1. BACKGROUND OF THE ASSIGNMENT:

There is a growing international recognition that insufficient use of alternatives to imprisonment and an excessive use of pre-trial detention and imprisonment are key drivers of the continuing growth of prison populations, prison overcrowding and inadequate prison conditions worldwide. Many countries rely heavily on imprisonment as the default or only means of criminal sanction.

The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) emphasize that imprisonment should be considered a last resort and encourage the promotion of non-custodial measures with due regard to an equilibrium between the rights of individual offenders, the rights of the victims and the concern of society. The Tokyo Rules are further complemented by the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), which provide additional guidance on gender-sensitive alternatives to imprisonment to account for the typical backgrounds of and meet the specific needs of women in contact with the criminal justice system. Other standards and norms concerning such women are included in the updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice and the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. This international normative framework on alternatives to imprisonment is applicable to all types of offences, including drug offences.

Globally, female imprisonment is increasing at a higher rate than the imprisonment of men. Some of the key factors behind this increase include the punitive responses to women with substance abuse disorders or women involved in minor drug offences, as well as the targeting by criminal laws of behaviors related to sexuality and reproduction. Prior victimization and gender-based violence is another key issue for women in conflict with the law, which is often part of the pathways to, conditions and consequences of imprisonment of women. Although women make up a minority of the global prison population (around 7 per cent), the number of women imprisoned is increasing at a higher rate than that of men.

A higher proportion of women than men are in prison for drug-related offences. 35 per cent of women globally are imprisoned for drug related offences compared to 19 per cent of men.
For minor charges where the woman in contact with the law does not pose a serious or dangerous threat to safety and society, alternatives to prosecution such as case dismissal, depenalization/decriminalization, gender-responsive diversion and treatment programmes, restorative justice and other related alternatives can be considered by police and prosecutors. The international drug control conventions expressly allow the provision of measures such as treatment and education as alternatives to conviction or punishment for personal drug consumption offences and for all other relevant offences in “appropriate cases of a minor nature”. Examples of this approach are the diversion of minor cases from the criminal justice system through the exercise of police or prosecutorial discretion, and the use of non-custodial measures as an alternative to pretrial detention or imprisonment.

Notwithstanding the detailed international normative framework, Member States face various obstacles in the use of non-custodial measures, including gaps in legal and policy frameworks, a lack of capacity and awareness among criminal justice practitioners or insufficient public awareness and acceptance of alternatives to imprisonment.

This assignment seeks to identify and address legal, policy, and practical gaps and obstacles for using non-custodial alternatives to pre-trial detention and imprisonment in South Africa.

2. PURPOSE OF THE ASSIGNMENT:

The objective of the assignment is to gain baseline understanding that will guide the planning of future UNODC technical assistance. The Consultant will conduct a detailed stocktaking exercise of relevant national laws, policies and practices in South Africa, with the aim of identifying the legal, policy, and practical gaps and obstacles for using alternatives to imprisonment with a specific focus on women arrested for drug offences. The stocktaking exercise will focus on the legal and policy framework as well as the institutional capacity to effectively use alternatives to imprisonment and assess whether they are in line with relevant international standards and norms, including the Tokyo Rules and the Bangkok Rules.

3. THE STOCKTAKING EXERCISE SHOULD FOCUS ON:

1) Legal and policy frameworks on alternatives to imprisonment with a specific focus on women arrested for drug offences and on the impact of gender-based violence before or during detention or imprisonment;
2) Institutional capacities for using alternatives to imprisonment and current practices;
3) An assessment of whether they are in line with relevant international standards and norms, including the Tokyo Rules and the Bangkok Rules; and
4) Recommendations for action that can be taken by the Government.

The stocktaking exercise will be guided by the United Nations assessment materials, such as the UNODC Criminal Justice Assessment Toolkit’s modules on alternatives to incarceration and on gender in the criminal justice system, and employ a gender-sensitive approach, paying particular attention to the specific challenges and needs of women in contact with the criminal justice system.

The stocktaking exercise will be done through desk-based research and consultations via phone, email or videoconference with relevant stakeholders to obtain in-depth information on practical challenges and good practices, followed by an analysis of information, data and documents gathered. The stocking exercise will identify gaps in existing laws, policies, institutions or practices, including any capacity-building needs, and will identify priorities for technical assistance and make practical recommendations for action.
4. THE OUTCOME OF THE RESEARCH AND ANALYSIS WILL BE PRESENTED IN A FINAL REPORT. THE FINAL REPORT SHOULD INCLUDE:

i) A situational analysis of the current use of non-custodial measures during the arrest stage with a particular focus on women arrested for drug offences, which should include a review of legal and policy frameworks, current practices as well as the national institutional capacities for using alternatives to imprisonment, with reference to current international or regional good practice as appropriate; and  

ii) Recommendations for action that can be taken by the Government.

The content of the final report will serve as background information at a national workshop, which will take place following the stocktaking exercise and bring together relevant stakeholders, including legislators, policymakers, prosecutors, judges, prison and probation service administrators, civil society. The objective of the online workshop will be to exchange information on practices and challenges as well as to identify priorities for reform and technical assistance needs.

5. SPECIFIC TASKS TO BE PERFORMED BY THE CONSULTANT:

The assessment will be conducted by the consultant under the supervision of the UNODC Regional Office for Southern Africa and Criminal Justice Officers of Justice Section, UNODC. The Consultant will undertake the following activities:

1) Carry out a desk review of existing materials and information on the legal and policy frameworks and institutional capacities of South Africa on the use of alternatives to imprisonment with a specific focus on women arrested for drug offences and on the impact of gender-based violence before or during detention or imprisonment. The research should consider alternatives at all stages (pre-trial, sentencing and post-sentencing) but focus in more detail on the application of alternatives during the arrest and pre-trial stage.

2) Engage in consultations via telephone, email and videoconference, and if necessary, in-person, with relevant national stakeholders in order to obtain an in-depth information and feedback on practical challenges as well as good practices.

3) Conduct an analysis of information gathered to identify gaps in existing laws, policies, or practices, and make practical recommendations for action.

4) Prepare a draft report presenting:
   i) a situational analysis of the current use of non-custodial measures, which should include a review of legal and policy frameworks, current practices as well as the national institutional capacities for using alternatives to imprisonment for women, particularly those arrested for drug offences and
   ii) recommendations for the Government.

5) Incorporate UNODC’s comments and prepare a final report.

6) Contribute to the planning and organizing of a national workshop, which will bring together relevant stakeholders (e.g. legislators, policymakers, the judiciary, prosecutors, legal aid providers, law enforcement officers, prison and probation services, judicial and prosecutorial training institutions, civil society) with the aim of presenting the findings of the stocktaking exercise and discussing the proposed recommendations.

6. EXPECTED TANGIBLE AND MEASURABLE OUTPUT(S):
1) A detailed work plan with assessment methodologies, focus areas, who to interview, questions, timetable, etc. (4 days)

2) A situational analysis of the current use of non-custodial measures, which should include a review of legal and policy frameworks, current practices as well as the national institutional capacities for using alternatives to imprisonment with a focus on women arrested for drug offences and on the impact of gender-based violence before or during detention or imprisonment (10 days)

3) Conducted online interviews with relevant stakeholders (5 days)

4) First draft of final report including an analysis of the conducted interviews (5 days)

5) Final report including a set of recommendations (5 days)

6) Presentation of findings in the webinar with stakeholders (1 day)

7. DATES AND DETAILS AS TO HOW THE WORK MUST BE DELIVERED:

Payments will be made based upon the full, acceptable delivery of the outputs described below.

<table>
<thead>
<tr>
<th>Deliverable</th>
<th>Output</th>
<th>To be accomplished by:</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>● Developing assessment work plan, desk review and writing inception report</td>
<td>1 -15 September 2020</td>
</tr>
<tr>
<td>B.</td>
<td>● Conducting interviews</td>
<td>16 – 30 September 2020</td>
</tr>
<tr>
<td>C.</td>
<td>● Drafting assessment report</td>
<td>1 – 15 October 2020</td>
</tr>
<tr>
<td>D.</td>
<td>● Including comments from UNODC and stakeholders</td>
<td>16 – 25 October 2020</td>
</tr>
<tr>
<td>E.</td>
<td>● Submission of final assessment report and power point presentation</td>
<td>30 October 2020</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>30 days</td>
</tr>
</tbody>
</table>

8. INDICATORS TO EVALUATE THE CONSULTANT’S PERFORMANCE:

- Timely submission of the detailed assessment work plan, the draft inception, draft and final assessment reports;
- Quality and comprehensiveness of research and soundness in analysis as reflected in the materials;
- Cooperative working relationship with UNODC – maintaining regular communication and receiving feedback; and
- Editing as required for the final report.

9. PAYMENT METHOD:

The consultant will be issued a consultancy contract and will be paid as per the common UN rules and procedures.

The payment fee will be paid in two instalments:

- The first instalment amounting to 25% of the total cost of the contract will be paid after the submission and acceptance by UNODC of the detailed workplan with assessment methodologies, focus areas, who to interview, questions, timetable, etc, and of the inception
report (Deliverable 1)

- The second and final instalment amounting to 75% of the total cost of the contract will be paid after the final report has been submitted, assessed and approved by UNODC ROSAF.

QUALIFICATIONS/EXPERTISE SOUGHT (REQUIRED EDUCATIONAL BACKGROUND, YEARS OF RELEVANT WORK EXPERIENCE, OTHER SPECIAL SKILLS OR KNOWLEDGE REQUIRED):

Experience: At least 7 years of professional expertise and experience in the area of criminal justice, with an adequate focus on gender equality, women’s rights and drug policy. Specific experience in research and drafting in the above-described area is required, preferably in South Africa.

Education: Advanced university degree in law, human rights, political science or other related field; with emphasis on the above-described area.

Language: Fluency and excellent writing skills in English.

Competencies: Communication and teamwork – the consultant would need excellent interpersonal and communications skills as well as the ability to operate effectively across organizational boundaries, and to maintain effective working relations with people of different national and cultural background with respect for diversity.

APPLICATION REQUIREMENTS

A completed application must include: Financial and technical proposal, Cover letter, CV with three contactable referees, and Personal History profile (UNDP P11 Form). Personal History profile must include past work experiences, information on computer skills, samples of knowledge products (guides, toolkit, etc.) and include three contactable referees.

Interested candidates may send their completed application with the Subject line “Tokyo Rules and the Bangkok Rules Consultancy” to Takalani Godobedza at takalani.godobedza@un.org (incomplete applications will not be considered). For enquiries, please contact Takalani at the provided email.

For technical queries, please contact Takalani Godobedza. These TOR’s will also be available on UNODC website: https://www.unodc.org/southernAfrica/en/consultancies-and-opportunities.html

Correspondence will be limited to shortlisted candidates only. UNODC reserves the right not to make an appointment.

CLOSING DATE FOR APPLICATIONS: 21 August 2020