



UNODC

United Nations Office on Drugs and Crime

**ORGANIZED CRIME
AND GENDER:**
issues relating to the
**UNITED NATIONS
CONVENTION AGAINST
TRANSNATIONAL
ORGANIZED CRIME**



ISSUE PAPER

UNITED NATIONS OFFICE ON DRUGS AND CRIME

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The issue paper was drafted by Cecilia Farfán-Méndez, with substantive support from the following UNODC staff (in alphabetical order): Agustina Diaz Rhein, Magdalena Howland, Roxana-Andreea Mastor, Maria Cristina Montefusco, Riikka Puttonen, Marian Salema and Hanna Sands. UNODC would also like to thank the following persons for their contributions: Felia Allum, Anne Aulinger, Margot Denier, Mafaro Kasipo, Mariela Labozzetta, Luis Lozano, Elena Pohl, Pascale Reinke-Schreiber, Agustina Inés Rodríguez, Jennifer Sarvary Bradford and Raha Sayadifar.

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KEY TAKEAWAYS

Gender mainstreaming in the implementation of the United Nations Convention against Transnational Organized Crime offers the opportunity to explore some biases and stereotypes with respect to gender roles in organized crime and explore some promising practices in gender mainstreaming in the implementation of the Convention.

There are several implications of not mainstreaming gender into legislation, policies and practices to combat organized crime. These implications include jeopardizing the effective implementation of the Organized Crime Convention and implementing ineffective or even counterproductive practices to prevent and combat organized crime.

Not mainstreaming gender into policies, legislation and practices can lead to a continuation of differential treatment in society and within criminal justice systems, including secondary victimization and revictimization. This can lead to higher levels of violence and perpetuate the cycle of organized criminal activity. In policies, legislation and practices into which gender has not been mainstreamed, men are seen predominantly as perpetrators and rarely as victims, which can lead to them being denied the assistance and protection they would need in order to be able to collaborate with criminal justice systems to help bring to justice those who lead and direct organized criminal groups. Women are seen predominantly as victims and rarely as perpetrators. Moreover, such policies, legislation and practices do not recognize that the categories of perpetrator and victim in organized crime are not mutually exclusive and that the roles of perpetrators and victims can be fluid and, at times, overlap. This can lead to impunity or unjust treatment by criminal justice systems.

The composition of the workforce of the criminal justice system has an impact on the treatment of individuals within the system, as accused persons, prisoners, witnesses or victims. Criminal justice institutions cannot provide equal and equitable responses if the composition of the workforce is not representative of the broader population, or if discriminatory human resources policies persist. If victims and witnesses do not feel comfortable coming forward and collaborating with the justice system, the quality of investigations, prosecutions and adjudications is compromised.

In terms of legislation and policy development, there are fundamental questions to ask to address the gender dimensions in policies to prevent and combat organized crime. Who makes law and policy (representativeness)? What evidence do they draw on? Are gender-disaggregated data available and used? Whose voices do legislators and policymakers hear in consultations? What is the gender composition of the criminal justice workforce? Can gender bias be identified in pretrial detention and sentencing?

In terms of looking at investigation, prosecution and adjudication through a gender-sensitive lens, some key points should be addressed. What is the gender selectivity, or assumptions as to who is a perpetrator and who is a victim, in investigations and prosecutions? Who benefits in reality from the proceeds of organized crime? Is the distinction between perpetrator and victim clear cut? Are gender-sensitive victim assistance and witness protection provided to victims and witnesses, to encourage and enable them to collaborate with the criminal justice system? Is such protection extended, in appropriate cases, to their relatives and other persons close to them to take into account the caregiver roles? Are victims and witnesses protected from intimidation and retaliation in a gender-sensitive manner? Are vulnerable individuals protected from revictimization and secondary victimization?

The present issue paper concludes that gender mainstreaming is not a parallel effort or a “women’s issue” separate from the implementation of the Organized Crime Convention but that it is an integral part of full implementation of the Convention. Significant data challenges still exist: gender statistics, including sex-disaggregated data, need to be collected, disseminated and used to inform policy, legislation and practices in order to improve understanding of gender and organized crime and to prevent and combat organized crime more efficiently.

INTRODUCTION

Organized crime should no longer be associated solely with images of women involved in criminal activity only as a result of family ties, nor should it be associated with images of powerful men in control. By perpetuating stereotypes or ignoring evidence, the agency of women and vulnerability of men are not recognized, the context is not examined when female participation and victimization of men are conferred as exceptional and the invisibility paradox of all genders is exacerbated, depending on the context. Ultimately, ineffective policy and discriminatory legislation are the result.

Whereas there is now a growing body of work examining the gendered dimensions of trafficking in persons, gendered aspects of the wide variety of other serious crimes falling under the scope of the United Nations Convention against Transnational Organized Crime continue to be underresearched, and significant data gaps exist. An introductory analysis of select gender considerations pertaining to the Organized Crime Convention are provided in the present issue paper, with the purpose of supporting States and other stakeholders in mainstreaming gender into the implementation of the Convention. It is recognized that much more remains to be done.

The issue paper is organized into two main chapters.

Chapter I is focused on providing a conceptual framework built on four concepts: (a) agency; (b) relationships; (c) intersectionality; and (d) chronic vulnerability. Furthermore, it contains an exploration of the relevance of gender mainstreaming for the implementation of the Organized Crime Convention, the prevailing gender stereotypes in relation to organized crime, the need for gender statistics, and policy implications of making women invisible as perpetrators and victims and ignoring vulnerabilities in other genders, including men.

Chapter II considers select gender issues in the implementation of the Organized Crime Convention, according to the following five clusters of articles:

- (a) Criminalization, measures targeting specific offences and scope of application;
- (b) Investigation, prosecution and adjudication;
- (c) International cooperation;
- (d) Protection and assistance;
- (e) Prevention.

The first section of chapter II addresses selected gender considerations in relation to the criminalization of specific conduct introduced by the Organized Crime Convention, with a focus on participation in an organized criminal group, and contains examples from different parts of the world. Subsequent sections of chapter II are focused on the impact of gender on the criminal justice systems, in particular with regard to the investigation, prosecution and adjudication of organized crime, international cooperation and the protection of and assistance to victims and witnesses of organized crime. These sections contain a discussion of the gendered impact of organized crime, ranging from gender stereotyping in criminal justice systems and its impact on different individuals to discriminatory policies and laws that affect women and LGBTIQ+ individuals disproportionately, gender stereotypes and the role of masculinities, human rights considerations in international cooperation and gender diversity in the criminal justice workforce.

Throughout the issue paper, fundamental questions are addressed, such as:

- What do the concepts of gender, sex, agency, relationships, chronic vulnerability and intersectionality mean?
- How can gender stereotypes in organized criminal groups be debunked?
- What are the consequences of gender-blind assumptions in criminal justice policies and legislation?
- Why does gender matter in the investigation, prosecution and adjudication of organized crime cases, as well as in the composition of the criminal justice workforce?
- What are possible gender-sensitive measures for the protection of witnesses and for assistance to victims of organized crime?
- What is the role of gender in prevention of organized crime?

Looking into these questions demonstrates the wide spectrum of people participating in organized crime, as well as the differentiated impacts of criminal activity in different groups (women, men, boys, girls and gender-diverse individuals). Gender matters in preventing and combating organized crime and in fully implementing the Organized Crime Convention. One of the aims of the issue paper is to show why.

UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

In the first two decades of the twenty-first century, organized crime killed as many people as armed conflicts around the world, with both the cause of roughly 1 million deaths each between 2000 and 2017.^a

In the fight against organized crime, the General Assembly adopted the United Nations Convention against Transnational Organized Crime in 2000.^b The Organized Crime Convention has reached near-universal adherence, with 190 parties as of February 2022.

In its resolution 55/25, by which it adopted the Convention, the General Assembly expressed its deep concern about the negative economic and social implications related to organized criminal activities. Those negative effects have differentiated impacts on women, men, girls, boys and people from gender-diverse and non-binary groups that necessitate looking at the phenomenon of organized crime through a gender-responsive lens. It is only through such a lens that the multiple facets, manifestations and consequences of organized crime can be understood and hence addressed, in terms of the roles of perpetrators, the drivers of their involvement, the impacts of their crimes on victims and their experiences in the criminal justice system. Only then is it possible to prevent and combat organized crime in an effective way and to ensure that the global commitment to and leading principle of the Sustainable Development Goals of leaving no one behind is achieved.

^aUnited Nations, Office on Drugs and Crime (UNODC), “Global study on homicide 2019”, booklet 1, “Executive summary” (Vienna, 2019) p. 12.

^bThe Organized Crime Convention was adopted along with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air. A third protocol, the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, was adopted in 2001.

METHODOLOGY

Sources

The research for the present issue paper involved a desk review of available primary sources, supported by secondary sources. Most of the examples of jurisprudence chosen were selected from among the cases contained on the UNODC Sharing Electronic Resources and Laws on Crime (SHERLOC) knowledge management portal.

The cases included as examples also build on the examples covered in the *Guidance Note for UNODC Staff: Gender Mainstreaming in the Work of UNODC* and module 15, on gender and organized crime, of the Education for Justice initiative.

Further examples of legislation, policies and initiatives were obtained from experts attending an expert group meeting on the Organized Crime Convention and gender that was held on 1 and 2 February 2021, as well as from States, practitioners and UNODC staff.

Scope and limitations

The topic of the issue paper is broad: the Organized Crime Convention contains more than 30 substantive articles aimed at preventing and combating transnational organized crime. Gender mainstreaming is also a broad and multifaceted concept. It was adopted as a strategy to promote gender equality at the Fourth World Conference on Women, in 1995,¹ and it was defined by the Economic and Social Council, in its agreed conclusion E/1997/66, as follows: “Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.” The intersection of these two dimensions yields a wide and complex area of work for policymakers and other stakeholders. The issue paper addresses only a selection of the measures contained in the Convention’s provisions. Furthermore, the three Protocols supplementing the Convention are excluded from the scope of this paper.

Challenges in drafting the issue paper were presented by the available sources and information. A lack of gender-disaggregated data, including a lack of qualitative data, on organized crime cases collected at the national level hindered the identification of appropriate case studies. Among other topics, there was also limited in-depth analysis available on the gender dimensions of services available to victims of organized crime.

In the issue paper, gender is understood as a spectrum and the diverse sexual orientations, gender identities and gender expressions that exist are recognized. The complex way in which the effects of multiple forms of direct and structural discrimination (such as ageism, racism, sexism, ableism, homophobia, transphobia, colonialism and classism) combine, overlap and intersect, creating cumulative disadvantages, are also recognized. Owing to limitations in the availability of research concerning how diverse genders, sexual orientations and identities interact with the criminal justice system, the examples selected for discussion in the paper are limited and do not fully reflect the diversity of those experiences. Examples that discuss the experiences of men and women as binary groups are given without the intention of obscuring the experiences of youth and children, or the experiences of LGBTIQ+ individuals.

¹ Beijing Declaration and Platform for Action.

Chapter I.

CONCEPTUAL FRAMEWORK

Chapter I contains an introduction to the conceptual framework that forms the foundation of the issue paper. It also contains an introduction to gender mainstreaming in the implementation of the Organized Crime Convention from a general perspective.

INTRODUCTION TO THE ORGANIZED CRIME CONVENTION

The Organized Crime Convention is the main international instrument in the fight against transnational organized crime. It entered into force on 29 September 2003 and, with 190 parties at the time of writing, it has reached near-universal adherence.

States parties to the Convention commit to taking a series of measures against transnational organized crime, including the creation of domestic criminal offences (participation in an organized criminal group, laundering of proceeds of crime, corruption and obstruction of justice), the adoption of frameworks for international cooperation, including extradition, mutual legal assistance and law enforcement cooperation, the protection of victims and witnesses of organized crime and, finally, measures to prevent transnational organized crime. These measures are further examined and analysed in chapter II of the present issue paper.

The Convention is further supplemented by three protocols² that will be referred to within the issue paper whenever they can provide guidance or examples of gender mainstreaming, but will however, not be addressed in greater detail.

²The Trafficking in Persons Protocol; the Smuggling of Migrants Protocol; and the Firearms Protocol.

Glossary of key terms

agency:	the individual's capacity to act or cause change
cisgender:	a term used to refer to individuals whose sense of their gender aligns with the sex they were assigned at birth
chronic vulnerability	socially generated, historical impoverishment and exclusion that is of high intensity, specific to a particular neighbourhood and maintained across generations
classism:	a prejudice against people on the basis of social class
femininity:	a pattern of social behaviour that is associated with ideals about how women and girls should behave and their position within gender relations, in a particular society at a particular time
gender:	the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for individuals on the basis of the sex they were assigned at birth
gender binary:	a concept classifying gender into two distinct, supposedly "opposite" forms, namely men/boys and women/girls
gender blindness:	the failure to recognize that the roles and responsibilities of men and boys and women and girls are given to them in and against specific social, cultural, economic and political contexts and backgrounds. Projects, programmes, policies and attitudes that are gender blind do not take into account these different roles and diverse needs, they maintain the status quo and they will not help transform the unequal structure of gender relations
gender discrimination:	any distinction, exclusion or restriction made on the basis of real or perceived sex, gender, sexual orientation, gender identity and/or gender expression (as the grounds of discrimination relevant to this paper) that has, for any individual or any group of individuals, the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field
gender equality:	the equal rights, responsibilities and opportunities of all individuals, regardless of gender. Equality does not mean that all individuals are the same, but that rights, responsibilities and opportunities will not depend on the sex assigned at birth, physical sex characteristics, gender assigned by society, gender identity or gender expression. Gender equality also implies that the interests, needs and priorities of all individuals should be taken into consideration
gender equity:	the process of being fair to individuals of all genders, including cisgender and transgender men and women, other transgender people, non-binary people and people with other gender identities
gender issue:	any issue or concern determined by gender-based and/or sex-based differences between women and men. Gender issues are all aspects and concerns relating to how women and men interrelate, their differences in access to and use of resources, their activities and how they react to changes, interventions and policies
gender mainstreaming:	a strategy for assessing the gendered implications of any planned action, including policies, programming or legislation, and for ensuring that gender concerns and experiences are an integral consideration in the design, formulation, implementation, analysis and monitoring of such actions

gender neutral:	approaches that do not consider gender and do not affect norms, roles and relations
gender norms:	ideas about how men and women should be and should act. These are the standards and expectations to which gender identity generally conforms, within a range that defines a particular society, culture and community at that point in time
gender responsive:	considering and addressing gender norms, roles and access to resources only insofar as needed to reach project goals
gender statistics:	statistics that adequately reflect differences and inequalities in the situation of women and men, girls and boys, in all areas of life
gender transformative:	considering gender as central and transforming unequal gender relations to promote shared power, control of resources, decision-making and support for the empowerment of women
intersectionality:	how intersecting power relations influence social relations across diverse societies, as well as individual experiences in everyday life
intersex:	persons born with a reproductive or sexual anatomy that does not seem to fit the typical definitions of female or male
LGBTIQ+:	lesbian, gay, bisexual, transgender, intersex and queer or questioning persons. The symbol “+” denotes other persons of diverse sexual orientation and gender identity (asexual, pansexual, etc.)
masculinity:	pattern of social behaviour that is associated with ideals about how men and boys should behave and their position within gender relations in a particular society at a particular time
non-binary:	an adjective describing people whose gender identity falls outside the binary of male and female gender identities. An umbrella term that encompasses a wide variety of gender experiences, including people with a specific gender identity other than man or woman, people who identify as two or more genders (bi-gender, pangender or polygender) and people who do not identify with any gender (agender)
racism:	a prejudice, discrimination or antagonism directed against someone of a different race or ethnicity based on the belief that a person’s own race or ethnicity is superior
sex:	the classification of a person as having female, male and/or intersex sex characteristics. While infants are usually assigned the sex of male or female at birth on the basis of the appearance of their external anatomy alone, a person’s sex is a combination of a range of bodily sex characteristics
sexism:	prejudice, stereotyping or discriminating, typically against women, on the basis of sex
sexual orientation:	each person’s enduring capacity for profound romantic, emotional and/or physical feelings for, or attraction to, other people
social construction:	meanings, notions and connotations that exist not objectively or inherently, but because of human interaction
transgender:	term used by some people whose gender identity differs from what is typically associated with the sex they were assigned at birth

MAINSTREAMING GENDER INTO THE IMPLEMENTATION OF THE ORGANIZED CRIME CONVENTION

Gender mainstreaming and why it matters for the implementation of the Organized Crime Convention

Gender mainstreaming refers to the process of assessing the gendered implications of any planned action, including policies, programming or legislation, and ensuring that gender concerns and experiences are an integral consideration in the design, formulation, implementation, analysis and monitoring of such action.

To effectively prevent and combat transnational organized crime, a holistic understanding of the phenomenon is required. This will only be possible if policymakers and legislators adopt a gender-responsive approach and mainstream gender into policies and legislation to prevent and combat organized crime, illuminating and taking into account the different roles that women, men and gender-diverse and non-binary persons occupy within organized criminal groups and the variety of offences and serious crimes of which they are victims.

Mainstreaming gender is, thus, not a parallel effort or a women's issue separate from the implementation of the Organized Crime Convention. Gender mainstreaming recognizes that people do not share particular

characteristics because they are men or because they are women;³ they do not share particular characteristics because of their gender. Rather, persons of all genders make choices shaped by locally specific configurations of political and cultural institutions, agents and social practices.⁴ A more integrated, gender-based approach to transnational organized crime should help in the design of more effective solutions to these challenges and make better use of the Convention's instruments.⁵

Mainstreaming gender is not just about women and is not a separate "women's issue" unrelated from the Organized Crime Convention's implementation process.

People who participate in and/or are victims of organized criminal activity make choices that are affected by the contexts in which they live. They have agency, but this agency is shaped by other people and the social structures around them.⁶ In the case of organized criminal activities, this agency is significantly affected by gendered assumptions of acceptable roles for men and women (masculinity and femininity). However, unless these choices, and their formal and informal constraints, are understood, the design, implementation, monitoring and evaluation of policies will fall short of effectively preventing and combating organized crime.

Gender stereotypes in the context of organized crime

Discussions of organized crime often invoke conceptions of violence underpinned by gendered assumptions of masculinities and femininities. These assumptions are commonly derived from the stereotypes where male aggression is assumed as inherent (rather than as a contingent fact) and females are perceived solely as victims. The reality of organized crime, however, is more complex. In analysing crime or criminal spaces,

³Caron E. Gentry and Laura Sjoberg, *Beyond Mothers, Monsters, Whores: Thinking about Women's Violence in Global Politics* (London, Zed Books, 2015), p. 5.

⁴Mo Hume and Polly Wilding, "Beyond agency and passivity: situating a gendered articulation of urban violence in Brazil and El Salvador", *Urban Studies*, vol. 57, No. 2 (February 2020), p. 250.

⁵The General Assembly first introduced the concept of gender mainstreaming to the United Nations system in 1996, in its resolution 50/203. Since then, the Organization has continued to emphasize its commitment to gender mainstreaming. Indeed, gender mainstreaming figures prominently in the 2030 Agenda for Sustainable Development, as gender equality and the empowerment of women are not only a standalone Sustainable Development Goal (Goal 5) but also a cross-cutting theme that affects the achievement of all the other Goals. With regard to the fight against organized crime, the Commission on Crime Prevention and Criminal Justice, in its resolution 26/3, called upon Member States to take a gender perspective into account in the implementation of the Organized Crime Convention and also called upon Member States to continue to appropriately mainstream a gender perspective into their criminal justice systems and into efforts to prevent and combat crime, including transnational organized crime.

⁶Gentry and Sjoberg, *Beyond Mothers, Monsters, Whores*, p. 5.

gender norms generally focus on violent hypermasculinities (exaggeration of male stereotypical behaviour, such as an emphasis on physical strength, aggression, and sexuality), where violence is at the core of the gender performance. As criminal spaces are often seen as a “man’s place”, masculinities play a key role in the gendered experiences of organized crime.

However, before evaluating how people make choices and their pathways into crime, it is important to debunk the enduring myth among the general public and some policymakers of men-only organized criminal groups. In that sense, and in line with emerging scholarship on different gender identities and organized crime,⁷ a precondition to successfully mainstreaming gender into the implementation of the Organized Crime Convention is to understand that women are not only victims of certain types of crime, such as trafficking in persons, but may also be members of organized criminal groups and perpetrators of organized criminal activity. Moreover, where they participate in organized crime, their participation may not be merely a result of their circumstances but an exercise of their own agency. Even if their participation derives from kinship or romantic ties, women may exercise power and authority within criminal structures.⁸

Accurate data on female rates of participation in organized criminal groups are not available at the global level and national statistics on rates of female participation are also lacking, with some exceptions. For example, the Netherlands,⁹ Italy¹⁰ and the United Kingdom of Great Britain and Northern Ireland¹¹ have reported that 9 per cent, 2 per cent and 5 per cent, respectively, of those participating in organized crime are women. The lack of data beyond rates of female participation and paths into offending is due to the difficulty of estimating the size of criminal markets, including the types and numbers of participants. However, in the case of female perpetrators, this problem may be magnified in view of biased perceptions that neglect female participation. Bearing in mind the data challenges, UNODC estimates that women make up approximately 4 per cent of persons prosecuted in organized crime cases in the Western Balkans, which is comparable with global trends.¹² It should be noted that the number of prosecuted persons does not equal the number of participants in organized crime. That is, this estimate reflects only those who came in contact with the criminal justice system and were subsequently prosecuted, but not the actual number of women who are involved in criminal activities. The smaller number of (known) women offenders compared with that of male offenders has stimulated discussion on whether women are less prone to committing criminal acts than men or whether women’s offending is more hidden from view, consisting of crimes that are rarely recorded. More research and better data from criminal justice systems from around the world are necessary to establish with greater certainty the merits of these hypotheses.

Beyond the limited data on female offenders, policy and academic research on women and organized crime is characterized by its paucity. Even considering the limitations of conducting research related to illicit activities, the implicit assumption that organized criminal groups are exclusively composed of men has incorrectly portrayed women as outsiders or passive participants in criminal activity, often defining women only in relation to male criminal offenders. Furthermore, because organized crime is associated – often incorrectly so – with the use of violence, women who participate in organized crime are considered to be exceptions.¹³ Where law enforcement entities, the media and, to some extent, scholarly work have recognized the participation of women, they have still often relied on stereotypes about women who offend, and simultaneously make

⁷ See, for example, Innes and Anderson, *Indigenous Men and Masculinities: Legacies, Identities, Regeneration* (Winnipeg, University of Manitoba Press, 2015).

⁸ Alessandra Dino, “Symbolic domination and active power: female roles in organized criminal groups”, in *Women and the Mafia*, Giovanni Fiandaca, ed., Studies in Organized Crime Series, vol. 5 (New York, Springer, 2007).

⁹ Victor van der Geest, M. Vere van Koppen and Edward R. Kleemans, “Delinquent development, employment and income in a sample of Dutch organized crime offenders: shape, content, and correlates of delinquent trajectories from age 12 to 65”, in *Understanding Recruitment to Organized Crime and Terrorism*, David Weisburd and others, eds. (Cham, Switzerland, Springer, 2020).

¹⁰ Ernesto U. Savona and others, “The criminal careers of Italian mafia members”, in *Understanding Recruitment to Organized Crime and Terrorism*, Weisburd and others.

¹¹ Brian Francis and others, *Understanding Criminal Careers in Organized Crime: Research Report 74* (London, Home Office, 2013).

¹² UNODC, *Measuring Organized Crime in the Western Balkans* (Vienna, 2020).

¹³ It should be noted that when women are prosecuted, they may also experience harsher punishments for similar reasons. This point is further explored in the section on Prosecution, adjudication and sanctions in chapter II.

implications about “normal”, “regular” or “real” women, namely that such women do not commit violent crimes and are not members of organized criminal groups.¹⁴ For example, research from the context of war crimes has found that women war criminals go unnoticed because their very existence challenges deeply held assumptions about war and women. Although, in the war crimes context, the increased visibility of female members of Daesh may challenge these assumptions, similar assumptions exist about women in organized crime.

Similarly, a focus on hegemonic masculinity¹⁵ (the dominant and dominating forms of male identity in society) has obscured the existence of vulnerable masculinities. The concept of vulnerable masculinities recognizes that not all men benefit equally from existing power structures and may also be in disadvantageous situations. Within the field of masculinity, there are sites of domination, subordination, orthodoxy (maintaining the status quo), heterodoxy (seeking change), submission and usurpation. For example, a man may be subordinated as a gay man within the field of masculinity, yet be dominant within the field of gay masculinity.¹⁶ Furthermore, these identities are multifaceted and situationally mutable: men are not permanently committed to one pattern of masculinity; rather, they draw upon a repertoire of performances to negotiate the gendered world from one space and moment to the next. Research from Latin America shows, for example, that some hitmen can be caring fathers, sons or brothers at home, while also being perpetrators of murder and, in some cases, rape.¹⁷

The association of violent crimes with men and the subsequent assumption that women do not participate in organized crime is linked closely with the idea of harmful masculinities, which recognizes how hegemonic masculinities can uphold negative masculine ideals. Examples of this are the associations of violence, the display of limited emotions and the expression of dominant behaviours with masculine traits and, as a result, the association of feminine traits with weakness. Harmful masculine traits are often expressed to

WHEN MEDIA PORTRAYALS SEXUALLY OBJECTIFY OFFENDERS: the case of Kristina Svechinskaya

Kristina Svechinskaya was charged, along with 36 other individuals, for hacking into computers and extracting funds from bank accounts. The hackers used fake passports to open bank accounts, before deploying a virus to attack thousands of computers and extract personal banking information. This allowed the hackers to transfer money illegally into the accounts they had opened. According to the Department of Justice of the United States of America, the group succeeded in stealing approximately \$3 million from banks based in the United States and \$11 million from banks based in the United Kingdom of Great Britain and Northern Ireland. Svechinskaya personally received \$35,000, according to charges filed by the United States Attorney for the Southern District of New York at the time. She pleaded guilty to those crimes on 19 November 2010.^a

In several media outlets, Svechinskaya was referred to as “the world’s sexiest computer hacker”^b and a magazine even published an article entitled “How sexy is accused Russian hacker Kristina Svechinskaya?”^c This example not only highlights the sexualization and objectification of female offenders in the media but also underscores the difference in the perception of female and male offenders. Media coverage of Svechinskaya focused on her appearance, while her male criminal associates were known only as criminals, without any media attention placed on what they looked like.

^a Al Harris, “Kristina Svechinskaya: world’s most notorious cyber bank robber”, Technical Framework, 15 January 2020.

^b See Geoffrey Ingersoll, “‘World’s sexiest computer hacker’ to be sentenced this spring”, *Business Insider*, 5 March 2013; “Is Kristina Svechinskaya, sexy Russian hacker, the next Anna Chapman”, *The Observer*, 10 January 2010; and “‘World’s sexiest computer hacker’ Kristina Svechinskaya to appear in court in connection with multi-million dollar internet fraud scam”, *Daily Mirror*, 27 January 2012.

^c Jessica Pressler, *Intelligencer*, 1 October 2010.

¹⁴ Gentry and Sjoberg, *Beyond Mothers, Monsters, Whores*.

¹⁵ R.W. Connell, *Masculinities* (Los Angeles, University of California Press, 1995).

¹⁶ Tony Coles, “Negotiating the field of masculinity: the production and reproduction of multiple dominant masculinities”, *Men and Masculinities*, vol. 12, No. 1 (October 2009).

¹⁷ Adam Baird, “Becoming the ‘baddest’: masculine trajectories of gang violence in Medellín”, *Journal of Latin American Studies*, vol. 50, No. 1 (February 2018), pp. 192–193.

reinforce power and control when there is a perceived failure to meet masculine expectations. Research has shown that these harmful masculinities can be valuable for some organized criminal groups that may place a premium on the use of dominant behaviours to achieve and maintain their business goals.¹⁸ It is important to note, however, that understanding of masculinities and subsequently hegemonic and harmful masculinities is contextual and can change over time.

The involvement of women in organized crime is not new. For example, during the first two decades of the twentieth century, women were successful owners and managers of brothels operating extralegally in Chicago. Although they never occupied central positions in the organized criminal groups running the brothels, they benefited from direct relationships with powerful men who would guarantee social capital, resources and protection.¹⁹ Women in Latin America were involved in supplying the United States drug market as early as the 1930s. María Dolores Estévez Zuleta, also known as Lola la Chata, led her own drug trafficking organization based in Mexico City, with storage sites around the country and processing laboratories in Mexico City and near the border with the United States. She entered the drug trade with her mother, who had previously sold legitimate goods only.²⁰

While it is true that certain organized criminal groups around the world formally exclude women from participating, evidence shows that women continue to be involved in these groups, in informal roles. For instance, even though the Japanese Yakuza formally precludes female involvement, women married to top members of the Yamaguchi-gumi organization have been instrumental in member retention by resolving quarrels between the group's subordinates or between subordinates and their wives.²¹ At a time when Japanese youth are uninterested in joining the Yakuza, keeping human capital is crucial for continuing their illegal activities. These informal roles are not fixed and, just as the roles of men have evolved and changed as organized criminal activities have adapted, so have women's.²²

Promoting gender equality goes beyond conventional spheres of the economy and health and includes the reduction of risk and levels of future societal conflicts. Evidence shows that higher levels of gender inequality in education, employment, financial inclusion and political representation and higher rates of adolescent pregnancy and intimate partner violence all correlate with higher levels of organized violence. It therefore follows that improvements in women's education and employment, financial inclusion, political participation, access to contraception and reproductive health and education, and reduced rates of intimate partner violence are all associated with lower levels of organized criminal activities and incidents of violence.²³

In calling attention to the different roles that women perform within organized criminal groups, as well as to how they are victimized, one of the aims of the present issue paper is to abandon gender-blind policies that offer the same services to all persons but are, in reality, only appropriate for the subgroup whose social reality that service most closely approximates.²⁴ Therefore, there should not be a "one-size-fits-all" policy response but, instead, the diverse experiences of men, women boys, girls and non-binary and gender-diverse people, affected by different social factors, should be addressed by policymakers and legislative drafters when developing national responses to organized crime.

¹⁸ See, for example, Karina García, "Violence within: understanding the use of violent practices among Mexican drug traffickers", *Justice in Mexico Working Paper Series*, vol. 16, No. 2 (2019).

¹⁹ Chris M. Smith, *Syndicate Women: Gender and Networks in Chicago Organized Crime*, (Oakland, California, University of California Press, 2019).

²⁰ Elaine Carey, "A woman formed the first cartel? Historical imagination and realities of the US-Mexico drug war", *The Social History of Alcohol and Drugs*, vol. 31 (2017), p. 27.

²¹ Cecilia Farfán-Méndez, "Women's involvement in organized crime and drug trafficking: a comparative analysis of the Sinaloa and Yamaguchi-gumi organizations", in *The Impact of Global Drug Policy on Women: Shifting the Needle*, Julia Buxton, Giavana Margo, Lona Burger, eds. (Bingley, United Kingdom, Emerald Publishing, 2020); and Rié Alkemade, *Outsiders Amongst Outsiders: A Cultural Criminological Perspective on the Sub-Subcultural World of Women in the Yakuza Underworld* (Oisterwijk, Netherlands, Wolf Legal Publishers, 2014).

²² Carey, "A woman formed the first cartel?".

²³ Jeni Klugman, Robert Nagel and Mariana Viollaz, "Women's empowerment as a path to peace: understanding the relationship between gender equality and organized violence" (Washington, D.C., Georgetown Institute for Women, Peace and Security, 2021).

²⁴ Fiona Macaulay, "Gendering drug policy", in *The Impact of Global Drug Policy on Women*, Buxton, Margo and Burger.

Consequences of gender-blind assumptions

Table 1 below provides further information on why addressing gender-blind assumptions matters.

Table 1. Policy implications of making women invisible as perpetrators and victims

ASSUMPTIONS	WHY IT MATTERS
Men are perpetrators and rarely victims	<p>Not all men benefit equally from patriarchal structures (systems that reproduce and maintain privileged status for men over women and gender-diverse and non-binary individuals)^a</p> <p>Men and boys who are victims might not seek help, especially for issues relating to mental health and social well-being^b</p> <p>When men are not considered as victims, organizations and practitioners that could normally provide services to male victims are less likely to show interest or feel a sense of urgency, thus contributing to men lacking equal access to support services for victims^c</p>
Women perpetrators are anomalies or passive participants	<p>Female motivations for participating in organized crime remain misunderstood.</p> <p>Despite representations in popular culture of organized crime as a violent activity, many organized criminal groups do not engage in violence. Even those groups that do engage in violent activities also engage in non-violent activities, such as money-laundering, hiding weapons or bribing officials. As violent roles are often associated with men, when only these roles are considered, other functions are obscured that may be performed by individuals of other genders</p>
Only certain crimes affect women	<p>Certain crimes may disproportionately affect women, for example, trafficking in persons for the purposes of sexual exploitation</p> <p>However, even when crimes do not affect men, women and non-binary individuals in the same way, they still affect all genders</p>

^a Adam Baird, "Duros and gangland girlfriends: male identity, gang socialisation and rape in Medellín", in *Violence at the Urban Margins*, Javier Auyero, Philippe Bourgeois and Nancy Scheper-Hughes, eds. (Oxford, Oxford University Press, 2015).

^b Andrea Waling, "Problematising 'toxic' and 'healthy' masculinity for addressing gender inequalities", *Australian Feminist Studies*, vol. 34, No. 101 (October 2019).

^c Thomas Callender and Liz Dartnall, "Mental health responses for victims of sexual violence and rape in resource poor settings", Briefing Paper (Pretoria, Sexual Violence Research Initiative, 2011); Monica Adhiambo Onyango and Karen Hampanda, "Social constructions of masculinity and male survivors of wartime sexual violence: an analytical review", *International Journal of Sexual Health*, vol. 23, No. 4 (November 2011); and Anjuli Fahlberg, and Mollie Pepper, "Masculinity and sexual violence: assessing the state of the field", *Sociology Compass*, vol. 10, No. 8 (August 2016).

The consequence of gender blindness are criminal justice policies that deny not only equal access to justice but also equity in law. Policies that deny equity lead to increased levels of organized criminal activities and incidents of violence. Another consequence is the continuation of differentiated treatment for different genders, both under the law and in society more broadly. The goal is for the criminal justice system to guarantee equal access to justice and to take into account the distinct life trajectories of men, women, boys, girls and non-binary and gender-diverse individuals and to develop policies that respond to individuals' needs and have equivalent outcomes. Policymakers should be aware of and address these issues, as they can hinder States' actions to prevent and combat organized crime in an effective way.

Gender statistics in responses to organized crime

Mainstreaming gender into the implementation of the Organized Crime Convention requires gender statistics and an adequate gender-sensitive analysis of the data. A suitable gender analysis is required to properly process sex-disaggregated and other forms of gender-related data. Without it, there is a risk of overlooking hidden assumptions and explanations.²⁵ It is important to stress that gender statistics are more than data disaggregated by sex. Sex-disaggregated statistics are simply data collected on biological traits and tabulated separately for women and men. In contrast, gender statistics are defined as the sum of the following characteristics:

“Those who are invisible in data are also invisible in policies”

Sylvie Durrer

- (a) Data that are collected and presented disaggregated by sex as a primary and overall classification;
- (b) Data that reflect gender issues, including questions, problems and concerns related to all aspects of people’s lives, such as their specific needs, opportunities and contributions to society;
- (c) Data based on concepts and definitions that adequately reflect diversity and capture all aspects of people’s lives;
- (d) Data-collection methods that take into account stereotypes and social and cultural factors that may induce gender bias.²⁶

For example, a study of the criminal histories of Australian organized crime offenders had a final sample comprising 2,172 offenders who had collectively committed 37,689 offences. Of those, 92 per cent (1,994) were male and 6 per cent (141) were female. The gender of 2 per cent (37) of the offenders was unknown. While such studies offer information on the nature and seriousness of offending, their utility in designing policy responses is limited insofar as they do not account for different trajectories into crime, offences committed and offending frequency between men and women.²⁷

PROMISING PRACTICE

In 2018, Statistics Canada implemented new sex-at-birth and gender variables into a number of its household surveys, including victimization surveys, to better reflect how Canadians describe themselves and address information gaps on the transgender and non-binary populations of Canada, while maintaining the same high standards for quality and historical comparability of the data. Statistics Canada has also made a change to its approach to reporting crime statistics data. As of 2019, data collected from police services now record the gender of the victim and of the accused. These definitions enable police to reflect individuals as they are living and expressing themselves and alleviate the need for police to inquire about sex at birth.

As States parties implement the Organized Crime Convention, it is crucial that gender statistics are collected and include information on perpetrators, victims, law enforcement agencies and public servants within the criminal justice systems. To the extent that data producers and data users are able to account for gender differentials in their products, it will be possible to answer questions such as, but not limited to, how – and to what extent – women, men and non-binary and gender-diverse people are recruited into organized criminal groups and their varying experiences as offenders and victims, including in their interactions with the

²⁵ UNODC, *Gender Mainstreaming in the Work of UNODC: Guidance Note for UNODC Staff* (Vienna, 2021).

²⁶ *Integrating a Gender Perspective into Statistics*, Studies in Methods, Series F, No. 111 (United Nations publication, 2016).

²⁷ Georgina Fuller, Anthony Morgan and Rick Brown, “Criminal histories of Australian organized crime offenders”, Trends and Issues in Crime and Criminal Justice Series, No. 567 (Canberra, Australian Institute of Criminology, 2019).

criminal justice system, as well as the number of women and non-binary and gender-diverse people working in law enforcement. Similarly, there is a need to account for the growing number of gender-diverse and non-binary individuals who in some countries, such as the United States, are overrepresented – as both victims and offenders – at every stage of the criminal justice system, including in the juvenile justice system.²⁸ Research has found that lesbian, gay and bisexual people are incarcerated at a rate over three times that of the general adult population in the United States.²⁹ Nevertheless, despite some positive recent trends in some countries, even the collection of sex-disaggregated data remains a challenge and, in many cases, diverse gender identities are not recognized and sometimes punished by law or within communities, which can put individuals at risk.

Gender statistics – on participation, roles, activities, etc. – need to be collected and disseminated to improve understanding of gender and organized crime.

Except where the dissemination of certain statistics needs to be limited for reasons of security, statistical information should be made available to a wider group of stakeholders, including scholars and civil society. This can potentially improve prevention strategies and understanding of the many facets of organized crime and in turn contribute to limiting and preventing such crime.

Table 2 below contains examples of gender statistics that can be collected, expanded upon and disseminated by States. It is not meant to be exhaustive, but rather to offer ideas of how gendered data related to organized crime can be expanded by both researchers and government agencies.

Table 2. Examples of gender statistics and qualitative data relating to different groups

GROUP	EXAMPLES OF GENDER STATISTICS AND QUALITATIVE DATA
Victims	Narrative-based data on: <ul style="list-style-type: none"> • Initial contact with a criminal group or member of a criminal group, including questions on the use of coercion and/or co-optation mechanisms • Social relations, including family, friendship, marriage, partnership and other interpersonal links • Conditions of chronic vulnerability
Offenders	Narrative-based data on: <ul style="list-style-type: none"> • Behaviour including recruitment, retention and offences committed • Social relations including family, friendship, marriage, partnership and other interpersonal links • Conditions of chronic vulnerability
Law enforcement officials	Narrative-based data on: <ul style="list-style-type: none"> • The composition of investigative teams • The roles within the team (who is leading, who is supporting, who is a technical expert, etc.) • Gender-responsive training for police, including who has received training and the impact of such training • Threats received in relation to work on organized criminal cases • Attacks on their person, property and/or family as a result of involvement in organized criminal cases

²⁸ Alexi Jones, “Visualizing the unequal treatment of LGBTQ people in the criminal justice system”, Prison Policy Initiative, 2 March 2021.

²⁹ Ilan H. Meyer and others, “Incarceration rates and traits of sexual minorities in the United States: national inmate survey, 2011–2012” *American Journal of Public Health*, vol. 107, No. 2 (February 2017).

GROUP	EXAMPLES OF GENDER STATISTICS AND QUALITATIVE DATA
Judges	<p data-bbox="485 342 751 371">Narrative-based data on:</p> <ul data-bbox="485 380 1313 611" style="list-style-type: none"><li data-bbox="485 380 820 409">• Gender-responsive training<li data-bbox="485 418 919 448">• Assignment of organized crime cases<li data-bbox="485 456 1110 486">• Guidelines used in sentencing of organized crime cases<li data-bbox="485 495 1198 524">• Threats received in relation to work in organized criminal cases<li data-bbox="485 533 1313 611">• Attacks on their person, property and/or family as a result of involvement in organized criminal cases

Chapter II.

SELECT GENDER ISSUES IN THE IMPLEMENTATION OF THE ORGANIZED CRIME CONVENTION

Chapter II of this issue paper considers select gender issues in the implementation of the Organized Crime Convention. These are organized according to the following five clusters of articles within the Organized Crime Convention:

- (a) Criminalization, measures targeting specific offences and scope of application;
- (b) Investigation, prosecution and adjudication;
- (c) International cooperation;
- (d) Protection and assistance;
- (e) Prevention.

CRIMINALIZATION, MEASURES TARGETING SPECIFIC OFFENCES AND SCOPE OF APPLICATION OF THE ORGANIZED CRIME CONVENTION

The Organized Crime Convention requires that States parties criminalize certain conduct relating to organized crime, namely participation in an organized criminal group (article 5), laundering of the proceeds of crime (article 6), corruption (article 8) and obstruction of justice (article 23). Article 3 defines the scope of application of the Convention. It provides the framework of application of the Convention and states that it applies, except where the Convention provides otherwise, to the prevention, investigation and prosecution of offences established in accordance with articles 5, 6, 8 and 23 and “serious crime”, where such offences are transnational in nature and involve an organized criminal group.

The present section addresses gender considerations in relation to the illicit conduct of participation in an organized criminal group and illustrates, with examples, how gender influences the way that people are affected by and involved in organized criminal groups. The section also touches upon the concept of “serious crime” as used in the Organized Crime Convention, and provides a few additional examples of its application, highlighting how organized crime affects people differently according to their gender, such as in the case of money-laundering, and how, on the basis of gender and gender identity, individuals might be more or less likely to be involved as either victim or offender in organized crime.

The examples presented in the section are not exhaustive. They do not represent the only ways in which persons of all genders are victimized by or participate in organized criminal groups. Rather, they are shared with the aim of providing specific examples of the concepts discussed in the conceptual framework included in chapter I above. Gender considerations in relation to the offences covered in the three Protocols supplementing the Convention are not addressed in the issue paper.³⁰

Participation in an organized criminal group

Article 5 of the Organized Crime Convention requires that States parties criminalize participation in an organized criminal group. Article 2 of the Organized Crime Convention defines an organized criminal group as a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with the Convention, in order to obtain, directly or indirectly, a financial or other material benefit.

Article 5 of the Convention provides that States parties may take one (or both) of two approaches to criminalizing participation in an organized criminal group. The first approach is based on the concept of conspiracy (a concept widely used in common-law countries). The second is based on the concept of criminal association (a concept that emerged in civil-law countries).

As noted previously, adoption of an intersectional approach, for looking at the distinct roles that different individuals play in organized criminal groups, will contribute to more sensitive and effective policies to prevent and combat organized crime. In particular, greater attention is needed in the analysis of the roles of women in organized crime – and victimization of men – which continues to receive inadequate attention in studies and public policies.

As the examples below illustrate, female participation in organized criminal groups is not limited to passive involvement. The examples draw attention to the different functions and the varying contexts in which women negotiate their agency. They are deliberately focused on women to illustrate how women participate in organized crime around the world.

WHEN SOCIAL AND FAMILY RELATIONSHIPS HAVE THE POTENTIAL TO INFLUENCE AN INDIVIDUAL'S PARTICIPATION IN AN ORGANIZED CRIMINAL GROUP: the case of Raffaella D'Alterio

Raffaella D'Alterio was the daughter of a Camorra boss (one of the Mafia-type organized criminal groups based in and around Naples, Italy) and later married another. She took over the leadership of the group when her husband was arrested in 2002 and, after his release, they started a violent feud over control of the criminal organization. The conflict between the two rival families ended when Raffaella arranged to have her husband killed. She remained the leader of the group until 2012, when the police arrested her, together with other 65 members of the group, and confiscated property valued over 10 million euros. Over 70 criminal charges were brought against them, including criminal association, extortion, drug trafficking and illicit arms possession.^a

^a UNODC, Education for Justice, University Module Series, Organized Crime, "Module 15: gender and organized crime", April 2019.

³⁰ In relation to the Trafficking in Persons Protocol and the Smuggling of Migrants Protocol, see UNODC, *UNODC Toolkit for Mainstreaming Human Rights and Gender Equality into Criminal Justice Interventions to Address Trafficking in Persons and Smuggling of Migrants* (Vienna, 2021); UNODC, *Female Victims of Trafficking for Sexual Exploitation as Defendants: A Case Law Analysis*, (Vienna, 2020); and UNODC, Education for Justice, University Module Series, Trafficking in Persons and Smuggling of Migrants, "Module 13: gender dimensions of trafficking in persons and smuggling of migrants", May 2019.

WHEN CHRONIC VULNERABILITY, AS WELL AS MULTIPLE AND COMPOUNDING FORMS OF DISCRIMINATION, LEAD TO PARTICIPATION IN CRIMINAL ACTIVITIES: women in Central American extortion gangs

The high prevalence of extortion markets in poor urban neighbourhoods in Guatemala, which are characterized by a lack of job opportunities, poverty and broken families, has converted this criminal economy into a major source of informal employment for women, many of whom have connections to members of the MS13 or Barrio 18 gangs in the country's prisons. Extortion is the most common crime for which women are imprisoned in Guatemala, and that statistic has been on the rise since 2009. In 2014, 382 women were serving prison sentences for extortion. By 2017, that number had more than doubled, reaching 791, out of a total of 2,612 women incarcerated in the country, according to official figures.^a

^a InSight Crime and Global Initiative against Transnational Organized Crime, *A Criminal Culture: Extortion in Central America* (Geneva, 2019), p. 32.

Participation in an organized criminal group may take different forms. Individuals participating in a group's activity may be involved only partially, or may carry out only specific functions and responsibilities, such as laundering proceeds of crime. Organized criminal groups frequently launder illicit funds from proceeds of crime into apparently legitimate assets to enjoy the benefits of crime and sustain their criminal businesses. Money-laundering rarely involves the use of violence and, as research into and enforcement against violent activities of organized criminal groups tends to obscure non-violent roles such as money-laundering, women's participation and involvement in criminal activities may be obscured.

AGENCY IN A PATRIARCHAL SOCIETY AND MALE-DOMINATED ENVIRONMENT: the case of Ivonne Soto-Vega

Narratives of "drug cartels" in Mexico are often constructed around male dominant figures. Women may, however, exercise agency within the male-dominated environment of organized criminal groups.

Ivonne Soto-Vega was arrested in 2001 in the city of Tijuana, Mexico. The Attorney General's Office of Mexico identified her as the main money-launderer for the Arellano-Félix organization. The Office of Foreign Assets Control in the United States identified her as one of the managers of a group of brokers that operated a pawn shop, one restaurant and nine currency exchange houses, eight of which were in Tijuana and one in Guadalajara, Mexico.

According to the Financial Crimes Enforcement Network, United States dollars from illicit drug sales in the United States were smuggled by members of the Arellano-Félix organization in bulk into Mexico.^a These dollars were then brought back into the United States by declaring the currency in the name of the currency exchange houses in Mexico, thereby concealing the illicit origin of the funds. The currency was then deposited into United States bank accounts held in the name of the currency exchange companies. To further conceal the origin of the funds, money from those accounts was transferred to bank accounts around the world. The Department of Treasury stated that Soto-Vega laundered more than \$120 million over a three-year period.^b

^a United States, Financial Crimes Enforcement Network, *Fiscal Year 2005 Annual Report* (Washington, D.C., 2005).

^b Cecilia Farfán-Méndez, "The structure of drug trafficking organizations and money laundering practices: a risk appetite hypothesis", *Journal of Illicit Economies and Development*, vol. 1, No. 3 (November 2019).

Money-laundering

Recognizing the links between money-laundering and organized crime, article 6 of the Organized Crime Convention requires that States parties adopt criminal offences relating to the laundering of proceeds of crime. Article 7 further requires that States parties adopt additional measures to combat money-laundering.

Although data and statistics concerning women's involvement in money-laundering are partially available in some States, a lack of gender-disaggregated data persists and might contribute to a distorted perception of the reality of the situation. In the United States, according to the statistics collected by the United States Bureau of Justice Statistics, on average, fewer than 1,000 people are sentenced each year in the country for money-laundering offences, compared with more than 20,000 for drug trafficking. Of those sentenced for money-laundering, about 20 per cent are women.³¹

AGENCY WITHOUT LEADERSHIP: the case of Lam Meiling

Lam Meiling was an illiterate woman from a poor background. She grew up and got married in Dongguan, mainland China, but moved to Hong Kong, China, in 1989, where she worked as a food delivery driver until 2002. She was accused of laundering \$860 million between 2002 and 2005 and was arrested in 2008.

According to her, the money-laundering started when she was instructed by a female friend, who raised the defendant's two children in mainland China, to register as a remittance agent. Upon her friend's instructions, Lam used the relevant bank accounts to process money on her behalf, without asking about the source of the funds. She received 4,500 yuan (approximately \$500) as a monthly payment. On average, she laundered \$20 million every month.

The judge considered that, although Lam was not the mastermind behind the scheme, there was no doubt that she was aware of what she was doing, despite her being illiterate, owing to the sums involved, the number of accounts and the duration of the crime.

The court decided that, despite the existence of mitigating circumstances, Lam would be sentenced to 10 years, the maximum penalty being 14 years' imprisonment, because she had received a significant fine for failing to keep remittance records in 2002, which should have encouraged her to be more vigilant. The court further noted that when such a serious charge was involved, personal factors, such as family and a low level of education, do not constitute a reason for reduction of sentence. In the appeal, the defence argued that, since the case did not involve cross-border laundering, the sentence was too heavy. This was rejected by the court, which stated that the main motive for sentencing in such cases was deterrence.^a

^a BBC News, "HK woman jailed for laundering \$860m", 12 March 2013.

Measures to combat money-laundering (article 7)

Article 7 of the Organized Crime Convention sets out a number of mandatory and voluntary measures to ensure that comprehensive and effective legal and administrative regimes are put into place to both deter and detect money-laundering.

It is now widely recognized that anti-money-laundering measures – in common with all policy measures in a gendered world – are not gender-neutral; they can hinder or promote social and gender equality. While measures to prevent money-laundering are positive developments, some measures may have disproportionate impacts upon groups on the basis of their gender identity. For example, strict procedures in relation to opening bank accounts and requirements to produce identity documents can disproportionately affect women and girls, who in many countries face financial, literacy, social and logistical barriers to accessing the

³¹ United States Sentencing Commission, "Statistical information package: fiscal year 2019 – first circuit" (April 2020).

banking system. Know-your-customer requirements, which require applicants to submit identity documents to have access to banking services, can have the effect of excluding large numbers of women who do not have access to, or who have difficulties accessing, such documents. A lack of identity documents to meet international know-your-customer requirements has been identified as one of the main barriers to women's financial inclusion and access to the global economy.³²

PROMISING PRACTICE

To avoid disproportionately negative effects of anti-money-laundering measures on individuals on the basis of their gender identity, it is important that countries implement international legal standards (such as the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation of the Financial Action Task Force) in consideration of the needs, characteristics and environment of the different targets and stakeholder groups. In this regard, the availability of gender statistics and a subsequent appropriate gender analysis can have a positive impact on the efficiency of anti-money-laundering measures adopted by countries, avoiding further exacerbation of the gender gap in financial access.

The Financial Action Task Force calls upon countries to identify, assess and understand the risks of money-laundering and terrorist financing that they face. Countries are encouraged to look at risks in a holistic manner, namely, in close association with the characteristics of the different customer target groups and their environments.

To guide countries in striking a balance, the Alliance for Financial Inclusion developed a guideline note on gender considerations in balancing financial inclusion and anti-money-laundering and countering the financing of terrorism that could be used in the implementation of the Organized Crime Convention and its article 7. Examples provided in the guidance note include ways of integrating gender and women's financial inclusion considerations into risk assessments and customer due diligence, acknowledging that women present a lower risk profile as customers of financial institutions and assessing crime risk by gender.^a

^a Alliance for Financial Inclusion, "Gender considerations in balancing financial inclusion and anti-money laundering and countering the financing of terrorism (AML/CFT)", Guideline Note, No. 31 (Kuala Lumpur, 2018), p. 18.

Corruption

Recognizing the links between corruption and organized crime, article 8 of the Organized Crime Convention requires that States parties adopt offences criminalizing certain corrupt acts. Article 9 requires that States parties adopt additional measures to combat corruption.

Adopting a gender-responsive lens allows for a better analysis and understanding of how gender affects the roles held by members of organized criminal groups, including in relation to corruption. Arguably, bribery payments are gendered as a result of the inherent social and cultural norms that influence how people interact and how they access public services such as education and health care. Empirical research in Myanmar³³ revealed that gendered divisions of labour giving women caregiving roles result in women frequently coming into contact with public services, such as education and health care, therefore putting them more at risk of becoming victims of corruption at those points of service delivery. On the other hand, women in leadership roles have often been more motivated and invested in addressing corruption in public services that disproportionately affects women. Nevertheless, irrespective of women's social and economic position, corruption is more likely to get in the way of their political and professional ambitions and opportunities than it is for

³² Alliance for Financial Inclusion, "Gender considerations in balancing financial inclusion and anti-money laundering and countering the financing of terrorism (AML/CFT)", Guideline Note, No. 31 (Kuala Lumpur, 2018).

³³ UNODC, Regional Office for Southeast Asia and the Pacific, "Thematic brief on gender and corruption in Myanmar: initial insights from focus group discussions" (October 2020).

men, meaning that women are more likely to look for ways to counter corruption. As a result, increased gender equality in local governments has also led to reduced levels of bribery in accessing State services.³⁴

Measures against corruption (article 9)

Article 9 of the Organized Crime Convention insists on the necessity for States parties to implement measures to promote integrity and to prevent, detect and punish the corruption of public officials.

PROMISING PRACTICE

The National Anti-Corruption Action Plan of Ghana was developed in 2010 and 2011 through a multi-stakeholder consultation process. In it, not only is the disproportionate negative impact of corruption on women, children and groups such as persons with disabilities and other vulnerable groups acknowledged, but the unique differences, needs, concerns, priorities and experiences of women and men that need to be taken into account in the development, implementation and monitoring of anti-corruption strategies and initiatives are also explicitly highlighted.^a The initiative to bring a gender-responsive perspective to the document came primarily from one of its drafters, who pushed for recognition of the different ways that corruption could affect men and women. Prior to the development of the Plan, most Ghanaians considered reducing corruption to be the responsibility of just a few institutions, but there are signs that the process of developing and adopting the Plan in parliament generated a greater sense of collective responsibility and that it is mobilizing organizations to take sexual corruption more seriously. Under the Plan, every public agency is expected to develop a sexual harassment policy. The 2017 implementation report on the Plan stated that 27 institutions had developed and published sexual harassment policies for their workplaces, compared with 21 in 2016. Continued improvements have since been reported in the press.^b

This represents a positive example of how gender can be mainstreamed into anti-corruption policy and plans and how a gender-responsive perspective needs to be integrated into the development of such policies and plans. It illustrates that a comprehensive and inclusive approach to the phenomenon of corruption, taking into account the ways in which incentives for bribery will impact women and men differently, is more likely to be successful.

^a Ghana, *National Anti-Corruption Action Plan (NACAP), 2012–2021* (December 2011), p. 38.

^b UNODC, *The Time is Now: Addressing the Gender Dimensions of Corruption* (Vienna, 2020), p. 115.

Notion of serious crime

Another concept central to the scope of application of the Organized Crime Convention is the notion of serious crime. The Convention applies to the prevention, investigation and prosecution of offences established in accordance with its articles 5, 6, 8 and 23, as well as serious crime, where such offences are transnational in nature and involve an organized criminal group. For the purposes of the Convention, serious crime is defined, in article 2 (b), as conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty, leaving the determination of what constitutes serious crime to national legislators.

By defining serious crime – and hence the scope of the Organized Crime Convention – by reference to national legislation, the Convention remains a flexible legal instrument, capable of tackling new forms of organized crime as they emerge. For example, while not all forms of cyber organized crime currently being perpetrated would have been apparent at the time of drafting the Convention, the flexible definition of serious crime allows the Convention to be used to address new and emerging forms of cyber organized crime

³⁴ UNODC, *The Time is Now: Addressing the Gender Dimensions of Corruption* (Vienna, 2020).

as they are addressed by national legislators. Another form of crime not expressly mentioned in the Organized Crime Convention, but capable of being covered by the Convention through the notion of serious crime, is the manufacturing of and trafficking in falsified medical products. The example below presents this crime from a gender perspective.

APPLICATION OF THE ORGANIZED CRIME CONVENTION TO THE FIGHT AGAINST FALSIFIED MEDICAL PRODUCTS: a gender perspective

The sudden increase in demand for medical products to address the coronavirus disease (COVID-19) pandemic has led to an expansion in trafficking in falsified medical products,^a often by organized criminal groups.

How does the Organized Crime Convention apply to the fight against falsified medical products?

The notion of serious crime, defined by reference to States parties' domestic criminal laws, allows the Organized Crime Convention to be used to tackle falsified medical product-related crime, provided that States parties have made offences such as the manufacturing of and trafficking in falsified medical products subject to maximum penalties of at least four years' imprisonment, that the offence is transnational and an organized criminal group is involved.

A gender perspective in the fight against falsified medical products

At the global level, women constitute the majority of the world's poorest populations and also suffer more frequently from different serious diseases (such as HIV/AIDS and malaria).^b These illnesses require expensive and intensive treatments, making them often inaccessible. As a result of socioeconomic constraints, it is unlikely that women with limited resources will go to court to seek compensation for falsified medical products bought in good faith. This problem is at the root of the illicit manufacturing of and trafficking in medical products.

The European Committee on Crime Problems found that women tend to face increasing disadvantages due to their roles in the household, difference in status and entitlement, differences in access to resources, care and support, and cultural norms leading to health risks, and are therefore more at risk from falsified medical products.^c

At-risk populations are disproportionately affected by organized crime, including during the COVID-19 pandemic. In line with the findings by the European Committee on Crime Problems outlined above, the difference in access to resources and access to the legal system may increase the likelihood that women are affected by falsified vaccines.

Organized criminal groups have taken advantage of the COVID-19 pandemic by attacking vulnerabilities and gaps in health-care and criminal justice systems. This includes the manufacturing of and trafficking in falsified medical products.^d In the context of a global health emergency, adopting a gender-responsive approach to the pandemic and to organized criminal groups exploiting the situation is of paramount importance to ensure the protection of those more at risk.

The COVID-19 Global Gender Response Tracker of the United Nations Development Programme monitors policy measures enacted by Governments worldwide to tackle the pandemic and highlights responses that have integrated a gender lens. It includes national measures that directly address women's economic and social security, including violence against women.

^a For an in-depth discussion, see UNODC, "Report on COVID-19-related trafficking of medical products as a threat to public health" (Vienna, 2020).

^b World Health Organization, *Leading the Realization of Human Rights to Health and Through Health: Report of the High-Level Working Group on the Health and Human Rights of Women, Children and Adolescents* (Geneva, 2017).

^c European Committee on Crime Problems, "A gender perspective on the counterfeiting/falsification of medical products and similar crimes: concept note", document CDPC (2017).

^d UNODC, "COVID-19 vaccines and corruption risks: preventing corruption in the manufacture, allocation and distribution of vaccines" (Vienna, 2020), p. 6.

^e Available at <https://data.undp.org/gendertacker>.

APPLICATION OF THE ORGANIZED CRIME CONVENTION TO CYBER ORGANIZED CRIME AND ONLINE SEXUAL EXPLOITATION: a gender perspective

How does the Organized Crime Convention apply to cyber organized crime?

The notion of serious crime, defined by reference to States parties' domestic criminal laws, allows the Organized Crime Convention to be used respond to cybercrime – provided that States parties have made such offences subject to maximum penalties of at least four years' imprisonment, the offence is transnational and an organized criminal group is involved.

Moreover, article 2 of the Organized Crime Convention introduces the notion of other material benefit. This reference is to be interpreted broadly, so that it can cover crimes with tangible but non-monetary objectives^a and include personal benefits such as sexual gratification.^b This provision is, therefore, particularly useful in dealing with cases of online sexual exploitation of children.

A gender perspective in the fight against cybercrime and online sexual exploitation

Certain types of cybercrime are not gender-neutral and, as such, addressing them from a gender-based perspective, recognizing their differentiated impact is of paramount importance to ensure and develop a more comprehensive approach to combating and preventing them. One example is cyber violence, in particular online sexual violence, such as the non-consensual distribution of intimate images. Women and girls are overwhelmingly the victims of this behaviour, which is premised upon their objectification.

Non-consensual distribution of intimate images, or the dissemination of sexually explicit images or videos of others without their permission, often involves situations in which the individual consented to the creation of the photos or videos but expected that they would be kept private, while in other cases, images may have been taken surreptitiously and then shared. In a recent study of 3,044 adults (54 per cent of whom were women), 1 in 20 reported having experienced non-consensual distribution of intimate images.^c

In various parts of the world, women and LGBTIQ+ and gender non-conforming individuals are disproportionately subjected to various forms of online abuse. A poll in 2017 revealed that approximately one quarter of the 4,000 women surveyed in Denmark, Italy, Poland, Spain, Sweden, the United Kingdom and the United States had experienced some form of online abuse (e.g. cyber harassment) at least once. Furthermore, 41 per cent of the women who had experienced online abuse feared for their personal safety as a result.^d According to a 2020 report, while evidence shows that women are disproportionately targeted, men, transgender and gender non-conforming people are also affected.^e

In the context of cybercrime, the use of a gender-responsive lens is needed to recognize and understand the dynamics of cybercrime and to respond appropriately. For example, age and desire for social relationships are increasingly becoming risk factors involved in the possibility of an individual falling victim to online sexual extortion (or "sextortion"). Sextortion occurs when an individual threatens to share or otherwise distribute personal information or intimate images or videos if the target does not provide the offender with other images or videos of a sexual nature, engage in sexual acts in view of the perpetrator online, or provide the perpetrator with money or other goods. Both adults and children can be the targets of sextortion.

Age and desire for social relationships as risk factors

The eSafety commissioner of Australia found that 7 out of 10 victims of online sexual exploitation were men. One particular investigation found that many of them were foreign male students who were eager for companionship after they arrived to study at university. Many victims used social media or dating sites in an attempt to make new friends but were then coaxed into sharing intimate images of themselves and later blackmailed by criminal gangs.^f In 2018, Australia introduced new legislation to address the issue of non-consensual distribution of intimate images. It involved the introduction of a complaints and objections system, which provided that service providers, end users and host servers could be served with a removal notice requiring them to remove an intimate image from the service, and established a civil penalty regime for failing to comply with such a notice.^g

According to a Canadian Survey on cyberbullying and cyberstalking, cyberbullying and online harassment was more prevalent in younger age groups and within the homosexual and bisexual populations, while cyberstalking was more prevalent among women and single people. Furthermore, young Canadians with experience of victimization were significantly more likely to experience cyberbullying and cyberstalking. For instance, 31 per cent of those who were physically or sexually assaulted before the age of 15 experienced either cyberstalking or cyberbullying, compared with 13 per cent of those who did not report a prior experience of assault.^h

Young girls are also disproportionately subjected to sexual abuse and exploitation online, including non-consensual sharing of images. In its *Global Threat Assessment 2019*, the WePROTECT Global Alliance highlighted the normalization of sexual behaviour online as a contributing factor for the increase in sexual images generated by children. Sometimes these images are shared in a consensual manner between peers and further distributed without consent. In other cases, the images are produced as a result of coercion and deception. This contributes to an overall increase in child sexual exploitation material found online. The Alliance highlighted that children who were refugees or living in displaced communities where it was difficult to monitor online child sexual abuse or where there was limited access to child protection services were especially vulnerable to sexual exploitation online.

^a *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations publication, Sales No. E.06.V.5).

^b *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations publication, Sales No. E.05.V.2).

^c Yanet Ruvalcaba and Asia Eaton, “Nonconsensual pornography among U.S. adults: a sexual scripts framework on victimization, perpetration, and health correlates for women and men”, *Psychology of Violence*, vol. 10, No. 1.

^d UNODC, Education for Justice, University Module Series, Cybercrime, Module 12: Interpersonal Cybercrime, “Gender-based interpersonal cybercrime”, February 2020.

^e Hazel Feigenblatt, *Breaking the Silence around Sextortion: The Links between Power, Sex, and Corruption* (Berlin, Transparency International, 2020).

^f Beh Lih Yi, “Growing number on young men in Australia targeted for ‘sextortion’”, Reuters, 12 March 2020.

^g Baker McKenzie, “Australia: new law to protect individuals from non-consensual sharing of intimate images online”, *Lexology*, 1 October 2018.

^h Darcy Hango, *Cyberbullying and Cyberstalking among Internet Users aged 15 to 29 in Canada*, Insights on Canadian Society Series (Statistics Canada, 2016).

Discriminatory laws affecting women and LGBTIQ+ individuals disproportionately

Where gendered inequalities, stereotypes, norms and values are prevalent in cultures and societies, they are likely to be expressed or reflected in the laws, policies and institutions of those societies. Criminal law and related procedures are no exception.³⁵

Criminal justice systems have historically been designed by and for heterosexual, cisgender men, which means that current laws and institutions often fail to consider the different needs of individuals of all genders and exacerbate inequalities. It also means that current laws and institutions affect various groups in society in different ways, leading to discriminatory practices. For example, data from Australia and the United States indicate that lesbian and bisexual women are overrepresented among female offenders.³⁶

Examples of discriminatory substantive criminal law may include criminalizing forms of behaviours that: (a) are not criminalized or punished as harshly if they are performed by a particular gender; (b) can only be performed by a certain gender; and (c) are not crimes according to any international legal standard. For instance, certain laws provide reduced sentences for (predominantly male) perpetrators who kill in response to provocation caused by the behaviour of wives or female relatives but require aggravated sentences for

³⁵ UNODC, Education for Justice, University Module Series, Crime Prevention and Criminal Justice, Module 9: Gender in the Criminal Justice System, “Topic one: gender-based discrimination and women in conflict with the law”, July 2019.

³⁶ Paul L. Simpson, “Understanding the over-representation of lesbian or bisexual women in the Australian prisoner population”, *Current Issues in Criminal Justice*, vol. 31, No. 3 (September 2019).

(predominantly female) perpetrators who kill their abusers with premeditation. Moreover, discrimination plays a role in sentencing, as women are imprisoned for petty offences more often than men, as a result of their inability to pay bail.

On the other hand, discrimination in substantive criminal law can also occur when there is a failure to criminalize in order to prevent and provide redress for crimes that disproportionately affect one gender. A case in point is the prevention of self-defence claims for victims and survivors of violence and the disregard for psychological impact in sentencing.

Awareness of the existence of discriminatory criminal codes and procedures is relevant not only for legal reform. Discriminatory criminal codes and procedures have a direct impact on the implementation of the Organized Crime Convention, as a result of the negative compounding effects they have on the treatment of women and LGBTIQ+ individuals within the criminal justice system. Criminal justice systems often fail women by ignoring their trauma and the realities and dynamics of domestic violence.³⁷ For example, courts are not equipped with the right guidance or show reluctance to consistently take victimization of offenders into account as a possible mitigating factor.³⁸ Similarly, as highlighted in a recent study by UNODC, women and girls who are victims of trafficking in persons and are sexually exploited by organized criminal groups have been prosecuted and convicted for trafficking in persons-related crimes.³⁹

Data show that being a victim of sexual or gender-based violence can also play a role in certain types of crimes committed by women.⁴⁰

ORGANIZED CRIME AND SEXUAL OR GENDER-BASED VIOLENCE AGAINST WOMEN AND GIRLS

There are multiple, complex linkages between organized crime and violence against women and girls:

- Various forms of organized crime, such as trafficking in persons for the purposes of sexual exploitation, involve violence and abuse against women and girls
- Many women within organized criminal groups face violence, including sexual or gender-based violence, by partners or members of the group
- Being a victim of sexual or gender-based violence as a child or committed by an intimate partner has been proved to be a risk factor for involvement in organized crime, in particular – but not exclusively – for women and girls^a
- Sexual or gender-based violence may be a motive for engaging with organized crime, in terms of escaping abusive relationships, seeking protection from violence in the family and community or earning money

Using a gender lens and considering sexual or gender-based violence as potential factors and risks that influence a person's involvement in organized crime is key for an in-depth understanding of organized crime. These considerations are also of paramount importance to policymakers in developing national strategies against organized crime, as addressing gender-based violence against women can directly contribute to preventing women from engaging in organized crime.

^a Veronica Ahlenback and Naomi Clugston, "Serious and organized crime and violence against women and girls fact-sheet", Violence against Women and Girls Helpdesk Research Report, No. 319 (London, 2020).

³⁷ Penal Reform International and Linklaters, *Women Who Kill in Response to Domestic Violence: How Do Criminal Justice Systems Respond?* (London, 2016).

³⁸ UNODC, Education for Justice, University Module Series, Crime Prevention and Criminal Justice, Module 9: Gender in the Criminal Justice System.

³⁹ UNODC, *Female Victims of Trafficking for Sexual Exploitation as Defendants*.

⁴⁰ UNODC, Education for Justice, University Module Series, Crime Prevention and Criminal Justice, Module 9: Gender in the Criminal Justice System.

In addition to sexual or gender-based violence, the disproportionate effects of poverty and harsh drug policies on women should also be taken into consideration when analysing offences committed by women and when seeking to understand the increasing rate of women offenders.⁴¹

Discriminatory laws and legal practices also have a negative impact on LGBTIQ+ individuals, who face pervasive forms of everyday discrimination, and pervasive risks to their physical safety and well-being, for which they find little redress in law.⁴²

In the context of the implementation of the Organized Crime Convention, States parties need to consider that contact with the criminal justice system imposes a range of additional risks to individuals who identify as, or are perceived to be, LGBTIQ+. These risks are present whether they are brought into contact with the law as victims, witnesses, defendants or convicted offenders. In countries where homosexuality is seen to be outside socially accepted bounds, or criminalized, LGBTIQ+ individuals often endure profound stigmatization, which may prevent their full and equal participation in all aspects of personal and public life. While not all LGBTIQ+ individuals identify as homosexual, it is important to note that, where homosexuality is proscribed, the criminal justice system has the potential to impose a lifelong stigma (and punishment) by means of the mechanisms of legal prohibition, conviction, record of conviction and, in some cases, sex offender registration and public notification schemes. In some countries, it may also result in the death penalty. In these contexts, data on LGBTIQ+ individuals should be collected only if anonymity is ensured, owing to the potential risks and harms that could be caused. In contexts where the human rights of LGBTIQ+ individuals are recognized and protected by law, it is important to gather data on offenders that are disaggregated by sexual orientation and gender identity, as evidence from Australia and the United States indicates that LGBTIQ+ individuals are overrepresented as offenders.⁴³

Despite the lack of extensive data on gender discrimination in the criminal justice system for the LGBTIQ+ community, there is evidence of this practice in courts and police stations, even in countries where being an LGBTIQ+ individual is not criminalized by national laws.

Gender bias and gender discrimination in the criminal justice system hinder the full exercise of the rights of equal access to justice of LGBTIQ+ individuals, in particular the right to be heard and recognized as victims of organized crime. Awareness-raising activities and gender training are urgently needed for criminal justice officials to avoid the use of gender discriminatory language and practices against LGBTIQ+ individuals, who are more vulnerable to discrimination. Providing such awareness-raising and training contributes to a more effective outcome of investigations and avoids impunity.

⁴¹ For an important resource in this area, see *United Nations Police Gender Toolkit: Standardised Best Practices on Gender Mainstreaming in Peacekeeping* (2015).

⁴² UNODC, *Education for Justice, University Module Series, Crime Prevention and Criminal Justice, Module 9: Gender in the Criminal Justice System*, “Topic three: discrimination and violence against individuals that identify as, or are perceived to be, LGBTI”.

⁴³ Simpson, “Understanding the over-representation of lesbian or bisexual women in the Australian prisoner population”.

PROMISING PRACTICE

Transgender people challenge one of the basic assumptions of many incarceration systems: segregation by sex, with sex (and corresponding gender identity) taken to mean male and female only, and usually the sex assigned at birth. Transgender people's gender expression may or may not align with their gender identity and often varies depending on their desire for and access to transition-related health care, such as hormones and surgeries; this in turn, results in challenges to long-standing classification systems in correction systems. The binary system of classification fails to reflect the complexity of society and has created a multitude of complications when it comes to caring for transgender people in contemporary correctional settings.^a

Official data collected by the United States Bureau of Justice Statistics confirm that transgender prisoners in jails and prisons experience exceptionally high rates of victimization relative to other prisoners. When examining rates of sexual misconduct (by both staff and prisoners), they found that almost 40 per cent of transgender prisoners had experienced sexual victimization while incarcerated, compared with 4 per cent of prisoners as a whole.

In 2020, attacks against transgender prisoners who were housed without consideration of their gender identity prompted an overhaul of guidelines for transgender prisoners in the United Kingdom, including the establishment of a new transgender unit at Downview Prison in south London.^b

It is paramount that transgender women and men are safe while in the care of the State, including in detention facilities, jails and prisons. When sentenced persons are transferred, they should be housed according to their gender identity rather than their assigned sex at birth.

^a Jae Sevelius and Valerie Jenness, "Challenges and opportunities for gender-affirming healthcare for transgender women in prison", *International Journal of Prisoner Health*, vol. 13, No. 1 (March 2017).

^b Danny Shaw, "Eleven transgender inmates sexually assaulted in male prisons last year", BBC News, 21 May 2020.

INVESTIGATION AND LAW ENFORCEMENT

This section contains an overview of different gendered aspects of investigating, adjudicating and prosecuting organized crime. It is focused on gender-based discrimination, gender stereotypes and the impact and importance of taking gender diversity into account in the criminal justice system in relation to different forms of organized crime. It addresses a selection of relevant provisions of the Organized Crime Convention and provides practical examples of good practices and challenges.

The criminal justice system generates different experiences depending on individuals' gender identities and roles and intersectional barriers due to racism, sexism, ableism, homophobia and socioeconomic status, to name a few. As part of the implementation of the Organized Crime Convention, adopting a gender-responsive approach in the criminal justice system and understanding these differences and inequalities can help identify needs, target assistance and ensure that all needs are met.

In addition, it is important to consider the biases inherent in the design and operation of the criminal justice system itself.

In terms of considering judicial procedures and prosecution of organized crime from a gender-responsive perspective, it is worth considering who benefits from the proceeds of organized crime and whether the distinction between perpetrator and victim is clear cut.

Investigation

Special investigative techniques

Article 20 of the Organized Crime Convention addresses special investigative techniques, such as undercover operations, electronic surveillance and controlled delivery. These are applied by law enforcement officials for the purposes of detecting and investigating crimes and suspects without alerting the target persons and can be highly intrusive. The use of special investigative techniques can have a disproportionate effect on particular groups of people, according to their gender. A gender-responsive application of these measures guarantees the principles of necessity and proportionality that needs to be respected when implementing them, by ensuring that the victim's or survivor's well-being is balanced with the investigative requirements.⁴⁴

CHALLENGES

Special investigative techniques differ from routine investigation methods and include both covert techniques and the use of technology. They are particularly useful in dealing with sophisticated organized criminal groups in view of the dangers and difficulties inherent in gaining access to criminal operations and gathering information and evidence for use in domestic prosecutions.

However, power asymmetries in interactions between the police, victims and perpetrators foster opportunities for misconduct. For example, in one recorded case, undercover agents sexually assaulted victims when investigating a group involved in trafficking in persons for the purpose of sexual exploitation. Moreover, the victims had nowhere to turn, or recourse to justice as law enforcement agents were committing the violence.^a

^a McKenzie Shuman and others, "Documents: federal agents engaged in sex acts with victims", ABC News, 11 May 2020.

⁴⁴ Mirko Fernandez and Jane Townsley, UN-Women, UNODC and International Association of Women Police (IAWP), *The Handbook on Gender-responsive Police Services for Women and Girls Subject to Violence* (New York, UN-Women, UNODC and International Association of Women Police, 2021), p. 109.

Gender diversity in the criminal justice workforce: a focus on law enforcement

The importance of gender diversity in law enforcement and security forces and its impact on the prevention of crime and conflict has been widely recognized, including by the international community.⁴⁵

The composition of the criminal justice workforce has an impact on the treatment of individuals who come in contact with the criminal justice system, whether as accused persons, prisoners, witnesses or victims. It is unrealistic to expect that criminal justice institutions can deliver fair treatment to all if the composition of the workforce is not representative of the diversity in the broader population, and/or where discriminatory human resources policies, lack of equal education and employment opportunities and obstacles to equal access to leadership positions continue to persist. It is equally important to ensure that individuals who are often less represented within the criminal justice workforce have the proper skills and qualifications, irrespective of their sex, gender or sexual orientation.

Criminal justice institutions, especially police services, continue to remain largely male dominated. UNODC regularly collects data on the number and percentage of women police officers and judges in countries around the world. According to data compiled in September 2018, the percentage of women police officers across all the countries studied varied between 3 and 37 per cent, with the rate in most countries between 10 and 20 per cent.⁴⁶ The latest UNODC report on women in law enforcement in the Association of Southeast Asian Nations (ASEAN) region confirms the global trend: in South-East Asia for example, women are still underrepresented across law enforcement agencies in the region, with female officers accounting for only 6 to 20 per cent of the law enforcement workforce.⁴⁷

Evidence from practitioners in the expert group meeting held on 1 and 2 February 2021 also suggests that societal roles and expectations affect female officers' careers, as they may face constraints in terms of professional advancement, which, in turn, affect the overall quality of criminal justice institutions. Evidence from the ASEAN region highlights that women continue to be used in particular roles and are rarely assigned as case agents or deployed to operational roles, criminal investigations or specialist operations teams that are often important for career advancement in law enforcement.⁴⁸ Furthermore, the predominantly masculine environment in criminal justice institutions and agencies limits the agency of female and gender-diverse personnel, which ultimately undermines the quality of investigations by authorities.

The presence of female staff can increase the effectiveness of detection and investigation. Research has found that female officers are better positioned to meet the needs of women and girls in their communities, that their presence improves the response to gender-based crimes, increases agencies' perceived legitimacy and enhances intelligence collection.⁴⁹ Only if people trust the police will they be willing to cooperate and comply with their instructions, enabling the police to succeed in performing their functions to guarantee the rule of law. In the context of organized crime, female personnel may be better suited to identifying and interviewing female victims.

Ignoring gender-responsive approaches can have a negative impact on the law enforcement approach. For example, research has shown that, when law enforcement entities consider women as outsiders to organized criminal activities, women become valuable members of organized criminal groups. This paradox of invisibility favours organized criminal groups because women will not receive the same amount of attention from law enforcement entities as men and the media will perpetuate the stereotype of the female offender as the

⁴⁵ The Security Council has repeatedly highlighted the differential impact of conflict on women, men, boys and girls and therefore the necessity to mainstream gender perspectives into peacekeeping (see Council resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013), 2122 (2013), 2242 (2015), 2467 (2019) and 2493 (2019)). In its resolution 2185 (2014), the Council emphasized the promotion of gender equality as part of a comprehensive approach to conflict prevention and sustainable peace.

⁴⁶ UNODC, Education for Justice, University Module Series, Crime Prevention and Criminal Justice, Module 9: Gender in the Criminal Justice System, "Topic four: gender diversity in the criminal justice workforce", July 2019.

⁴⁷ UNODC, International Criminal Police Organization (INTERPOL) and UN-Women, *Women in Law Enforcement in the ASEAN Region* (Bangkok, 2020).

⁴⁸ Ibid.

⁴⁹ Ibid.

exception rather than the norm.⁵⁰ In this context, if law enforcement agencies in different jurisdictions lack gender-responsive approaches, organized criminal groups may operate undetected. Therefore, adopting a gender-responsive approach could increase the likelihood of detecting criminal activity.

Similarly, adequate training on gender-related matters is important to ensure adequate treatment of suspects, victims and witnesses of organized crime. For example, when investigating and, in particular, interviewing suspects or victims, it is important to consider gender. Vulnerable victims or witnesses may prefer to speak to law enforcement officers of a particular gender, hence a gender-responsive approach may also improve the outcome of the investigation and may reduce the likelihood of secondary victimization, which can increase trauma.

PROMISING PRACTICE

In Kenya and Nigeria, there has been a general increase in the number of women at various levels of law enforcement and the judiciary. Staff are trained to be more sensitive to the needs of women victims and women are deployed to perform searches on other women at border control points.

In the context of organized crime, in particular wildlife crime, anti-poaching units and law enforcement units are generally predominately male. Nonetheless, there are some examples in Africa of mostly female ranger units, such as the Black Mamba Anti-Poaching Unit of the Balule Nature Reserve in South Africa. UNODC has found that the employment of women from local communities in the all-female Anti-Poaching Unit (taking part in anti-poaching patrols, outreach and community education programmes) has helped bridge the gaps between wildlife conservationists and local communities, attracting broad community support for sustainable wildlife management. Indeed, since its establishment, the Black Mambas have contributed to a reduction of 76 per cent in poaching on the reserve.^a

^a UNODC, “Gender brief for UNODC Staff: mainstreaming gender in organized crime and illicit trafficking projects” (Vienna, 2020), p. 15.

PROMISING PRACTICE

The Ibero-American Association of Public Prosecutors (AIAMP) includes public prosecutor’s offices from 22 countries in Latin America, the Caribbean and Europe (Andorra, Portugal and Spain). The Association aims to strengthen ties of cooperation and professional development among members of public prosecutor’s offices and develop common strategies that allow them to improve their institutional capacities, which is an essential requirement to provide rights protection.

AIAMP also has a network of specialized gender networks (to strengthen coordination among Ibero-American public prosecutor’s offices in matters relating to the investigation, protection and criminal prosecution of gender-based violence and femicide, including in relation to and in the context of organized crime). To structure their plan of action, the network approved a five-year strategic plan for the period 2019–2023, with the aim of strengthening criminal investigations and prosecution on gender issues in the countries that are part of AIAMP. The main objective of the network is to strengthen the capacities of the public prosecutor’s offices for the improvement of gender equality and equity, as well as the investigation, protection and prosecution of cases related to gender-based violence and femicide. Their work is focused on, among others, the following areas:

- (a) Local adaptation process of the Latin American Model Protocol for the Investigation of Gender-related Killings of Women;
- (b) Femicides in the context of organized crime;
- (c) Recording data on femicides;
- (d) Sexual violence;
- (e) Gender mainstreaming within the public prosecutors offices.

⁵⁰ Farfán-Méndez, “Women’s involvement in organized crime and drug trafficking”.

Prosecution, adjudication and sanctions

Article 11 of the Organized Crime Convention is aimed at ensuring effective prosecution, adjudication and sanctioning of cases falling within the scope of the Convention and ensuring that prosecution, adjudication and sanctioning are proportionate to the damage done and the benefits accrued through criminal activity.

Using a gender-responsive lens in prosecuting and adjudicating organized criminal offences allows judges and prosecutors to:

- (a) Understand the real motives behind the commission of an organized crime offence. For example, in some circumstances, joining an organized criminal group represents a way of seeking protection from sexual or gender-based violence;
- (b) Steer prosecution efforts towards those who are responsible for those crimes. To do so, it is crucial that prosecutors examine the evidence, in particular where vulnerable women and girls are concerned, to assess if those women and girls have been groomed or forced into committing crimes. The same principle applies to other vulnerable groups. Recognizing such grooming will help steer the prosecution towards those who are responsible for and have mandated the crimes, rather than those who have been forced to commit them;
- (c) Consider relevant mitigating circumstances;
- (d) Consider appropriate sanctions that take into account the individual's intersectional identity (including gender identity), needs and risk factors to determine an appropriate sanction and/or consider alternatives to imprisonment and diversion from prosecution.

The above list is not exhaustive, but rather highlights some reasons why adopting a gender-responsive approach in prosecuting and adjudicating organized crime is of fundamental importance, as it not only takes into account the rights of the defendants and victims of organized crime, preventing, among other things, revictimization, but also addresses the level of impunity in organized crime cases.

PROMISING PRACTICE

In 2020, the Crown Prosecution Service of the United Kingdom developed new legal guidance for prosecutors on decision-making in gang-related offences. The guidance covers the need to consider if there is evidence that any women and girls involved in gang-related cases have been groomed or forced into committing a crime.

It is stated in the guidance that criminal gangs often prey on vulnerable people; some are forced into debt bondage, or face being stabbed or shot if they go to the police or a rival gang. Cases have been seen of some being sexually assaulted, beaten, controlled and even, used for sexual favours or prostituted for payment for drugs.

The guidance covers a wide range of issues related to gang offending and gang culture, including the examination of tactics used by gangs to recruit vulnerable victims, and addresses the increasing number of women and girls involved in gang-related crimes. It is designed to help prosecutors identify vulnerable victims who may need to be diverted from prosecution or offered a defence if they have been groomed, coerced or manipulated into committing crimes.

If criminal justice practitioners ignore the intersectional and gendered impact of organized crime during the prosecutorial and adjudicatory phases, gender inequalities already inherent to the criminal justice system may be perpetuated or compounded, as outlined in table 3 below.

Table 3. Gender-based challenges in the criminal justice system

Pretrial	<ul style="list-style-type: none"> • Lack of or different access to the financial resources that allow suspects and accused to access legal representation • Increased likelihood of pretrial detention owing to a lack of ability to pay bail • Women and LGBTIQ+ individuals in pretrial detention are at higher risk of sexual violence and other forms of abuse • Ways in which individuals' needs are met by the criminal justice system: women, for example, may require more comprehensive legal aid services to address their needs holistically (in criminal, civil and family matters)
Trial	<ul style="list-style-type: none"> • Increased likelihood of gender bias and judicial stereotyping, affecting, for example, the judge's perception of the facts and of the credibility of witnesses, the admissibility of evidence, the identification of those at risk or who are vulnerable, and ultimately shaping judicial decisions • Lack of knowledge of people's personal history and backgrounds (e.g. history of abuse or violence may lead to a lack of appropriate measures (e.g. alternatives to imprisonment) • Lack or insufficient use by judges of social services reports to identify mitigating circumstances
Post-trial	<ul style="list-style-type: none"> • Increased risk of stigmatization and rejection by families and communities • Female and LGBTIQ+ prisoners are at a heightened risk of sexual violence and other forms of abuse • Lack of access to post-release care and follow-up that are suited to addressing mental health and other complex needs

Proportionality of sentences

The Organized Crime Convention, in its article 11, paragraph 1, requires that the applicable sanctions for offences take into account the gravity of that offence, which is a general principle of criminal law common to national legal systems that is also protected by international human rights law. The principle of proportionality of penalties requires that criminal penalties adequately reflect, but not exceed, the gravity of the offence and the circumstances of the offender. It is linked to the more general principle of international human rights law that any restrictions of human rights must be necessary and proportionate to a legitimate aim.

This principle thus reflects States' obligations to both convicted persons and victims. On the one hand, States should avoid penalties that fail to adequately take into account the gravity of the offence. On the other hand, penalties that are disproportionately harsh in comparison with the gravity of the offence and the circumstances of the offender may amount to arbitrary deprivation of liberty or cruel, inhuman or degrading treatment or punishment. They may also be inconsistent with the essential aim of the penitentiary system, namely, the rehabilitation of offenders. Moreover, legislation that establishes mandatory minimum sentences that preclude sentencing judges from taking into account the gravity of the offence and the circumstances of the offender, including relevant mitigating factors, is likely to lead to the imposition of disproportionate penalties. Furthermore, mandatory minimum sentences may have a discriminatory impact

on certain groups. For example, mandatory minimum sentences for drug-related offences have resulted in a disproportionate impact on women, who are more likely to be involved in drug-related offending at lower levels and hence more likely to be sentenced to a disproportionately harsh penalty under mandatory minimum sentencing laws.⁵¹

PROMISING PRACTICE

The proportionality of sanctions for drug offenders should take into account several factors, such as the level or rank of the offender within the criminal organization, as well as gender perspectives.

A promising example that showcases the inclusion of a gender perspective into legislation affecting the proportionality of sanctions comes from Costa Rica. In 2013, the country amended article 77 of Law 8204 so as to reduce the penalties for introducing drugs into prisons. As a result, women who are convicted of bringing drugs into prison as their first offence, and who are affected by some of the conditions of vulnerability noted in the law, can be eligible for alternatives to incarceration.^a

More generally, States could consider non-custodial alternatives, including the availability of options on the basis of an individual's specific circumstances (family situation, criminal record, etc.) and, specifically, questions related to intersectionality and chronic vulnerability.

^a Washington Office on Latin America and others, *Women, Drug Policies, and Incarceration: A Guide for Policy Reform in Latin America and the Caribbean* (Washington, D.C., 2015), p. 20.

Gender stereotypes as a form of agency

The examples of women engaging in drug offences highlight how women's offending can be explained by both the exercise of their agency and their victimization. Findings from incarcerated female drug offenders in Latin America would suggest that some women become involved in the drug trade by choice and others as a result of community or family factors.⁵² As a result, victimization and empowerment can be interrelated.

Research has found that women war criminals and their legal teams actively manipulate gendered assumptions about women's roles in conflict and take advantage of existing biases to fight for better conditions, reduced charges and shorter sentences.⁵³ Similarly, biases within law enforcement may lead to officials overlooking women's involvement in organized crime. Furthermore, women continue to be underestimated in judicial contexts and in mafia cases are often purported to be weak. The way in which women are perceived by judges and framed by social media and the press may also influence sentencing and risks, leading, in certain circumstances, to impunity.

This is not to say that men and women should receive identical treatment within the criminal justice system. Rather, by taking into account agency, social relationships, chronic vulnerability and intersectional factors, it is possible to offer victims equal access to justice and also hold offenders – from all genders – accountable for their actions.

⁵¹ *World Drug Report 2018*, booklet 5, *Women and Drugs: Drug Use, Drug Supply and Their Consequences* (United Nations publication, 2018), pp. 27, 29 and 32.

⁵² Corina Giacomello, "Women and drug policies in Latin America: a critical review of the United Nations resolution 'Mainstreaming a gender perspective in drug-related policies and programmes'", *Howard Journal of Crime and Justice*, vol. 56, No. 3 (September 2017).

⁵³ Izabela Steflja and Jessica Trisko Darden, *Women as War Criminals: Gender, Agency and Justice* (Stamford, Stamford University Press, 2020), p. 14.

Seizure and confiscation

Article 12, paragraph 1, of the Organized Crime Convention provides that States parties are to adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:

- (a) Proceeds of crime derived from offences covered by the Convention or property the value of which corresponds to that of such proceeds;
- (b) Property, equipment or other instrumentalities used in or destined for use in offences covered by the Convention.

Article 12, paragraph 2, provides that States parties are to adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in article 12, paragraph 1, for the purpose of eventual confiscation.

The appropriate and effective use of seizure and confiscation is key in preventing organized criminal groups from profiting from their crimes and the proceeds thereof, as well as in preventing them from using those proceeds to commit further offences. The Organized Crime Convention recognizes that confiscation can contribute to compensation for and restitution to victims of organized crime: article 14, paragraph 2, provides that, when acting on a request for international cooperation for the purposes of confiscation, pursuant to article 13 of the Convention, States parties should, to the extent permitted by domestic law, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State party for the purposes of restitution or compensation.

Gender considerations (positively) and gender bias (negatively) also influence the applicability of seizure and confiscation measures: the participation of women in the economic and financial sphere may remain hidden and is often not recognized. This may result in the concealment of the illegal origins of assets accumulated by organized criminal groups. Many States have responded to this by allowing seizure orders to be issued against properties registered under “clean” names but suspected of being used to hide assets of organized criminal groups, allowing criminal justice systems to extend to family members and other people used to conceal the true ownership of a property or asset (sometimes known as a “front”) of organized criminal groups. At the same time, authorities need to consider who truly benefits from those assets, as seizure and confiscation orders may otherwise have a disproportionate effect on women and people of diverse gender. Women are often used to conceal the true ownership of assets owned by organized criminal groups or the true leadership of such groups, without benefiting from the proceeds of crime.

Furthermore, when defining the criteria for the temporary assignment and disposal of seized and confiscated assets, in the context of national asset management programmes, States are encouraged to consider establishing programmes for the reuse of confiscated assets for social purposes that include a gender perspective. This is, for example, the approach taken by Spain, which established programmes for the reuse of confiscated assets that address the problem of substance use disorders and include a gender perspective under the eligibility criteria for the distribution of confiscated funds.⁵⁴

⁵⁴ Salvatore Costantino, *The Importance of Reuse of Confiscated Assets for Social Purposes in Fighting the Illegal Economy: Some Case Studies* (Palermo, Italy, 2012), p. 31.

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Despite lengthy confiscation procedures, Italy has achieved widespread success in non-conviction-based asset recovery cases associated with anti-Mafia preventive measures. The use of seized and confiscated assets has been guaranteed by several agreements among institutions that allow for the allocation of confiscated houses to families who have lost their homes, for women experiencing violence, refugees and homeless people, among others. Furthermore, the gendered dimension in asset confiscation can have symbolic value. For example, a football team under the Camorra's control was confiscated and transformed into “*Nuova Quarto Calcio per la Legalità*”, a team based on the values of legality and rule of law and with a public shareholding governance structure.^a Likewise, a house in Rome confiscated from an organized criminal group was assigned to an organization offering shelter to women experiencing violence.^b

The above examples highlight how confiscated proceeds of crime can be reinvested into society to tackle the gender dimensions of crime and areas of vulnerability that may lead to women participating in crime in the first place.

^a Conference room paper on the Italian experience in the management, use and disposal of frozen, seized and confiscated assets, prepared for the eighth meeting of the Open-ended Intergovernmental Working Group on Asset Recovery, held in Vienna on 1 and 12 September 2014 (CAC/COSP/WG.2/2014/CRP.3); and UNODC, *Effective Management and Disposal of Seized and Confiscated Assets 2017* (Vienna, 2017).

^b Laura Bogliolo, “Roma, la casa confiscata alla mafia ora accoglie donne vittime di violenza”, *Il Messaggero*, 3 October 2019.

PROMISING PRACTICE

It is not unusual for criminal acts to be committed across jurisdictions and for victims to be located in more than one country. Proceeds of crime are commonly laundered through the financial systems of multiple countries, with members of the criminal organization operating or living in yet other countries. International cooperation for the return of confiscated proceeds of crime or property, to be returned to their legitimate owners or used to provide compensation to victims, is an important tool to provide access to justice in such cases.

Under a partnership between civil society organizations in Kazakhstan and the Governments of Kazakhstan, Switzerland and the United States of America, a social reuse project was developed that was financed by the proceeds of crime returned to Kazakhstan as part of a money-laundering and bribery case investigated by the Department of Justice of the United States. The three Governments, along with the World Bank, signed agreements for the restitution of \$84 million through a foundation, the BOTA Foundation, that operated between 2009 and 2014. This Foundation implemented a conditional cash transfer programme and awarded scholarships and grants aimed at improving health and poverty outcomes for children and youth. According to its final report, the programme delivered regular cash payments to four categories of beneficiaries within poor households: (a) those with preschool-aged children; (b) women with infants up to the age of 6 months; (c) households with children with disabilities up to the age of 16 and (d) young people aged 16–19 who had completed school and not yet found employment.^a

^a BOTA Foundation, *The BOTA Foundation: Final Summative Report* (Washington, D.C., IREX and Save the Children, 2015).

Establishment of criminal record

Article 22 of the Organized Crime Convention provides that States parties may adopt measures that would allow them to take into consideration an alleged offender's previous convictions in another State. Article 22 of the Organized Crime Convention allows States parties discretion in establishing the appropriate terms and purposes under which the type of information may be used, which may include, depending on the legal system in question, determination of penalty and/or guilt. It must be stressed that the admission of evidence of prior convictions has a highly prejudicial effect, which may be further reinforced by gender biases or gender discrimination on the part of the finder of fact (that is, either the judge or the jury). A record of previous offending can lead the court or jury to assume that, because the individual committed another crime, they must have committed the present crime as well. This assumption is unfair to the alleged offender, and a

conviction based upon such an assumption undermines the proper administration of justice. For this reason, some legal systems restrict the circumstances in which such evidence may be admitted. Where evidence of a prior conviction is sought to be admitted, the probative value of the evidence will need to be carefully weighed against the likely prejudicial effect that the evidence may have on the defendant's right to a fair trial.⁵⁵

CHALLENGES

In countries where there are penalties against those who identify or are perceived as LGBTIQ+, the criminal justice system has the potential to impose a lifelong stigma that may limit opportunities for individuals. For example, LGBTIQ+ individuals who are prosecuted for their gender identity or sexual orientation and receive a criminal record are prevented from equally participating in all aspects of personal and public life.

Women drug offenders

The experiences of women in drug offences are particularly useful for illustrating the devastating effects of discriminatory laws. Examining the responses of criminal justice systems to illegal narcotics is particularly relevant in the light of the revenue generated through drug trafficking, which was estimated at \$320 billion in 2016.⁵⁶ Largely attributable to drug offences, the number of women in prisons around the world has been increasing rapidly in recent years, at a faster rate than that of men. Data from 2017 show that the female prison population increased by 53.3 per cent in the previous two years, compared with 19.6 per cent for men.⁵⁷ For example, in the United States, arrests of women for drug-related offences, including both minor offences and major crimes, increased by 216 per cent between 1985 and 2019, compared with an increase of 48 per cent for men.⁵⁸ Similarly, data from Australia show that, between 2002 and 2019, drug arrests for drug-related offences increased by 190 and 102 per cent for women and men, respectively.⁵⁹ In Latin America, incarceration for drug-related offences constitutes one of the main causes of overcrowding in prisons in the region and, depending on the country, the first or second most-common cause of female incarceration.⁶⁰

When looking at the criminal justice system's response to illegal narcotics, a gender-responsive approach would, for instance, consider materials such as *Women, Drug Polices, and Incarceration: A Guide for Policy Reform in Latin America and the Caribbean*.⁶¹

Many of the women incarcerated for drug offences have low levels of education, live in poverty and are the primary caregivers of dependent persons, including children, young people, the elderly and people with disabilities. Consequently, their incarceration can have devastating effects on their families and communities but contributes little, if anything, to dismantling illegal drug markets or improving public security. Moreover, prison tends to further limit women's chances of finding decent and legal employment when released, thus perpetuating a vicious cycle of poverty, involvement in drug markets and incarceration.⁶²

These findings are also echoed in the *World Drug Report 2018*, in which it was found that some women involved in trafficking in drugs are victims of trafficking in persons, including trafficking for the purposes of

⁵⁵ UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime* (Vienna, 2017), para. 461.

⁵⁶ Organisation for Economic Co-operation and Development (OECD), *Illicit Trade: Converging Criminal Networks*, OECD Reviews of Risk Management Policies (Paris, OECD Publishing, 2016).

⁵⁷ Roy Walmsley, "World Female Imprisonment List: women and girls in penal institutions, including pre-trial detainees/remand prisoners", 4th ed., World Prison Brief, Institute for Crime and Justice Policy Research (London, 2017).

⁵⁸ Tiana Herring, "Since you asked: what role does drug enforcement play in the rising incarceration of women?", Prison Policy Initiative, 10 November 2020.

⁵⁹ Australia, Australian Criminal Intelligence Commission, *Illicit Drug Data Report 2018-19 and Illicit Drug Data 2002-03* (Canberra, 2020 and 2004).

⁶⁰ *World Drug Report 2018*, booklet 5, p. 32.

⁶¹ Washington Office on Latin America and others, (Washington D.C., 2015).

⁶² *Ibid.*

sexual exploitation. Women's participation in the drug supply chain can often be attributed to vulnerability and oppression, where they are forced to act out of fear. However, this does not preclude the fact that some women may choose to participate.

Women may also accept lower pay than men for the same criminal activity. Some researchers have noted that women may feel compelled to accept lower rates of payment than men to carry out drug trafficking activities, which means that some drug trafficking organizations may be more likely to use women as mules.⁶³

An exercise for mainstreaming gender into drug policy would involve asking a series of questions to maintain a critical approach. The questions could include:

- Who makes law and policy (representativeness)?
- What evidence is drawn upon?
- Whose voices are heard in consultation?
- What is the gender composition of the staff of the criminal justice agencies?
- What is the gender selectivity of searches and arrests for drugs?
- Can gender bias be identified in pretrial detention and sentencing?
- Are gender-disaggregated data available on those who produce, supply or consume drugs?⁶⁴

Drug policies that mainstream gender should take extenuating circumstances into account, for example in the case of women who have dependants in their care or women who are pregnant. Furthermore, they should consider alternatives to incarceration that tend to be less costly and harmful, such as restorative or transformative justice.⁶⁵

To conclude, analysing women drug offenders as victims does not preclude discussions of women choosing to participate in the drug trafficking business. The following example illustrates how women also exercise agency in drug trafficking markets.

GRISELDA BLANCO

Griselda Blanco gained notoriety in the 1970s and 1980s for shipping multi-ton shipments of cocaine from Colombia to Miami, United States. According to investigators, she was also the mastermind of countless murders.

Blanco became involved with cocaine trafficking through her marriage to a known drug trafficker. However, it was her creativity that helped grow their illicit enterprise through the manufacture of lingerie with secret compartments in which cocaine could be hidden and trafficked under the guise of a legitimate garment business.

In 1975, Blanco was charged in Miami with conspiring to manufacture, smuggle and distribute cocaine in the United States. For the next decade, she lived in Colombia using false names and documents to hide from authorities. The Drug Enforcement Administration arrested her in Irvine, California, in 1985. She was convicted and sentenced to six years' imprisonment.

In 1994, Blanco was charged with ordering three murders in the Miami area. The killings – including that of a 3-year-old boy, who was shot while in a car with his targeted father – had happened in 1982.

In 2004, after serving her sentence, Blanco was deported to her native Colombia. Local media reported that she was shot and killed in 2012.^a

^a Rafael Romo, "Queen of cocaine' killed in Colombia", CNN, 4 September 2012.

⁶³ *World Drug Report 2018*, booklet 5.

⁶⁴ Macaulay, "Gendering drug policy", p. 25.

⁶⁵ See for example: *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment*, Criminal Justice Handbook Series (United Nations publication, 2007). It should be noted that, in the application of the law, the extenuating circumstances that lead to alternatives to imprisonment should be applied equitably that is, also applied to men. While the intention is not to reinforce the stereotype of women as caregivers, existing data show that greater numbers of women have dependants in their care compared with men. In the United States, data from the Centers for Disease Control and Prevention show that two out of three caregivers are women who provide daily or regular support to children, adults or people with chronic illnesses or disabilities. Preliminary evidence also shows that the COVID-19 pandemic has created additional child-care responsibilities for women that are often shared unequally with their partners (see UN-Women, "Surveys show that COVID-19 has gendered effects in Asia and the Pacific", 29 April 2020).

INTERNATIONAL COOPERATION

The present section will address the provisions of the Organized Crime Convention related to international cooperation. It provides an overview of different gender considerations that can be taken into account by Member States when requesting or responding to requests for international cooperation. It provides practical examples of how gender can be mainstreamed into different phases and forms of international cooperation and highlights how gender is also intertwined with international human rights obligations.

“If crime crosses borders, so must law enforcement”

Kofi A. Annan

In its resolution 55/25, in which it adopted the Organized Crime Convention, the General Assembly stated its determination to deny safe havens to those who engaged in transnational organized crime by prosecuting their crimes wherever they occurred and by cooperating at the international level.

By definition, preventing and limiting transnational organized criminal activities requires international cooperation. If States do not work with their counterparts, organized criminal groups will remain one step ahead.

Gender-responsive approaches in international cooperation and mutual legal assistance among Member States can be built and developed through the activities described in table 4 below.

Table 4. Examples of gender-responsive international cooperation through mutual legal assistance

MUTUAL LEGAL ASSISTANCE ACTIVITY	EXAMPLES OF GENDER-RESPONSIVE CAPACITY-BUILDING AND TECHNICAL ASSISTANCE
<p>Taking evidence or statements</p> <p>Effecting service of judicial documents</p>	<p>Law enforcement agents receive adequate training that considers the contexts (chronic vulnerability) and characteristics (intersectionality) of the perpetrator</p>
<p>Executing searches and seizures</p>	<p>Searches and seizures are executed while there are no children present, to avoid victimizing them</p> <p>Searches are executed by personnel trained in respect for all genders, taking into account the special needs of transgender and/or non-binary individuals</p>
<p>Providing information, evidence, expert evaluations, documents and records</p>	<p>The experts assigned to perform expert evaluations are carefully considered and chosen from a roster that has a clear gender-mainstreaming component. The gender composition of the expert evaluation teams and the evidence that they draw upon are taken into account</p>
<p>Identifying or tracing proceeds of crime, property or instrumentalities for evidentiary purposes</p>	<p>Training is provided on gender awareness to correctly identify who benefits from the criminal activities</p>
<p>Facilitating the appearance of witnesses</p>	<p>Technology is used that allows testimony to be given without endangering the witness. A support person is present during testimony to prevent secondary victimization</p>

Gender and non-refoulement

As gender dimensions are increasingly recognised as a relevant factor shaping organized criminal activities, gender should also be taken into account in the return of persons involved in transnational organized crime, including to their country of origin.

Under conventional and customary international human rights and refugee law, the principle of non-refoulement protects against the return of the individual concerned to reasonably foreseeable serious violations of human rights in the requesting State and, in the case of international refugee law, threats to life or freedom on the basis of protected grounds.⁶⁶ The principle of non-refoulement applies not only to extradition but also to other forms of expulsion or return (refoulement). International human rights law prohibits a State from extraditing or otherwise transferring a person when its authorities know, or ought to know, that the person concerned would face a genuine risk of serious human rights violations in the territory to which extradition or transfer is foreseen. Article 3, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that no State may extradite a person to another State where there are substantial grounds (“foreseeable, personal, present and real”)⁶⁷ for believing that the person would be in danger of being subject to torture. Decisions of regional human rights courts and United Nations treaty bodies have further held that a person may not be extradited where there are substantial grounds for believing that, if extradited, the person would face torture, cruel, inhuman or degrading treatment or punishment, including inhumane treatment as a result of being sentenced to death, a violation of their right to life, a flagrant breach of the right to liberty and security or a flagrant denial of justice in relation to their right to a fair trial. This applies to all persons, whether as perpetrators, witnesses or victims of organized crime.

Moreover, article 33 of the Convention relating to the Status of Refugees provides that no State may extradite a refugee to a State where the life or freedom of the person would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion. This should also be read in conjunction with article 26 of the International Covenant on Civil and Political Rights, which prohibits any discrimination and guarantees to all persons (whether perpetrators, witnesses or victims of organized crime) equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁶⁸

The ground of “other status” mentioned in this provision may include grounds such as sexual orientation and gender identity.

It is important to assess when a person is to be returned, extradited or transferred to another country, including to their country of origin,⁶⁹ whether the person would be exposed to a real risk of other forms of serious ill-treatment on the basis of gender identity and/or sexual orientation.

The sections below set out in greater detail some of the gender implications of two different forms of international cooperation involving the physical transfer of persons: extradition (article 16 of the Organized Crime Convention) and transfer of sentenced persons (article 17).

Extradition

Article 16 of the Organized Crime Convention calls upon States parties to provide for extradition. The article also provides a list of principles that guarantee that any person subject to extradition proceedings for any

⁶⁶Convention relating to the Status of Refugees, art. 33.

⁶⁷Committee against Torture, general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, para. 11.

⁶⁸See also Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, paras. 27–35.

⁶⁹See, for example, Office of the United Nations High Commissioner for Refugees, Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1976 Protocol relating to the Status of Refugees (HCR/GIP/02/01 Rev.1).

offence to which the article applies is subject to fair treatment, including the enjoyment of relevant rights and guarantees provided by domestic law. Among these principles, the non-discrimination clause included in paragraph 14 of the article is of particular relevance in this context, as it provides a practical way of mainstreaming gender into international cooperation.

This clause stipulates that requested States have no obligation to extradite if there are reasons to believe that the person would be persecuted in the requesting State on account of sex, race, religion, nationality, ethnic origin or political opinion.

It should be noted, however, that the grounds listed in article 16, paragraph 14, include “sex” and not “gender” as a ground for exclusion from extradition. Notwithstanding this difference in language, Member States have the freedom to refuse an extradition request if compliance with the request would prejudice the person’s position for any one of the reasons listed in article 16, paragraph 14, including gender.

While article 16 does not impose an obligation on States parties to the Organized Crime Convention to establish and apply grounds for refusal, States parties should establish and make appropriate use of such grounds for refusal to best respect, protect and fulfil human rights in the implementation of the Convention. In this regard, States should be aware of their obligations to guarantee equal and effective protection for all persons against discrimination under international human rights law⁷⁰ and, as applicable, under international refugee law. Moreover, the international human rights instruments to which States are party may include other circumstances in which a requested State will be required to refuse extradition and may also protect against discrimination on grounds other than those mentioned in article 16, paragraph 14), such as sexual orientation and gender identity. These and other relevant grounds should be taken into consideration in the implementation of article 16 of the Convention.

In some States, statutory grounds for refusal of extradition are linked to the constitutional obligations in relation to the protection of fundamental rights and freedoms of the person sought for extradition, in line with article 16, paragraph 7, and, as such, could be interpreted more broadly to include gender identity. In addition to the domestic law of the requested State, any applicable bilateral or multilateral extradition treaties should be referred to when ascertaining the potentially applicable grounds for refusal. Article 16, paragraph 7, of the Organized Crime Convention should, moreover, be read in conjunction with article 16, paragraph 13, and article 16, paragraph 14. As discussed above, the latter provision preserves a number of human rights-based grounds for the refusal of extradition. These provisions are of particular importance to protect individuals who would face gender-based discrimination and gender-related persecution in the requesting State.

In addition, in the context of the implementation of the provisions of the Organized Crime Convention on international cooperation, States parties may wish to follow a more holistic approach in domestic legislation and expand the grounds for refusing extradition to include gender identity and sexual orientation. For example, some regional treaties, including the “Qualification directive” of the European Parliament and of the Council,⁷¹ have been amended to encourage States parties to include gender identity as a reason for persecution (which could lead to international protection for individuals from the LGBTIQ+ community).⁷²

States parties to the Organized Crime Convention should establish and make use of grounds for refusal of extradition in cases where there are substantial grounds for believing that extradition is sought for the purpose of prosecuting or punishing a person on account of internationally protected grounds. States may wish to consider treating sexual orientation and gender identity as such protected grounds.

⁷⁰ See, for example, International Covenant on Civil and Political Rights, art. 26.

⁷¹ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

⁷² European Union Agency for Fundamental Rights, *Protection against Discrimination on Grounds of Sexual Orientation, Gender Identity and Sex Characteristics in the EU: Comparative Legal Analysis – Update 2015* (Luxembourg, Publications Office of the European Union, 2015), p.101.

Transfer of sentenced persons

Article 17 of the Organized Crime Convention invites States parties to consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by the Convention, in order that they may complete their sentences there.

While the other forms of cooperation provided by the Organized Crime Convention are aimed primarily at regulating and realizing States' interests in prosecuting and punishing those responsible for crimes covered by the Convention, the transfer of sentenced persons pursues the interest of detainees to serve their sentences in a country where they have social links, as this also enhances their opportunities for reintegration into society. Moreover, article 17 may be used to facilitate the return of persons who may be imprisoned in harsh or inhumane conditions abroad or who are suffering language, religious, cultural or other forms of discrimination in a foreign prison system.⁷³ There is a strong humanitarian argument in favour of the transfer of detainees who are in situations of particular vulnerability owing to their age, health condition, ethnicity, sexual orientation or gender identity.

PROMISING PRACTICE

The case of *Orobator v. Governor of Her Majesty's Prison Holloway and Secretary of State for Justice* presents an example of States cooperating to ensure the transfer of a sentenced person in compelling humanitarian circumstances.^a The case concerned a pregnant woman from the United Kingdom who had been sentenced to life imprisonment in the Lao People's Democratic Republic for trafficking heroin. Although the bilateral treaty on transfer of prisoners between the United Kingdom and the Lao People's Democratic Republic had not yet entered into force, the two countries signed a memorandum of understanding to immediately apply the terms of the treaty administratively to facilitate the transfer of the woman to the United Kingdom. She was transferred to the United Kingdom on 7 August 2009, where she was re-sentenced according to national law.

^a United Kingdom, England and Wales High Court (Administrative Court), case No. CO/9527 (2010) EWHC 58.

Adopting a gender-responsive approach to the transfer of sentenced persons allows for the identification of those at major risk and the provision of adequate protection. A useful tool in this regard is the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). The Bangkok Rules provide policymakers, legal authorities and prison staff with a broad set of regulations that should reduce the number of imprisoned women and meet the needs of women in prison. With regard to transfer measures, rule 53 of the Bangkok Rules provides as follows:

Where relevant bilateral or multilateral agreements are in place, the transfer of non-resident foreign-national women prisoners to their home country, especially if they have children in their home country, shall be considered as early as possible during their imprisonment, following the application or informed consent of the woman concerned.

Joint investigations

Article 19 of the Organized Crime Convention requires that States parties consider concluding agreements or arrangements to establish joint investigative bodies in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States.

Gender discrimination can also be considered an obstacle to international cooperation and joint investigations. According to the European Commission, there is evidence of States members of the European Union

⁷³ UNODC, *Model Legislative Provisions against Organized Crime* (Vienna, 2012), pp. 119–120.

refusing to participate in joint investigative teams in cases of requests motivated by discrimination, including gender discrimination.⁷⁴

Collection, exchange and analysis of information on the nature of organized crime

Article 28 of the Organized Crime Convention addresses the collection, exchange and analysis of information on the nature of organized crime. States parties are strongly encouraged to go beyond the criminal justice measures of international cooperation and assistance mentioned above and are encouraged to collaborate and share information on organized crime, recognizing the crucial importance of information collection and exchange to develop effective and evidence-based policies to prevent and combat organized crime.

Recalling the challenges posed by a lack of sex-disaggregated data and gender statistics, States parties to the Convention may consider adopting a gender-responsive approach when implementing this provision to ensure that data and evidence are gathered in a gender-sensitive manner, e.g. sex-disaggregated data, focus groups with both men and women and separate women's focus groups.

States can then develop their responses to preventing and combating organized crime on the basis of a more comprehensive understanding of the phenomenon that, in turn, is based on data and evidence collected in a gender-responsive manner and takes into account and addresses the different needs and interests of individuals, based on their sex, sexual orientation, sex characteristics and gender identity.

PROMISING PRACTICE

As part of its Feminist International Assistance Policy, Canada provides capacity-building support to projects that incorporate a gender perspective in countering and preventing crime. Gender-Based Analysis+ is a tool used by Canada for the analysis of gender and diversity considerations to assess how different women, men and gender-diverse people may experience policies, programmes and initiatives. It is one of several lenses through which all public project proposals are reviewed.

All projects are assigned a Gender Equality Identifier Code. The codes cover a spectrum from 0 to 3, based on how gender is integrated into the logical framework of proposed projects. Outcomes that are supported by the gender-based analysis are expected to be fully supported by outputs, activities, indicators, baselines and targets. Coding can be updated when changes are made to the project outcomes.

In order to integrate gender and diversity considerations from the first stages of a project proposal, implementing partners are encouraged to ask themselves the following questions:

- What are my biases? What are the partner's biases? What gender, ethnic, religious or other population groups may be affected or underrepresented in the project's inception, design and implementation?
- What are the gender and diversity elements in the project's ultimate outcome?
- How will the project's activities and outputs support the achievement of these outcomes?
- How will the project make those outcomes sustainable and enduring?
- How will we measure, monitor and assess the project's success in delivering on these commitments?

⁷⁴ Philip Gounev and others, "Part 3: legal and investigative tools" in *Study on Paving the Way for Future Policy Initiatives in the Field of Fight against Organized Crime: The Effectiveness of Specific Criminal Law Measures Targeting Organized Crime* (Luxembourg, Publications Office of the European Union, 2014).

PROTECTION AND ASSISTANCE

This section considers the gender dimensions of those provisions of the Organized Crime Convention concerning the protection of witnesses and persons cooperating with the authorities and assistance to and protection of victims of organized crime.

Witnesses and persons collaborating with law enforcement authorities

The ability to provide effective protection to witnesses and assistance and protection to victims is critically important to ensuring the successful investigation into and prosecution of organized criminal groups. This is explicitly recognized by article 24 of the Organized Crime Convention, which requires States parties to ensure protection at all stages of an organized crime case (at the investigation stage, throughout the criminal proceedings and, in some cases, beyond the proceedings), to protect witnesses from intimidation and or retaliation by organized criminal groups. Such protection measures may include, for instance, measures for physical protection, relocation and non-disclosure or limitation on the disclosure of information concerning the identity or whereabouts of such persons and providing evidentiary rules to permit their testimony to be given in a manner that ensures their safety, such as permitting the use of technology and video links or other adequate means.

Although the term “witness” is not defined by the Organized Crime Convention, it is suggested that a broad notion of witnesses be applied when establishing measures for the protection of witnesses to best achieve the protective aims of article 24.⁷⁵ The needs of those different witnesses may vary, including on the basis of their gender. What many witnesses may have in common is a reluctance to testify. Such reluctance can be explained by trauma, fear of retaliation by the members of the organized criminal group, a lack of trust in the authorities, fear of becoming involved or an unwillingness to incriminate themselves. The reluctance to provide information and testify is particularly relevant for groups characterized by strong family ties. To counter this reluctance, legislators may wish to make protective measures available not only to persons who actually testify, but also to persons cooperating with the authorities, as well as their relatives and persons close to them. Similarly, when planning and executing the protective measures, a gender-responsive approach, which considers the needs of those who give testimony, is fundamentally important in order to create conditions in which a witness feels safe and reassured to provide a truthful, accurate and complete statement. Adopting a gender-responsive approach in planning and executing protective measures may reveal that the needs of witnesses to organized crime might differ on the basis of gender.

PROMISING PRACTICE

In 2008, the Ibero-American Association of Public Prosecutors’ Offices approved the Santiago guidelines on the protection of victims and witnesses, in which specific recommendations directed at public prosecutor’s offices were compiled for the first time in a regional document. The recommendations are aimed at promoting the conditions that ensure that the protection required by victims and witnesses of crime can be provided in a timely, comprehensive and efficient manner.

Since their adoption, the guidelines have become a milestone document in the region. Guided by the principle of effectiveness, with a human rights perspective and a cross-cutting gender mainstreaming approach, the guidelines were reviewed and updated in 2020. The revised 2020 version highlight the importance of adopting a gender perspective when providing assistance and support to victims and witnesses of crime, including organized crime.

There is growing evidence that shows that gender, social status and employment status have an impact on an individual’s willingness to testify.⁷⁶ The gender identity of an individual may also influence a person’s decision

⁷⁵ UNODC, *Legislative Guides*, para. 409.

⁷⁶ Mustafa Demir, “The perceived effect of a witness security program on willingness to testify”, *International Criminal Justice Review*, vol. 28, No. 1 (July 2017).

to collaborate with the justice system. For example, women may choose to collaborate because of a desire for greater personal autonomy (economic and social). Indeed, women are often a valuable source of information for law enforcement entities because of the role they have traditionally played, in particular in the culture of some mafia-type groups, as mothers, wives and caregivers.

As documented in some high-profile cases such as the Lea Garofalo case (see box below), gender roles can also be a crucial factor in women's decisions to start collaborating with the justice system. When provided with appropriate assistance and support by institutions and civil society, women's cooperation and collaboration can result in an important process to break the chain by which organized crime replicates itself. In other words, gender can also be harnessed to institute change. Criminal justice systems need to take into account these differentiated factors on a case-by-case basis.

Relocation is an extreme measure as part of witness protection, and some gender-related problems are encountered by those in relocation programmes.⁷⁷ There may be a desire to return home to see family and friends. The risk of doing this can be high, and officials of the relocation programmes must work very hard to convince witnesses of the need to leave the past behind forever. These problems may be greater for women or LGBTIQ+ individuals going into witness protection programmes. In extreme cases, such as that of Maria Concetta Cacciola (see box below), they may be killed when trying to return to their homes.

CHALLENGING ORGANIZED CRIME: the story of Maria Concetta Cacciola

There are cases of women from inside the 'Ndrangheta, a mafia-type organization, turning against their relatives and collaborating with authorities. Maria Concetta Cacciola was one of those women.

Cacciola was born into a family that was part of the 'Ndrangheta and heavily involved in trafficking in drugs and weapons. Cacciola wanted her freedom and she turned to the Italian police, who put her into witness protection. She was completely isolated, as she had had to flee without her children. Cacciola thought that her mother would understand her decision, but her mother used the children to lure her back to her hometown. Against the advice of the police and her lawyers, Cacciola left the witness protection programme and retracted her testimony. In August 2011, she was found dead, having ingested a highly corrosive acid. A long investigation determined that she had been forced to ingest the acid. Her mother, father and brother were convicted of mafia-related crimes and for the violence leading to her death.^a

^a Connie Agius, "The Italian mafia and violence against women", OpenDemocracy, 3 December 2016.

Witness protection for women and their children requires joint efforts and coordination among multiple agencies that can provide social and financial services in addition to physical protection. However, these processes can be expensive for Governments and hard to maintain.

MOTHERHOOD AND ORGANIZED CRIME: the story of Lea Garofalo

Lea Garofalo is an anti-Mafia icon in Italy for standing up to her origins, the 'Ndrangheta and her family, who murdered her in 2009. Her story represents the courage of the many women who contributed to breaking up the illicit businesses of organized criminal groups in Italy thanks to their collaboration with law enforcement entities.

Garofalo grew up and lived in an 'Ndrangheta family: she was the daughter of one Calabrian 'Ndrangheta boss and the sister of another. At the age of 16, she married a drug trafficker with 'Ndrangheta ties and they had a child.

⁷⁷ Pete Earley and Gerald Shur, *WITSEC: Inside the Federal Witness Protection Program* (New York, Bantam Books, 2002); Robert J. Kelly, Rufus Schatzberg and Ko-lin Chin, "Without fear of retribution: the witness protection program" in *Handbook of Organized Crime in the United States*, Robert J. Kelly, Rufus Schatzberg and Ko-lin Chin, eds. (Westport, Connecticut, United States, Greenwood Publishing, 1994); and John Partington and Arlene Violet, *The Mob and Me: Wiseguys and the Witness Protection Program*, (New York, Pocket Star Books, 2011).

MOTHERHOOD AND ORGANIZED CRIME: the story of Lea Garofalo *(continued)*

In 2001, having moved to Milan, her husband was arrested. She subsequently walked away from the marriage and prevented him from seeing their daughter. She entered the witness protection programme, providing information on Calabrian 'Ndrangheta to law enforcement. Consequently, she and her young teenage daughter changed identities and ended up completely isolated from their friends and family.

Frustrated by her new isolated life and the denial of a permanent protection status within the programme – resulting from the fact that the evidence she had provided was considered reliable but not sufficient for criminal prosecution – she decided to leave the programme in 2009. She returned to Milan, where her husband killed her and disposed of her body with the help of some relatives.

In 2012, the five killers were convicted for aggravated murder and sentenced to life imprisonment. The verdict was confirmed by the Supreme Court of Justice in 2014.^a

^a More information about the case is available in the SHERLOC caselaw database (available at <https://sherloc.unodc.org/cld/en/st/home.html>).

Women and LGBTIQ+ individuals may face additional risks to their mental and physical well-being when they collaborate with law enforcement entities as witnesses, as a result of structural factors within the criminal justice system, which has historically been designed by heterosexual and cisgender men, often meaning that laws and policies fail to consider the perspectives of other groups. Overall, women encounter challenges at all stages of the criminal justice system, owing to the male-dominated and male-oriented design and delivery of criminal justice services. In some extreme cases, women and LGBTIQ+ individuals may be coerced into engaging in sexual acts with law enforcement officials in exchange for more lenient treatment, including for relatives or persons close to them. Evidence from Latin America shows that this form of “sex-tortion” is rarely detected and punished because victims seldom report perpetrators,⁷⁸ meaning that risks for women within the criminal justice system continue to be mostly invisible.

As countries design or adjust their witness protection measures in relation to the implementation of the Organized Crime Convention, the need for gender-responsive measures cannot be overstated. Gender-sensitive witness protection measures can be designed under a victim-centred approach that means placing the needs and priorities of victims at the forefront of any response. The needs and priorities of witnesses include: (a) being treated with dignity and respect; (b) having access to a safe, supportive, non-judgemental environment; (c) having access to appropriate information; (d) being enabled to make an informed choice; and (e) having the right to privacy and confidentiality.⁷⁹ Policies need to include adequate training and resources (human and financial) for all actors who work in the context of witness protection.

Victims

Article 25 of the Organized Crime Convention provides for assistance to and protection of victims, and in addition requires Member States to regulate victims’ participation in criminal and other proceedings and establish appropriate procedures to provide access to compensation and restitution.

Gender affects the experiences of organized crime victims differently; therefore, using a gender-responsive lens in assessing the rights holders of the provisions of article 25 is vital to ensure adequate and effective protection and assistance to victims.

States parties to the Organized Crime Convention and criminal justice professionals bear obligations regarding the protection of victims. As stated in the Convention, victims need to be protected from further criminal acts, including retaliation and intimidation, and victims may be at ongoing risk, or may perceive that they are.

⁷⁸ Borja Díaz Rivillas and Ana Linda Solano López, “Being a woman or girl in Latin America increases the risk of experiencing corrupt practices by public officials”, Eurosocial, 18 March 2020.

⁷⁹ UN-Women, Virtual Knowledge Centre to End Violence against Women and Girls, “Victim/survivor-centred approach”, 14 January 2019.

As countries design or adjust their measures, legislators and policymakers need to consider whether women, men and gender-diverse persons are victimized by organized crime and trafficking in different or similar ways. A gender analysis of victims of organized crime and their profile and needs is crucial to understand victims' experiences and to ensure that victims' needs are appropriately identified and addressed by relevant measures. A gender analysis can inform the development of effective prevention programmes and activities, targeting the specific needs of victims. The absence of a gendered approach in identifying the profile of victims of organized crime may lead to revictimization, secondary victimization and erroneously ignoring victims' experiences and undermining their inherent human right to seek protection. This also applies to male victims of organized crime. For example, ignoring the differentiated gendered impact of organized crime on victims may lead to gender stereotyping, which may have as a consequence the reinforcement of social constructions such as masculinity, and hence increase men's reluctance to self-identify or acknowledge other men as victims.

The categories of perpetrator and victim in organized crime are not mutually exclusive and can coexist; as such, these categories should be seen as fluid. A gender-responsive approach allows investigators and prosecutors to identify those nuances.

In the context of the implementation of the Organized Crime Convention, an area of particular concern is secondary victimization. Secondary victimization refers to the victimization that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim.⁸⁰ For victims who also collaborate as witnesses, the risks and vulnerabilities are compounded as they may also experience secondary victimization.

PROMISING PRACTICE

In a case from South Africa related to trafficking in children, the court found mitigating circumstances for the female co-accused (aged 24) considering the prior victimization that she had experienced. She had been trafficked for sexual abuse by her co-accused when she was very young. When she grew older, he gave her a job and a place to live on the compound where abuses took place. The circumstances of the case justified a more lenient approach in sentencing.^a

^a *State (South Africa) v. Mabuza and Chauke* (more details available in the UNODC SHERLOC caselaw database. Available at <https://sherloc.unodc.org/cld/en/st/home.html>)

CHALLENGE

In a case in Canada, evidence of prior victimization was disregarded by courts for the purposes of conviction and sentencing. In the case, the decision made references to the fact that the female defendant had handed over the money she had made from prostitution to her male co-defendant. The court also made reference to the fact that the defendant had told the court that she was a victim of human trafficking. Nonetheless, there was no indication in the decision that due account was taken of the possible contemporaneous or prior victimization of the female defendant by her male co-defendant or any other individual.

Such an approach departs from internationally recognized best practice, which recommends that justice sector professionals take measures to identify, protect and support victims of trafficking at an early stage and avoid prosecuting them for offences committed because of their exploitation by traffickers.^a

^a UNODC, *Female Victims of Trafficking for Sexual Exploitation as Defendants: A Case Law Analysis*, (Vienna, 2020), p. 17.

To avoid harm caused by, for instance, repeated and insensitive interviewing or having to wait in the same area as the offender before trial in court, it is important to ensure that victims, their relatives and those close

⁸⁰ UNODC, *Handbook on Justice for Victims: On the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (New York, 1999).

to them are provided with assistance and protection. It is also important to recognize the potential need for long-term support to victims and their loved ones.⁸¹

PROMISING PRACTICE

Liberi di scegliere (“free to choose”) is a memorandum of understanding signed in November 2019 between the Public Prosecutor’s Office and the Juvenile Public Prosecutor’s Office of the region of Calabria, the Department of Equal Opportunities of the Presidency of the Council, the National Anti-Mafia Prosecutor and the Italian civil society organization LIBERA, with the aim of supporting and ensuring an alternative life for victims of mafia violence and their families who want to dissociate from the criminal context. The initiative provides a set of protective and proactive measures to give youth coming from, or still living in, a context of organized crime effective opportunities for obtaining education, qualifications, work apprenticeships, social and psychological support and social reintegration. The protocol includes a specific “call to the mothers”, to encourage them to engage with the authorities to protect and remove their children from the criminal network.

Bearing in mind challenges to reporting crime, such as trauma, the fear of retribution or lack of trust in authorities, it is imperative to raise awareness among communities about the importance of reporting organized crime and informing people about the different means available to the potential victim, at the lowest possible threshold. Examples and good practices can also be drawn from the context of anti-corruption and the protection of whistle-blowers.⁸²

PROMISING PRACTICE

The national rescue and support programme for people affected by trafficking in persons, provided by the Ministry of Justice and Human Rights of Argentina in collaboration with federal law enforcement entities, adopts a gender-sensitive approach in treating victims of trafficking in persons. The programme is focused on the needs of the victim and ensures that all service providers have expertise in the causes, consequences and intersecting dynamics of trafficking in persons. An interdisciplinary team of psychologists, social workers, political scientists, doctors, lawyers and exclusive specialized police personnel, who provide psychological, social and medical assistance, legal advice and security to victims, from a gender and human rights perspective, provide assistance before and during trial proceedings.^a

Although specifically developed and implemented for victims of trafficking in persons, this gender-sensitive approach supported by interdisciplinary and holistic assistance could be replicated in other organized crime contexts as it ensures that victims’ needs are adequately addressed.

^aUN-Women, Global database on violence against women, “Programa nacional de rescate y acompañamiento a las personas damnificadas por el delito de trata”. Available at <https://evaw-global-database.unwomen.org/en>.

The example above shows the need to prioritize victims’ needs for psychological support and physical security. It also brings to the fore the agency that individuals should be able to exercise, even as victims. In this regard, integrating a gender-responsive approach to victim support is essential. Equally important is avoiding gender stereotypes, as an absence of gender awareness can have detrimental consequences. First, gender stereotyping contributes to a failure to identify victims and underreporting; some stereotypes feed into the belief that men are not victims, whereas others feed into the belief that only certain crimes, such as

⁸¹ UNODC, Education for Justice, University Module Series, Crime Prevention and Criminal Justice, Module 9: Gender in the Criminal Justice System, “Topic three”.

⁸² See UNODC, *The Time is Now*, chap. 4.

trafficking in persons, affect women. This may also lead to revictimization. Second, gender stereotyping leads to insensitive treatment. Gender stereotyping may lead to insensitive treatment by criminal justice officials and secondary victimization. Third, gender stereotyping results in a lack of assistance and protection: where individuals are not considered victims owing to gender stereotyping, they will not be offered assistance and protection. Victim services that are designed on the basis of stereotypes will not be able to respond to the different needs of all genders. This may lead to both revictimization and secondary victimization.

PREVENTION

Crime prevention comprises strategies and measures that seek to reduce the risk of crimes occurring, and their potential harmful effects on individuals and society, including fear of crime, by intervening to influence their multiple causes.⁸³ Notwithstanding the pivotal importance of effective law enforcement, prosecution and adjudication to combat organized crime, the importance of measures that prevent organized crime occurring in the first place is recognized in article 31 of the Organized Crime Convention.

Well-planned crime prevention strategies not only prevent crime and victimization, but also contribute to sustainable development. Prevention is key to achieving 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) in terms of reducing violence, crime and injustice, as well as for creating safe and resilient cities (Goal 11) and to eliminating all forms of violence against women and girls (Goal 5). The interconnection of crime prevention with other Sustainable Development Goals, in particular in terms of the advancement of gender equality, was emphasized by the Commission on Crime Prevention and Criminal Justice in 2017, with the adoption of its resolution 26/3, entitled “Mainstreaming a gender perspective into crime prevention and criminal justice policies and programmes and into efforts to prevent and combat transnational organized crime”.

Effective prevention requires actors in the justice system to collaborate with those in other sectors to address the root causes of disputes, conflict, violence and human rights abuses with the aim of reducing the risk of crime occurring. Effective prevention needs to be based on evidence, with the aim of reducing levels of violence, in particular against women, children and at-risk groups. Evidence-based prevention, therefore, considers the four key concepts covered in this issue paper: (a) agency; (b) relationships; (c) chronic vulnerability; and (d) intersectionality.

It also means that professionals, such as social workers and criminal justice practitioners, including defence attorneys, who interact with offenders and victims should be included in the implementation of prevention programmes, to ensure that communication is effective and that referrals of individual cases to appropriate service providers run smoothly and are in the best interest of the individuals concerned.

An effective gender-responsive crime prevention strategy is necessary for the development of inclusive crime-prevention programmes and initiatives. It is crucial that, throughout the process (consultation, development and implementation of prevention strategies and programmes), the needs of people with different gender identities are accounted for and that they are heard in the process. Gender equality policies and initiatives can have a positive effect in preventing and countering organized crime.⁸⁴

Similarly, partnerships with civil society organizations engaged in issues related to organized crime but that do not work primarily on achieving crime prevention and criminal justice objectives, including women's organizations or groups of LGBTIQ+ allies, can potentially be important partners in preventing and countering organized crime in certain parts of the world.

⁸³ Guidelines for the Prevention of Crime, para. 3.

⁸⁴ See UNODC, *The Time is Now*, chap. 4

ORGANIZED CRIME STRATEGY TOOLKIT FOR DEVELOPING HIGH-IMPACT STRATEGIES

To assist Member States in the development of counter-organized crime strategies, UNODC prepared a toolkit^a that provides guidance on strategic principles relating to preventing and countering organized crime, while containing a description of some of the more specific approaches, capabilities and instruments that can be adopted to address the problem.

^a Available at <https://sherloc.unodc.org>.

PROMISING PRACTICE

In Argentina, with funding provided by the United Nations Democracy Fund, the United Nations Development Fund for Women partnered with a foundation for women's equality (Fundación Mujeres en Igualdad) to implement the Organizing Women against Corruption project. The project sought to organize and mobilize women in order to raise public awareness of their right to access public information.

A toolkit was produced that included materials on the access to information law, along with a road map for individuals and non-governmental organizations on requesting information about the financing and enforcement of gender policies. A documentary film entitled *Gender and Corruption* was also produced, to educate the public on a subject that remains sensitive and rarely discussed in Argentina. The film draws on the knowledge and experience of former and current public servants, members of specialized international agencies and civil society organizations. It shows how women, already disadvantaged, suffer even more from the loss of resources caused by corruption, how gender inequality can obstruct women's access to justice and information and how women, as victims of corruption, can even be further sexually exploited by being forced to be involved in transactional sex.^a

^a United Nations Development Programme, *Corruption, Accountability and Gender: Understanding the Connections, Primer in Gender and Democratic Governance*, vol. 5 (2010).

Effective prevention requires a multi-stakeholder approach: it requires actors in the justice system to collaborate with other sectors to address the root causes of disputes and to avert conflict, violence and human rights abuses, including gender discrimination.

Motherhood affords opportunities for preventing or limiting the participation of young people in organized criminal groups. It is important to note that highlighting the role of mothers is not intended to further gender stereotypes that cast women as the natural nurturers and caregivers, but rather to recognize their relevant and positive role as change makers. In Italy, this phenomenon has been referred to in the media as “courageous mothers”. This is also in line with findings on countering violent extremism⁸⁵ and Security Council resolution 1325 (2000), in which the Council reaffirmed the important role of women in the prevention and resolution of conflicts and in peace-building and stressed the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security.

In the Philippines, for example, women, in particular in their roles as mothers and widows, typically spearhead community resilience initiatives. In South Africa, mothers are seen as nurturers who should command respect. This role constitutes an entry point for women undertaking mediation and dialogue with gang members.⁸⁶

A pilot study in the Netherlands exploring the extent of intergenerational continuity of crime in families of organized crime offenders found that, while in the large majority of the cases, the sons of members of organized criminal groups seemed to follow in their fathers' footsteps, that was not the case for daughters. Half of

⁸⁵ UN-Women, “Women's role vital in countering violent extremism”, 2 October 2017.

⁸⁶ Lucia Bird, “Rethinking resilience: the role of women in community responses to organized crime”, Policy Brief (Geneva, Global Initiative against Transnational Organized Crime, 2021).

the daughters did have a criminal record, but mainly for one minor crime only. Overall, however, the study found that intergenerational transmission, or the likelihood of sons and daughters following the path of their fathers into organized criminal groups, seemed to be facilitated by additional mediating risk factors such as inadequate parenting skills, a father's reputation and deviant social learning.⁸⁷ Once again, both intersectionality and people's relationships play an important role in preventing – or not – the participation of youth in organized criminal groups.

Additional evidence from Italy highlights the influence of women in mafia families, where the mother's role as educator is decisive in passing on the mafia values to the younger generation. Similar evidence on the “hidden force” of mothers, has been found also in other communities, such as in Curaçao, where parents pass on values conducive to criminality within the context of economic vulnerability.⁸⁸

PROMISING PRACTICE

In Peru, the national multi-sector policy against organized crime for 2019–2030 presents gender as one of the four cross-cutting approaches that must be addressed and included in efforts to prevent and combat organized crime. In particular, the national policy underlines the importance of taking into consideration gender, together with the three other cross-cutting approaches, to prevent crime from infiltrating communities through the assessment and analysis of its root causes and identification of the possible areas of intervention. The national policy also includes gender considerations in the majority of the indicators set out in the document to assess the implementation of approaches, tools and capabilities by relevant national entities for the prevention and combating of organized crime.^a

^a Available in the SHERLOC strategies database (<https://sherloc.unodc.org/cld/en/st/home.html>).

PROMISING PRACTICE

In Pakistan, the national action plan to combat trafficking in persons and smuggling of migrants^a includes a gender-sensitive approach, with the majority of the action plan's strategic objectives being gender-inclusive. The first objective is to establish vital mechanisms to combat trafficking in persons and smuggling of migrants through, among others, the development of a national action plan that is gender-sensitive. Furthermore, a gender-inclusive approach was developed regarding the monitoring and evaluation of the action plan with the integration of gender- and age-disaggregated data to assess the implementation of the national action plan that must be achieved to combat trafficking in persons and smuggling of migrants in Pakistan.

^a Available in the SHERLOC strategies database (<https://sherloc.unodc.org/cld/en/st/home.html>).

⁸⁷ Meintje van Dijk, Edward Kleemans and Veroni Eichelsheim, “Children of organized crime offenders: like father, like child? An explorative and qualitative study into mechanisms of intergenerational (dis)continuity in organized crime families”, *European Journal on Criminal Policy and Research*, vol. 25 (2019). It is important to highlight that the study was conducted based on a small sample of organized crime cases and families in one country, and the findings cannot be transposed to the global scale.

⁸⁸ Jacqueline Hicks, “The role of gender in serious and organised/transnational crime”, K4D Helpdesk Report (March 2021).

CONCLUSION

GENDER MATTERS

The present issue paper is aimed at providing an overview of gender-related issues pertaining to the implementation of the Organized Crime Convention.

Recalling the international community's central commitment in the context of the 2030 Agenda for Sustainable of "leaving no one behind", mainstreaming gender considerations in countering and preventing organized crime will facilitate and contribute to more effective prevention, investigation, prosecution and adjudication of organized crime, more efficient and inclusive protection of victims and witnesses of organized crime and finally be of paramount importance for the effective implementation of the Organized Crime Convention.

The paper concludes that gender-mainstreaming is not a parallel effort or a "women's issue" separate from the implementation of the Organized Crime Convention but is an integral part of full implementation of the Convention.

THIS PAPER IS JUST THE BEGINNING

Nevertheless, much remains to be done. For the most part, examples presented in the present paper focused on the binary categories of women and men, despite the understanding that gender is a spectrum. It is important to underscore, however, that this reflects the limited range of available research and information on practices by Governments around the world, rather than people's experiences. In order to develop discussions and understanding, future research on organized crime and gender, and by extension the implementation of the Organized Crime Convention, needs to further explore the experiences of diverse gender identities, as well as the different experiences of victims of organized crime within the criminal justice and the gender dimension of youth in organized crime. Significant data challenges still exist. Gender statistics, including sex-disaggregated data, need to be collected, disseminated and used to inform policy, legislation and practices in order to improve our understanding of gender and organized crime; and to prevent and combat organized crime more efficiently.

Therefore, this issue paper is not intended to be an exhaustive analysis of all the potential issues related to gender and organized crime. More research from scholars, practitioners and civil society is needed to develop in-depth knowledge of the wide array of areas related to organized crime and gender.



UNODC

United Nations Office on Drugs and Crime