind or on any grounds, such as their immigration status,<sup>31</sup> they are often prevented or discouraged from reporting abuses, seeking justice and remedies and receiving the required protection and assistance. This can be attributed to several factors. Many people on the move with irregular migratory status are, upon first contact with the authorities, immediately processed under immigration frameworks. In addition, migrant smuggling-related offences are considered crimes against the State in most jurisdictions and are often applied against migrants, as criminal justice practitioners may refer to the consent of the persons to being smuggled while ignoring that they might have become victims of severe abuse and violence perpetrated by smugglers. Rather than being considered victims, they are criminalized because of their irregular migratory status. As a result, for fear of detention or deportation, they refrain from reporting crimes.

44. Even when people on the move are not criminalized for their irregular presence or entry, other conduct may be criminalized and discourage them from reporting abuse, especially if they are victims of trafficking for sexual exploitation. For example, that can occur when abortion, same-sex intercourse or prostitution are criminalized, regardless of whether the acts are consensual or coerced. Fear of corruption and a lack of trust in the authorities are additional barriers for refugees and migrants to access justice.<sup>32</sup> Addressing obstacles to access to justice for people on the move, whether internally displaced persons, refugees, migrants or trafficking victims, is an urgent requirement for fair criminal justice systems.

45. Article 6 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, requires States to ensure that victims have access to justice and redress. It also contains provisions on assistance and protection. Member States firmly reiterated those commitments in the 2021 Political Declaration on the Implementation of the United Nations Global Plan of Action to Combat Trafficking in Persons.<sup>33</sup> However, when proceedings are not trauma-informed, gender-responsive and child-sensitive, victims of trafficking may be forced into situations that could result in retraumatization or further victimization. This may be the case when a victim is questioned repeatedly, the investigation phase is prolonged excessively and the prosecutors rely too heavily on victims' testimonies. Without the

<sup>29</sup> For UNODC guidance on this issue, see *Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework*, the revised edition of *The Criminal Justice Response to Support Victims of Acts of Terrorism*, and the *Model Legislative Provisions to Support the Needs and Protect the Rights of Victims of Terrorism*, published in 2022 by UNODC, the Inter-Parliamentary Union and the Office of Counter-Terrorism.

<sup>30</sup> Inter-Agency Coordination Group against Trafficking in Persons, "Contribution to the Progress Declaration by the Inter-Agency Coordination Group against Trafficking in Persons" (2022).

<sup>31</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex).

<sup>32</sup> UNODC, *Abused and Neglected: A Gender Perspective on Aggravated Migrant Smuggling Offences and Response* (Vienna, 2021), p. 7.

<sup>33</sup> General Assembly resolution 76/7, annex.

involvement of support mechanisms, such as specialized non-governmental organizations or trained legal aid providers, the potential harmful consequences for victims are often multiplied and may also impact the quality of victims' testimonies and their access to redress. Lastly, access to support should never be made conditional upon initiating criminal proceedings or cooperating with authorities, as tying support to cooperation with authorities may have a detrimental effect on victims.<sup>34</sup>

## **V. Enhancing the preventive role of the criminal justice system**

### **A. Safe and secure societies as the guiding objective of criminal justice interventions**

46. Identifying forms of conduct that need to be defined as criminal acts is an important step in ensuring safe and secure societies. Not all socially undesirable conduct, however, needs to be classified as a crime, and other responses may be more efficient than the criminal justice response. For instance, various countries have decriminalized status offences such as vagrancy (which are often part of a colonial legacy) in whole or in part, significantly reducing rates of imprisonment. Even less widely known offences, such as the illicit production of liquor in some countries, may produce a disproportionate number of prisoners and may be better dealt with through administrative or civil law. Decriminalizing behaviours that do not produce a negative impact on public safety makes it possible to redirect resources towards the prevention of and responses to serious crime through criminal justice systems.

47. As provided in rule 6.1 of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), the use of pretrial detention, in particular for prolonged periods, has the potential to generate or reinforce risks of offending or reoffending and is to be used as a means of last resort in criminal proceedings. Decisions to commit suspected offenders to pretrial detention should be strictly limited to situations in which it is found necessary to address the risk that individual offenders may abscond, commit further criminal offences or interfere with the course of justice.<sup>35</sup> Those well-established principles notwithstanding, the number of pretrial detainees among the prison population has risen by 30 per cent since 2000, to more than 3 million people. Pretrial detainees outnumber convicted prisoners in 45 Member States; in 14 of those States, pretrial detainees represent more than 70 per cent of the prison population.<sup>36</sup> In some Member States, such detainees remain in detention for a period longer than the sentence that would typically apply to those found guilty of the alleged offence. Others are subject to prolonged detention in police holding cells that are not designed, and should not be used, for that purpose.

48. Notwithstanding the acknowledgement that, as part of individualized, balanced and proportionate criminal justice policies, well-managed prison systems constitute an important aspect of the justice chain, the deprivation of liberty in response to a criminal charge should constitute a measure of last resort,<sup>37</sup> taking into account the nature and gravity of the offence, the risk the offender poses to the public and the offender's social reintegration needs.

<sup>34</sup> Article 6 of the Trafficking in Persons Protocol and article 25 of the United Nations Convention against Transnational Organized Crime. See also UNODC, *Legislative Guide for the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children* (Vienna, 2020), p. 60.

<sup>35</sup> UNODC, *Incorporating the Nelson Mandela Rules into National Prison Legislation: A Model Prison Act and Related Commentary*, Criminal Justice Handbook Series (Vienna, 2022).

<sup>36</sup> See the United Nations Surveys on Crime Trends and the Operations of Criminal Justice Systems, complemented by data from the "World pretrial/remand imprisonment list", compiled by the Word Prison Brief; see also Catherine Heard and Helen Fair, *Pre-Trial Detention and Its Over-Use: Evidence from Ten Countries* (London, Institute for Crime and Justice Policy Research, Birkbeck, University of London, 2019).

<sup>37</sup> International Covenant on Civil and Political Rights, art. 9, para. 3, and art. 14, para. 2.

49. Criminal justice systems should consider the rehabilitation of offenders and the prevention of their reoffending as central objectives of sentencing decisions, including decisions to use imprisonment. In sentencing policies and practices, mandatory sentences that limit the judiciary's capacity to tailor sentences to individual circumstances should be avoided, as should the use of short-term prison sentences that have serious financial and social costs to the offender, with little opportunity for rehabilitative interventions.

50. Sentencing policies and guidelines need to be governed by the principle of proportionality and promote the use of non-custodial measures, including those tailored to meet the specific requirements of women,<sup>38</sup> and the use of community-based sentencing options. Even in the context of promoting non-custodial measures, it is important to avoid mass supervision and "net-widening", whereby the number of persons monitored by the criminal justice system increases. Indeed, the overuse of unnecessary supervision for low-risk offenders, or the use of non-custodial measures without appropriate community-based treatment, may be ineffective and even counterproductive in preventing crime and recidivism.<sup>39</sup>

## **B. The role of community-oriented policing in preventing crime**

51. Among the various criminal justice actors, the police have a key role to play in working with the public to prevent and control crime, promoting community cohesion and contributing to equal access to justice. Particularly important and effective are policing approaches that encourage consultative and collaborative arrangements between the police and citizens. In the context of the highly complex and multidimensional problem of crime, community-oriented policing should be embedded in a comprehensive, coherent and human rights-compliant strategy to reduce crime in all its forms and address the conditions that are conducive to it.

52. Proactive policing strategies, including problem-oriented and community-oriented policing, are aimed at preventing crime and working with the community to reduce crime and violence. Community-oriented policing can be described as a strategy for encouraging the public to act as partners with the police in preventing and managing crime as well as other aspects of security and order based on the needs of the community.<sup>40</sup> Although there is no unified approach to this type of policing and countries implement it in different ways, one common feature is that it actively engages citizens in police efforts to define, control and prevent crime and related problems.

53. Research shows that problem-oriented policing has a modest but statistically significant impact on reducing crime and disorder. Existing studies point to a strong correlation between this type of policing on the one hand and the legitimacy of the police and the law-abiding behaviour of the population on the other. While several countries have successfully implemented problem-oriented policing during the past decade, a large number continue to face challenges in transitioning from a law enforcement force model to a police service approach in which community-oriented policing is operationalized as part of a broader approach to human rights-based and gender-sensitive policing.<sup>41</sup>

<sup>38</sup> The Bangkok Rules, rule 57.

<sup>39</sup> See, for instance, UNODC, *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment*, Criminal Justice Handbook Series (United Nations publication, 2007) and UNODC, *Handbook on Strategies to Reduce Overcrowding in Prisons*, Criminal Justice Handbook Series (Vienna, 2013).

<sup>40</sup> United Nations Peace Operations, "Manual on community-oriented policing in United Nations Peace Operations" (New York, 2018).

<sup>41</sup> See, for instance, National Academies of Sciences, Engineering, and Medicine, *Evidence to Advance Reform in the Global Security and Justice Sectors: Compilation of Reports* (Washington, D.C., National Academies Press, 2022) and National Academies of Sciences, Engineering, and Medicine, *Developing Policing Practices that Build Legitimacy* (Washington, D.C., National Academies Press, 2022).

### C. Achieving public safety and security through the rehabilitation and reintegration of offenders

54. A shift of criminal justice responses from imposing punishment and isolation to greater investments in the social reintegration of offenders, including into the community, provides significant benefits for public safety, social cohesion and human rights, while at the same time countering the global challenges of overincarceration, prison overcrowding and reoffending. That notion dovetails neatly with the call made in the Kyoto Declaration to ensure rehabilitative environments in both the community and in correctional facilities.<sup>42</sup>

55. Obstacles to fully exploiting the potential of non-custodial measures in line with applicable United Nations standards and norms<sup>43</sup> include legislative deficits but are more often related to a reluctance to apply non-custodial measures, including as a result of a lack of confidence in their effectiveness, a perceived lack of public support, or insufficient health care, housing and social welfare services. Those challenges are often compounded by the absence or inadequacy of entities required to implement alternatives to incarceration, such as probation services, and by populist rhetoric.

56. For persons subject to pretrial detention or imprisonment, the prison system's overall management practices, organizational culture and material prison conditions not only constitute an integral part of the obligation under international law to treat persons deprived of liberty with respect for their inherent dignity,<sup>44</sup> but also contribute to determining the prospects for a decent, safe and gender-responsive environment conducive to their individualized treatment and rehabilitation.

57. The actual prison realities in many Member States stand in stark contrast to the international standards and the envisaged environment above. In addition to poor prison conditions and the risk of systemic neglect and abuse, prison overcrowding continues to affect a solid majority of countries worldwide and stands out as the greatest contributor to violations of international minimum standards in prisons. The Kyoto Declaration highlights the need to improve prison conditions by fostering the practical application of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the Bangkok Rules and to take measures aimed at addressing overcrowding in detention facilities.<sup>45</sup>

## VI. Questions for consideration

58. Member States may wish to address the following questions:

(a) How can programmes, measures and approaches to enhancing the integrity, efficiency, transparency, inclusivity and accountability of the criminal justice system be more evidence-based, and how should their impact be measured?

(b) What new and emerging challenges to integrity, transparency and accountability have been observed in the police, prosecution authorities, the judiciary and the courts, and what approaches, programmes and measures have been successful in addressing those challenges?

(c) What measures to increase equal access to justice for all have proven effective, in particular to address the rights and needs of those facing barriers to access to justice?

(d) How can funding for legal aid systems become more sustainable, in order to ensure adequate quality and nationwide service delivery, including specialized services for specific groups? How can existing measures to enhance access to legal

<sup>42</sup> See, in particular, paras. 37–40.

<sup>43</sup> Including the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the Bangkok Rules.

<sup>44</sup> International Covenant on Civil and Political Rights, art. 9, para. 1.

<sup>45</sup> See, in particular, paras. 35 and 36.

aid be aligned and integrated with measures to counter discrimination in the criminal justice system and overcome structural barriers?

(e) How can criminal justice institutions cooperate and coordinate with health-care providers, social welfare systems, the private sector, civil society and other sectors to provide a more holistic approach to ensuring equal access to justice for all and more efficient responses to crime?

(f) How can the potential of technology be leveraged to increase equal access to justice for all and enhance the functioning of the criminal justice system, and what safeguards are necessary to ensure the protection and promotion of human dignity and human rights?

(g) What measures have been effective in increasing the representation and retention of women and groups that are currently underrepresented in the criminal justice system? How are criminal justice institutions addressing the lack of women professionals in senior and decision-making roles, the gender pay gap, sexual harassment in the workplace and other systemic barriers to the equal participation of women in the criminal justice workforce? How can criminal justice institutions be supported in order to ensure that they reflect racial diversity within societies and provide opportunities for marginalized groups to be recruited and retained?

(h) What measures have proven effective in making criminal justice systems more gender-responsive? What has been the impact of domestic homicide committees and other initiatives to analyse and prevent gender-related killing through coordinated, multisectoral responses to gender-based violence? How are criminal justice systems ensuring that institutions and processes are gender-responsive and are informed by the experience of and feedback from victims and survivors? What has been the impact of measures taken at the national level to reduce the imprisonment of women, implement gender-responsive prison management and enhance the social reintegration of women released from prison?

(i) What measures are being taken to address age inequalities within the criminal justice system? Are there cross-ministerial and cross-sectoral strategies and financially sustainable partnerships across government that are working to increase children's access to justice? Are there examples of intergenerational partnership with children, and how have such partnerships improved policymaking and contributed to building stronger, safer communities? What measures have been effective in responding to the needs of young adults in contact with the criminal justice system? What measures have yielded results in addressing the needs of older persons in contact with the system?

(j) How can criminal justice institutions address and respond to structural and systemic forms of racial discrimination within the criminal justice system, including excessive use of force by the police? How can criminal justice systems prevent the overrepresentation of minority and racialized groups in prison populations? Are there alternative measures that can be utilized, and can traditional and restorative justice systems play a stronger role in this area? Are there any successful examples of reforms focusing on the needs of racialized communities in terms of access to justice?

(k) Are there successful examples of programmes ensuring access to justice for persons with disabilities? How can the rights of persons with disabilities be mainstreamed across criminal justice reform efforts?

(l) Are there successful and innovative examples of trauma-informed and victim-centred approaches to criminal justice? How can victim support, assistance and protection be sustainably funded in times of financial crisis and other crises? How can multisectoral approaches and partnerships between the public sector and civil society actors successfully fulfil the needs of victims of crime and violence?

(m) Which specific actions and measures can States take to best ensure access to justice for people on the move, in particular victims and survivors of trafficking in persons, in their criminal justice systems? How can States ensure that victims of crime



who are irregularly in transit or destination countries can fully access justice and exercise their right to redress? What are the specific needs and challenges faced by victims of terrorism in obtaining access to justice, and how can those needs and challenges best be approached?

(n) Have there been any successful experiences with the decriminalization of certain offences related to poverty, status or “immoral” acts? Is there evidence of the impact of such reforms on crime rates, the criminal justice system and society in general? How has the introduction or implementation of alternatives to prosecution and to imprisonment had an impact on the criminal justice system and society at large?

(o) Is there evidence of a reduction of crime rates and an increase of trust between the police and the communities they serve as a result of the introduction of community-oriented policing approaches? What are the necessary elements for such an approach to be successful?

(p) Which approaches to the reintegration and rehabilitation of offenders have had positive effects on rates of reoffending and recidivism, and what elements are necessary for such approaches to be effective?

(q) How can UNODC better support and strengthen Member States in enhancing the functioning of their criminal justice systems to ensure access to justice and to realize a safe and secure society?

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