

2022

**CCPCJ THEMATIC DISCUSSIONS
ON THE IMPLEMENTATION OF THE
KYOTO DECLARATION**

CCPCJ



**BACKGROUND NOTE
PILLAR II: ADVANCING THE
CRIMINAL JUSTICE SYSTEM**

5-7 DECEMBER 2022



UNODC

United Nations Office on Drugs and Crime
Secretariat to the Governing Bodies

INTRODUCTION

On 7 March 2021, the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice adopted by consensus the *Kyoto Declaration on Advancing Crime Prevention, Criminal Justice and the Rule of Law: Towards the Achievement of the 2030 Agenda for Sustainable Development*. In the Kyoto Declaration, Member States expressed the endeavour to take actions to advance crime prevention (pillar I, para. 21-30), advance the criminal justice system (pillar II, para. 31-47), promote the rule of law (pillar III, para. 48-59) and promote international cooperation and technical assistance to prevent and address all forms of crime (pillar IV, para. 60-95). In para. 96, they called upon the Commission on Crime Prevention and Criminal Justice to adopt the appropriate policy and operational measures for the follow-up to the declaration and to identify innovative ways to make use of information on progress made in the implementation of the Declaration, and invited the Commission to engage with other relevant stakeholders, including the institutes of the United Nations crime prevention and criminal justice programme network, in order to strengthen global partnership in advancing crime prevention, criminal justice and the rule of law towards the achievement of the 2030 Agenda.

In its resolution A/RES/76/181 entitled “*Fourteenth United Nations Congress on Crime Prevention and Criminal Justice*”, which was prepared by the Commission, the General Assembly endorsed the Kyoto Declaration and requested, inter alia, in para. 11, that the Commission on Crime Prevention and Criminal Justice hold intersessional thematic discussions, working in close consultation with Member States on a workplan, to effectively follow up on the Kyoto Declaration through the sharing of information, good practices and lessons learned, subject to the availability of extrabudgetary resources.

On 23 July 2021, the Commission on Crime Prevention and Criminal Justice adopted by silence procedure a multi-year workplan for the mentioned thematic discussions. The workplan follows the four pillars of the Kyoto Declaration. The first thematic discussion was held on 10-12 November 2021 in a hybrid format and focused on pillar I of the Kyoto Declaration, “Advancing Crime Prevention”, thereby addressing the causes, including the root causes, of crime; evidence-based crime prevention; addressing the economic dimension of crime; tailor-made crime prevention strategies; mainstreaming a gender perspective into crime prevention; children and youth in crime prevention, and youth empowerment for crime prevention.¹

The second thematic discussion will be held on 5-7 December 2022 in a hybrid format. It will focus on pillar II “Advancing the criminal justice system”. According to the organizational arrangements for the thematic discussion circulated on 25 July 2022, the content of pillar II will be clustered in three meeting days:

Day 1: 5 December 2022

- Safeguarding victims’ rights and protecting witnesses and reporting persons
- Improving criminal investigation processes

Day 2: 6 December 2022

- Improving prison conditions
- Reducing reoffending through rehabilitation and reintegration

Day 3: 7 December 2022

- Mainstreaming a gender perspective into criminal justice systems
- Addressing the vulnerabilities of children and youth in contact with the criminal justice system

The Secretariat has prepared this background paper with a view to facilitating the dialogue during the Commission’s thematic discussions. The document reflects findings relating to Pillar II, “Advancing the criminal justice system”, as contained in relevant UNODC research publications and contributions provided by the UNODC substantive Branches and Sections, as well as some discussion questions (not a comprehensive list).

¹ Information on the first Thematic Discussions is available here:

https://www.unodc.org/unodc/en/commissions/CCPCJ/session/30_Session_2021/thematic-sessions-kyoto.html

5 DECEMBER 2022 – THEMATIC SESSION 1: SAFEGUARDING VICTIMS' RIGHTS AND PROTECTING WITNESSES AND REPORTING PERSONS; IMPROVING CRIMINAL INVESTIGATION PROCESSES

IN THE KYOTO DECLARATION, MEMBER STATES ENDEAVOURED TO TAKE THE FOLLOWING ACTIONS TO ADVANCE THE CRIMINAL JUSTICE SYSTEM:

Safeguarding victims' rights and protecting witnesses and reporting persons

31. 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;
32. Encourage victims to report crime by providing them with adequate support, including in criminal proceedings, such as effective access to translation services;
33. Take appropriate measures to provide effective protection for witnesses in criminal proceedings and for reporting persons;
34. 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;

Improving criminal investigation processes

47. Encourage the use and sharing of good practices on legally grounded, evidence-based interviewing methods designed to obtain only voluntary statements, thereby reducing the risk of unlawful, abusive and coercive measures being used during criminal investigation processes, and enable the obtaining of best evidence, thereby improving the legitimacy and quality of criminal investigations, prosecutions and convictions, and the efficient use of resources, as well as continue to welcome the collaboration between practitioners, experts and other relevant stakeholders on the elaboration of a set of international guidelines for non-coercive interviewing methods and procedural safeguards in this regard.

BACKGROUND

Data from around the world indicate that there is a large gap between the number of crimes committed and the number of cases referred to the criminal justice system. Crime reporting rates are typically lower where crime levels are higher, often in countries with higher levels of poverty and of income inequality.² The level of reporting varies also by type of crime, the level of harm it produces, and its perpetrators, with, for instance, higher reporting levels for homicide and very low reporting levels for sexual offenses. Reasons for victims not to report a crime include lack of trust in the criminal justice system; lack of - or limited access to - the police, prosecution or to victim-centered reporting systems; fear of retaliation; shame; a personal relationship between the victim and the offender; and crimes with a small impact where the victim feels that it is not worth the effort of reporting it to the authorities.³

Only a very small share of countries (less than 15%) produce and report data on crime reporting rates based on victimisation surveys. Based on these data, on average, 36% of victims of physical assault report the victimization to competent authorities while the figure for sexual assault is significantly lower at 19%. In some countries, the crime reporting rate is as low as 8% for physical assault and 3% for sexual

² E/CN.15/2016/10, Note by the Secretariat on world crime trends and emerging issues and responses in the field of crime prevention and criminal justice, 2016

³ UNODC University Module Series on Crime Prevention and Criminal Justice, Module 11 on Access to Justice for Victims, 2019

assault. Victimization surveys have since the 1980s facilitated a broader understanding of the magnitude and impact of crime, the share of victims that report their victimisation to the authorities, as well as individual experiences of crime and criminal justice responses by victims.

Available data from 41 countries⁴ reporting on the yearly number of persons convicted of a crime for the period 2017-2020, suggest a general slowing down of the criminal justice process during the first year of the Covid-19 pandemic. While the total number of convictions in these countries changed very little between 2017 and 2018 (by 0.2%), and between 2018 and 2019 (by 0.0%), convictions dropped significantly (by -10.5%) between 2019 and the end of 2020. This trend is observable across different world regions, although trend data on convictions remain limited outside of Europe.

Safeguarding Victims' Rights

A fair, effective, inclusive and efficient criminal justice system focuses on the need to prevent victimization, to protect and assist victims, to treat them with compassion, and to respect their dignity, in line with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.⁵ Victims should have access to judicial and other mechanisms to seek prompt redress for harm they have suffered. Additionally, victims should have access to specialized assistance in dealing with any injury, trauma and other consequences of their victimization, including specialised services for particular groups of victims or victims of particular types of crimes. Binding instruments such as the [Convention on the Rights of the Child](#) (CRC) or the [Convention on the Rights of Persons with Disabilities](#) and standards and norms such as the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime⁶ provide additional guidance to Member States.

While criminal justice systems have traditionally been centred around the treatment of the suspects or offenders, a victim-centred approach is recommended in several international standards. A victim-centred approach is essential to ensure the protection of victims' rights and the prevention of secondary and repeat victimization. It may also increase the likelihood that victims will be willing to cooperate and be effective witnesses within the judicial system, which will positively impact the quality and outcome of the investigation. A victim-centred approach considers the response system and how it is delivered. It prioritises the safety, wellbeing and wishes of victims (which might not necessarily correspond with the aims of the police or law enforcement) in determining what actions are taken, and how. It also ensures that risk assessment leads to the identification of a victim's specific needs. Evidence shows that it is more sustainable to strengthen national laws, policies, procedures and programmes for all victims, with a specialisation of services where necessary.

Protecting Witnesses

The ability to provide effective protection to witnesses is critically important to ensuring the successful investigation into and prosecution of organized criminal groups. States parties to the [Convention on Transnational Organized Crime \(UNTOC\)](#) and the [Convention against Corruption \(UNCAC\)](#) are obliged to take measures to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings and, as appropriate, for their relatives and other persons close to them, among them, procedures for the physical protection of such persons and evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness.

An analysis of the review of implementation of art. 32 of UNCAC in 156 countries showed that witness protection measures are available in the majority of countries, although no measures had been taken in a number of jurisdictions and a number of States parties did not have a comprehensive witness protection system but only limited and fragmented measures, mostly lacking procedures for the physical protection of witnesses, experts and their families. Among the challenges identified in the protection of witnesses were inadequate normative frameworks, the costs of witness protection programmes, limited awareness of state-of-the-art measures and practices for witness and expert protection, specificities of the national

⁴ UNODC, based on national data from 41 countries.

⁵ General Assembly resolution 40/34.

⁶ ECOSOC Resolution 2005/20.

legal systems (sometimes related to the small size or geographical isolation of the country), weak inter-agency coordination and limited capacities (e.g., in terms of human resources and technological and institutional infrastructure).⁷

While witness protection systems around the world were found to be very different, depending on the geographical area, legal system, size or level of social and economic development of the particular country, similarities were identified: (1) There was regularly a combination of witness protection, mitigated punishment, and testimony; (2) There was an almost exclusive focus on the small number of critical witnesses who agreed to cooperate with the prosecution if protective measures were provided to them and their close relations or associates; (3) Relocation and re-identification - based on almost the same criteria (type of crime, threat, suitability, voluntary participation) – were generally used as a last resort in ensuring witness security.⁸

Protecting Reporting Persons

In most international and regional instruments against corruption, the protection of persons who report acts of corruption is considered as one of the key elements to better detect, investigate, prosecute, and ultimately combat corruption. A robust reporting and protection system is considered as a cornerstone of the fight against corruption and contributes to institutional accountability in line with Sustainable Development Goal 16.

Article 33 of the United Nations Convention against Corruption requires States parties to “consider incorporating into [their] domestic legal systems appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with the Convention.”

However, the reluctance of individuals to report alleged wrongdoing or suspected acts of corruption continues to be identified by States parties as one of the main challenges in the implementation of the Convention. In the context of the UNCAC Implementation Review Mechanism, approximately 70 per cent of the reviewed States parties received recommendations to strengthen their reporting and protection mechanisms. Half of these States parties also identified technical assistance needs to enhance their national legal and policy systems.

To address these challenges, many States adopted or strengthened whistle-blower reporting and protection policies and laws, mostly comprising procedural protective measures (for example, the protection of the identity of the reporting person), explicit protection against court action related to the disclosure (for example, for defamation), and measures to protect reporting persons from discriminatory treatment or disciplinary sanctions.⁹ Over the years, and with the adoption of more laws and international instruments, the notion of reporting persons has been gradually refined and the notion of “whistle-blowers” has become predominant on the international scene. The latest instruments adopted in this area, such as the European directive¹⁰ and the G20 high level principles¹¹, are an example of such an evolution. To date a whistle-blower can be referred to as a person who becomes aware of possible wrongdoings in his/her workplace, and who, by deciding to report them, may risk facing retaliation in his/her professional life.

However, the concept is not always understood in the same way by all countries and stakeholders. This lack of harmony in the definitions adopted can lead to an increase in the risk and vulnerability of persons, as they may mistakenly believe that they can benefit from whistle-blower protection when this may not be the case. It may also be difficult at times to distinguish between a whistle-blower and other categories of reporting persons.

⁷ UNODC, State of Implementation of the United Nations Convention against Corruption: Criminalization, law enforcement and international cooperation, Second edition (2017), p.142-152.

⁸ UNODC, Good practices for the protection of witnesses in criminal proceedings involving organized crime (2008), p.93-94.

⁹ UNODC, State of Implementation of the United Nations Convention against Corruption: Criminalization, law enforcement and international cooperation, Second edition (2017), p.153-154,

¹⁰ [Directive \(EU\) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.](#)

¹¹ [G20 High-Level Principles for the Effective Protection of Whistleblowers.](#)

Improving Criminal Investigation Processes

Since the 1980s, law enforcement officers and academics have worked together to develop an evidence base for policing policy and for practice that complies with core human rights provisions on the prohibition of torture and the right to a fair trial. These efforts have recognized the importance of using non-coercive methods of investigation, in particular during the interview stage. Investigative interviewing provides practical guidance on how to perform interviews with victims, witnesses and suspects with a view to advancing the investigation by gathering accurate and reliable information and evidence that can stand in court. Evidence shows that this approach can be used in investigating all categories of crime. Investigative interviewing connects professionalism with ethics, and improves transparency, accountability and citizens' trust in law enforcement. Investigative interviewing techniques assist law enforcement officials to promote the rule of law by meeting core legal thresholds. Enhancing core competencies in the field of investigative interviewing is a key means of promoting human rights-based and gender-sensitive policing.

As a follow-up to the recommendation of the then Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, in his last report in 2016, to develop guidelines to replace coercive interrogation by rapport-based interviewing and implementation of safeguards, a group of international experts developed the Principles on Effective Interviewing for Investigations and Information Gathering (Mendez Principles),¹² which aim to transform the relationship between States and their citizens.

In line with the commitments contained in the Kyoto Declaration, UNODC, with the support of Germany and Norway and in partnership with the Norwegian Centre for Human Rights, has developed a set of practical and free of charge eLearning Modules¹³ on Investigative Interviewing based on the available evidence base. The modules, piloted in Nigeria and Pakistan, are being translated into Arabic, French, German, Spanish and Russian, and additional mini-modules are under development.

DISCUSSION QUESTIONS

- Is there evidence on the successful implementation of reforms towards a more victim-centred criminal justice system?
- What experience do countries have in implementing specialised versus generic victim support programmes, laws and policies?
- How can UNODC and other technical assistance providers better support Member States in the area of victim support, protection and assistance?
- Which challenges have countries encountered when establishing and further developing their witness protection systems, including during the transition to the post-COVID era?
- Are there cost-effective and pragmatic measures that countries can adopt in the absence of full-fledged witness protection systems?
- Do countries have at their disposal data on the frequency and types of unjustified treatment against reporting persons? Which protection measures have proven particularly effective in encouraging the reporting of alleged corruption offences?
- What would be required for Member States to improve criminal investigations and in particular interviewing of suspects, victims and witnesses, in order to both ensure effective prosecutions and better protect, respect and fulfil human rights obligations?
- Can you share experiences with regards to the design or implementation of investigative interviewing techniques in your country?

¹² Principles on Effective Interviewing for Investigations and Information Gathering (Mendez principles), <https://www.apt.ch/en/mendez-principles-effective-interviewing>

¹³ UNODC eLearning Modules on Investigative Interviewing, 2022

6 DECEMBER 2022 – THEMATIC SESSION 2: IMPROVING PRISON CONDITIONS; REDUCING REOFFENDING THROUGH REHABILITATION AND REINTEGRATION

IN THE KYOTO DECLARATION, MEMBER STATES ENDEAVOURED TO TAKE THE FOLLOWING ACTIONS TO ADVANCE THE CRIMINAL JUSTICE SYSTEM:

Improving prison conditions

35. Improve the detention conditions for both pretrial and post-trial detainees and the capacities of prison, correction and other relevant officers in this regard, including by promoting the practical application of relevant provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)¹⁴, as well as the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)¹⁵;

36. Take measures to address overcrowding in detention facilities and to improve the overall effectiveness and capacity of the criminal justice system, including by considering the use of alternatives to pretrial detention and custodial sentences, giving due consideration to the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)¹⁶;

Reducing reoffending through rehabilitation and reintegration

37. Promote a rehabilitative environment in correctional facilities, including through designing and implementing effective treatment programmes based on an individual assessment of the needs and risks of offenders, and provide offenders with access to vocational and technical training and educational programmes to support them to develop the necessary skills for reintegration;

38. Promote a rehabilitative environment in the community to facilitate the social reintegration of offenders with the active involvement of local communities, giving due regard to the need to protect society and individuals and the rights of victims and offenders;

39. Promote multi-stakeholder partnerships to reduce reoffending by fostering interagency coordination among relevant government authorities, such as employment and social welfare agencies and local governments, as well as public-private partnerships between those authorities and the community, including cooperating employers and community volunteers who support the long-term and social reintegration of offenders;

40. Raise awareness of the importance of the public acceptance of offenders as members of the community and the significance of community engagement in assisting their long-term and social reintegration;

41. Promote, where appropriate, cooperation on the transfer of sentenced persons to serve the rest of their sentences in their own countries, conclude bilateral or multilateral agreements or arrangements in this regard as necessary, taking into consideration the rights of sentenced persons and issues relating to consent, rehabilitation and reintegration, as appropriate, and raise awareness among these prisoners about the availability of such measures;

42. Facilitate, where appropriate and in accordance with domestic legal frameworks, restorative justice processes at relevant stages in criminal proceedings in order to assist the recovery of victims and the reintegration of offenders, as well as to prevent crime and recidivism, and assess their usefulness in this regard;

¹⁴ General Assembly resolution [70/175](#).

¹⁵ General Assembly resolution [65/229](#).

¹⁶ General Assembly resolution [45/110](#).

BACKGROUND

For the first time in the past two decades, the global prison population declined - by around 4.7% from just under 11.8 million to 11.2 million between 2019 and the end of 2020¹⁷. This reduction can be attributed to various reasons, including emergency releases of prisoners due to Covid-19, reduced admissions of new detainees due to court delays or as a Covid-19 measure, as well as reduced crime and law enforcement activities during the lockdown period.

The share of prisoners who have not been sentenced is used as an indicator to monitor the target on access to justice under the United Nations Sustainable Development Goals. The unsentenced share of the global prison population has remained stable at 30% over the past two decades and was unaffected by the 2020 drop in prisoner numbers, suggesting very limited global progress in improving access to justice within a reasonably short period of time.

Delays in the justice process and prison overcrowding are closely related.¹⁸ In roughly half of all countries with available data between 2014 and 2019, the prison systems were operating at more than 100% of intended capacity. In one out of five countries with available data, prisoners outnumbered the prison capacity by more than 150%.

Improving Prison Conditions

Prison conditions constitute an integral part of the obligation under international law to treat persons deprived of liberty with humanity and respect for their inherent dignity¹⁹. As imprisonment is punishment in itself, the prison system must not aggravate the suffering inherent in such a situation²⁰. Instead, the State assumes a “duty of care” for prisoners, as they depend on the prison administration for fulfilling even their most basic needs, such as food and drinking water, clothing and bedding, personal hygiene and suitable accommodation.

As opposed to being limited to material aspects, prison conditions are intrinsically linked to a prison system’s management practices and organizational culture, all of which co-determine the prospects for a decent, safe, and gender-responsive prison environment that is conducive to individualized treatment and rehabilitation.

While the Nelson Mandela Rules²¹ and the Bangkok Rules²² establish clear benchmarks on prison conditions and the treatment of prisoners, many prison systems remain in a state of neglect and suffer from severe resource constraints that undermine the practical application of these universally recognized standards. These deficiencies also extend to prison officers when their selection, training and recognition does not give justice to their complex and demanding task.

Prison overcrowding has been consistently identified as the greatest contributor to violations of international minimum prison standards but continues to affect a majority of States worldwide. As most recently exemplified during the COVID-19 pandemic, overcrowded prisons not only gravely undermine prison conditions, including health, but also generate conflicts, fuel violence and pose immense security and management challenges.

In order to address prison overcrowding, holistic and evidence-based strategies are needed to reduce the scope of imprisonment; improve the efficiency and fairness of criminal justice systems, including prisoners’ access to legal aid; enhance the use of non-custodial measures; and foster the social reintegration prospects of offenders. Particular attention should be paid to pre-trial detention, which constitutes a main contributor to prison overcrowding in many countries.

¹⁷ UNODC, 2022 [Data Matters 4, Monitoring SDG 16 – A gender perspective, p.19](#).

¹⁸ At the country-level (using the latest available year), there is a positive and statistically significant correlation between the occupancy rate and the share of prisoners who are unsentenced. See https://www.unodc.org/documents/data-and-analysis/statistics/DataMatters1_prison.pdf

¹⁹ International Covenant on Civil and Political Rights, General Assembly resolution 2200A (XXI), Art. 10 (1).

²⁰ The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), General Assembly resolution 70/175, annex, Rule 3.

²¹ United Nations Standard Minimum Rules for the Treatment of Prisoners, General Assembly resolution 70/175, annex, adopted on 17 December 2015.

²² United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, General Assembly resolution 65/229, adopted in March 2011.

While the unprecedented wave of emergency releases of prisoners during the COVID-19 pandemic has showcased the potential for reducing prison populations, systemic reform efforts beyond these ad hoc initiatives, which would firmly institutionalize a resort to non-custodial sentences in line with the Tokyo Rules²³, are still lagging behind in many countries.

Reducing Reoffending through rehabilitation and reintegration

Reducing reoffending is one of the main goals of criminal justice interventions. It leads to fewer victims, greater community safety as well as less pressure on and lower costs for the criminal justice system. Promoting rehabilitation and reintegration of offenders can reduce reoffending by addressing the root causes of criminal behaviour and the individual risk factors of offenders. Ensuring effective rehabilitation and social reintegration of offenders as productive and law-abiding citizens is an essential measure in achieving Goal 16 of the 2030 Agenda.

The relevant United Nations standards and norms in crime prevention and criminal justice to rehabilitation and reintegration, in particular the Nelson Mandela Rules, the Tokyo Rules and the Bangkok Rules, all reaffirm the importance of reducing reoffending and various measures as a means to prevent recidivism and protect society.

Efforts to reduce reoffending require a multifaceted approach. Such measures include:

- Proportionate and individualized decisions and interventions based on assessments of offenders' risks and criminogenic needs, capacities and dispositions; adopting a gender-responsive approach;
- Fair sentencing policies; rational use of non-custodial measures and restorative justice programmes in appropriate cases; provision of evidence-based rehabilitation and social reintegration programmes both in prisons and in the community;
- Promoting and fostering of humane and constructive relationships between prison and probation/parole staff and offenders;
- Ensuring continuity of care and support from custody to the community; striking a balance between surveillance and support during community supervision;
- Recruitment of qualified staff and multidisciplinary training for all criminal justice practitioners; and
- Regular and consistent data collection, research and evaluation of strategies and programmes to reduce reoffending.

Efforts to reduce reoffending cannot be achieved by criminal justice authorities alone. To address the multiple and complex needs of offenders, an integrated and comprehensive approach in partnership with all relevant agencies and individuals within and outside the criminal justice system is required. Support from the community is also indispensable in the process of offender rehabilitation. Raising the public's awareness, understanding and acceptance of social reintegration of offenders is critical to its success. The valuable role of community volunteers should also be recognized, as they can have a powerful impact on individual offender rehabilitation as well as rebuilding connection between offenders and the community, promoting public understanding and contributing to resilient communities.

DISCUSSION QUESTIONS

- What are persisting priority gaps as related to prison conditions and human resource capacities in prison systems, and how have Member States addressed these?
- Which trends are likely to have a future impact on prison conditions and their compliance with international minimum standards? How can UNODC assist in this regard?
- How have Member States generated political and public buy-in for prison reform and the use of non-custodial measures? Were these reinforced as a result of COVID-19? How can the experience gained in a post-COVID time?
- Which concrete measures did Member States initiate to reduce prison overcrowding, including those involving close coordination among relevant criminal justice stakeholders?

²³ United Nations Standard Minimum Rules for Non-custodial Measures, General Assembly resolution 45/110, annex, adopted in December 1990.

- How are Member States working towards a more effective use of non-custodial measures and/or restorative justice approaches with a view to reducing reoffending?
- What are some of the measures taken by Member States to foster a more rehabilitative environment in custodial settings? What are some of the key challenges or obstacles? How can these challenges and obstacles be overcome?
- What are some of the characteristics or qualities of successful community-based rehabilitation and social reintegration programmes?
- How is recidivism defined and how are recidivism statistics collected and analysed in different jurisdictions? What are some of the main challenges in data collection?

7 DECEMBER 2022 – THEMATIC SESSION 3: MAINSTREAMING A GENDER PERSPECTIVE INTO CRIMINAL JUSTICE SYSTEMS; ADDRESSING THE VULNERABILITIES OF CHILDREN AND YOUTH IN CONTACT WITH THE CRIMINAL JUSTICE SYSTEM

IN THE KYOTO DECLARATION, MEMBER STATES ENDEAVOURED TO TAKE THE FOLLOWING ACTIONS TO ADVANCE THE CRIMINAL JUSTICE SYSTEM:

Mainstreaming a gender perspective into criminal justice systems

43. Develop and implement appropriate and effective policies and plans to achieve gender equality and remove impediments to the advancement of women and women's empowerment in law enforcement and other criminal justice institutions at all levels, and in this regard pledge to take further concrete action to ensure the full, effective and accelerated implementation of the Beijing Declaration and Platform for Action²⁴ and of the outcome documents as adopted at the twenty-third special session of the General Assembly²⁵;

44. Mainstream a gender perspective into the criminal justice system by promoting gender-responsive measures that address the gender-specific needs of both offenders and victims, including the protection of women and girls from revictimization in criminal justice proceedings;

Addressing the vulnerabilities of children and youth in contact with the criminal justice system

45. Establish or strengthen juvenile justice systems or other similar proceedings that address the seriousness of the offending behaviour and the degree of responsibility of juveniles, as well as their vulnerabilities and the causes, including the root causes, and risk factors of their offending behaviour, in order to facilitate their rehabilitation and reintegration, including by promoting the practical application of relevant provisions of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)²⁶;

46. Implement, and strengthen as appropriate, measures to assist the rehabilitation and reintegration of children and youth who have been involved in all forms of organized criminal groups including gangs, as well as in terrorist groups, while protecting their rights and giving full recognition to the importance of delivering justice and protecting the safety of victims of these criminal groups and society throughout the implementation of such measures;

BACKGROUND

UNODC data shows that women are underrepresented as staff within criminal justice institutions in many countries, especially in law enforcement agencies.²⁷

Judicial and prison systems tend to focus on the needs of a predominantly male population, although the global number of women in prisons has been growing at a faster rate between 2000 and 2020. Gender-based discrimination in the criminal justice system disproportionately affects women and LGBTIQ+ people who face barriers in accessing justice, whether as victims, witnesses, alleged offenders or prisoners.

According to the 2019 UN Global Study on children deprived of liberty,²⁸ roughly 7.2 million children are deprived of liberty per year worldwide in all situations of detention. As reported, at least 35,000 children are being deprived of their liberty in situations of armed conflict, while at least 1,500 children are being detained in the context of national security in countries without conflicts on their own territories. Both numbers are conservative estimates.

²⁴ Report of the Fourth World Conference on Women, Beijing, 4–15 September 1995 (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1.

²⁵ General Assembly resolution [S-23/2](#), and resolution [S-23/3](#).

²⁶ General Assembly resolution [40/33](#).

²⁷ E4J University Module Series: Crime Prevention and Criminal Justice, Module 9: Gender in the Criminal Justice System.

²⁸ <https://www.ohchr.org/en/treaty-bodies/crc/united-nations-global-study-children-deprived-liberty>

Gang violence is a specific type of violence that can affect youth in various ways, resulting in either exploitation, abuse or even death. Involvement in organized criminal groups and other criminal enterprises are among the leading causes of youth homicide in countries where the presence of organized criminal groups and gangs has been documented.²⁹

Regarding armed conflict, the United Nations annual reports (2012 to 2017) revealed almost 30,000 verified cases of child recruitment³⁰. These numbers are likely to be under-reported, and reliable and comparable data on serious forms of violence against children and those deprived of liberty, including child recruitment, are scarce.

Mainstreaming a Gender Perspective into Criminal Justice Systems

The importance of achieving gender equality in the criminal justice workforce is stressed in numerous international instruments, including the Beijing Declaration and Platform for Action (1995), which includes a specific objective on ensuring women's equal access to and full participation in power structures and decision-making. The updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice³¹ call for gender-equitable representation in the justice system, and the Bangkok Rules call for, inter alia, equal access to capacity-building measures.

Mainstreaming a gender perspective into criminal justice systems is crucial to advance sustainable reforms that enable institutions to break patterns of discrimination, ensure justice for all and meet the needs of those left behind, including women in conflict with the law and survivors of gender-based violence. Key challenges range from discriminatory criminal laws and procedures and a lack of gender diversity among criminal justice professionals, to gender bias, stereotyping, stigma and impunity. Effective responses require comprehensive interventions to address the obstacles women face throughout the criminal justice chain, in line with the [Convention on the Elimination of all Forms of Discrimination Against Women](#) (CEDAW)³², the Bangkok Rules and related international standards and norms. Good practices include prioritizing non-custodial measures for women wherever possible and providing gender-specific hygiene and health care, as well as childcare and rehabilitation programmes in female prisons.

The Global Judicial Integrity Network has also highlighted³³ that many of the existing safeguards for promoting and protecting judicial integrity do not give sufficient consideration to the full range of gender-related integrity issues, such as unequal gender representation in the judiciary, sexual corruption, sexual harassment, sex discrimination, gender biases, gender stereotyping, or inappropriate sexual conduct. Some of the key challenges include the lack of clear guidance and of gender-specific provisions in codes of judicial conduct, insufficient judicial accountability mechanisms and barriers to reporting misconduct within the courts.

Survivors of gender-based violence face particular challenges. Violence against women remains under-reported and unlikely to end in conviction. Survivors often face obstacles due to gaps in criminal law and procedure, gender stereotypes, victim blaming and inadequate responses of criminal justice institutions and professionals, leading to secondary victimization. The COVID-19 pandemic has further reduced access to essential police and justice services for women, despite increased risk of gender-based violence.

Ending gender-based violence against women and girls by 2030 (SDG 5.2), requires survivor-centred criminal justice responses, as outlined in the updated Model Strategies and Practical Measures. Good practices include recruitment and retention of women as staff in criminal justice institutions to provide survivors with their right to speak to female officials; accessibility of essential health, social, police and justice services; and performance management, monitoring and evaluation mechanisms that incorporate feedback from survivors.

²⁹ UNODC, 2019 - Global Study on Homicide, booklet on Killing of children and young adults.

³⁰ Secretary-General's Report on Children and armed conflict, most recent edition: A/76/871-S/2022/493

³¹ A/RES/65/228, Annex

³² The Convention on the Elimination of all Forms of Discrimination Against Women, General Assembly resolution 34/180, adopted in 1979.

³³ Global Integrity Network, Gender-related Issues in the Judiciary, 2020

Addressing the Vulnerabilities of Children and Youth in Contact with the Criminal Justice System

Crisis, conflict, and the digital age have exacerbated violence against children and continue to create additional vulnerabilities for children.³⁴ Children are increasingly exposed to crime and violence; they come into contact with the juvenile justice system as victims, witnesses or alleged offenders, including those recruited and exploited by criminal and armed groups, such as terrorist groups, or as child victims of abuse and exploitation (online and offline). It is essential that children in contact with the justice system as rights-holders are empowered, on their own and through their families and communities, to overcome deprivation and social exclusion.

International standards and norms in the area of juvenile justice are detailed. They can be found primarily in the Convention on the Rights of the Child (CRC), the only international legally binding instrument with regard to juvenile justice. Further international juvenile justice standards and norms are contained in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),³⁵ the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the Havana Rules),³⁶ the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)³⁷ and related United Nations Standards and Norms, including the United Nations Model Strategies and Practical Measures on the Elimination of Violence Against Children in the Field of Crime Prevention and Criminal Justice.³⁸

The Beijing Rules provide minimum standards on the treatment of children while in contact with the justice system including general principles, detailed guidance on investigation and prosecution, adjudication and disposition, and institutional and non-institutional treatment. They address key issues related to juvenile justice such as age of criminal responsibility, the aim of juvenile justice to emphasize the child's well-being, the right to legal counsel, the right to privacy, the primacy of alternatives to judicial proceedings (diversion), the importance of social inquiry reports, non-custodial measures, child-sensitive guiding principles for sentencing, as well as specialization and training of justice professionals dealing with children and the principle of detention as a measure of last resort.

With regards to young people, youth is not a fixed age-group but is best understood as a transition period from the dependence of childhood to adulthood's independence.³⁹ Youth are disproportionately impacted by crime and violence, for example, the majority of all homicide victims and perpetrators globally are young and male. Lack of educational and economic opportunities, social exclusion and adverse childhood experiences, along with other societal, individual and family factors, increase vulnerabilities of young people and the risk of recruitment by organised criminal networks, including by gangs and terrorist groups.

Effective rehabilitation and social reintegration programmes for young offenders are typically offered at community level, addressing all factors that increase risks for (re)-engagement in violence and crime and offering opportunities for young people's development, including education, social and economic opportunities. Such programmes must be tailored to the needs and vulnerabilities of young people in contact with the law and engage a range of actors in addition to the criminal justice system, including from the education-, social- and health-sectors. Good practice examples, implemented in the context of holistic interventions include specialised courts, family support and outreach programmes for young victims and preparators, police diversion schemes of low-risk youth, reconciliation schemes and tailored rehabilitation programmes for those engaged in specific types of crime such as exit programmes for gang members or programmes for the disengagement from violence.

In particular, children associated with terrorist and violent extremist groups need rehabilitative support to be re-integrated into society as empowered citizens. The planning of effective interventions requires a comprehensive

³⁴ All individuals under the age of 18 years, as per Article 1 of the Convention on the Rights of the Child.

³⁵ General Assembly resolution 40/33, annex, of 29 November 1985.

³⁶ General Assembly resolution 45/113, annex, of 14 December 1990.

³⁷ General Assembly resolution 45/112, annex, of 14 December 1990.

³⁸ General Assembly resolution 69/194, annex, of 18 December 2014.

³⁹ The UN, for statistical consistency across regions, defines 'youth', as those persons between the ages of 15 and 24 years, without prejudice to other definitions by Member States. [General Assembly (see A/36/215 and resolution 36/28, 1981).] At the same time, specific legal mechanisms of juvenile justice should be applicable to children i.e., persons below 18 years old, as per the UN CRC (See also Commentary of the OHCHR to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), A/RES/40/33.

and effective reintegration strategy, adapted to local contexts.⁴⁰ Research and data collection in this area are essential and will provide the basis for evidence-based policy-making with a focus on restorative justice approaches. In particular, when it comes to children alleged as, accused of, or recognized as having infringed the penal law, the CRC highlights their right to be treated in a manner which is consistent with the promotion of the child's sense of dignity and worth and which takes into account the child's age and the desirability of promoting the child's reintegration and assuming a constructive role in society. According to the CRC, weight should be given to the child's best interests as a primary consideration as well as to the need to promote the child's reintegration into society. It is therefore strongly recommended that Member States integrate child individual assessments into their processes to promote the best possible outcomes of the rehabilitation and reintegration process for each individual.

DISCUSSION QUESTIONS

- How are countries ensuring gender equality and women's empowerment in law enforcement and other criminal justice institutions?
- To what extent are performance management, monitoring and evaluation mechanisms and processes used by criminal justice institutions gender-responsive and being based on feedback from victims and survivors?
- How are Member States ensuring that non-custodial measures are gender-responsive? What measures have been taken to sustain (beyond the pandemic) the pronounced reduction of the female prison population due to emergency releases of prisoners in response to the COVID-19 pandemic?
- What are the key challenges and good practices in gender-responsive prison management and legal aid provision?
- How are Member States ensuring that crime prevention and criminal justice responses to gender-based violence against women are key components of national strategies to address the response to and recovery from the COVID-19 pandemic, and that adequate and sustainable resources are devoted to this purpose in the post-pandemic time?
- What are some of the good practices that Member States can share in establishing and strengthening juvenile justice systems?
- How can the international community assist Member States in ensuring that justice systems work effectively with other sectors to ensure that rehabilitation and reintegration are the primary objectives for all actions targeting children in contact with the law?
- What are some key challenges and good practices in supporting the rehabilitation and reintegration of children and youth who have been involved in all forms of organized criminal groups?
- How are Member States working *with* young people in developing and implementing measures for the rehabilitation and reintegration of youth involved in gangs and other forms of organized criminal groups, including terrorist groups? Can you provide some examples of effective youth engagement?
- Can you provide examples of partnerships set up by Member States to promote community-based, multisectoral approaches in promoting social rehabilitation and reintegration of young people engaged in crime, and in addressing the specific vulnerabilities and root causes of offending behaviour?

⁴⁰ UNODC Toolkit for Action
https://www.unodc.org/pdf/criminal_justice/endVAC/Flyer/Flyer_UNODC_training_Package_EN.pdf

Photo credits:

United Nations Office on Drugs and Crime

This paper has not been formally edited.