



Gender Equality and Justice Programming: Equitable Access to Justice for Women

PRIMERS IN GENDER AND DEMOCRATIC GOVERNANCE



**2. GENDER EQUALITY AND
JUSTICE PROGRAMMING: EQUITABLE
ACCESS TO JUSTICE FOR WOMEN**

This primer outlines the major obstacles and barriers women face in accessing justice and suggests strategies and interventions to overcome these challenges. Gender mainstreaming is not a goal in itself, but rather a strategy towards achieving equality between men and women. The majority of this primer focuses on women's access to justice and the social relationships between men and women that disadvantage women and hamper this access.

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The other four primers in the Primers in Gender and Democratic Governance Series are:

- Quick Entry Points to Women's Empowerment and Gender Equality in Democratic Governance Clusters
- Gender Equality and Electoral Funding Mechanisms



- Corruption and Gender Relations: Five Dimensions for Democratic Governance
- Gender Responsive E-Governance: Exploring the Transformative Potential

These resources are framed by the human rights-based approach to development, which now informs the work of the UN development system (see the Quick Entry Points primer for a discussion of the approach and what it means for gender equality work).

UNDP intends for these primers to contribute to the empowerment of women and the advancement of gender equality through democratic governance. We encourage colleagues to continue to share their experiences and ideas through dgp-net@groups.undp.org, the electronic discussion network serving UNDP democratic governance practitioners.

Acronyms and Definitions

Gender

The social attributes associated with being male and female and the relationships between women, men, girls and boys, as well as the relations between women and those between men. These attributes and relationships are socially constructed and are learned through socialization. They are context- and time-specific and changeable. Gender is part of the broader socio-cultural context. Other important criteria for socio-cultural analysis include class, race, poverty level, ethnic group and age (UN/OSAGI, n.d.). The concept of gender also includes the expectations about the characteristics, aptitudes and likely behaviours of both women and men (femininity and masculinity). The concept of gender, applied to social analysis, reveals how women's subordination (or men's domination) is socially constructed. As such, the subordination can be changed or ended. It is not biologically predetermined nor is it fixed forever (UNESCO, 2003).

Gender relations

The social relationships between men, women, girls and boys, which shape how power is distributed between women, men, girls and boys and how that power translates into different positions in society. Gender relations vary depending on other social relations, such as class, race, ethnicity, etc. They will greatly impact how an individual man or woman experiences processes and institutions such as trials and courts and how they interact with other individuals within those institutions.

Gender mainstreaming

“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 perpetrated. The ultimate goal of this strategy is to achieve gender equality” (UN/ECOSOC, 1997).

Gender equality

The equal rights, responsibilities and opportunities of women and men and girls and boys. Equality does not mean that women and men will become the same but that women's and men's rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities

ACRONYMS

BCPR	Bureau for Crisis Prevention and Recovery
BDP	Bureau for Development Policy
CEDAW	The Convention on the Elimination of All Forms of Discrimination Against Women
DEVAW	Declaration on the Elimination of Violence Against Women
DGG	Democratic Governance Group
FSU	Family Support Unit
GBV	Gender-Based Violence
ICC	The International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
MDGs	The Millennium Development Goals
NGO	Non-Governmental Organization
SADC	South African Development Community
UNDP	United Nations Development Programme
UNIFEM	United Nations Development Fund for Women
UNODC	United Nations Office on Drugs and Crime

of both women and men are taken into consideration, recognizing the diversity of different groups of women and men (UN/OSAGI n.d.).

Gender equity

The process of being fair to men and women. To ensure fairness, measures must often be put in place to compensate for the historical and social disadvantages that prevent women and men from operating on a level playing field. Equity is a means—equality is the result (UNESCO, 2003).

Gender analysis

The collection and analysis of sex-disaggregated information. Men and women perform different roles in societies and within institutions, such as police forces and courts. These differing roles lead to women and men having different experiences, knowledge, talents and needs. Gender analysis explores these differences so that policies, programmes and projects can identify and meet the different needs of men and women. Gender analysis also facilitates the strategic use of the distinct knowledge and skills possessed by women and men, which can greatly improve the long-term sustainability of interventions (UNESCO, 2003).

Gender neutrality

An assumption that development interventions will benefit men and women equally, leading to a failure to analyse and plan for the social relationships between men and

women and how those relationships will impact programming.

Gender justice

“The protection and promotion of civil, political, economic and social rights on the basis of gender equality. It necessitates taking a gender perspective on the rights themselves, as well as the assessment of access and obstacles to the enjoyment of these rights for women, men, girls and boys and adopting gender-sensitive strategies for protecting and promoting them” (Spees, 2004). Much of the broader gender justice agenda falls outside the scope of UNDP Access to Justice programming. However, increasing women’s access to justice, be it formal or informal, hinges on removing economic, political and social barriers to participation, as articulated by the gender justice agenda (UNIFEM & ILAC, 2004).

Gender-based violence (GBV)

A generic term used to describe any harmful act perpetrated against an individual against his or her will based on his or her socially defined identity as male or female (UN, 2005). The UN General Assembly defined violence against women in the 1993 Declaration on the Elimination of Violence Against Women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private” (UN, 1993).

“ Gender is defined as the social attributes associated with being male and female and the relationships between women, men, girls and boys, as well as the relations between women and those between men. ”

Introduction

The engagement of UNDP in Strengthening Responsive Governing Institutions (DGG—Cluster II), as defined in the *Access to Justice Practice Note* (UNDP, 2004) aims at supporting justice and related systems to ensure that they work for the poor and disadvantaged. Depending on whether individuals are men or women, poor or disadvantaged, everyone requires different services from the justice system and encounters different barriers when accessing such services. There is a long history of activism and academic inquiry into the different ways in which men and women experience legal and judicial institutions, however, much of this knowledge has not yet impacted programming initiatives.

By and large, women have less access to and ownership of judicial processes because of their marginalized status *vis á vis* men in most societies. In addition to state-sponsored or condoned discrimination against women, women are marginalized from the justice system because injustices against women are much more likely to occur in private than injustices against men. Also, men are likely to mediate women's access to state institutions due to unequal power relations in the home, at work or in the State (Charlesworth & Chinkin, 1994). In order to ameliorate the gender disparities in access to justice, attention and resources need to be allocated to resolving this marginalization and improving women's ability to access justice mechanisms.

Equitable justice requires both the removal of harmful laws and practices, and ensuring that women are empowered to claim their rights (Nussbaum, 2001). Despite the fact that more member states have signed the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW) than any other UN Convention (UN/DAW, n.d.), gender inequalities and discrimination against women persist in every part of the



world. It is necessary for UNDP programming in the area of gender and justice to focus on creating an enabling legal and policy environment and to devise appropriate means of support for women and men so they can equitably access the judicial system.

“ UNDP must ‘mainstream’ gender analysis into all programmes and carry out gender-related activities as a part of every initiative it undertakes. At the same time, specific programmes and initiatives need to target women in order to build women’s capacity, reduce obstacles to access, and compensate for centuries of discrimination against women in the political and justice spheres.”

This primer outlines the major obstacles and barriers that women face in accessing justice and suggests strategies and interventions to correct this disparity. Gender mainstreaming is not a goal in itself, but rather a strategy towards achieving equality between men and women. The majority of this primer focuses on women and the social relationships between men and women that disadvantage women. While men have their own positive and negative gender-specific experiences of the justice system, in general, women are more likely to be marginalized from justice mechanisms. Given women’s extremely unequal access to power, resources, information and discourse, one cannot assume that gender-neutral policies and programmes will equitably benefit men and women.

Section 1 of this primer lays out the international mandates for UNDP work on gender equality and justice. Section 2 highlights key considerations in programming on gender equality and access to justice, including major obstacles facing women. Section 3 analyses UNDP programming to date on gender issues,

women’s rights, justice and human rights, noting overarching gaps and highlighting best practices. Section 4 analyses the types of gender-aware support offered by UNDP and makes recommendations for closing the existing gender gap in specific interventions and for ensuring that everyone enjoys the benefits of access to justice initiatives.

This primer advocates a two-fold approach to programming. On the one hand, UNDP must ‘mainstream’ gender analysis into all programmes and carry out gender-related activities as a part of every initiative it undertakes. At the same time, specific programmes and initiatives need to target women in order to build women’s capacity, reduce obstacles to access, and compensate for centuries of discrimination against women in the political and justice spheres. The issues, analysis and recommendations contained in this primer are designed to provide a starting point for realigning UNDP support to Strengthening Responsive Governing Institutions (DGG—Cluster II) along these two complementary tracks.



Mandates for UNDP Work on Gender and Justice

For the past several decades, the international community has been developing the normative framework that protects women's rights and enshrines gender equality as a means to and a goal of sustainable and equitable development. The most relevant of these normative frameworks to the field of access to justice are described below.

Convention on the Elimination of All Forms of Discrimination Against Women

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was first adopted in 1979 by the UN General Assembly and now has 182 Member State signatories, making it the

most ratified UN convention. Member State signatories to CEDAW are obligated to implement policies and laws that will comply with the convention's articles. In December 2000, an Optional Protocol to CEDAW entered into force, which allowed for individual women or groups of women to submit complaints to the CEDAW committee



about signatory States that have violated these women's rights under the CEDAW articles and provisions.¹ CEDAW articles of particular relevance to gender-responsive justice programming include those pertaining to State Parties' commitments to:

- Establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination. (2.C)

- Take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against women. (2.F)
- Repeal all national penal provisions that constitute discrimination against women. (2.G)
- [Accord] women equality with men before the law. (15.1)
- [Accord] to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals. (15.2)
- Take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. (16.1)

CEDAW is much more than just a policy statement and general commitment to the principles of equal rights for women and men. In the past quarter century, it has been a powerful tool for holding governments accountable to their commitments *vis à vis* gender equality and women's rights.

UNDP practitioners can use the provisions of CEDAW as an advocacy tool when lobbying decision makers to reform laws and policy so that they will better serve women's justice needs. Harmonizing legal and judicial policy and practice with CEDAW should be a major goal of justice programming. Furthermore, decades of women's activism on the implementation of CEDAW has yielded a wealth of knowledge on obstacles and opportunities for gender equality. UNDP

should consult individuals and organizations that have experience in advocacy around CEDAW when designing and implementing access to justice programmes.

Declaration on the Elimination of Violence Against Women

The General Assembly adopted the Declaration on the Elimination of Violence Against Women (DEVAW) on 20 December 1993.² It represents an international consensus on the centrality of eliminating violence against women to realizing universal human rights and the development goals, and it is also a powerful advocacy tool for UNDP practitioners. DEVAW calls on member states, *inter alia*, to:

- “Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms” (UN, 1993).³
- “Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women” (UN, 1993).⁴

Beijing Platform for Action

The Beijing Platform for Action was adopted at the Fourth World Conference on Women held in 1995.⁵ It sets out an ambitious agenda for achieving gender equality on a global scale and calls on member states to:

- Provide women who are subjected to violence with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm they have suffered, and inform women of their rights in seeking redress through such mechanisms (UN, 1995).⁶
- Review national laws, including customary laws and legal practices in the areas of family, civil, penal, labour and commercial law, in order to ensure the implementation of the principles and procedures of all relevant international human rights instruments by means of national legislation; and to revoke any remaining laws that discriminate on the basis of sex and remove gender bias in the administration of justice (UN, 1995).⁷

Security Council Resolution 1325

Adopted unanimously by the Council in October 2000, Security Council Resolution 1325 “*emphasizes* the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes, especially those related to sexual and other violence against women and girls, and in this regard *stresses* the

“UNDP should consult individuals and organizations that have experience in advocacy around CEDAW when designing and implementing access to justice programmes.”

BOX 1. COUNTRY-LEVEL GENDER STRATEGIES

UNDP will work across practices and in partnership with other United Nations agencies on initiatives aimed at helping national partners to:

- Incorporate gender equality into MDG-based planning and monitoring, and apply gender-sensitive budgeting techniques;
- Reduce violence against women and reduce the vulnerability of women and girls to HIV infection and their burden of care for the sick;
- Expand women's participation in governance and decision-making processes and strengthen women's property and inheritance rights; and
- Reduce time burdens on women and girls through mainstreaming gender into environment and energy policies.

need to exclude these crimes, where feasible, from amnesty provisions” (UN, 2000).

UNDP Gender Strategy 2008–2011

The Millennium Summit of 2000 reaffirmed gender equality as a development goal itself (MDG3) and underlined its importance as a means to achieve all of the other MDGs. UNDP will integrate a gender perspective into its four focus areas to increase development effectiveness. In addition to this, UNDP will set clear targets and benchmarks throughout the organization for achieving gender parity and gender sensitivity in the workplace (see

Box 1). UNDP will continue to build internal capacity to address gender dimensions in all aspects of its work. Focus will be given to developing policy and measurement tools and indicators, regular monitoring and reporting, and advocacy strategies. The UNDP Gender Strategy for 2008–2011 will build on the current Gender Action Plan (2006–7) to:

- Develop capacities, in-country and in-house, to integrate gender concerns in all practice areas and in global, regional and country programmes.
- Provide gender-responsive policy advisory services that promote gender equality and women's empowerment in all focus areas.
- Support specific interventions that benefit women and scale-up and expand innovative models developed and tested by the United Nations Development Fund for Women (UNIFEM).

UNDP, UNIFEM, UNFPA, and UNICEF have prepared a background paper that outlines collective efforts to promote gender equality and women's empowerment, and the unique role of each agency in this process, for discussion with members of the Executive Board.

“The Millennium Summit of 2000 reaffirmed gender equality as a development goal itself (MDG3) and underlined its importance as a means to achieve all of the other MDGs.”



Key Gender Issues for Justice Programming

As described in the section above, the term 'gender justice' is used to encompass a broad menu of policy and legislative reforms aimed at removing discrimination against women and promoting gender equality. Drawing on experiences from access to justice programmes, there are major issues that should be given priority to achieve these goals on the ground.

The first set of issues focuses on the disparate impacts that delivering justice has on women and men and the substantive areas where women are marginalized from the justice process, including property and inheritance, family law, gender-based violence (GBV),

traditional justice, and international jurisprudence. A second set of issues surrounds women's participation in the justice sector and barriers to women's access to justice, including procedural problems that inhibit equitable functioning of the justice sector.

Women's property and inheritance rights

In many countries, women and men do not have equal rights to inherit and own property. Some governments may have ratified CEDAW, but have yet to harmonize legislation with CEDAW or do not hold themselves accountable to ensuring women's property and inheritance rights (see Box 2).

Gender inequities in inheritance and property rights are attributable both to laws and policies that openly discriminate against women and also to the failure of many countries to implement existing, equitable laws on property ownership and inheritance. In addition to violating women's right to protection from discrimination under the law as guaranteed by CEDAW, denying women the equal right to inherit and hold property on a par with men has serious consequences for women's physical and economic security and can also be detrimental to national development. When women cannot inherit and hold property, their ability to provide for themselves and their families suffers. This situation can be gravely exacerbated in situations where a high prevalence of HIV/AIDS, high rates of urbanization or migration, or where conflict

has left women as the sole providers for their families.

Insecure land rights for women are especially pernicious in many regions of the world, most notably Sub-Saharan Africa, where women carry out most of the agricultural work and produce the majority of the food. In fact, the Food and Agriculture Organization posits a direct link between women's insecure land rights (including usufruct rights) and food insecurity (FAO, 2002; Feminist Daily News Wire, 2006). Women's disproportionately low land and property ownership rates also renders them less likely to be able to secure credit with which to embark on entrepreneurial activities that could result in their own and their communities' economic growth (Agarwal, 2003). In addition, a recent study undertaken in the state of Kerala in India showed that women who owned land or other immovable property were least likely to suffer domestic violence, irrespective of household income (Panda & Agarwal, 2005). In post-conflict environments, women's land and property rights are often even further contested, as displacement and social dislocation may weaken women's claims to land (UNIFEM, 2001).

Marriage, divorce and family law

As with inheritance and property law, inequalities in legislation related to marriage, divorce and child custody persist in many countries. Given the primacy of the private sphere for many women, discrimination against women in family law can be particularly harmful. Furthermore, many systematic and pervasive violations of women's human rights are perpetrated by women's family members. While most men suffer human rights abuses at the hands of state or public institutions, women who suffer rights abuses tend to do so in their own homes, at the hands of family members. Thus, unfair access to services, counsel and adjudication,

BOX 2. GLOBAL EXAMPLES OF GENDER INEQUALITY IN THE RIGHT TO INHERIT AND HOLD PROPERTY

- **Lesotho's** Deed Registry Act (1967) states, "No immovable property shall be registered in the name of a woman married in community of property" (Equality Now, 2005).
- **Chile's** Civil Code (Article 1749) dictates that the husband is to administer both the couple's joint property and the property of his wife (Equality Now, 2005).
- In **Nigeria, Kenya** and **Uganda**, widows lose their rights to inherited property once they remarry (Decker, 2006).
- As recently as 2005, the application of customary law in **Sierra Leone** was disadvantaging women in disputes over property and inheritance (Amnesty International, 2005).

“As with discriminatory inheritance and property entitlements, discrimination against women in family law can have an adverse affect on the physical and economic security of women and their children.”

and the enforcement of discriminatory marriage, divorce and family law render women unprotected in the very sphere where they are most likely to suffer human rights abuses (see Box 3).

These discrepancies explicitly violate the provisions of CEDAW that entitle women to equal rights to enter and leave marriages (UN, 1979). Women in countries with discriminatory family law are often left with little choice but to stay in unhappy or even violent marriages. Despite having the largest burden of care for children within the household, women may not have equal rights over the custody of their children upon dissolution of their marriage. As with discriminatory inheritance and property entitlements, discrimination against women in family law can have an adverse affect on the physical and economic security of women and their children. Often, discrimination against women in property and family law compound each other: For example, for divorced and widowed Afghan women and their children living under the Taliban regime, begging was the only means of survival (Grima, 2003). Discrimination in nationality law exists in many countries, and seriously affects women (and also their husbands and children), especially in respect to their right to work, health, and education. Women in several regions are tackling inequality in this area.

BOX 3. GLOBAL EXAMPLES OF DISCRIMINATORY MARITAL AND FAMILY LAWS

- In **Egypt**, in spite of some improvement due to amendments in the family law, men and women still have drastically different rights when it comes to divorce. As of December 2004, Egyptian men could divorce their wives without providing justification or ever entering a courtroom, whereas Egyptian women had to provide evidence in court that they had been harmed in order to divorce their husbands (Human Rights Watch, 2004).
- The 1971 Law of Marriage Act of **Tanzania** allows males to marry at the age of 18, while the legal age for females is 15, which violates girls' rights under the Convention on the Rights of the Child (Equality Now, 2005).
- Divorced women of **Iran** are only allowed to keep custody of their children until those children reach the age of seven (Halper, 2005).
- In **Bangladesh**, women lack the right to pass their citizenship on to their children, although having a Bangladeshi national as a father or grandfather grants Bangladeshi citizenship to the same child (Equality Now, 2005).

Gender-based violence

Violence against women is the most pervasive and destructive systematic violation of women's human rights. Besides violating women's bodily integrity, gender-based violence (GBV) is also used as a means of intimidating, silencing, punishing and humiliating women. Independent experts Ellen Johnson-Sirleaf and Elisabeth Rehn described the 'continuum of violence', meaning that many women and girls face violence at many times in their lives: before

BOX 4. GLOBAL EXAMPLES OF VIOLENCE AGAINST WOMEN

- In **Uganda**, marital rape is still not criminalized and inequitable family law makes divorce more difficult for women than men. Although Uganda is a signatory to CEDAW, a 2003 report by Human Rights Watch found that many Ugandan women's groups believe that the government has not enacted legislation that ensures prosecution and punishment for those responsible for violence against women (Human Rights Watch, 2003).
- The UN Special Rapporteur on Violence Against Women found that decentralization in **Mexico** was making the justice system unable to "effectively comply with its international obligations, particularly with regard to violence against women." While some states have enacted progressive legislation and have pursued implementation expeditiously, 20 states have not criminalized marital rape, 11 states do not recognize domestic violence as grounds for divorce, and one state even allows a man to "exercise his right to correction towards those against whom he may exercise it" (UN Special Rapporteur on Violence against Women, 2006).
- Systemic disrespect for women's rights often combines with political and social unrest, resulting in heightened violence against women in many turbulent societies. According to the former UN Special Rapporteur on Violence Against Women, "violence against women [in **Colombia**], particularly sexual violence by armed groups, has become a common practice within the context of a slowly degrading conflict and a lack of respect for international humanitarian law" (UN Special Rapporteur on Violence against Women, 2001).

conflict, after conflict and during peace (Johnson-Sirleaf & Rehn, 2002). Violence against women is not confined to any particular social class, ethnic group, religious group or even time period. Rather, GBV is an ever-present universal threat to women.

Despite the seriousness and prevalence of GBV, many women are still not protected by legislation or practice. In fact, institutions of justice and individuals throughout the world have routinely been found to be complicit in either perpetrating or perpetuating violence against women. Most judicial systems globally do not address GBV with the urgency required.

In countries where appropriate legislation is in place, implementation and enforcement of protections for women are often lacking, or, in some instances, they are biased in favour of the perpetrator. In other countries, women who have been victims of GBV are themselves blamed and held responsible in court for violence perpetrated against them (UNIFEM, n.d.) (see Box 4). GBV is a major cause of injury and death and, in contexts of high rates of HIV infection, non-lethal incidents of violence can still prove deadly with time.

The centrality of GBV to all other areas of discrimination against women cannot be under-estimated. Many feminists argue that violence against women and the threat of violence are used as a tool to enforce the patriarchal order (MacKinnon, 1998). All programming that focuses on women or gender equality must recognize that violence is not only a major cause of injury and humiliation for women, but also a major inhibitor for women's participation in public life, including justice sector institutions.

Traditional justice versus formal justice

Support for traditional or customary justice mechanisms has been advocated as a means of increasing access to justice for people marginalized by poverty, ethnicity, location or other factors. Non-elites often view traditional justice systems as more legitimate, relevant and accessible (UNDP, 2004). Furthermore, where traditional justice mechanisms are in force, corruption and elite capture of development resources are often perceived to be less endemic. However, traditional justice mechanisms can and often do discriminate against women. Care must be taken to ensure that any traditional justice initiatives supported by UNDP and its

partners comply with CEDAW and other normative human rights frameworks. It should be noted though that engaging with traditional mechanisms that discriminate against women may sometimes be necessary when working towards change (see Box 5).

Not all customary justice mechanisms are disadvantageous to women. Evidence from Kenya shows that the introduction of statutory law related to title registration and land ownership actually eroded women's customary claims to land (Castillo-Diaz, 2006). Furthermore, customary justice mechanisms also provide women a space for dispute resolution that is acceptable to men and therefore easier for women to access than formal justice systems.

Traditional justice mechanisms may also be more representative, in terms of women's participation, than formal institutions. As opposed to the extremely low representation of women that characterizes most justice institutions worldwide, 35% of the judges in the Rwandese Gacaca courts are women. This percentage is thought to be the highest of any justice institution in the world (UNIFEM, n.d. (a)). Importantly, Rwandese women advocated that crimes of sexual and GBV be excluded from the Gacaca mechanism and be included under the jurisdiction of the national and international courts dealing with crimes committed during the 1994 genocide.

BOX 5. GLOBAL EXAMPLES OF TRADITIONAL MECHANISMS THAT DISCRIMINATE AGAINST WOMEN

- Eighty-five per cent of **Sierra Leone's** population turns to customary courts to adjudicate disputes. These courts have been found to discriminate against women in property rights, inheritance rights and cases of alleged GBV. Men overwhelmingly staff customary courts in Sierra Leone. Amnesty International even found cases of trumped up charges against women and wrongful imprisonment, which they believed to be retributive actions against women seeking justice under traditional law (Amnesty International, 2005).
- Human Rights Watch has documented several alleged violations of women's rights since Sharia law was extended to criminal cases in northern **Nigeria**. Not only is the testimony of women worth half that of the testimony of men, but women can be convicted of adultery solely by becoming pregnant. Women lawyers are also forbidden to address the court except through the male counsels on their team (Human Rights Watch, 2004).

In each country and cultural context, traditional and customary justice mechanisms must be analysed from a women's rights perspective in order to strengthen gender-equitable programming. It should also be noted that, while formal and informal justice systems both have advantages and disadvantages, "legal pluralism can be inimical to women's interests, as it provokes confusion and allows male-dominated societies to resist women's claims by vacillating between the two systems and putting off, or neutralizing, any reforms" (Castillo Diaz, 2006).

Transitional justice

One of the most daunting challenges for societies emerging from conflict is the re-establishment of justice mechanisms. Striking a balance between the community's need for reconciliation and an individual's need for justice is often difficult. Furthermore, the culture of impunity that often predominates during conflict can have a destabilizing effect in the post-conflict period. This is especially true when it comes to crimes



“ Since many transitional institutions carry on into subsequent phases, it is essential that women’s rights be safeguarded so that they can be adequately protected in the post-transition and development phases. ”

against women. Incidents of rape and other forms of sexual violence have reached epidemic proportions in many of today’s war zones (Johnson-Sirleaf & Rehn, 2002). While academics and feminists argue about the extent to which prosecutions can serve as a deterrent in cases of GBV, women in post-conflict societies have repeatedly and consistently demanded that those responsible for crimes against women be held to account in courts of law (Castillo Diaz, 2005). Furthermore, as transitional justice is a major strategy for restoring the rule of law in post-conflict societies, crimes against women must be prioritized in transitional justice mechanisms.

Despite the many challenges of delivering justice to women in post-conflict societies, transitional periods can offer new political

space in which to advance women’s rights. Since many transitional institutions carry on into subsequent phases, it is essential that women’s rights be safeguarded so that they can be adequately protected in the post-transition and development phases. Women’s groups and advocates on the ground are often active in issues of justice in post-conflict societies (see Box 6).

Because the focus of transitional justice is on reconciliation, healing and peace-building, the equal participation of women and the inclusion of civil society are essential to ensure that justice is reaching all members of society. However, women who participate in post-conflict justice procedures may be placing themselves in a state of heightened insecurity: those who have committed crimes against them may seek to silence them or enact revenge. Programmes must aim to take women’s security needs into account while encouraging them to participate in any transitional justice processes.

BOX 6. GLOBAL EXAMPLES OF GROUPS ADVOCATING FOR GENDER-SENSITIVE JUSTICE IN POST-CONFLICT SOCIETIES

- Women’s organizations in **Liberia**, such as the Women in Peace Building Network (WIPNET), have been organizing community reconciliation workshops in order to help male and female members of the community come to grips with their trauma. WIPNET’s activities have been focusing on both victims—many of whom are children—and perpetrators (UNIFEM, n.d. (b)).
- In 2003, women’s groups in **Sierra Leone** participated in a special three-day session of the Truth and Reconciliation Commission that focused on crimes against women committed during the civil war (UN, 2003).

International jurisprudence

In recent years, international jurisprudence has seen a great deal of progress in ensuring justice for women. Bodies such as the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the International Criminal Court (ICC) have been grappling with the means to deliver justice for crimes committed against women (see Box 7).

BOX 7. GLOBAL EXAMPLES OF PROGRESS IN INTERNATIONAL JURISPRUDENCE

- Rape and GBV were key catalysts for the establishment of the Criminal Tribunal for the Former **Yugoslavia** (ICTY) and many of those accused before the tribunal were accused of gender-based crimes. Bosnian women activists continuously lobbied the tribunal to consider GBV as the gravest form of human rights abuse, rather than as a mere by-product of war. In 2004, the NGO Women Waging Peace found that male and female staff of the ICTY, among others, believed that the tribunal's strong focus on gender expertise had had a positive effect on the tribunal's proceedings. The presence of women and men with gender training and expertise facilitated the identification and preparation of witnesses who had experienced gender-based crimes. Furthermore, women's testimony was essential to prove allegations, since women were sometimes the only individuals present besides the accused when incidents of mass rape and other gender-related crimes occurred (Mertus, 2004). In 1998, the ICTY also handed down convictions for sexual violence as a form of torture (Askin, 2003).
- Article 3 of the Statute of the International Criminal Tribunal for **Rwanda** (ICTR) includes rape as a crime against humanity. In 1998, the ICTR convicted Jean-Paul Akeyasu of rape as a crime against humanity for his role in inciting violence against women during Rwanda's genocide (Askin, 2003).
- According to UNIFEM, "The Rome Statute [establishing the International Criminal Court] is one of the most significant examples of gender mainstreaming in an **international** treaty. It explicitly includes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and sexual violence as war crimes and crimes against humanity. Trafficking is encompassed within the crime against humanity of enslavement... In February 2003, the election of the Court's first judges was held; of the 18 judges elected, seven were women—a historic achievement in light of the traditionally very low number of women serving in international tribunals" (UNIFEM, 2006).

Although much international jurisprudence is outside the scope of UNDP Access to Justice programmes, the evolution of international jurisprudence as it relates to sexual and gender-based violence sets an important precedent and demonstrates the seriousness with which the international community treats these acts. Norms established by the ICC, as with other normative frameworks relating to women's rights, such as CEDAW, can be used by UNDP to lobby decision makers on these issues.

Women's participation in the justice sector

Women are severely underrepresented in most public sector institutions all over the world. This is especially true in the judiciary. In most parts of the world, fewer women than men become lawyers, and even fewer women lawyers than men lawyers rise to senior partner status, resulting in a tiny pool of eligible female candidates for positions in the judiciary (BBC, 2004). While the judiciary is one of the least representative branches of many governments, women are

also severely underrepresented in police forces, and in legislatures (see Box 8).

It is important to not assume that the presence of women within the justice sector will necessarily result in institutions that are more responsive to women's needs. In fact, when women's participation is limited to tokenism, individual women and men can feel pressure

BOX 8. GLOBAL EXAMPLES OF UNDERREPRESENTATION OF WOMEN IN THE JUSTICE SECTOR

- In 2005, UNODC reported that there were 29 women judges and 1,920 male judges in **Afghanistan**, 25 women judges and 985 male judges in **Ethiopia** and 434 female judges and 1,982 male judges in **South Africa** (UNODC, 2005).
- As of 2004, there was only one woman sitting as a judge at any level in **Egypt** (Human Rights Watch, 2004).
- In 1999, there were no women in the three highest courts in **Colombia** (UNIFEM, n.d. (c)).
- As of 2002, no more than three women were sitting at any time in either the International Criminal Tribunal for the Former **Yugoslavia** or the International Criminal Tribunal for **Rwanda** (Johnson-Sirleaf and Rehn, 2002).

to be less sensitive to women's issues and gender inequities. Nonetheless, justice sector practitioners, men and women alike, do have different capacities and skills to offer justice processes and their clients. For example, in cases of GBV, female victims may feel more comfortable and safer when dealing with female police, investigators, lawyers and judges. As noted by the NGO Women Waging Peace in their study of the ICTY, the presence of women judges, lawyers and ICTY staff greatly facilitated the process of collecting female victims and witnesses' testimony (Mertus, 2004). In order to encourage both men and women in the justice sector to become advocates for gender equality, we need to build men and women's knowledge of and skills in implementing a gender equality and women's rights approach in their work.

Barriers to women's access to justice

Of greatest relevance to UNDP Access to Justice programming are the ways in which men and women have unequal access to justice due to their gender. Many other factors may interact with gender identity to inhibit both men's and women's access to the justice system, such as race, class, ethnicity, rural/urban location, and other factors. Some specific factors that inhibit women's access to justice include:

- Lack of adequate legal mechanisms and normative frameworks that protect women's rights.
- Lack of knowledge of the legal measures that protect women and give them rights and access to services.
- High rates of illiteracy and poor literacy amongst women in many countries.

- Lack of resources or time to participate in justice processes, especially given the heavy burden of labour that women bear for their families.
- Fear of repercussions because, in many cases, the perpetrator or defendant knows the female victim or claimant.
- Lack of appropriately qualified female staff within justice institutions to receive and process women's complaints.
- Fear of being ostracized and shamed by communities that tend to blame victims of violence for the abuses they have suffered.
- The general climate of indifference towards women's rights in the society.
- The tacit acceptance of domestic and GBV in the society.
- Lack of protective mechanisms for women who come forward to seek justice.
- Under-funding of family and civil courts where divorce, custody and property disputes are adjudicated (Nyamu-Musembi, 2005).
- Cultural or religious practices that discriminate against women and inhibit their access to either formal or informal justice mechanisms.

Regardless of the particular reason, women's inability to access justice mechanisms is a major cause for the gender disparities mentioned in the above areas. If women are unable to equitably access justice mechanisms, they are not adequately protected from discrimination as mandated by CEDAW. Strategies to ameliorate this unequal access to justice are elaborated below.

“ It is important to not assume that the presence of women within the justice sector will necessarily result in institutions that are more responsive to women's needs. ”



The Track Record on Promoting Access to Justice for Women through UNDP Programmes

In 2005, UNDP undertook a comprehensive Gender Mapping exercise to establish the breadth and scope of programming across all UNDP service lines. Questionnaires were sent to all country offices asking them to identify the nature of the programming that they were undertaking, the source of funding, the advocacy being done around the programmes, and the policy advice given to governments and other actors.

Forty-nine country offices reported programming on gender and justice and women's human rights between the years 1999 to 2005. Country offices also reported

on ongoing and planned activities for the next programme cycle.⁸ Figure 1 summarizes the main areas of UNDP programming, as reported by the 49 country offices.

FIGURE 1. UNDP GENDER AND JUSTICE PROGRAMMING BY FOCUS AREA



To date, UNDP efforts in this area have focused primarily on advocacy campaigns aimed at increasing men and women’s legal awareness. Support to CEDAW implementation and reporting, often in partnership with national women’s machineries or UNIFEM, was reported by 11 country offices. Fifteen country offices supported the creation and codification of knowledge on gender and justice, by commissioning research and data collection projects. Fifteen country offices also mentioned activities focused on women’s participation, but ‘participation’ often referred to achieving a gender balance amongst programme staff. Eight country offices reported programming on gender-responsive law reform, institutional support to the justice sector, and support or training to women. Nine country offices reported carrying out training for male and female members of the justice sector on gender, and three offices did projects that dealt directly with the question of women’s access to justice.

Advocacy and support of normative mechanisms are important tools for improving

women’s awareness of their rights and their ability to access justice. However, the gender mapping revealed that there are insufficient capacity-building activities for justice sector institutions and for individuals within the justice sector. Gender and women’s human rights training are sorely needed for judicial officials, police and lawyers. Institutional capacity building, such as women’s desks, and gender capacity within ministries, court systems and police forces, are needed to improve the ability of justice sector institutions to equitably respond to the needs of women and men.

Unfortunately, by far the smallest number of programmes directly benefited women themselves by offering training or otherwise helping them to access justice or to remove barriers to justice. Given the great disparities between men’s and women’s ability to access justice, much more effort is needed to create programmes which directly benefit women. Partnering with UNIFEM and scaling-up innovative UNIFEM programmes are two key strategies that should be considered (see section 4 for examples of such programming).

Gender analysis of database documents

In the course of preparing this primer, the author undertook a detailed analysis of available documentation on UNDP Access to Justice programmes, focusing on documents available in the UNDP programme database from 1999 to the current programme cycle (see endnote 8 for more information). The analysis of available documents for 46 projects revealed the following:

- 29 referred to women and gender
- 20 referred to gender in the situation analysis
- 20 referred to gender in strategies and activities sections

“To date, UNDP efforts in programming on women’s access to justice have focused primarily on advocacy campaigns aimed at increasing men and women’s legal awareness.”

- 17 mentioned gender in the outcomes and outputs section
- 13 made specific reference to women as project beneficiaries

The results of this analysis show that gender is not being mainstreamed adequately in UNDP access to justice programming, with nearly half of all programme documents failing to mention women and/or gender at all. Less than half of all programme documents mention gender or women in the situation analysis, implying that adequate attention is not being given to assessing women’s needs *vis á vis* the justice sector or what gender-specific barriers to access there might be. The omission of women and gender from the situation analysis is extremely troubling, since an assessment leads to the design of strategies to address the problems identified in the assessment. If gender equality considerations are absent at this stage, integrating practical and effective gender-related activities becomes all the more difficult.

Only 20 of the 46 programmes involved gender-related activities. Even fewer mentioned gender in the outcomes and outputs sections, which is of concern because it means that practitioners in the field are not holding themselves accountable for gender-related results. By far the fewest project documents mentioned women as direct beneficiaries of programming. Although both women and



men may benefit from a given intervention, one cannot assume this. Unless adequate gender analysis is undertaken before, during and after a given activity, there will be no evidence that programming benefits men and women equally.

“ Unless adequate gender analysis is undertaken before, during and after a given activity, there will be no evidence that programming benefits men and women equally. ”

BOX 9. ACCESS TO JUSTICE AT THE DISTRICT LEVEL IN AFGHANISTAN

The 2005 document for this initiative is a good model because it lays out a very comprehensive and integrated programme that has **analysed the gender-specific barriers** to access and developed measures to address them. **Strategies and activities are multi-pronged** in as much as they deal with various aspects of women's marginalization from the justice sector within a comprehensive package of support for district-level justice institutions. **Partnerships** are planned with UNIFEM and the Afghan Ministry of Women's Affairs in addition to the Ministry of Justice and other governmental bodies. Throughout the strategy, women's security needs are articulated and considered, as are the psychosocial needs that women may have as a result of sexual violence or other trauma suffered during the Taliban regime. **Data** presented in the programme document is disaggregated by sex. **Specific activities** are proposed to increase women's participation in the justice sector as well as activities geared towards improving the capacity of women already working within the justice sector. **Public seminars** on women's rights and an advocacy **campaign** are also planned in order to improve legal awareness amongst women and the community at large.

Importantly, within a broader access to justice programme, this programme includes both activities geared specifically towards women, as well as activities focused on improving the gender-awareness of both the justice sector and the general populace. Thus, the Afghan programme follows a **“twin track” of gender mainstreaming and women's empowerment**. The programme also places its outcomes within the UNDAF goals and national priorities *vis á vis* gender equality.

However, good programme documentation may not necessarily translate into an improved environment for women to fully exercise their rights on the ground. It remains to be seen whether the 'Access to Justice at the District Level Programme in Afghanistan' will truly improve the conditions faced by women. Nonetheless, all UNDP programme documents should strive to incorporate gender analysis and gender-related activities and results in as comprehensive a manner as the Afghan programme.

Source: UNDP, 2005

Of course, the documentation available cannot fully reflect the nature and scope of programming on the ground. Some country offices that have presented their programmes in a more gender-neutral way may in fact be implementing their programming in a very gender-sensitive manner, but are not as successful at articulating what they do. Conversely, making a programme document look good on paper does not necessarily mean that women's barriers to justice are being removed. Despite this, reporting and documentation are critical areas for improvement, not only for the sake of information sharing, but also as a tool with which UNDP can hold itself accountable for its commitments to gender equality and women's human rights.

Despite the overall paucity of information, activities and outcomes focused on women and gender, a few programme documents are notable for their comprehensive attention to both women's and men's need for equitable justice mechanisms. Box 9 describes an example of a programme document that has undertaken adequate gender analysis and translated this into gender-related outcomes and results.



Entry Points to Promote Women's Access to Justice

The UNDP/BDP/DGG—Cluster II: 'Strengthening Responsive Governing Institutions' offers support in the justice area, in terms of legal protection, legal awareness, legal aid and counsel, adjudication, enforcement, and civil society and parliamentary oversight.

As illustrated in the preceding sections, women and men have different justice needs and often face very different barriers to access, based on their gender. Each of the six types of support provided by UNDP must be tailored to reflect these differences and adapted to meet the needs of both women and men in justice sector reform. Entry points to ensure that UNDP support promotes women's rights and gender equality are identified below. As UNDP is committed to partnering with UNIFEM and UNIFEM has already covered considerable ground in this arena, the discussion below highlights examples of UNIFEM

programmes that UNDP can draw upon and replicate. It also gives examples of programmes pioneered by UNDP and other UN agencies, as well as national governments and non-governmental actors.

Legal protection

As noted in Section 2, women and men are still not equal before the law in many contexts in which UNDP works. Even where women and men have *de jure* equality, women still face *de facto* discrimination. UNDP should:

- Include CEDAW among the international treaties that UNDP refers to as a

“Women’s groups understand the gender dynamics in their countries of work and are best placed to assist UNDP to design effective information dissemination strategies.”

means of enhancing the protection of disadvantaged groups.

- Encourage national stakeholders to harmonize national legislation with CEDAW and develop plans for implementing CEDAW, complete with implementation schedules and monitoring and evaluation components. For example, in the Arab States region, UNIFEM assisted women’s organizations to draw together a network of experts on CEDAW in six countries. In Morocco, UNIFEM support for women’s organizations resulted in an amendment to family law, which now stipulates equality between spouses.
- Support capacity-building within justice and regulatory bodies on gender issues and women’s rights. Capacity building could include training on gender for members of the judiciary or support for the establishment of gender desks within ministries.
- Encourage women to participate in the justice sector and support women who are already working in the justice sector. Associations of women judges exist in many parts of the world, and they can be a useful resource for UNDP as it determines what some of the barriers to access for women in a particular country might be.

Legal awareness

The extent to which women and men are aware of their rights and entitlements varies tremendously from place to place. In many cases, women and men may understand their rights but be unaware of the redress available to them in cases of rights violations. In other instances, women and men may know about legal redress but still be unable to access

justice for a variety of reasons. The threat of violence makes access particularly difficult for many women. Given that many women seek or would like to seek legal redress from their relatives and other people known to them, simply informing women of their rights does not guarantee them any type of protection in the event that they choose to lay claim to those rights or mechanisms of redress. Therefore:

- The efforts of UNDP to raise legal awareness must recognize and grapple with the threat to personal security that may follow many women’s attempts at obtaining legal or judicial redress for rights violations. When encouraging women to access justice mechanisms, adequate measures must be in place to protect them, including referrals to safe houses and police protection, if necessary.
- Women and men must be provided with separate access to information about their rights and the legal redress available to them. In many cases, information directed to a male head of household, for example, will not reach other, less powerful members of the household. Women and men with appropriate gender expertise and experience should inform women of their rights. For example, to help Nepalese women migrant workers understand their rights, the Nepali Government, supported by UNIFEM, organized briefing sessions for women migrants on their rights before they were due to leave the country.
- Women and men who are trained in dealing with victims of GBV should staff the legal aid clinics or centres that UNDP supports. Female clients must be

allowed to interact exclusively with female staff if deemed necessary.

- Women's organizations should be viewed as key disseminators of information. Women's groups understand the gender dynamics in their countries of work and are best placed to assist UNDP to design information strategies that will effectively target men and women.
- Women's organizations can also offer a pool of talent to involve as 'non-lawyers' in the design and delivery of education programmes. While many women's organizations already specialize in justice and legal reform, training can be provided to build women's organizations' capacity in this area.
- Training of government officials in legal awareness must include a gender component, focusing on how men and women may possess differing information, senses of entitlement and different abilities to access justice in a given context.

Legal aid and counsel

As previously noted, the under-representation of women in the legal and judicial fields lessens the likelihood that women who are seeking justice will find suitable representation. However, women-friendly counsel need not necessarily be female. Investments should be made in building legal counsellors' knowledge of gender issues pertaining to their work, and this should be provided to both male and female legal practitioners. UNDP should:

- Provide support to women interested in pursuing legal careers through scholarship programmes. For example, in Somalia, UNDP offered scholarships to qualified young women interested in pursuing legal careers.
- Adequately consider the protection needs of women who may seek judicial remedies, by planning for contingencies that may

require safe house or psychosocial support referrals, and by closely coordinating with security institutions.

- Engage bar associations and other lawyers' associations and offer gender and women's human rights training to their membership.
- Offer legal clinics exclusively to women to encourage their participation in these sorts of trainings and provide them in a safe environment.
- Ensure that 'demand-orientation' is representative of women and men's demands. This will entail assessing what the differing legal needs of women and men are prior to identifying the 'demand'.
- Cost is an obstacle for everyone. However, in many parts of the world, women do not enjoy the same access to the funds required to access justice as men. Poverty compounds women's inability to access justice. This issue must be considered and tackled when developing pro-poor interventions designed to improve access to justice. In 2004, UNDP Indonesia undertook an assessment comprised of over 5,000 surveys, which placed particular emphasis on women heads of household. As a result, the Legal Empowerment and Assistance for the Disadvantaged (LEAD) project was developed to strengthen legal services that address specific segments of the community, such as women.





Adjudication

Adjudication in different kinds of cases has often proven to be discriminatory towards women. As noted above, adjudication in both customary and formal law often tends to privilege those who hold the most power in society: men. Women's severe under-representation as judges worsens this disparity. UNDP should:

- Utilize existing programming, such as support for judicial training centres, to roll out training for members of the judiciary on CEDAW, gender, and women's rights. Such training programmes, including the Pacific Islands Regional Judicial Training Project, already target magistrates, court officers, judges and paralegals. Gender issues, women's rights, and compliance with CEDAW must form cornerstones of these programmes.
- Support national human rights commissions and ombudsperson's offices to develop adequate capacity on gender issues and women's human rights, including through training and the establishment of gender desks.
- Facilitate the participation of women in Truth and Reconciliation Commissions by providing women's groups with access to resources needed to organize their participation and by lobbying national actors to include women in the proceedings.

- Support witness protection programmes to encourage the participation of women and ensure their security during participation.
- Ensure that the traditional adjudication methods that UNDP supports fully comply with CEDAW and are equally acceptable to women and men in the community.
- Support national stakeholders to develop appointment and recruitment systems that will maximize the participation of women in the judiciary. This will also require a full analysis of the major obstacles to women's advancement within the judiciary.
- Support women judges to form caucuses and support existing associations of women judges in order to build the professionalism and impact of women judges. For example, in 2000, the UNIFEM-managed UN Trust Fund to Eliminate Violence Against Women gave a grant to the International Association of Women Judges to conduct training on gender, women's rights and CEDAW for 100 judges in Uganda, Kenya and Tanzania. The project also created a cadre of trainers qualified to train judges and was later replicated in the Latin America region.
- Support judicial reforms that fully respond to the needs of women victims of GBV, including by providing adequate protection; in camera proceedings if necessary; special chambers; training for judges and lawyers on how to deal with victims of sexual and GBV; referral services to psychosocial support and safe houses; and other reforms.

Enforcement

When addressing the implications of enforcement mechanisms for gender, it is important to remember that, in many contexts, the police and the security sector are perpetrators of crimes against women rather than protectors of women's rights. Nevertheless, gender-responsive police reform is an essential

means of improving women's access to justice. UNDP should:

- Work with national police forces to develop zero-tolerance policies as well as accountability mechanisms for sexual exploitation, abuse and GBV committed by members of the security sector.
- Provide training in human rights, gender issues and zero-tolerance to police forces.
- Support innovative strategies, such as community co-policing mechanisms, whereby women from the community accompany police on patrol to monitor their treatment of the community and raise the police's awareness of community priorities.
- Work with national police forces to develop policies that ensure that the police will enforce judgments made in favour of women in cases involving property disputes, marriage and divorce, and violence.
- Assist police forces to establish centres that specialize in providing forensic, investigative and prosecutorial procedures for women victims of GBV. For example, the Sierra Leone Police Force established a Family Support Unit (FSU) with the mandate to investigate and combat sexual and physical violence committed against women and children. As of 2004, the FSU was present in almost all of the police command units countrywide.
- Support national police forces to recruit more female officers.
- Ensure that penal facilities provide equitable services and living conditions for male and female prisoners and that female prisoners are protected from

GBV during their detention. Women being held in corrections facilities may have dependent children who need care during their period of detention. UNDP should support national programmes that assist these children to find temporary homes during these periods.

Civil society and parliamentary oversight

In many countries, women's organizations are already engaging in 'watchdog and monitoring' capacities. Women's organizing has proven time and again to be a very powerful force for demanding increased access to formal justice and improved protection of women's rights. Furthermore, women parliamentarians, whose numbers are growing in many places, should be encouraged to take a more active role in judicial and security sector reform, especially since many of them are 'ghettoized' into committees dealing with perceived 'soft' issues such as health and family welfare. UNDP should:

- Engage with the many women's organizations at the country level that are active on issues of justice, police reform and media and advocacy.
- Consult women's organizations prior to planning access to justice programming in order to assess women's priorities in the target community. In this way, programmes will support, rather than possibly undermine, existing initiatives at the grass-roots level.
- Sub-contract women's NGOs to carry out media and information campaigns targeted both at women and the community at large.

“Women parliamentarians should be encouraged to take a more active role in judicial and security sector reform, especially since many of them are 'ghettoized' into committees dealing with perceived 'soft' issues, such as health and family welfare.”

“ Staff must be held accountable for gender-related results and must be rewarded for good performance in this area. ”

- Support, in association with UNIFEM, partnerships among a broad cross-section of women’s organizations, in order to consolidate an agenda for justice sector reform that is responsive to women’s needs. For example, the UNDP programme, Access to Justice for Peace and Development in Aceh, is increasing the capacity of civil society to monitor and advocate for the rights of the disadvantaged, including women.
- Provide support for women parliamentarians to participate in parliamentary oversight committees. UNIFEM has been supporting the Regional Women’s Parliamentary Caucus in Southern Africa to lobby for the fulfilment of SADC’s commitment to achieving 30 per cent representation of women in all governance structures, including the justice sector.

Entry points for all focus areas

- **Utilize Gender-Responsive Budgeting:** Government ministries in all regions are increasingly using gender-responsive budgeting to analyse how government expenditure is addressing the different needs of women and men. Not only does this analysis improve equitable service delivery for women and men, but it can lead to improved efficiency, accountability and transparency as it yields insight into how resources are allocated and absorbed. Gender-responsive budgeting should be applied to justice sector institutions that are supported by UNDP programmes and should become an integral analytical tool as UNDP plans programme interventions.
- **Require gender analysis for all programme documents:** As evidenced by the gender analysis of UNDP Access to Justice pro-

gramme documents (see Section 3), less than half explicitly analyse gender-specific challenges and barriers. This omission makes it less likely that UNDP programmes will be equitable. It also makes programmes less responsive to the context in which they will be implemented, if the specific needs of half the population have been neither assessed nor planned for. Prior to supporting an intervention, UNDP must analyse various issues, including gender relations, the gender-specific barriers to accessing justice, gender-specific security threats, the capacities of women and women’s groups, etc. The collection of sex-disaggregated data must also be prioritized. Gender assessments must be required as part of situation analyses in every programme document.

- **Make practitioners accountable for results in gender equality and women’s empowerment:** Even fewer access to justice programmes mentioned gender-specific outputs, and the smallest number of programmes mentioned women as direct beneficiaries of programming. In order to achieve results in the areas of gender equality and women’s empowerment, programme strategies and documents must state gender-related outcomes and outputs. The gender-related needs assessments carried out for the situation analysis must be tied to specific activities, and these must be tied to specific results. Furthermore, if women are not mentioned as direct beneficiaries, they likely will not benefit from the programme equitably. Even where it is unfeasible to implement gender-responsive activities, practitioners must analyse the ways in which interventions will impact women and men and take steps to ensure that

whatever can be done to foster equality is indeed done. The UNIFEM “CEDAW Results and Indicators Matrix” (2005) is a useful tool.

- **Support women in other governance arenas:** As noted by the guide produced by the Asia bureau of UNDP, “Programming for Justice, Access for All: The Access to Justice Practitioners Guide”, supporting the increased participation of women in other areas of governance can have a positive effect on the justice sector. The establishment of quotas for women’s participation in the legislature, for example, may increase the likelihood that the requisite gender-sensitive legal reforms are instituted (UNDP, 2005).
- **Build UNDP capacity on gender and justice issues:** The 2005 Gender Review carried out for the Bureau for Crisis Prevention and Recovery found a large number of gender ‘passivists’ and ‘obstructionists’ amongst UNDP staff, interviewed from both inside and outside BCPR. UNDP staff working on gender and justice programmes in the field and at headquarters need greater capacity to effectively address gender issues. Furthermore, staff must be held accountable for gender-related results and must be rewarded for good performance in this area.



Over the past decade or so, UNDP has made many great strides in gender mainstreaming across all of its bureaux and regions. BDP, along with many other bureaux, has employed a senior gender adviser who liaises with a network of gender advisers and focal points both at headquarters and in the field. Internal and external interest and expertise in gender mainstreaming and gender-responsive programming initiatives have been increasing. Donors, client countries and practitioners now almost universally expect gender analysis to be integrated into programming and policy. However, much work remains to be

done in order to strengthen, systematize and consolidate gender mainstreaming initiatives and those that target women as a marginalized group. With all the focus over the past few years on gender mainstreaming, the fact that women must be empowered in order to achieve gender equality (the goal of gender mainstreaming) is often overlooked or sidelined.

As a global development leader, UNDP is uniquely positioned to assist partner governments to reach the goals they have set for themselves *vis á vis* gender equality by committing themselves to the MDGs and passing CEDAW, DEVAW, the Beijing Platform for Action and Security Council Resolution 1325. Much is often made of the value of lessening the gap between women and men. According to the 2002 UNDP Gender Practice Note, “gender equality is not merely a desirable by-product of human development; it is a core goal in its own right” (UNDP, 2002). This tenet is especially true when it comes to access to justice. A democratic, professional, independent and equitable justice sector promotes and reinforces governance structures that are conducive to equitable development. But even more importantly, equitable access to justice is a right that all the world’s citizens deserve regardless of their gender, race, age, ethnicity or religion. Put simply, women and men have equal rights to justice; any existing barriers preventing either men or women from exercising their rights to justice must be removed with the utmost urgency.



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Endnotes

1. The full text of CEDAW is available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> and of the Optional Protocol to CEDAW and background information at <http://www.un.org/womenwatch/daw/cedaw/protocol/>
2. The full text of DEVAW is available at: [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.RES.48.104.En?Opendocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.48.104.En?Opendocument)
3. DEVAW. Article 4.D
4. DEVAW. Article 4.I
5. The full text of the Beijing Platform for Action is available at <http://www.un.org/womenwatch/daw/beijing/platform/>. The Platform was reaffirmed at a Special Session of the General Assembly in 2000 (Beijing Plus Five) and again at the 2005 Commission on the Status of Women (Beijing Plus Ten). See <http://www.un.org/womenwatch/confer/beijing5/about.htm> For more information on Beijing Plus Ten, see: <http://www.un.org/womenwatch/daw/Review/english/news.htm>
6. Beijing Platform for Action D.124.H
7. Beijing Platform for Action I.232.D
8. The author of this primer produced a narrative summary of the gender mapping relating to gender justice and women’s human rights programmes, which can be found on the practice workspace. In addition, the author undertook a gender analysis of documents relating to UNDP access to justice programmes from its results database covering the years 1999–2005, and the matrix is also available in the practice workspace.



PHOTOGRAPHS

Page 2. Women's summit in Turkey hosts a panel on political parties and women branches. (UNDP)

Page 5. The joint sitting of two Parliamentary committees, South Africa. (Trevor Samson/World Bank)

Page 7. Mafuane Police Training College, Mozambique. (Eric Miller/World Bank)

Page 8. Women Summit Walk, Turkey. (UN Photo)

Page 11. Flo Kennedy (centre) of the United States and several other women demonstrate outside the Tribune, a nongovernmental conference that paralleled the official, UN-sponsored World Conference of the International Women's Year in Mexico City, 1975. (B. Lane/UN Photo)

Page 15. A woman gives testimony at a seminar on enhancing women's participation in local elections, Syria. (UNDP)

Page 19. Women from all over Côte d'Ivoire gather to celebrate International Women's Day 2005 at the Palais de la Culture in Abidjan. (Ky Chung/UN Photo)

Page 21 (top). Women's summit in Turkey hosts a panel on political parties and women branches. (UNDP)

Page 21 (bottom). National seminar on enhancing women's participation in local elections takes place in Syria. (UNDP)

Page 23. Two women in Sorlamba, Liberia, stand next to an election instructional poster provided by United Nations Mission in Liberia peacekeepers. (Eric Kanalstein/UN Photo)

Page 25. Local women's group provides instruction on nutrition, health and basic mathematics to help women qualify for loans in Bangladesh. (Shehzad Noorani/World Bank)

Page 26. International Women's Day observed in Liberia. (Eric Kanalstein/UN Photo)

Page 29. In observance of the International Women's Day, participants march from the centre of Monrovia to the Temple of Justice, home of the Liberian Supreme Court, to stage a peaceful sit-in protest against gender-based violence. (Eric Kanalstein/UN Photo)

“To date, UNDP efforts in the area of gender equality and justice programming have focused primarily on advocacy campaigns to increase men and women’s legal awareness. However, institutional capacity building, such as establishing women’s desks and increasing the gender capacity within ministries, court systems and police forces, is needed to improve the ability of justice sector institutions to equitably respond to the different judicial needs of women and men.”



PRIMERS IN GENDER AND DEMOCRATIC GOVERNANCE

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