



UNODC

United Nations Office on Drugs and Crime



Resource book for trainers on
**effective prosecution
responses to violence
against women and girls**

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UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

Resource book for trainers
**on effective prosecution responses to
violence against women and girls**



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Introduction

Violence against women¹ is a widespread and serious violation of human rights. Although the rates at which women are exposed to violence vary from one country to another, statistics indicate that violence against women is a universal phenomenon and women are subjected to different forms of violence both within and outside their homes. With a global review of available data finding 35 per cent of women worldwide have experienced either physical and/or sexual violence,² it is not surprising that the United Nations Secretary General has described violence against women as “reaching epidemic proportions”.³ In many countries, the criminal justice chain is still failing women victims of violence. This is due to loopholes in criminal legislation, poor enforcement of criminal legislation, insufficient capacity in the criminal justice system, discriminatory attitudes among criminal justice actors and a lack of adequate and sustainable dedicated resources. This failure results in a high level of cases of violence going unreported and unprosecuted, a profound lack of confidence and trust in criminal justice institutions, high levels of impunity for perpetrators and a high percentage of victims whose needs for assistance, protection and redress are neither recognized nor met. An international study on understanding the criminal justice response to violence against women conducted in 2008 found that cases of violence were filtered out at every stage of the justice process and that women encountered significant societal, legal and institutional policies and practices that act as barriers to justice.⁴

The majority of countries are bound by international obligations that require the State to act with due diligence to prevent, investigate and punish acts of violence against women. Prosecutors are a critical part of that State apparatus and as such play a key role in ensuring their State meets its international obligations. On a practical level, prosecuting gender-based violent crime can be challenging and presents unique difficulties to prosecutors, whether they are new recruits or experienced veterans. Often there are a number of evidentiary challenges due to the private nature of the violence. The police investigation may be substandard. Victims can be traumatized, uncooperative and withdraw or recant their complaints. Judges or juries may be influenced by gender bias or common myths surrounding violence against women when examining the credibility of the victim and the facts of the case.

This *Resource Book for Trainers on Effective Prosecution Responses to Violence against Women and Girls* is aimed at training frontline prosecutors in prosecuting cases involving violence against women, with a specific focus on intimate partner violence and sexual violence.

¹ Except where otherwise specified, the term “women” encompasses “girls” or “female children”.

² World Health Organization, *Global and Regional Estimates of Violence against Women* (Geneva, 2013). Available from: http://apps.who.int/bitstream/10665/85239/1/9789241564625_eng.pdf.

³ Report of the Secretary-General on the In-depth Study on Violence against Women, A/61/122/Add.1.

⁴ Holly Johnson and others, *Violence Against Women: An International Perspective* (HEUNI, 2008).

It has been developed by UNODC, in collaboration with UN Women and the Thailand Institute of Justice (TIJ) and is based on the UNODC/UN Women/TIJ *Handbook on Effective Prosecution Responses to Violence against Women and Girls*.⁵ It also builds on tools such as the Blueprint for Action: an Implementation Plan for Criminal Justice Systems to Prevent and Respond to Violence against Women⁶ (hereinafter UNODC Blueprint for Action) and the United Nations *Essential Services Package for Women and Girls Subject to Violence*.⁷ Together, these tools provide detailed and concrete guidance on the implementation of relevant international standards and norms, particularly the Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, adopted by the United Nations General Assembly in December 2010.⁸

This *Resource Book* benefited from a piloting at a regional training workshop organized by UNODC, UN Women and TIJ in Bangkok from 4 to 6 May 2016 and was further enhanced with substantive input and feedback from the participants: prosecutors from 10 Southeast Asian States.⁹

Overview of the resource book and modules

Overall objectives

This *Resource Book* is intended to be a tool for planning and conducting interactive adult learning-centred training sessions for prosecutors on effective responses when prosecuting crimes involving violence against women. Given that this is a global tool, it has been designed to be purposefully broad to serve as a reference document. It sets out templates of training modules that can be adapted and modified by national prosecution agencies to develop their own curriculum based on their national training needs, local context and legal system.

The overall objectives are to:

- Develop a better understanding by prosecutors of the extent and nature of violence against women; the dynamics of such violence, its root causes and the concept of gender equality, and how to avoid common myths and misconceptions.
- Familiarize prosecutors with the international standards and national laws relating to key issues for responding to violence against women, particularly intimate partner violence and sexual violence.

⁵ Available from: https://www.unodc.org/documents/justice-and-prison-reform/14-02565_Ebook_new.pdf.

⁶ Contained in UNODC, *Strengthening Crime Prevention and Criminal Justice Response to Violence against Women*. Available from: https://www.unodc.org/documents/justice-and-prison-reform/Strengthening_Crime_Prevention_and_Criminal_Justice_Responses_to_Violence_against_Women.pdf.

⁷ See, in particular, its module 3 on Justice and Policing. Available from: <https://www.unodc.org/documents/justice-and-prison-reform/EN-Modules-AllnOne.pdf>.

⁸ A/RES/65/228, annex.

⁹ Participants were from Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam.

- Enhance the knowledge and skills of prosecutors to investigate and prosecute cases involving violence against women, ensuring the protection and safety of victims while holding perpetrators accountable.

Modular structure of the Resource Book

This *Resource Book* is made up of eight modules, with the first three modules covering general topics such as understanding the situation of women who suffer violence and the legal framework, both international and national, in place to ensure access to justice for victims of violence. The next five modules focus on knowledge and skills for frontline prosecutors as they perform their roles along the criminal justice chain, from the investigation, decision to prosecute and the selection of charges to pre-trial, trial and post-trial considerations.

The modules are intended to be practical, concrete and useful. Each module contains a summary of key issues on the topic; references to applicable international law and practices, examples of promising practices and participatory exercises to enhance participants' learning. The *Resource Book* is based on a participatory and experiential learning model and uses a variety of training techniques, including warm-up activities and ice-breakers, presentations and discussions, small group work, brainstorming, case studies, role plays and simulations. Given that adults learn best when there are ample opportunities to participate, and appreciating that training cultures differ from region to region, and country to country, each module contains different training approaches and exercises. There are more exercises than the time will likely allow and national training teams are encouraged to adapt the *Resource Book* to more effectively reflect their specific national contexts and meet the needs of local trainees.

Each module has the following structure:

Learning objectives

This part articulates the knowledge and skills that each module is meant to impart to the trainees.

Part I: Substantive material

This part contains the essential substantive content to be covered at each training session.

Part II: Possible options for delivering the material

A range of interactive learning exercises and case studies have been designed for each module in order to provide possible options for delivering the material during each session. Each module contains various sample participatory training aids and exercises, including PowerPoint slides, brainstorming exercises, small group and plenary discussions, case studies, role play and simulation exercises.



NOTE TO TRAINING TEAMS

The material in each module provides training teams with various options to pick and choose when adapting this *Resource Book* to best fit their training needs and their specific national contexts. It is the trainer's responsibility to add context-specific examples and to choose the ones that will be more suitable for the needs of the particular trainees.

A note about adapting the Resource Book for national or regional training

In adapting this *Resource Book*, the training teams should conduct a training needs assessment to determine the knowledge and skills that should be the target of the national or regional training. A sample three day training agenda is contained in annex 1 and sample detailed lesson plans covering the eight modules are contained in annex 2 as examples. However, please note that covering all eight modules in a three-day period results in a basic introduction to these issues. Depending on the number of days allocated for the training and the specific needs and experience of the trainees, the training team might decide to focus on only one or two of the modules during a course in order to have sufficient time to delve more deeply into the issues.

Guidance for trainers

Depending on the experience of the trainers in adult learning techniques and training on violence against women cases, some of the sections below can be passed over by the trainers. It is essential that facilitators of training sessions have a strong understanding of the dynamics of violence against women, the importance of a human rights-based approach, and previous experience facilitating discussion about the issue. When facilitating sessions about the gender dynamics underpinning such violence, it is helpful to collaborate with experts, such as non-governmental organizations providing assistance to survivors locally if available.

Training methodologies

A variety of training methodologies are suggested in each of the modules. These methods are based on three basic modalities to process information to memory: visual (learning by seeing), auditory (learning by hearing) and kinesthetic (learning by doing). Different teaching techniques have different levels of effectiveness. Effective teaching requires a variety of teaching methods which cover all three learning modalities. No matter what their preference, students should have equal opportunities to learn in a way that is effective for them.

This *Resource Book* proposes a range of training methodologies. The main categories of methods are indicated by symbols for ease of use:

	POWERPOINT PRESENTATIONS	The modules are accompanied by a set of PowerPoint slides that can be integrated into the training. Slides help to vary the texture. They are there to make the presentation more intelligible, interesting, vivid and memorable. Slides have been included at the end of each module and can be modified accordingly.
	PLENARY DISCUSSIONS	In order to encourage participants to take an active role in the training, to help them relate their learning to their own criminal justice systems and to learn from each other's experiences, the module also contains a few examples of questions to the plenary. The intention is for the trainers to ask these questions to a few individual participants on each occasion and then ask other participants to comment on their responses. Flip charts may be used to summarize the responses and the trainer may then comment on the interventions by the participants based on the trainer's experience and in line with international standards.
	GROUP ACTIVITIES	Each module contains suggested group activities, which can include small group exercises, case study discussions, simulations, etc. The training group is divided into smaller groups and given a task to complete within 15–30 minutes, depending on the complexity of the task. The groups are asked to write their findings on flip charts and then one member of each group is asked to present the group's findings. Presentations will be followed by a general discussion, with the trainer intervening and commenting as appropriate. The conclusions of the discussion may be set out on a separate flip chart for ease of reference and to aid the memory of the training participants. Training participants should be encouraged to refer to their training materials during group activities.
	LARGE GROUP EXERCISES	Some of the modules contain suggested large group exercises such as brainstorming, role play, case scenario discussions or use of flash cards to generate discussion. Depending on the size of the group and the time allocated, these exercises could be modified to become small group exercises. However small group exercises usually require more time for the groups to report back to the plenary and for plenary discussion.
	AUDIO-VISUAL	The use of audio-visual material such as short films, recordings, etc., is encouraged throughout the training. If any of the audio-visual aids include any visual images of victims, their faces should be obscured on the image so that they cannot be identified.
	HANDOUTS	Handouts, including the pre- and post-training evaluations, case studies and group exercises, etc., should be prepared in advanced. These can also include excerpts from international law and/or national law.

A note about the use of case studies in the Resource Book

Most of the modules include a number of different case studies in order to provide an opportunity for the participants to learn by doing. Two “common course cases” have been developed, one on sexual violence and one on intimate partner violence. The common course cases establish one set of facts, which can be added to, in order to provide the trainers with the option of using the same case throughout the training course. This is done in order to limit the time needed by participants to review different fact sets. If the training team decides to use different case studies throughout, they might want to consider using only one case per exercise to reduce the amount of time needed to summarize the different facts for all the participants.

Note about modifying case studies. The case studies use names of persons and locations which are fictitious so that they can be modified and contextualized according to the country where the training is being delivered in order to have a better impact on the trainees. If possible, more real and local case study examples should be used to reinforce the credibility and applicability of the *Resource Book*. However, any personal identifying features of any victims featured in the study should be changed to protect their identities and maintain confidentiality.

The focus of this *Resource Book* includes raising awareness and sensitivity to violence against women, providing information on laws and procedures and developing competencies such as interviewing victims and conducting trials. Each of these modules aims to provide opportunities for the trainers to be creative in using different training methodologies. Prosecutors are most often not used to spending long periods in a classroom. Therefore, the greater the variety of techniques used, the more attention learners will pay.

The training kit

The training kit is made up of relevant United Nations publications that should be distributed prior to the formal commencement of training. If this is not possible, then ensure that the training material is handed out in the opening session.

Training material should include:

- UNODC/UN Women/TIJ *Handbook on Effective Prosecution Responses to Violence against Women and Girls*
- UNODC's publication on *Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women*, which includes:
 - The updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice
 - The Blueprint for Action: an Implementation Plan for Criminal Justice Systems to Prevent and Respond to Violence against Women
- United Nations *Essential Services Package for Women and Girls Subject to Violence* – Module 3: Justice and Policing

Pre-course preparation

Training needs assessment. The purpose of a training needs assessment is to identify performance requirements and the knowledge, skills and abilities needed by prosecutors in the investigation and prosecution of cases involving violence against women, and to identify any gaps or specific areas of needs. This can be collected from a number of sources, depending on what is available in the country or region, including information from judicial trainers, prosecution offices, and the results of any previous evaluation of training carried out on violence against women in the past. The topics on the needs assessment list can mirror the table of contents and subheadings from this *Resource Book*. A number of tools with more information on developing training needs

assessments in different contexts are available from United Nations agencies and other organizations.¹⁰

The training team and its responsibilities. Training on violence against women is an intensive and emotionally challenging issue. It is suggested that the training be delivered by a team of trainers. It is important to identify the training coordinator and all co-trainers and facilitators and have their input when designing the course programme. There needs to be agreement as to the training roles and who will do what. Each trainer needs to adapt this training material to the sessions to which they are formally assigned, bearing in mind the time limitations set out in the course programme. Trainers should think about what practical examples they might want to give to the participants, based on their professional experience, to assist them in implementing the relevant human rights standards in their daily work.

Training participants. Essential information for the preparation of training courses includes finding out how many and what kind of participants will attend the course. Trainers should plan any activities associated with their module accordingly (pair work is more difficult with large groups, and more debrief time will be needed the greater the number of participants are on the course). Participants should be asked to fill in a brief questionnaire with a two-fold objective: (a) to assess the participants' current level of knowledge and experience on the topic; and (b) to investigate specific issues of their interest/concern.

There are several important questions to ask:

- How many people will there be?
- Who are they?
- What is their understanding of the subject?
- What is their age, gender and educational background?
- Are there any special needs that you need to be aware of?
- Do they know each other?

Distribution of training kits and other materials. The participants should receive the training kit and ideally a finalized training curriculum before the opening session. Before the trainers begin a session, they need to ensure that all supplies and equipment are on hand and in working order. It is advisable to arrive at least one hour before the start of the session, so trainers can be prepared for any eventuality. Here is a sample list of supplies/equipment that may be needed:

- Note-taking pad/pencil for each participant
- Flip charts
- A4 paper
- Projector (optional)

¹⁰ For more information on developing training needs assessments, see UN Women and Geneva Centre for the Democratic Control of Armed Forces, *Gender and Security Training Manual* (2012); UN-Habitat, *Manual on Training Needs Assessment and Training Outcome Evaluation In an Urban Context* (2012) or Implementation of the Pilot Project – European Judicial training: Lot 1 “Study on Best Practices in training of judges and prosecutors” *Final Report* (2014). For an example of a training needs assessment questionnaire, see UNODC, *Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking* (2010), annex.

- Pencil sharpener
- Trainee's kit for each participant (if not distributed prior to training course)
- Name cards for each participant.
- Comfortable chairs, if possible, and a friendly seating arrangement (i.e. U-shape or small tables)
- Break-out rooms close by, or large rooms with the possibility to hold at least 4 small groups
- An agenda for each participant
- Video equipment if appropriate (optional)
- Adequate room lighting
- Easels (flip chart stand) with adequate supply of paper
- A variety of colourful markers
- Water and glasses
- Instructional notes
- Copies of handouts

Trainers should be completely prepared and set up when participants arrive. From the time the first participant arrives, the trainers' focus should be on the participants. This is essential to help the participants feel comfortable about their new learning environment.

Responsibilities during the course

At the start of each training day, trainers are encouraged to:

- Outline and discuss the learning objectives for the module or the day.
- Check-in with participants to see if there are any outstanding questions, issues or concerns from the previous module or day.
- Orient participants to the planned schedule for the module or day, including times for breaks and planned time the day/lesson will end.
- Ask participants what the one thing was that stood out for them from the previous day.

At the end of each training day, trainers are encouraged to:

- Review key learning from the day. This can take the form of a guided discussion, recorded on flip chart paper, in which participants themselves identify key learning points from the day/lesson.
- Check-in with participants to see if there are any outstanding questions, issues or concerns from the day/lesson.
- Orient participants to the schedule and topics to be covered on the following day.

Working as a training team includes the following tasks:

- Participate in daily pre- and post-course briefings with the rest of the training team.
- Attend and participate in all course sessions.
- Meet with the session co-trainers/facilitators the day before each scheduled presentation to plan roles and activity.
- Deliver presentations and facilitate discussion, adhering to specified time limits, based on the training materials, for the topics assigned to each trainer as a session presenter.
- Timekeeping: once participants have been given a programme containing a schedule, trainers must stick to the published times unless they agree with the participants to vary the schedules. If sessions overrun, participants get restless and tend not to concentrate. Trainers must carefully monitor the time and move things on if discussions are going on for too long or if groups have not returned from small group activities. Trainers will need to be flexible in using the material – speeding up or slowing down depending on how the session is going. Some discussion points can be dropped and others added to regulate the time available.
- Make practical recommendations, based on the trainers' professional experience, during discussion periods and in working groups, including during sessions for which other trainers are not the session presenter.
- Ensure that any comments or recommendations made are consistent with the international standards set out in the training materials.
- Encourage active group participation and discussion, provide advice and comments on the training materials and attend all opening and closing ceremonies and ancillary events of the programme.

Follow up

Trainers should participate in a final debriefing session with the rest of the training team. This is an opportunity to review and revise the materials, on the basis of the experience gained in conducting the training. Feedback should be provided to UNODC on the *Resource Book* and evaluation sheets.

A note about adult learning principles

Characteristics of adult learners

It is generally accepted that training adults differs considerably from training children or younger people. Successful learning can be achieved if certain general principles of adult learning are recognized and used to inform training and facilitation methods.

Experience. All new learning for adults is based on what they already know. Adults have accumulated a foundation of life experience and knowledge upon which to draw. They may have fixed view-points and opinions. This is especially true given the subject matter in this *Resource Book*. They bring a wide variety of interests, attitudes, education, ages,

responsibilities and concerns into the classroom. Based on their experiences as prosecutors, they have a tremendous ability to assist the facilitator as sources of knowledge when discussing various aspects of the course material, including legal and prosecutorial practices. The trainers should get examples from the participants about their experience with the topic as much as possible. It is good practice to begin most sessions with requests for participants to tell the trainers what they know or think about each subject, and allow time for discussion rather than lecturing.

Adults may also bring preconceived ideas to the training, based on their experience. By using a facilitative approach, the trainers can bring these ideas to the surface and defuse them early in the session. Their views cannot be dismissed, and must be handled with respect. For example, if someone states that there are some situations in which it would be acceptable to beat a woman, trainers/facilitators can acknowledge that statement respectfully, then ask the group what others think about it. It is quite likely that others in the group will disagree and that it will lead to a deeper discussion and challenge the belief. The group discussion should be able to help the participant who made the original statement arrive at a different understanding. Allowing the group to challenge biased statements is more powerful than mere contradiction from the facilitator.

Autonomy. Adults are autonomous and self-directed. They will decide for themselves what is important to learn and are self-directed in their learning. They enjoy a democratic, collaborative and participatory environment. Use techniques that allow adults to learn concepts independently.

Relevance. Adults learn what they want to learn, what they are interested in and what they think will be useful to them in their lives. In order to increase their motivation, use examples and training materials that are relevant to the participants. Let them direct exercises and case studies themselves, and validate the relevance of their choices. This *Resource Book* uses case studies and discussion based on practical experiences to facilitate this approach.

Problem-solving orientation. Typically, adults enter the classroom because they understand there is a gap in their knowledge and have resolved to fill this gap. They want information and skills that can be applied to the real world. They view learning as an answer to a problem, and as a goal-directed activity. Demonstrate to them how a lesson or a concept can immediately be tied into their real-world experience as prosecutors working with women who are victims of violence.

Peer acceptance. Adults learn best from those of a similar age and background. Encourage them to share with one another. Adults have a need for association and acceptance, so allow them plenty of opportunity to share their knowledge and experience of the subject matter with others in the group.

Respect. Adults learn when they are treated with respect for their skills, abilities, experience and ideas. Treat them as equals, as people who have responsibility for their own learning and actions. Acknowledge the breadth of experience people bring to the group, and allow them to voice their opinions freely. Listen, respectfully, to their experiences as prosecutors in dealing with cases of violence against women.

Individual pace. Adults learn at different rates, according to their education level, personality and learning style. Trainers/facilitators need to allow for individual learning rates.

Factors that influence how quickly people learn

Environmental. Lighting, sound, temperature and seating can all influence learning. Sitting on a hard chair for many hours without interaction will slow the learning process dramatically. Adults, and especially in this context, prosecutors are usually moving about and involved with lots of different activities in any given day. Remember, most adults are not used to sitting in chairs all day, and this can make them very tired. Use lots of small groups, pair work, discussion and other techniques to keep the class varied and interesting.

Sociological. As adults grow older, their powers of observation and reasoning often grow stronger. This ability to observe, think and analyse means that in adult education everyone is a learner and everyone is a teacher. Use group discussion as much as possible, rather than isolating people from each other with paper and pencil exercises. Use pairs and small groups. Group discussion also helps adults to learn by discovery.

Physical. General health, fitness and energy levels all have an impact on people's ability to learn. Most people have less energy in the afternoon than in the morning. People who walk and stand all day will become more tired when sitting. Activities should reflect the differences in the physical condition of the participants. Some adults may be affected by diminished hearing, vision or some other physical ailment that needs to be accommodated. Make the learning environment flexible enough so that their needs can be accommodated.

Intellectual and experiential. Adults learn best through discovery. Tests have shown that adults remember:

- 10 per cent of what they read
- 20 per cent of what they hear
- 30 per cent of what they see
- 50 per cent of what they see and hear
- 80 per cent of what they say
- 90 per cent of what they say and do

Demonstrating skills, facilitating interactive discussions and table-top activities and using case studies and role plays are ways to actively engage learners above and beyond relying on lectures.

Elements of the learning process

There are four critical elements in the learning process. These are:

1. Motivation
2. Reinforcement
3. Retention
4. Use of the materials/learning in a real-world environment

Motivation. Participants must have a reason for learning. The best way to establish motivation is to pose questions to participants in small groups and let them generate their own motivation. For example: “Why is it important for you to protect women from violence? What are the benefits to you and your community?” If the facilitator can establish rapport with participants and prepare them for learning, this also provides motivation. Trainers and facilitators can motivate students via several means:

- *Set a feeling or tone for the lesson.* Trainers and facilitators should try to establish a friendly, open atmosphere that shows the participants that the facilitator will help them learn.
- *Set the seriousness to the content.* The level of tension must be adjusted to meet the level of importance of the subject under discussion. If the material has a high level of importance, a higher level of seriousness should be established in the class.
- *Set an appropriate level of difficulty.* The degree of difficulty should be set high enough to challenge participants but not so high that they become frustrated by information overload. The instruction should predict and reward participation, culminating in success.
- *Adults are also motivated by the opportunity to meet and socialize with others in similar contexts.* An important motivator for adults is the ability to network, gain contacts and resources, and share information and ideas with other professionals.

Reinforcement. Reinforcement is a very necessary part of the teaching/learning process; through it, trainers and facilitators encourage correct modes of behaviour and performance. Reinforcement should be part of the teaching-learning process to ensure correct behaviour. It should be used on a frequent and regular basis early in the process to help participants retain what they have learned, and to encourage them to participate in the learning. Reinforcement includes both verbal and non-verbal behaviour. Each time someone participates, whether or not the answer is “right”, trainers and facilitators should thank them for their contribution. This is a powerful form of reinforcement, and increases participation quite quickly. Learners who use inappropriate humour, or display hostility towards discussing the topic of domestic violence need to be heard, and encouraged to consider alternate points of view without shutting them out of the conversation. Trainers and facilitators should aim to reinforce their participation, not the negative comments.

The following is a suggestion for reinforcement at the beginning of a training session:

- Each time a participant contributes a voluntary answer, give him/her a playing card. This can help building attention as people wonder what the purpose of the cards is. As the cards are given out, other people will want to receive one, and so will begin to contribute. Continue until each person has at least one playing card. At the end of the session, give out small tokens to each person as a reward for their participation.
- Reinforcement is also non-verbal. Use open, welcoming gestures to encourage participation. Get excited about contributions to encourage more people to speak. Ask participants to build on each other’s contributions.

Retention. Participants must retain information from classes in order to benefit from the learning. If participants know that they will be using the material soon after the training, the motivation for retention increases. They must also understand and be able to interpret

and apply the information. This understanding includes their ability to demonstrate their mastery of the information, and heightens their ability to better protect women victims in the future. Retention by the participants is directly affected by their amount of practice during the learning. Trainers and facilitators should emphasize retention and application. After the participants demonstrate correct (desired) performance, they should be urged to practice to maintain the desired performance.

Use of the material in a real-world environment. Transfer of learning is the result of training. It is the ability to use the information taught in the course but in a new setting. In addition, participants need specific knowledge of their learning results (feedback). Feedback must be specific, not general. Participants must also see a reward for learning. The reward does not necessarily have to be monetary; it can be simply a demonstration of benefits to be realized from learning the material. Finally, the participant must be interested in the subject. Interest is directly related to reward. Adults must see the benefit of learning in order to motivate themselves to learn the subject. The use of case studies and role plays with subjects such as victim interviews will help participants see how using new techniques can result in more accurate and detailed statements, and better evidence which prosecutors can take action on.

Principles of effective training

Trainers and facilitators should follow the following key principles:

Make learning relevant. Relate their learning to what they already know. Use realistic examples that relate to the age, experience and interests of the participants. The best way to do this is to ask the group for examples when required. One of the most important skills of a great facilitator is to ask questions, rather than to deliver information. Use open-ended questioning techniques in discussions. Allow space for experience in the discussion, as participants sharing their experiences help others grow and enrich the group's learning. Remember to be sensitive to people's varying levels of experience and backgrounds.

Keep people active. The rule of thumb is that there should be a change of pace or activity approximately every 20–30 minutes. Prosecutors are accustomed to a variety of activities during a regular working day, and their attention span is governed by this variety.

Provide practical opportunities. Role play, simulations, discussions and case studies are activities that provide an opportunity for people to practise the theory or skill they have just learned. The debriefing of these activities provides an opportunity for feedback and reinforcement. Some very powerful facilitators can drop in to role play as part of the delivery of workshop content. When a participant presents a problem or a question, instead of providing an answer, the facilitator will smoothly move into a role play to give the participant an immediate experience of how to handle the problem presented, such as a victim interview, or the interview of a child witness.

Conduct the training in an informal environment. Choose seating arrangements that allow participants to see and interact with each other easily. Round tables, U-shapes and hollow square arrangements work well, depending on the size of the group. Classroom and theatre style are the most formal and set a facilitator-centred environment, and are also the least effective in ensuring learning takes place. Given the focus of this *Resource Book*,

its importance and sensitivity, theatre style is the least appropriate. The use of case studies and exercises suggests that small groups at round tables are the most appropriate style, if possible. Small group discussions or working in pairs can also create an environment where it is safe for everyone to participate, particularly those who are quiet in larger groups.

Provide variety and humour. Adults often learn in direct proportion to the amount of fun they are having. Use energizers and openers that allow people to interact and connect in a relaxed way. It may not seem that violence against women has much scope for humour, but even in a workshop with such serious content, there is a place for lightness and humour – so long as it is respectful and appropriate. Use humour to connect people to each other, to introduce a topic, or to move from one module to the next.

Serve as the facilitator of the learning process. Before telling the participants anything, ask them what they already know about the topic. Let the group do the work. The facilitator can be responsible for any information that was missed, or errors in the answers. Steer, do not push. Guide and prompt, do not tell.

Inform participants of the learning objectives. Adults do not like surprises in training, lest they risk a loss of face or be caught off guard. Explain all objectives thoroughly, and ensure the instructions and suggestions are understood clearly. Check with participants about their comfort level with any process being used, and assure them that if they are not comfortable, they are always free to pass.

Give and solicit feedback. Ask participants for their opinions and ideas. What did they learn? How will they apply the information in the field as prosecutors? What did they learn that they will immediately use? The art of asking questions is the mark of excellent feedback.

Use repetition. Repeat an idea using different learning modalities. Repetition brings familiarity, and familiarity leads to transference and a better chance that participants will use the information when they return to their jobs.

Keep the discussion focused on topic. Remind the group about important points. Emphasize and summarize the main ideas throughout the module. Summarize the discussion and link relevant ideas. Keep the discussion on topic by focusing on principles rather than opinions; for example, if someone argues that a man has the right to beat his wife, refer to the relevant international and national instruments rather than simply telling the person his or her opinion is wrong. Encourage constructive debate. If participants disagree with each other or with the trainer, facilitate an open discussion, drawing on the experience and background of all participants. This discussion should, however, remain grounded in the principles of the course: human rights and gender-equality as enshrined in international legal instruments.

Build an honest relationship with participants. Trainers and facilitators are encouraged to share their views and ideas, and contextualize them in the principles of the course. If they do not know something, they need to say so. Ask if someone else in the room can give input. This will encourage participants to talk freely and express their own ideas and opinions. If necessary, do some additional research and find a few minutes later on to respond to any unanswered questions. Sometimes, when people ask a question and

the facilitator does not know the answer, they worry about their question until an answer is provided. To prevent this, and to keep participants focused on the content, write the question on a flip chart page and post it somewhere in the classroom. The participant can now relax, as the question is posted and will not be forgotten. It will also remind the facilitator that there is an unanswered question that needs attention before the session is over. Once the question is answered, it can be crossed out, giving a bold visual cue that it has been answered.

Be positive, but realistic. Encourage the group to see the many options they have to support victims and survivors of violence. At the same time, be sensitive to the limitations of what they can do with finite time, skills, and budget. Talk about making choices to take action and make sure to include that the primary choice to take action is always in the hands of the victim/survivor.

Evaluation

At the back of this manual in annex 3 there is a sample workshop evaluation form that trainers can copy for distribution and collection at the end of training.

The purpose of this evaluation is to solicit participant feedback that will help the trainer better meet the needs of future groups. This includes feedback on the learning environment, approaches to and methods of instruction, and the learning materials. In this form, feedback is anonymous.

When handing out the feedback form, trainers should encourage participants to provide as many constructive comments as possible.

Trainers are strongly encouraged to carefully read and consider the results of the feedback. This information can help improve future workshops and the learning of participants.

At the beginning and end of the first module, participants are requested to take a test measuring their knowledge and understanding related to violence against women and the roles and responsibilities of prosecutors in dealing with gender-based violence cases. The purpose of the test is to estimate whether the participants' awareness has risen in general – not to judge or evaluate any individual participants. The results of each participant will therefore be confidential. The pre- and post-training tests contain the same questions. The pre-test can be found at the end of Opening, training objectives and general principles, and the post-test with answers can be found in annex 4.

It is also extremely important to measure any changes in attitudes and knowledge of the participants. Stemming from an increased awareness of issues surrounding violence against women is an improved skill set for those working with victims, such as significant reductions in behaviours such as blaming the victim for their abuse. Training that focuses on analysis and assessment in case studies has proven important to producing attitudinal and behavioural changes. This can be reflected in pre- and post-tests on several constructs, including for example: “violence against women is justified”, “women gain

from beatings”, “offenders are responsible and should be punished”, or “help should be given to victims”. Attitudinal change could also be tested by confronting trainees with scenarios and asking how they would respond. For longer term measurement, one way to gauge the effectiveness of the training is to send a questionnaire to participants several months after the training, asking how they have incorporated the skills into their work and analyse their responses.



Opening, training objectives and general principles

Training courses should start with an opening session. The purpose of this session is to welcome the participants to the training course, discuss the purpose and objectives of the course and to help participants relax and to create a learning environment. Depending on who is organizing and/or sponsoring the training course, there may be a formal opening ceremony by the sponsoring agencies.



NOTE TO TRAINERS

It is nice to greet the participants at the door as they come into the workshop room and welcome them to the workshop. Provide participants on arrival with any material, a name card and ask each participant to write his or her name on the card.

The objectives of this session are to:

- Introduce the basic purpose of the training (by the training coordinator)
- Inform participants about what to expect from the training course
- Provide a brief introduction of the training programme and schedule
- Set a few rules for the training sessions, with approval from all the participants
- Familiarize the trainees with all the resources and course material to ensure that they are fully involved in appreciating its benefits, thereby promoting active and responsive learning

Welcome and opening by the training team

Welcome the participants to the training course. When introducing the training team, reference should be made to each of the trainers' experience and the qualifications that particularly make each team member suitable for the training task.

Outline the background to the training and why it is taking place. Depending on what is mentioned in the formal opening ceremony, some points the trainers might want to cover include:

- The seriousness of the issue of violence against women:
 - It is a widespread and serious violation of human rights
 - Although rates of women exposed to violence vary from one region to another, statistics indicate that violence against women is a universal phenomenon and

women are subjected to different forms of violence both within and outside their homes

- Refer to statistics from the region/country where training is taking place
- The fact that criminal justice systems are still failing victims of violence against women. This can be due to:
 - Loopholes in criminal legislation
 - Poor enforcement of criminal laws and regulations
 - Lack of proper capacity in the criminal justice system
 - Discriminatory attitudes among criminal justice actors
 - Lack of sufficient and sustainable dedicated resources
- This failure has a number of results:
 - High level of cases of violence going unreported and unprosecuted
 - A profound lack of confidence and trust in the criminal justice institutions
 - High levels of impunity for the perpetrators
 - High percentage of victims whose needs for assistance, protection and redress are neither recognized nor met
- As prosecutors, the trainees all play a critical role in the criminal justice response to violence against women.
- Prosecuting gender-based violent crime can be challenging:
 - Often there are a number of evidentiary challenges, due to the private nature of the violence
 - The police investigation may be substandard
 - Victims may be uncooperative, and withdraw or recant their complaints
 - Judges or juries may employ gender bias or common myths surrounding violence against women when examining the credibility of the victim and the facts of the case

Introduction of participants/trainees: getting to know each other – icebreaker

Depending on the number of trainees, the introduction of participants could be done in a variety of ways.



GETTING TO KNOW EACH OTHER

Instructions: Pair people up together. Give them 60 seconds to exchange some information about themselves (can be guided by a PowerPoint slide) and then ask each one to introduce his or her partner.

Outcome: This exercise helps participants relax and ease into a learning situation as well as make a human connection and pay attention to what other persons are saying.



WHO AM I?

Instructions: Invite each participant to introduce him or herself. Ask them to mention their name, position, interest in the topic, and lastly, if they could have dinner with anyone, dead or alive, who would it be and why.

Outcome: This exercise helps participants relax and ease into a learning situation, helps them learn each other's names and personal and professional information, and helps to lower inhibitions by allowing them to share personal information.



NOTE TO TRAINERS

Listen carefully to each introduction and look for opportunities to ask follow-up questions or make short comments on the introduction.

Remember icebreakers are structured exercises designed to relax participants, introduce them to each other and energize them in what is normally an unduly formal atmosphere or situation. Icebreakers are not normally related to the subject matter.

Take the opportunity at the end of the exercise to explain the rationale for the exercise.

Training objectives

Explain to the participants what the objectives are for the training course and what it is meant to achieve. It is important that the participants understand what the trainers are trying to achieve during the training course and what is expected by the end.

It can also be helpful to ask the participants in advance what they hope to take away from the training, so that the trainers have an idea what the participants' needs are. Then when objectives are reviewed, the trainers can note anything that will not be covered or propose a way to incorporate it.

The overall objectives are to:

- Develop a better understanding by prosecutors of the extent and nature of violence against women; the consequences and dynamics of such violence; the root causes and the concept of gender equality; and how to avoid common misconceptions.
- Familiarize prosecutors with the international standards and national laws relating to key issues for responding to violence against women, particularly intimate partner violence and sexual violence.
- Enhance the knowledge and skills of prosecutors to investigate and prosecute cases involving violence against women, ensuring the protection and safety of victims while holding perpetrators accountable.
- Enhance the understanding of discriminatory barriers to accessing justice for women experiencing such violence.

Introduction to the training materials, the outline of modules and training methodology to be used

This *Resource Book* is based on the UNODC/UN Women/TIJ *Handbook on Effective Prosecution Responses to Violence against Women and Girls* and has been developed to provide practical guidance on the knowledge and skills frontline prosecutors need to more effectively respond to crimes involving violence against women. It also builds upon tools such as the UNODC Blueprint for Action and the United Nations *Essential Services Package for Women and Girls Subject to Violence* – Module 3 Justice and Policing. Together, these tools provide detailed and concrete guidance on the implementation of relevant international standards and norms, particularly the updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, adopted by the United Nations General Assembly in December 2010.¹¹

Explain the training schedule, highlighting the modules that will be covered during the training. The first three modules will review broad issues: including the international obligation of prosecution services to respond effectively to violence against women cases; understanding the situation of women who suffer such violence; and the legal frameworks, both international and national, that are in place to ensure access to justice for victims of violence. The next five modules focus on knowledge and skills for frontline prosecutors as they undertake their roles along the criminal justice chain: from investigation, decision to prosecute and selection of charges to pre-trial, trial and post-trial considerations. If the trainers are conducting a more focused training curriculum, adjust accordingly.

Explain why the course is structured in the way that it is. In particular, it should be highlighted that it is intended to be participatory, encouraging active participation. Interactive training techniques will be used and participants' knowledge, expertise and practical experience will provide an added value to the course and will be drawn on during the course. Emphasize that the training is relevant and helpful to prosecutors in their daily work; it is not a theoretical discussion, but is intended to help prosecutors as they go about their regular duties. It is also meant to be sequential, wherein each module will be sequenced and builds upon the previous module's learning objectives.

Training expectations

Ask a few participants what their expectations of the training are and note down the points on a flip chart. Mark the expectations that are repeated, if any, to show the frequency and what expectations they have in common.

Group rules

Spend a few minutes discussing group rules, i.e. the rules that will govern how the participants work with each other during the training course.

¹¹ A/RES/65/228, annex.

Ask the participants about what their ideas are for group rules for the training course. If needed, ask about:

- Working together
- Interruptions
- Time keeping

The trainers might want to put up the PowerPoint slide with a list of their suggestions after the participants have made their list. Compare what is on their list with their list and agree a final list for the training course.

List them on a flip chart, and during the training course, the trainer can refer to the list of ground rules and bring the group back on focus. Keep the flip chart posted on the wall throughout the workshop.



SUGGESTED GROUP RULES

- Turn mobile phones to silent
- Start on time in the morning
- Return promptly after breaks
- Value other people's opinion
- Be constructive in comments
- Only one person to speak at a time
- Confidentiality of participants to be respected [personal opinions or stories expressed during the course discussions do not leave the room]

Pre-test

The objective of the pre-training test is for participants to ascertain their initial impressions about the subject of violence against women and then test their level of knowledge and understanding at the end of the course.



PRE-TEST HANDOUT

Give participants 10 minutes to fill in the short pre-training test. Explain that the same test will be done at the end of the training course. Answers for the post-test are included in annex 4.

Handout: Pre-training test

1. A woman who has been beaten by her husband might be reluctant to participate in the criminal justice system for a number of reasons. (check all which apply):
 - She fears retaliation from her husband
 - She is ashamed of what the community will think
 - She does not want her husband to be removed from the home
 - She loves her husband
 - She does not believe that the police can protect her

(cont.)

2. In a case where the victim reports rape, if she had agreed to go to the accused's apartment for a drink, is this strong evidence that she consented to the subsequent sexual intercourse?
 Yes
 No

3. You have received a file involving a woman who has been injured and who gave a statement to the police stating that her husband assaulted her. If you receive a voice message from the woman telling you she wants to withdraw the case, should you respect her wishes and decide not to proceed?
 Yes
 No

4. A victim is beaten by her husband by being punched, kicked and choked, and hospitalized for five days with a broken leg. The only evidence in the file includes a report from her family doctor, a statement from her nine-year-old son who witnessed the incident and the victim's statement. Would you decide to prosecute?
 Yes
 No

5. Risk factors for lethal violence include which of the following:
 Unemployment
 Threats of suicide
 Jealous behaviour

6. The majority of rape cases involve strangers, physical force and physical injury.
 True
 False

7. The victim's past sexual history with others is relevant to her credibility in a rape case.
 True
 False

8. Victims are knowledgeable about the criminal justice system and their role in it.
 True
 False

9. The police have taken an initial statement from a victim of sexual violence. You subsequently interview the victim. The day after your interview, you realize you have follow-up questions, so you arrange for another interview. This is good practice.
 True
 False

10. It is good practice to allow a victim of a sexual offence to have a support person beside her when she is being interviewed and when she testifies in court.
 Yes
 No

MODULE

01

**Understanding the prosecution's
obligation to effectively respond
to violence against women under
international law**

PURPOSE OF MODULE 1

The purpose of this module is to introduce the concepts of gender, gender equality, due diligence and violence against women as established under international law. The first part of this module focuses on these key concepts and explores how promoting gender equality forms the basis of the international obligation of due diligence and informs the criminal justice response. The second part of this module focuses on the international legal framework and the key guiding principles for a quality criminal justice response to violence against women that has been agreed on by the international community.

LEARNING OBJECTIVES

At the end of this module, participants will have the necessary knowledge and skills to:

- Understand the concept of gender equality when dealing with violence against women cases and to be able to distinguish between the terms “sex” and “gender”
- Define the term “violence against women” and appreciate that it is both a cause and a consequence of gender inequality
- Gain knowledge and a good understanding of the international obligation of due diligence
- Explain the importance of the criminal justice system in general and the role of prosecutors in particular, for ensuring implementation of international obligations
- List the key guiding principles for a quality criminal justice response to violence against women

THE CONCEPT OF GENDER AND GENDER EQUALITY

Substantive material

This section aims to develop a better understanding of the terminology and dynamics of violence against women, the root causes of the violence and the concept of gender equality. Violence against women is often referred to as “gender-based violence”. In order to clarify these concepts, trainers should aim to convey the following:

- Violence against women is referred to as gender-based violence because it evolves in part from women’s subordinate gender status in society.
- Unequal power relationships between women and men created and maintained by gender stereotypes is the basic underlying cause of violence against women.
- In most cultures, traditional beliefs and social institutions legitimize and therefore perpetuate violence against women.
- The persistent attitudes and beliefs that see women as inferior to men and a culture of male domination socializes both men and women to accept, tolerate and even rationalize violence and to remain silent about such experiences. Gender discriminatory attitudes and behaviours are hard to change.
- It is essential that prosecutors understand these entrenched attitudes and traditional cultural assumptions about gender equality and gender roles in their response to crimes involving violence against women.
- Appreciating the gendered roles in a given country contributes to our understanding of the risks and of victimization of women, the realities women face in reporting certain crimes, how laws are applied by prosecutors, whether the prosecution agencies replicate gender inequalities and women’s participation and advancement within the criminal justice system.
- Women and men are impacted differently by crime and violence and have different experiences when they are in contact with the criminal justice system. Studies generally find that males are more often the victims of homicide and physical assault, whereas women are most often the victims of sexual assault. Women are also more likely to experience violence and abuse inside the private or domestic sphere, perpetrated by someone they know, often by their own partner.

- Even in reviewing domestic violence in general, which can take many forms such as child abuse, elderly abuse and intimate partner abuse, these types of violence involve different social and psychological dynamics and power differentials. Research has found that domestic violence against adults is distinctly gendered. It disproportionately victimizes women more than men, with men overrepresented as perpetrators. It is strongly related to socially determined power differentials between men and women. It is this gendered nature that distinguishes intimate partner violence from violent crime in general as well as from other types of violence in the home. For this reason, the *Resource Book* uses the term “intimate partner violence” rather than domestic violence.
- The United Nations, in the 1995 Beijing Platform for Action, emphasized that violence against women “is a manifestation of the historically unequal power relations between men and women which have led to domination over and discrimination against women by men”.¹²
- Key conclusion: the dynamics of violence against women, the forms of violence that women experience, the severity, frequency and consequences are very different from violence experienced by men.

“Gender” is a contentious subject. Initially there is likely to be confusion between “sex” and “gender”. In many languages there is little or no linguistic distinction. It will be important to clarify and reinforce the distinction between the two concepts from the very outset.

Gender refers to the relations between men and women in society which arise out of the roles they play. These roles are socially constructed and not physically determined. They can change over time. The following points should be borne in mind:

- “Socially constructed” means referring to the social interpretations and values assigned to being a woman or a man. The identity of men and women in any given society is socially and psychologically determined. Where people live together, a culture will arise, and they will develop common values and rules to internalize these.
- Gender roles refer to roles that men and women are expected to play in society. Socialization teaches and reinforces these roles. These gender roles are by no means inevitable. They can change over time and across societies.
- Gender roles are not determined at birth and are not unchangeable but shaped by family, school, society, friends and the surrounding environment. For example, child rearing is often classified as a female role, however it is a female gender role not a female sex role, as it can be done by both male and female. It is society that ascribes these roles. Roles are learned through observation and instruction. Society ensures conformity by example, penalty or persuasion. Those who do not conform may be punished or ignored, cut off in some way. Traditional concepts of the role of men and women, shaped over the years, continue to be passed down. The values associated with gender change with time, activism and shifting opinions. Gender is a basis on which people are labelled and judged, just like class, race and religion.

¹² *Report of the Fourth World Conference on Women*, Beijing, 4–15 September 1995 (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annex II, para. 118.

Sex refers to biological and physical characteristics of men and women. We are born with these characteristics and usually we cannot change our sex.

TABLE: KEY DIFFERENCES BETWEEN THE CONCEPTS OF SEX AND GENDER

GENDER	SEX
Different roles and social aspects between male and female. Changeable.	Different biological and physical aspects between male and female. Unchangeable.
Product of society, culture, tradition, shaped by teaching and learning.	Inborn.
Varies between regions, historic periods.	Universal: identical all over the world.
For example: childcare; men are rational vs. women are emotional; men are the bread winners in the family.	For example: pregnancy and childbirth; muscle mass/physical strength; growing beards.

A *gender stereotype* is a generalized view or preconception about attributes or characteristics that are or ought to be possessed by, or the roles that are or should be performed by, men and women. It is the belief that may cause its holder to make assumptions about members of the subject group, e.g., women. Gender stereotypes are beliefs held about characteristics, traits and activities that are “deemed” appropriate for men and women. Gender stereotypes are reflected in various fields, such as marriage, family, politics and the economy.



NOTE TO TRAINERS

Further resource: OHCHR paper on *Eliminating judicial stereotyping* (2014) available from: www.ohchr.org/Documents/Issues/Women?WRGS/judicial_stereotyping2014.

Gender stereotyping is the practice of ascribing to an individual woman or man specific attributes, characteristics or roles by reason only of her or his membership of the social group of women or men:

- It is the practice of applying a gender stereotype.
- Inferences are subsequently drawn about individual women and men based on the generalized views and preconceptions and related assumptions about the attributes, characteristics and roles of the different sex/genders.
- When we require or expect a person to act in a specific way because they are male or female, this is often referred to as “gender stereotyping”.

International human rights law is concerned with “harmful gender stereotypes” and “wrongful gender stereotyping”; it is not concerned with all stereotypes or all forms of gender stereotyping. However, it is important to remember that a gender stereotype need not be “negative” to cause harm.

Gender inequality refers to unequal treatment or perceptions of individuals based on their gender. The differences established between women and men tend to attribute greater importance and value to the characteristics and activities associated with men, thereby producing unequal power relationships. In most societies, the female gender has less power and fewer privileges and rights than the male gender. It is not our physical differences that define our unequal conditions but our social norms and values.

Gender equality refers to the equal rights, responsibilities and opportunities of women and men. 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. The following aspects should be highlighted:

- Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, recognizing the diversity of different groups of women and men.
- Equality does not mean only ensuring women's interests but rather focuses on both sexes.
- Women and men should have equal conditions for realizing their full human rights and the potential to engage in and contribute to political, economic, social and cultural development, and to benefit from the outcomes.
- This is a human rights issue as well as a precondition for sustainable development.

Promoting gender equality. Because most societies are based on systems where men have more power (patriarchal systems), women are discriminated against and have unequal access to resources, justice, etc. Violence is sometimes used to maintain power and control over women by men. Given that women are more disadvantaged than men in society, action for gender equality tends to pay more attention to women than men in order to address gender imbalance. Promoting gender equality means ensuring that similar opportunities are available to both women and men and that society places the same values on both the similarities and differences between women and men, and the different functions of each. Different measures might be needed for women and men to ensure that they are being fairly treated.

KEY POINTS FROM THIS SESSION

1. Appreciate that violence against women is both a cause and a consequence of gender inequality.
2. Understand how gender roles – socially constructed roles (“gender”) rather than physically determined (“sex”) – and characteristics contribute to differential experiences of violence (dynamics, forms, severity, frequency, consequences) and its impact on women's participation and advancement within the criminal justice system.
3. Persistent gender discriminatory attitudes and behaviours have socialized men and women to accept, tolerate and even rationalize violence against women.
4. It is essential for prosecutors to understand these entrenched attitudes and traditional cultural assumptions about gender equality and gender roles in their response to crimes involving violence against women.

Possible options for delivering the material

Individual exercise on the concept of gender: true and false questionnaire

One approach is to start off this module with a quick exercise to provide an opportunity for participants to start focusing on gender.



SHORT INDIVIDUAL EXERCISE

Handout: The concept of gender – True or false?

Instructions: Refer to the handout. Explain to participants that the purpose of this quick exercise is to get participants in the mood to discuss gender issues. It should be completed independently, not shared. It is a simple way for them to measure how far they have come in their understanding of this subject. The participants are to write TRUE or FALSE next to each statement, completing the exercise in two to three minutes. Tell participants that this exercise will be referred to at the end of the session. Take five minutes to review the answers at the end of the section on gender.

Handout 1 of module 1

Understanding the concept of gender – True or false?

1. Globally, women are paid less than men, with women in most countries earning on average only 60 to 75 per cent of men's wages.
.....
2. Sex and gender mean the same thing.
.....
3. Only females are victims of sexual violence.
.....
4. In ancient Egypt, men stayed at home and did weaving. Women handled family business. Women inherited property and men did not.
.....
5. Gender is fixed and unchangeable.
.....
6. Most criminal investigators in Viet Nam are women.
.....
7. In one study of 224 cultures, there were five cultures in which men did all the cooking, and 36 cultures in which women did all the house-building.
.....
8. The word "gender" can be used interchangeably with the word "women".
.....
9. Little girls are always gentle, boys are tough.
.....

At the end of the discussion on the concept of gender and gender equality, review the true or false exercise in the plenary.



REVIEW OF THE TRUE OR FALSE EXERCISE ON THE CONCEPT OF GENDER

Instructions: Put up the PowerPoint slide that contains the answers to the True or False exercise.

Review them and ask if anyone has any questions on that exercise.



UNDERSTANDING THE CONCEPT OF GENDER

True or false – how did you do?

1. Globally, women are paid less than men, with women in most countries earning on average only 60 to 75 per cent of men's wages. **TRUE**
2. Sex and gender mean the same thing. **FALSE**
3. Only females are victims of sexual violence. **FALSE**
4. In Ancient Egypt, men stayed at home and did weaving. Women handled family business. Women inherited property and men did not. **TRUE**
5. Gender is fixed and unchangeable. **FALSE**
6. Most criminal investigators in Viet Nam are women. **FALSE**
7. In one study of 224 cultures, there were five cultures in which men did all the cooking, and 36 cultures in which women did all the house-building. **TRUE**
8. The word "gender" can be used interchangeably with the word "women". **FALSE**
9. Little girls are always gentle, boys are tough. **FALSE**

PowerPoint presentation and plenary brainstorming questions

Another approach to starting this module or to proceed after the initial handout exercise is with a plenary brainstorming question, followed by a PowerPoint presentation.



QUESTION TO THE PLENARY

Why is violence against women referred to as gender-based violence?



POWERPOINT PRESENTATION

Terminology

Gender refers to the relations between men and women in society which arise out of the roles they play. These roles are socially constructed and not physically determined. They can change over time.

Sex refers to biological and physical characteristics of men and women.

Differences between "gender" and "sex"

Gender	Sex
Different roles and social aspects between male and female. Changeable.	Different biological and physical aspects between male and female. Unchangeable.
Product of society, culture, tradition, shaped by teaching and learning.	Inborn.
For example: childcare; men are rational vs women are emotional; men are the bread winners in the family.	For example: pregnancy and childbirth; muscle mass/physical strength; growing beards.

(cont.)

Terminology

Gender stereotype is a generalized view or preconception about attributes or characteristics that are or ought to be possessed by, or the roles that are or should be performed by, men and women.

Gender stereotyping is the practice of ascribing to an individual woman or man specific attributes, characteristics or roles, by reason only of her or his membership of the social group of women or men.

Terminology

Gender inequality refers to unequal treatment or perceptions of individuals based on their gender.

Gender equality refers to the equal rights, responsibilities and opportunities of women and men. 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.

**QUESTIONS TO THE PLENARY ON GENDER STEREOTYPES**

What are some examples of gender stereotypes?

What are some examples of gender stereotypes related to gender-based violence?

Some examples of gender stereotypes:

- Men cannot control their sex drive
- There are good women and there are bad women
- Sexy outfits are evidence of sexual availability
- Women say “no” when they mean “yes”
- Real victims cannot resume their normal activities after the alleged violation
- Real victims do not forget details

Large group brainstorming exercise: difference between gender and sex

Another approach is to conduct a large group exercise.

**BRAINSTORMING EXERCISE**

Instructions: Write “women” on one flip chart and “men” on another. Ask participants to brainstorm as a group. Brainstorming means participants should be responding quickly and without commenting on contributions from others.

Ask: “What are the characteristics of women and men?”

Write down everything that is mentioned, without making a comment.

If participants find it difficult to contribute, give examples and ask them to work it out: pregnancy and childbirth; child rearing; muscle mass/physical strength; breastfeeding; men are rational, women are emotional; baldness; boys are better at science and maths than girls; physical stamina; changing voices at puberty; girls are more gifted at sewing; growing beards.

After the list is completed, go through each item. Ask which of the female/male characteristics can or cannot be changed? Which characteristics can both male and females have? For example, if under the heading of “women”, such characteristics as “patient” or “caring” are mentioned, ask if men can also be “patient” or “caring”. If so, mark that characteristic with a “yes” or with a “+” sign. Characteristics that cannot be changed should be marked with a “no” or “-“ sign.

Highlight the difference between “sex” and “gender” from the examples provided and provide the group with definitions of these terms.

Other questions trainers might want to ask during the discussion:

- Are women always (e.g., patient)? Are men always (e.g., strong)?
- How would you react if a woman was stronger than a man?
- How would you react if a man was patient?
- Are these characteristics of women and men natural? Are they biological?
- How do we acquire these characteristics? Are they not socially constructed?
- What are some of the proverbs regarding the roles of men and women in your community?



NOTE TO TRAINERS

Change is the key issue. If in doubt, ask yourself “can I change this” or “is this subject to change?” If the answer is “yes” then it is gender.

After this discussion, the trainers might want to review some of the concepts in the PowerPoint slides from previous exercise.

Small group exercise: discussing the terminology

Below is another approach to introducing or reviewing the terminology in the module which might be good for those trainees who are already familiar with this subject matter.



REVIEWING THE TERMINOLOGY

Prepare in advance: On flash cards, write down one term per card: “sex”; “gender”; “gender stereotype”; “gender equality”; “violence against women”; “intimate partner violence”; “sexual violence”. Make up as many cards as participants, using the terms more than once.

Instructions: Hand out one flash card per participant. Ask the participants to pair up with someone they have not met before. Give them five to ten minutes to discuss with each other how they would define the term on one of the flash cards. Then ask them to switch to the other card for discussion, for the same amount of time.

Bring them back to plenary and review each term. This can be integrated into the PowerPoint presentation contained in this module (both section 1.1 and 1.2).

THE INTERNATIONAL LEGAL FRAMEWORK

Substantive material

This section covers the broad international human rights framework; the definition of violence against women under international law; the international obligation of due diligence; and the relevant international standards and norms in crime prevention and criminal justice.

The international human rights framework

There are a number of international and regional instruments which provide the international context for the prohibition of violence against women and girls. This is explained in detail in the UNODC/UN Women/TIJ Handbook on Effective Prosecution Responses to Violence against Women and Girls.

International instruments and gender equality

The promotion of gender equality and the principle of non-discrimination are cornerstones of the international human rights framework:

- The International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which is considered the women's bill of rights, all call for the prohibition of discrimination, equality before the law and equal protection of the law. Gender equality provisions are found across a cross section of these international human rights treaties.
- Justice and unhindered access to justice are seen as central to efforts towards achieving substantive equality.¹³
- Gender equality is also seen as indispensable for all women to enjoy their entire range of human rights.¹⁴
- There is an obligation to expose and remove the underlying social and cultural barriers, including gender stereotypes, that prevent women from exercising and claiming their rights and impede their access to effective remedies.¹⁵
- More detailed instruments on violence against women have been agreed among United Nations Member States.¹⁶ Together with the international human rights treaties, these

¹³ Committee on the Elimination of Discrimination against Women, General recommendation No. 33 on women's access to justice, CEDAW/C/GC/33.

¹⁴ *Ibid.*, para. 6.

¹⁵ *Ibid.*, para. 7.

¹⁶ See Declaration on the Elimination of Violence against Women (General Assembly resolution 48/104, of 20 December 1993) and Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (General Assembly resolution 65/228, annex, of 21 December 2010).

international standards and norms can be used by States to measure up to (i.e., respect, protect, fulfil human rights) or by advocates to hold States accountable.

Defining violence against women and identifying the common forms

Following from the international human rights framework that identifies gender discrimination as a human rights violation and requires States to promote gender equality; and knowing that violence against women is both a cause and consequence of gender inequality, a pervasive violation of the enjoyment of human rights and a major impediment to achieving gender equality, the Committee on the Elimination of Discrimination against Women has developed General Recommendations No. 12 and No. 19 to provide States with guidance as to how to eliminate violence against women.¹⁷ The Committee noted that:

- The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately.
- The vast majority of perpetrators of the violence are male while victims are female.
- It is this disproportionality that frames the discussion of violence against women as a form of systematic discrimination and connects it to gender equality obligations.

The international community agreed a definition of violence against women in 1993. This definition is found in the United Nations Declaration on the Elimination of Violence Against Women:¹⁸ “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 life”. The definition reflects:

- The breadth of the issues involved in violence against women
- The gendered nature of the abuse
- The fact that such violence is directed against a woman because she is a woman or affects women disproportionately
- The term “women” is used to cover females of all ages, including girls under the age of 18 years

The multifaceted nature of violence against women and the range and diversity of the contexts in which it can occur is further detailed in the Declaration on the Elimination of Violence Against Women:

- Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation
- Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution

¹⁷ Committee on the Elimination of Discrimination against Women, General recommendation No. 19: Violence against women, A/47/38, pp. 1–6.

¹⁸ General Assembly resolution 48/104, of 20 December 1993.

- Physical, sexual and psychological violence perpetrated by the State, wherever it occurs

Trainers should aim to convey the following aspects:

- All forms of violence against women are human rights violations and many constitute criminal offences in the legal framework of most States.
- The different forms of violence against women include domestic violence, intimate partner violence, sexual violence, sexual harassment, stalking, human trafficking, forced prostitution, forced and early marriage, female genital mutilation, crimes against women committed in the name of honour and other harmful practices, and gender-related killings of women. Violence against women is perpetrated in different settings, including conflict and post-conflict settings.¹⁹ The different forms of violence against women as covered by international and regional instruments is explained in detail in the UNODC/UN Women/TIJ *Handbook on Effective Prosecution Responses to Violence against Women and Girls*.
- The scope of criminal offences varies from State to State, as well as the definition or elements of the crimes. This will be covered in more detail in module 2 on the legal framework.
- While there are many different forms of violence against women, for this *Resource Book* the focus will be on two specific forms as these tend to be the most common cases seen by prosecutors across the world or the most common form of violence experienced by women globally: (a) intimate partner violence; and (b) non-partner sexual violence.



NOTE TO TRAINERS

If participants question why the focus is only on these two forms of violence against women, trainers can explain that:

1. This *Resource Book* is based on the UNODC/UN Women/TIJ *Handbook on Effective Prosecution Responses to Violence against Women and Girls*, which, while mentioning the different forms of violence against women, mainly focuses on intimate partner violence and sexual violence as these tend to be the most common cases seen by prosecutors across the world.
2. There are other resources that focus on specific forms of violence against women, such as the UNODC *Anti-Human Trafficking Manual for Criminal Justice Practitioners* (2009) available from: www.unodc.org/unodc/en/human-trafficking/2009/anti-human-trafficking-manual.html.
3. While different forms of violence against women might require different and unique approaches by prosecutors, this *Resource Book* can be a starting point to address these other forms, as it is based on the underlying commonalities of this type of violence: the gendered nature of the violence and the need to address the victim's whole experience, emphasizing the necessity for a prosecutorial response that protects and empowers the victim while holding perpetrators accountable.

¹⁹ More information and materials on prosecuting conflict-related sexual violence is available from the Prosecuting Conflict-related Sexual Violence Network of the International Association of Prosecutors (<http://www.iap-association.org/PSV/Home>). See also Serge Brammertz and Michelle Jarvis (eds.), *Prosecuting Conflict-Related Sexual Violence at the ICTY* (Oxford University Press, 2016).

Intimate partner violence includes a range of sexually, psychologically and physically coercive acts used against adult and adolescent women by a current or former intimate partner, without her consent:

- Physical violence involves intentionally using physical force, strength or a weapon to harm or injure the woman.
- Sexual violence includes abusive sexual contact, making a woman engage in a sexual act without her consent, and attempted or completed sex acts with a woman who is ill, disabled, under pressure or under the influence of alcohol or other drugs.
- Psychological violence includes controlling or isolating the woman, and humiliating or embarrassing her.
- Economic violence includes denying a woman access to and control over basic resources.

Non-partner sexual violence refers to violence by a relative, friend, acquaintance, neighbour, work colleague or stranger that includes being forced to perform any unwanted sexual act. It includes sexual harassment and violence perpetrated against women and girls, frequently by an offender known to them, including in public spaces, at school, in the workplace and in the community.



NOTE TO TRAINERS

Let participants know that module 2 provides an opportunity to examine how forms of violence against women defined in international law are translated into national criminal laws, and how the scope and elements of the crime varies from State to State.

International obligation of due diligence

States must take measures to protect women and girls from violence, to prosecute acts of violence and to prevent further acts of violence. This is the due diligence obligation under international law. Specifically articulated in the United Nations Declaration on the Elimination of Violence Against Women, States are required to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women whether those actions are perpetrated by the State or private persons. If a State fails to act, it has violated its international obligations.

This obligation of due diligence can be broken down into essential elements – the “five Ps” of due diligence to eliminate violence against women:

- *Prevention* includes measures taken by States that thwart the occurrence of violence against women. Good prevention programmes raise awareness of violence against women, make information and legal protection available post incident and target the underlying risks and causes of such violence. An effective criminal justice response that stops the violence, prevents it from further escalating and can deter other violence against women by sending a message to the community that violence against women is not tolerated.

- *Protection* keeps the victim safe from present harm and the re-occurrence of further violence as well as ensuring the victim receives adequate and timely services. This includes ensuring the possibility of criminal protection orders and ensuring that pre-trial release orders can contain conditions that provide protection to the victims, and her family.
- *Prosecution* refers to the duty of exercising criminal jurisdiction over those responsible for the violence. This duty must be exercised in an effective, prompt, impartial and thorough manner, which allows the victim to take steps to try to stop the violence without fear of repercussions. One of its components is to ensure that the applicable criminal legislation covers definitions of crimes that reflect the experiences of women who suffer violence.
- *Punishment* refers to the obligations of imposing a sanction on perpetrators as a consequence of their having committed violence against women. Sanctions can be criminal, civil, administrative or others, such as social sanctions. This also includes ensuring that sentences reflect the severity of the violence.
- *Provision of redress and reparations* refers to any form of remedy or compensation made available to the victim to redress the harm or loss suffered by them.

The importance of a quality criminal justice response

As discussed earlier, violence against women is a complex social problem deeply rooted in structures of gender inequality that flourishes in a culture of impunity. Such impunity ends up normalizing this type of violence and undermining the rule of law. All sectors of society need to play a role in changing the cultural and social acceptance of this violence or indifference to such violence.

The criminal justice system plays a leading role in efforts to prevent and respond to violence against women:

- Criminal legislation establishes what society deems as unacceptable behaviour and provides criminal justice officials with the legal grounds and authority to investigate, prosecute and punish gender-based crimes.
- Criminal justice officials, including prosecutors, have the duty to ensure the enforcement of laws, hold perpetrators accountable and keep victims safe.
- Effective and successful prosecutions send the important message that society does not tolerate crimes of violence against women and contribute to ending impunity for such crimes.
- This, in turn, can contribute to transformative changes in social and cultural practices needed to eliminate violence against women.

Despite the pervasiveness of violence against women, the responses of criminal justice systems around the world have been problematic. All forms of violence against women continue to be severely underreported crimes globally, especially to enforcement agencies. When women do report, the rates of perpetrators being charged and convicted are very low, while levels of withdrawal of complaints to the police and prosecutors are high.

International standards and norms in crime prevention and criminal justice

In order to assist criminal justice systems and professionals in meeting their due diligence obligations, in December 2010, the General Assembly adopted the updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (hereinafter “updated Model Strategies and Practical Measures”). From a legal and formal point of view, the updated Model Strategies and Practical Measures belong to the so-called Standards and Norms in Crime Prevention and Criminal Justice that the United Nations have developed over the years to cover a wide variety of issues such as justice for children, treatment of offenders, victim protection, conduct of criminal justice officials or restorative justice.²⁰ These instruments have a soft law nature, which means that unlike treaties and conventions, they are not legally binding for countries. Nevertheless, they enjoy the consensus of all United Nations Member States and embody internationally recognized principles of crime prevention and criminal justice, representing a common ideal of how the criminal justice system should be structured, how criminal policy strategies should be developed and how crime prevention and criminal justice should be secured.

The updated Model Strategies and Practical Measures provide a comprehensive set of criminal justice strategies and measures which can assist criminal justice professionals in better addressing the needs of women and ensure their fair treatment in the justice system. They represent a map, a compass to navigate through the different levels of criminal justice systems. And as such they represent, both for the relevant national and international authorities, a benchmark by which measure the fairness, effectiveness and humanity of a criminal justice system. In particular, they provide that the responsibility for prosecuting violence against women lies with prosecution authorities and not with victims of violence, regardless of the level or type of injury.

Guiding principles for a quality criminal justice response

The updated Model Strategies and Practical Measures set out the following elements of a quality criminal justice system response to violence against women. Trainers should cover the following key guiding principles:

- *Human rights-based.* Criminal justice systems need to be designed to allow all women to enjoy and exercise their human rights, be protected from violence and treated with dignity and respect. Underlying any criminal justice response is the understanding that violence against women is both a cause and a consequence of gender inequality as well as a violation of women’s human rights. The wider dynamics of inequalities between men and women create gender specific vulnerabilities, such as economic and legal dependency, that impact on victims’ willingness to cooperate with the criminal justice system and break out of the cycle of violence.
- *Victim-centred.* The safety and well-being of victims are paramount goals of a criminal justice response. A victim-centred approach, as opposed to a system-centred one, puts the needs of the victims at the core of any criminal justice intervention and recognizes that they deserve timely, compassionate, respectful and

²⁰ A Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice is available from: <https://www.unodc.org/unodc/en/justice-and-prison-reform/compendium.html>.

appropriate treatment. Victims have the right to be well informed in order to make their own decisions about participation in all the stages of the criminal justice process. Victims know far more about what they need and the risks they face than is typically assumed. The criminal justice system response is to assist them in managing risk and ensuring victim safety. The criminal justice system, with all its procedural rules and policies, should be applied in a manner that empowers individual women who are victims of violence. Domestic violence, rape and sexual assault, sexual harassment and other forms of violence often deprive women of their sense of control, autonomy, self-respect and personal privacy. The criminal justice system should seek to restore and reinforce those qualities, while avoiding measures that lead to secondary victimization.²¹ Victim-centred approaches shift the focus to assisting victims in their engagement with the criminal justice process rather than holding them responsible for their often well justified reluctance to cooperate with the criminal justice system. Any legal provisions should counter the climate of tolerance, social passivity and victim-blaming and acknowledge how these crimes, given their unique characteristics, have a traumatic and disempowering impact on victims.

- *Offender accountability.* In cases of violence against women, the criminal justice system needs to shift the focus away from discrediting victims to enhancing evidence-gathering and case-building and ensuring consistency in investigation, prosecution and punishment, in order to guarantee a fair trial. This could include early case discussion between police and prosecutor to explore potential evidential weaknesses and whether these might be addressed through additional evidence, expert testimony, research findings or courtroom advocacy. This principle can inform legal provisions that encourage reporting and maximize the victim's cooperation with the criminal justice system. Legal procedures should promote her capacity to act or exert her power while ensuring that the burden of seeking justice is on the State.
- *Comprehensive, coordinated and multidisciplinary approach.* The various institutions of the criminal justice system must work together in a coordinated manner to respond to violence against women. The criminal justice sector should also promote the involvement of all relevant government sectors, as well as pertinent sectors of civil society to ensure a comprehensive response to victims of violence. For instance, support agencies could work with police and prosecutors to guarantee support to victims during statement taking and provision of information on the progress of the case.
- *Use of specialized expertise.* Specialized approaches to violence against women may include establishing special police and prosecutorial units and special courts or dedicated justice system personnel and dedicated court time, and adequately funding specialized training, as well as multidisciplinary approaches such as one-stop centres (which provide multisectoral case management for victims such as health, welfare, counselling and legal services in one location).
- *Adequate resources.* States need to commit adequate and sustained resources to ensure effective responses.

²¹ Secondary victimization is victimization that occurs not as a direct result of a criminal act but through the inadequate response of institutions and individuals to the victim (updated Model Strategies and Practical Measures, para. 15(c)).

- *Monitoring mechanism.* The criminal justice system need to be monitored at all stages in order to evaluate effective criminal justice strategies as well as to provide oversight.
- *Take into account the varying needs of different groups of women subjected to violence.* Victims of violence against women are not a homogenous group. Some women face multiple and intersecting forms of discrimination which can be based on nationality, ethnicity, religion or language in addition to gender. Some victims may be part of specific highly vulnerable groups of women, such as those who belong to an indigenous group, are migrants, stateless or refugees. Some may live in remote or rural communities, be homeless, find themselves in institutions or in detention. Others may have disabilities, be elderly, widowed or live in conflict, post-conflict or disaster situations or, due to the high risk nature of work or lifestyle, may be commercial sex trade workers or women who use drugs.

KEY POINTS FROM THIS SESSION

1. Violence against women has been defined by the international community, emphasizing the gendered nature of the violence. It refers to different harms (physical, sexual, psychological) in different contexts (family, community and by the State) and different forms (e.g. battering, marital rape, rape, sexual assault, etc.).
2. States are required to exercise due diligence to prevent, investigate and punish acts of violence against women whether those actions are perpetrated by the State or by private persons. According to domestic law, the work of State agents such as prosecutors is a key element in the measures States need to take to fulfil their obligations under international law.
3. A criminal justice response is a crucial part of a multisectoral approach to violence against women, as this establishes what society deems as unacceptable behaviour and provides a legal framework to hold perpetrators accountable and keep victims safe.
4. Effective prosecutions can stop the historic cycle of impunity and contribute to transformative changes in social and cultural practices.
5. The United Nations updated Model Strategies and Practical Measures lists the key principles for a quality justice response to violence against women, emphasizing responses that are human rights-based, victim-centric and hold perpetrators accountable.

Possible options for delivering the material

Plenary brainstorming exercise and presentation on the various forms of violence against women



BRAINSTORMING EXERCISE

Instructions: Have the participants name as many forms of violence against women as they can in two to three minutes and write them on a flip chart.

If there is more time, discuss the various forms of violence against women with the group. Focus on what violence against women is and what it is not and why.



POWERPOINT PRESENTATION

The international human rights framework: the main treaties

1. International Covenant on Civil and Political Rights
2. International Covenant on Economic, Social and Cultural Rights
3. Convention on the Elimination of All Forms of Discrimination against Women
 - Prohibition against discrimination
 - Equality before the law
 - Equal protection of the law

The definition: United Nations Declaration on the Elimination of Violence Against Women

Violence against women is defined 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 life".

Range and diversity of context in which of violence against women occurs

Multifaceted nature of violence against women and the range and diversity of context in which it can occur:

- Physical, sexual and psychological violence occurring in the family
- Physical, sexual and psychological violence occurring within the general community
- Physical, sexual and psychological violence perpetrated by the State, wherever it occurs

The two most common forms of violence against women

- *Intimate partner violence*: includes a range of sexually, psychologically and physically coercive acts used against adult and adolescent women by a current or former intimate partner, without her consent.
- *Non-partner sexual violence*: refers to violence by a relative, friend, acquaintance, neighbour, work colleague or stranger that includes being forced to perform any unwanted sexual act.

Other forms of violence against women

- Trafficking in women and forced prostitution
- Harmful practices (e.g. female genital mutilation and forced marriage)
- Dowry-related violence
- Forced sterilization and forced abortion
- Coercive/forced use of contraceptives
- Female infanticide and prenatal sex selection
- Gender-related killing of women and girls
- Conflict-related violence (e.g., murder, systematic rape, sexual slavery and forced pregnancy)

Types of violence

Emotional violence: Any act or omission that damages the self-esteem, identity or development of an individual. This includes humiliation, threats, forced isolation or repeated yelling/degradation.

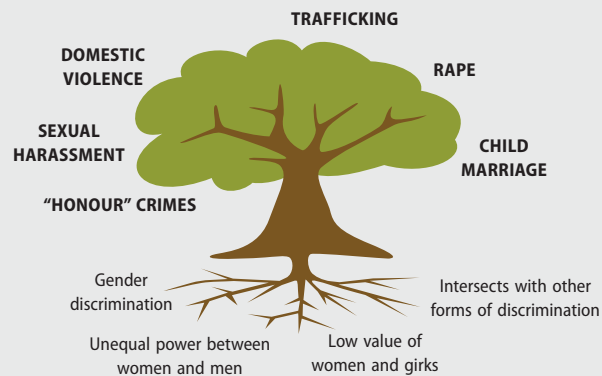
Economic violence: Denying a partner control over basic resources. This includes such acts as the denial of funds, refusal to contribute financially, denial of food and basic needs or controlling access to health care, employment, etc.

Physical violence: The intentional use of physical force with the potential for causing death, injury, or harm.

(cont.)

Sexual violence: any act in which one person in a relationship uses force, coercion or psychological intimidation to force another person to carry out any sexual act against his or her will. This can range from forced exposure to pornographic material to physical contact such as inappropriate touching or sexual assault. Gender inequality and violence

Gender inequality and violence



Plenary presentation and large or small group brainstorming exercise: implications of due diligence



POWERPOINT PRESENTATION

The main international instruments

Hard law (treaties)

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- International Covenant on Civil and Political Rights

Soft law (declarations, guidelines, etc.)

- United Nations Declaration on the Elimination of Violence against Women
- Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice

Committee on the Elimination of Discrimination against Women, General Recommendation No. 19

- Women have the right to live free of violence and free of the fear of violence.
- States are responsible for "private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence".
- States are to ensure that laws against gender-based violence give adequate protection to all women, and respect their integrity and dignity.

International obligation of due diligence

States are required to exercise due diligence to prevent, investigate and in accordance with national legislation punish acts of violence against women whether those actions are perpetrated by the State or private persons.

The five Ps of due diligence to eliminate violence against women

1. Prevention
2. Protection
3. Prosecution
4. Punishment
5. Provision of redress and reparations



BRAINSTORMING EXERCISE

Instructions: In one large or in several small groups, have the participants discuss what the international obligation of due diligence means for their government? What are the implications for the prosecution agency? For prosecutors?

What this means for governments. Points to cover:

- At a systemic level, due diligence implies obligations to address the structural causes and consequences of violence against women.
- At the individual level, States must establish and use effective means to respond to each case.
- It also entails that traditions, customs or religious considerations cannot be invoked as a justification to avoid these obligations.
- The obligation requires States to adopt comprehensive measures to address the root causes of and risk factors for violence against women and discrimination.
- Having criminal laws and procedures that are prompt, effective, exhaustive and aimed at establishing the truth and identifying, prosecuting and sanctioning perpetrators of violence against women are vital elements of these comprehensive measures.

What this means for prosecutors and prosecution agencies. Points to cover:

- Prosecutors and prosecution agencies, as part of the State apparatus, are charged with providing a fair and effective response to acts of violence against women.
- Their response needs to prioritize victim safety and offender accountability.
- It includes the opportunity to access redress for violence in a timely manner, the avoidance of revictimization, and the enforcement of legal remedies, including appropriate punishment for the perpetrators.
- Due diligence is not an obligation of result, but an obligation of means.
- Prosecutors should organize their response to all forms of violence in a way that ensures they can diligently prevent, investigate, punish and provide reparations for such acts of violence.
- Prosecutors need to have a full appreciation of the gendered nature of this problem and how violence against women is an expression of power and inequality.
- Prosecutors not only need to respond to women's safety, but their actions should also contribute to a woman's ability to enjoy and exercise her human rights as such violence undermines women's status and sense of self.
- Prosecutors have a key role to play in reducing the high level of impunity for perpetrators of violence against women by ensuring accountability and sending a message to society that such violence will not be tolerated.

Small group exercise: case study for discussing due diligence

If trainers plan on spending more time on this issue, they could consider doing a small group case study in order to demonstrate the due diligence obligation.



CASE STUDY

Instructions: In the role of expert members of the Committee on the Elimination of Discrimination against Women, you are presented with a case from a non-governmental organization and are asked to determine whether the government has violated their obligation of due diligence under CEDAW.

The facts

Mrs. G was subjected to physical violence and threats of violence over a period of at least three years, culminating in her fatal shooting by her husband, Mr. G. She was first attacked by her husband in December 1999, when he choked and threatened to kill her. She reported the incident to the police the following day, as a result of which the police issued an exclusion order (removing the husband from the family home) and prohibited her husband from returning to their apartment for ten days. There was further violence in August 2000, after which the police issued a second order excluding him from the home and prohibiting him from returning. The police also requested the prosecutor to detain Mr. G on charges of uttering threats but this request was refused. The police were called to the G's apartment as a result of six further incidents which took place between December 2001 and September 2002. A third exclusion order was issued as a result of another violent incident in October 2002. Mrs. G sought charges against her husband. The police again requested that the husband be detained, however the Prosecutor once again turned down this request. In October, Mrs. G obtained a civil no-contact order for a three-month period. The husband reportedly ignored the order, however when the police checked the apartment, he was not there. The prosecutor withdrew the prosecution on grounds of insufficient evidence. Mrs. G gave a written statement that a fight with her husband had caused the injury and also that her husband had repeatedly threatened to kill her over a number of years. The prosecutor took the view that the threats were a feature of the couple's fighting and would not be carried out. Mrs. G tried to play down the incidents to prevent prosecution and refused to testify in the proceedings. On December 6, 2002, Mrs. G called the police in an effort to prevent her husband from coming to her apartment. On December 7, 2002, Mr. G shot her with a handgun in her apartment during an argument. The police knew from other sources that Mr. G had acquired a handgun, despite an order prohibiting him from possessing a weapon.

Note: This is based on a real case, *Goecke (deceased) v. Austria* (5/2005) 6 August 2007, CEDAW/C/39/D/5/2005]. The Committee on the Elimination of Discrimination against Women found that Austria had not met its international due diligence obligation.

Plenary discussion and brainstorming exercise: international norms on crime prevention and criminal justice



POWERPOINT PRESENTATION

The updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice

- Provide a comprehensive policy framework to assist States in developing responses and carrying out actions to eliminate violence against women
- Provide a comprehensive set of criminal justice strategies and measures which can assist criminal justice professionals in better addressing the needs of women and ensure their fair treatment in the justice system
- Promote equality between men and women within the criminal justice system

(cont.)

Guiding principles for a quality criminal justice response

Main guiding principles

- Human rights based
- Victim centered
- Ensure offender accountability

Other principles

- Coordinated, systematic and sustained
- Involve all key stakeholders
- Sustained resources
- Monitoring and oversight
- Take into account varying needs of different groups of women

Guiding principles for a quality criminal justice response

Human rights-based

- Criminal justice responses ensure that all women can enjoy and exercise their human rights, be protected from violence and treated with dignity and respect
- Criminal justice responses need to ensure that they do not perpetuate gender inequality through reflecting negative gender stereotypes

Guiding principles for a quality criminal justice response

Victim-centred

- Centrality of victims needs
- Appropriate treatment
- Victim protection, assistance and empowerment

Guiding principles for a quality criminal justice response

Ensure offender accountability

- Fair trial
- Enhance evidence-gathering and case-building
- Victim's cooperation



BRAINSTORMING EXERCISE OR SMALL GROUP WORK

Instructions: Put on the PowerPoint slide which lists the guiding principles. Ask the plenary or divide the large group into small groups to brainstorm on how each principle should guide their work as prosecutors. Given the time, you might want to focus only on the first three principles.

MODULE
02

The national legal framework to respond to violence against women with guidance from international norms and standards

PURPOSE OF MODULE 2

The purpose of this module is to provide an opportunity for prosecutors at the national level to review their legal framework that responds to crimes of violence against women and compare this with the international legal framework. Given that this is a global tool, module 2 only provides the international framework. It is up to the national trainers to prepare the relevant information on their country's criminal legislation.

Module 1 introduced the broad international framework that is in place to respond to violence against women. This module builds on the content in module 1 and focuses in more detail on international standards and norms concerning criminalization and developing and applying criminal procedure and evidentiary rules.

LEARNING OBJECTIVES

At the end of this module, participants will have the necessary knowledge and skills to:

- Identify the applicable national laws in order to effectively respond to violence against women, including the appropriate criminal offences, criminal procedures and evidentiary rules
- Compare their national legal framework with the international recommendations regarding criminal offences, criminal procedures and evidentiary rules relating to violence against women

Substantive material

States have an obligation to ensure that international standards are reflected in their laws and in how the laws are implemented and enforced. Given the differing legal traditions and cultures, international standards are not prescriptive as to how these must be incorporated into law and countries use different approaches in the detail. However, international law provides guidance as to the elements that need to be covered to ensure prevention of and adequate response to incidents of violence against women.

Obligation to criminalize violence against women

The manner in which this type of violence is defined is a starting point for ensuring effective criminal justice responses. International standards recognize that all forms of violence against women are violations of human rights. However, this has not necessarily meant that all forms are translated into criminal offences in the legal framework in all States. Some forms and manifestations of violence against women can vary depending on the specific social, economic, cultural and political context. For example, certain forms, such as dowry deaths or female genital mutilation, are more prevalent in certain countries and therefore a specific criminal offence has been formulated in some countries but not others.

The updated Model Strategies and Practical Measures call on States to:

- Ensure all forms of violence against women are criminalized and prohibited (para. 14(b)).
- Ensure criminal laws are comprehensive and effective in eliminating violence against women (para. 14(a)).
- Remove any provisions that allow or condone violence against women or that increases the vulnerability or revictimization of women who have been subjected to violence (para. 14(a)).

The UNODC Blueprint for Action provides further elaboration on action to be taken:

- Ensure that definitions of offences provide that any act of violence against a person, in particular physical or sexual violence, constitutes a violation of that person's physical and/or sexual freedom and integrity, and not solely a violation of morality, honour or decency.

- Consider using gender specific language in defining criminal offences or specifically creating an offence of violence against women, which in some jurisdictions has been defined as violence that, as a manifestation of discrimination, inequality and power relations of men over women, is committed against women.
- Ensure that the required elements of the offences are aligned with human rights standards and comply with definitions contained in international and regional treaties and conventions.
- Ensure that definitions of offences do not condone myths or stereotypes.
- Prohibit the use of gender prejudices or stereotypes as defences to a criminal charge.
- Ensure that penalties are commensurate with the gravity of violence against women and explicitly provide for a consideration of aggravating factors, such as where the motive for the crime is gender-based discrimination.

Criminal offences that should be part of national law



NOTE TO TRAINERS

Review the relevant criminal offences in the national legal framework for an appreciation of the specific criminal offences in their jurisdiction that apply to violence against women.

The scope of crimes against women varies from State to State, as well as the definition or elements of the crimes. While recent years have seen growing recognition worldwide of the range of acts that should be criminalized, there continues to be a need for legal reform. For example, in some jurisdictions there is no specific criminal offence of intimate partner violence or domestic violence, rather, such violence may be covered by provisions criminalizing assault or other forms of violence. Many States do not have a specific criminal offence of stalking, marital rape or child grooming.



NOTE TO TRAINERS

As previously mentioned, the focus is on two of the most common forms of violence against women: sexual violence and intimate partner violence.

Sexual violence offences

International instruments and institutions provide guidance concerning the definition of different forms of sexual violence. The United Nations Declaration on the Elimination of Violence Against Women, in its article 2, refers to sexual violence within the family, the general community and committed by the State. The Declaration also contains specific reference to sexual abuse of girls (“female children”) in the household, marital rape, rape, sexual abuse and sexual harassment. The only regional treaty that defines the term sexual violence is the 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (hereinafter Council of Europe Convention). Its article 36 on sexual violence, including rape, provides that: “Parties shall take the

necessary legislative or other measures to ensure that the following intentional conducts are criminalized: (a) engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object; (b) engaging in other non-consensual acts of a sexual nature with a person; (c) causing another person to engage in non-consensual acts of a sexual nature with a third person.”

Consent is an essential element of the definition of sexual violence offences. The updated Model Strategies and Practical Measures calls on States to review their laws on sexual violence to ensure that they adequately protect all persons against sexual acts that are not based on the consent of both parties. The Council of Europe Convention, in its article 36, emphasizes that “[c]onsent must be given voluntarily as the result of the person’s free will assessed in the context of the surrounding circumstances. Parties shall take the necessary legislative or other measures to ensure that the provisions in this article also apply to acts committed against former or current spouses or partners as recognized by internal laws.” The Committee on the Elimination of Discrimination against Women has also emphasized consent, arguing in a number of its comments that this is more compatible with human rights standards than force-based definitions.

Sexual harassment is a particular form of sexual violence. The United Nations Declaration on the Elimination of Violence Against Women refers to sexual harassment but does not define the term. The Committee on the Elimination of Discrimination against Women, in its General Recommendation No. 19, provides a definition to include “unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions.” The Council of Europe Convention, in its article 40, defines sexual harassment as follows: “Any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment”. Article 34 of the Council of Europe Convention defines stalking as the “Intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her to fear for her safety”.

The UNODC Blueprint for Action recommends that States should:

- Ensure that all sexual acts committed against non-consenting women, even if they do not show signs of resistance, are considered sexual violence and are criminalized.
- Criminalize sexual violence and rape between spouses, regular or occasional partners and cohabitants.
- Define consent as given voluntarily as a result of the adult women’s free will assessed in the context of the surrounding circumstances.
- Consider criminalizing intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her to fear for her safety.
- Ensure that the law protects all women against forms of violence, abuse, exploitation and harassment committed through the use of new information technologies, including the Internet.
- Review whether or not emerging forms of violence such as cyber-violence (stalking or bullying) are covered in existing offences (often gender neutral) or whether specific offences need to be established.

International standards and norms also provide specific guidance on sexual violence offences against girls:²²

- When establishing sexual violence against girls as a crime, consider the minimum age at which a person is considered to be legally competent to consent to sexual acts according to international standards.
- Establish that sexual acts with girls under that designated age are considered as crimes, regardless of the issue of consent.
- For girls above the age considered to be legally competent to consent to sexual acts but below the age of an adult, incorporate the concept of abuse of positions of trust or dependency in considering consent.

Intimate partner violence (domestic violence) offences

International law does not define the terms “intimate partner violence” or “domestic violence”. However, the United Nations Declaration on the Elimination of Violence against Women refers to violence in the family and covers three types of violence: physical, sexual and psychological. It then provides examples of the types of violence, including battering, sexual abuse of girls (“female children”) in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation. The Council of Europe Convention contains more detailed definitions. In its article 3(b), domestic violence is defined as “[a]ll acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.” It defines psychological violence in its article 33 as the intentional conduct of seriously impairing a person’s psychological integrity through coercion or threats.

The United Nations Special Rapporteur on violence against women, its causes and consequences, developed a “Framework for model legislation on domestic violence” which provides that:²³

- Legislation shall clearly state that violence against women in the family and violence against women within interpersonal relationships constitute domestic violence.
- The language of the law must be clear and unambiguous in protecting women victims from gender-specific violence within the family and intimate relationships.
- Domestic violence must be distinguished from intra-family violence and legislated accordingly.
- With respect to relationships to be regulated, the Special Rapporteur suggests that the relationships which come within the purview of legislation on domestic violence must include: wives, live-in partners, former wives or partners, girlfriends (including girlfriends not living in the same house), female relatives (including but not restricted to sister, daughters, mothers) and female household workers.

²² See also United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (General Assembly resolution 69/194, annex, of 18 December 2014), in particular para. 11.

²³ See *Report of the Special Rapporteur on violence against women, its causes and consequences*, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1995/85, E/CN.4/1996/53/Add.2.

- All acts of gender-based physical, psychological and sexual abuse by a family member against women in the family, ranging from simple assaults to aggravated physical battery, kidnapping, threats, intimidation, coercion, stalking, humiliating verbal abuse, forcible or unlawful entry, arson, destruction of property, sexual violence, marital rape, dowry or bride price related violence, female genital mutilation, violence related to exploitation through prostitution, violence against household workers and attempts to commit such acts shall be termed domestic violence.

The UNODC Blueprint for Action recommends that States should:

- Ensure that all forms of domestic violence (physical, sexual, psychological and economic violence) are punished and criminalized.
- Define “psychological violence” as controlling, coercive or threatening behaviour or intentional conduct of seriously impairing a person’s psychological integrity through coercion or threats.
- Define the relationship as expansively as possible. This may include current or former spouses or partners, whether or not there is or has been cohabitation, partners of same sex, individuals with family relationships to one another and members of the same household.
- Ensure that the legal definition of domestic violence fully captures the experiences of such violence in all its manifestations. This could include criminalizing repeated or habitual violence (pattern of a series of violations) rather than limiting to isolated actions.



NOTE TO TRAINERS

As previously mentioned in module 1, this *Resource Book* focuses on intimate partner violence rather than the broader concept of domestic violence. This is because physical and psychological violence against parents or grandparents and many forms of violence against children in the home has no clear correlation with gender, while domestic violence between intimate partners is distinctly gendered. It disproportionately victimizes women more than men or girls more than boys whilst men are overrepresented as perpetrators. It is also strongly related to socially determined power differentials between men and women. It is the gendered nature of partner-related violence that distinguishes domestic violence from violent crime in general as well as from other types of violence in the home.

Criminal procedure

Mere criminalization of violence against women is not enough. In line with international standards and norms, States should have criminal procedures in place to ensure gender and child-sensitive investigations and prosecution with full respect and protection of victims’ rights and accountability.

Investigations should be carried out from a gender perspective, and consider the specific vulnerabilities and the victims’ needs, and use techniques that minimize intrusion into their lives while abiding by standards for the collection of evidence.²⁴ In particular, this includes the following aspects:

²⁴ Updated Model Strategies and Practical Measures, para. 16(e).

- The police and other law enforcement agencies have, with judicial authorization where required by national law, adequate powers to enter premises and conduct arrests in cases of violence against women in order to take immediate measures to ensure the safety of victims.²⁵
- Police and courts have the authority to issue and enforce protection and restraining or barring orders in cases of violence against women, including removal of the perpetrator from the domicile, prohibiting further contact with the victim and other affected parties, inside and outside the domicile; to issue and enforce child support and custody orders; and to impose penalties for breaches of those orders. If such powers cannot be granted to the police, measures must be taken to ensure timely access to court decisions in order to ensure swift action by the court. Such protection measures should not be dependent on the initiation of a criminal case.²⁶
- The primary responsibility for initiating investigations and prosecutions lies with the police and prosecution authorities and does not rest with women subjected to violence, regardless of the level or form of violence²⁷ and – in the case of girls – does not require an official complaint to be filed by the child victim of violence or a parent or legal guardian.²⁸

In cases of violence against girls, criminal procedures must also be child-sensitive.²⁹ This includes, for example:

- Child-sensitive investigation procedures to ensure that such violence is correctly identified and to help provide evidence for administrative, civil and criminal proceedings.³⁰
- Measures to avoid subjecting a child victim of violence to further harm through the process of the investigation, including by inviting and giving due weight to the child's views in accordance with the age and maturity of the child and adopting child-sensitive and gender-sensitive investigation and prosecution practices.³¹
- The child victim's parents or legal guardian and, where appropriate, a child protection professional accompany the child during interviews conducted as part of the investigation and during trial proceedings.³²
- Child-sensitive procedures, including interview rooms designed for children, interdisciplinary services for child victims integrated within the same location, modified court environments that take child witnesses into consideration, recesses during a child's testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, an appropriate notification system to ensure that the child

²⁵ Ibid., para. 15(a).

²⁶ Ibid., para. 15(h).

²⁷ Ibid., para. 15(b).

²⁸ United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, para. 22(a).

²⁹ Ibid., paras. 22 and 24. See also Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex, of 22 July 2005).

³⁰ United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, para. 22(d).

³¹ Ibid., para. 22(g).

³² Ibid., para. 24(e).

goes to court only when necessary and other appropriate measures to facilitate the child's testimony.³³

A number of measures can be taken to safeguard victims' rights when prosecuting violence against women:

- Women subjected to violence should be enabled to testify in criminal proceedings through adequate measures that facilitate such testimony by protecting the privacy, identity and dignity of the women; ensure safety during legal proceedings; and avoid secondary victimization.³⁴
- Comprehensive services should be provided and protection measures are taken when necessary to ensure the safety, privacy and dignity of victims and their families at all stages of the criminal justice process, including by establishing comprehensive witness and victim protection programmes.³⁵
- Safety risks, including the vulnerability of victims, should be taken into account in decisions concerning non-custodial or quasi-custodial sentences, the granting of bail, conditional release, parole or probation, especially when dealing with repeat and dangerous offenders.³⁶
- Victims should be enabled to speak to a female officer³⁷ and should be informed of the offender's release from detention or imprisonment.³⁸

In order to ensure accountability, the exercise of powers by police, prosecutors and other criminal justice officials should be in line with the rule of law and codes of conduct and that such officials should be held accountable for any infringement thereof through appropriate oversight and accountability mechanisms.³⁹ All procedures and complaint mechanism should be accessible to women who are victims of violence without fear of reprisal or discrimination.⁴⁰

The UNODC Blueprint for Action recommends that States take the following measures:

- Apply criminal procedures from a victim-centred perspective with consideration given to ensure protection/safety of the victim and empower/enable women to access justice.
- Where the national legal framework provides for standing of the victims in the criminal process, ensure that victims without financial means are provided with free legal aid.
- Ensure that protection measures are fast and rapid irrespective of whether the powers to grant such measures are with the police or courts. If granting protection measures lies with the courts, put in place provisions to ensure timely access to court decisions and swift action, including access to courts after hours.

³³ *Ibid.*, para. 24(i).

³⁴ Updated Model Strategies and Practical Measures, para. 15(c).

³⁵ *Ibid.*, para. 15(i).

³⁶ *Ibid.*, para. 15(j).

³⁷ *Ibid.*, para. 16(l).

³⁸ *Ibid.*, para. 17(c).

³⁹ *Ibid.*, para. 16(j).

⁴⁰ *Ibid.*, para. 15(l).

- Ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out by all relevant authorities in order to manage the risk and if necessary to provide coordinated safety and support.
- Take necessary measures to prohibit compulsory and forced alternative dispute resolution processes, including forced mediation and conciliation, in relation to all forms of violence against women.
- Apply procedures to create an enabling environment in court to prevent secondary victimization.

Evidentiary rules

Historically, evidentiary laws have been developed and applied in a discriminatory way in violence against women cases. The traditional belief that rape is an accusation that is easy to be made and hard to prove, and harder still to be defended against by the accused continues to be reflected in the way evidentiary laws are drafted, interpreted and applied, and in the way the victims are treated as witnesses at trial. It is well recognized in many countries that many criminal justice actors share stereotypical assumptions about “appropriate” female behaviour and that those continue to play a part when interpreting evidentiary laws in sexual violence cases, particular regarding issues of credibility. Some of that prejudice and attitudinal bias is conscious, but much of it is often outside ordinary conscious awareness. Studies have found that is common for justice providers to minimize the criminal nature of gender-based violence and express bias against its victims, condoning or falsely believing that women bring on violence by their actions, such as arguing with a spouse, dressing provocatively to go out, or walking alone at night. The reality for many victims of violence against women is that they are frequently viewed as less credible witnesses. It is often seen as permissible to attack the moral character and reputation of a complainant of violence against women.

International standards and norms have been developed to address these historical biases. They urge States to ensure the following:

- Evidentiary rules should be non-discriminatory, should allow the admission of all relevant evidence and should preclude the admissibility of the defence of “honour” or “provocation”.⁴¹
- Evidence of prior acts of violence by the perpetrator should also be considered during court proceedings.⁴²
- The credibility of a complainant in a sexual violence case should be the same as that of a complainant in any other criminal proceeding; the introduction of the complainant’s sexual history in both civil and criminal proceedings is prohibited when it is unrelated to the case; and no adverse inference should be drawn solely from a delay of any length between the alleged commission of a sexual offence and the reporting thereof.⁴³

⁴¹ Ibid., para. 15(d).

⁴² Ibid., para. 15(g).

⁴³ Ibid., para. 15(e).

- People who perpetuate acts of violence against women while voluntarily under the influence of alcohol, drugs or other substances are not exempt from criminal responsibility.⁴⁴
- In cases of violence against girls, ensure that the girl's views are given due weight in accordance with her age and maturity, that she is treated as a capable witness and that her testimony is not presumed to be invalid or untrustworthy by reason of her age alone, as long as the court or other competent authority deems that her age and maturity allow the giving of intelligible and credible testimony, with or without communication aids and other assistance.⁴⁵

In addition, the UNODC Blueprint for Action recommends that States take the following measures to ensure that evidentiary rules are gender-sensitive:

- Consider allowing for the inclusion of evidence such as the social context in which intimate partner violence/domestic violence takes place and broadening the understanding of expert witness to include intimate partner violence support workers.
- Provide that victims are considered competent witnesses in cases of intimate partner violence (i.e., where a victim is in a relationship with the accused). This means that the defendant cannot invoke spousal privilege against the victim's testimony in domestic violence cases.

Role of prosecutors in reforming national criminal procedures and evidentiary rules



NOTE TO TRAINERS

Review the relevant criminal procedures and evidentiary rules in the national legal framework.

Given their role in enforcing criminal laws concerning violence against women, prosecutors have essential knowledge and experience of the challenges that arise in practice. They are well placed to reveal any shortcomings in terms of the definition or elements of the offence, or the law, policy or practices in implementing criminal procedural and evidentiary rules relating to violence against women prosecutions.

Prosecutors and prosecution agencies should remind their governments of international obligations and advocate for their effective implementation. In doing so, prosecutors can refer to a number of innovative and promising practices that exist in other countries:

- Defining sexual violence: some States have introduced laws that have changed consent standards by explicitly eliminating the requirement that the victim physically resist her attacker.
- Eliminating the requirement that the victim's testimony be corroborated.

⁴⁴ Ibid., para. 15(f).

⁴⁵ Ibid., para. 17(c). See also United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, para. 24(b).

- Placing restrictions on the introduction of the victim's prior sexual conduct.
- Adopting a holistic approach (see the examples of Spain and Brazil in the UNODC/ UN Women/TIJ *Handbook on Effective Prosecution Responses to Violence against Women and Girls*).

KEY POINTS FROM THIS SESSION

1. The updated Model Strategies and Practical Measures is the main international instrument that embodies internationally recognized principles in crime prevention and criminal justice on how a State and criminal justice professionals can provide comprehensive responses to better address the needs of women and ensure their fair treatment in the justice system.
2. Compare the definitions of crimes under national criminal law with international recommendations, such as to ensure that all forms of violence against women are criminalized and prohibited, and that criminal law is comprehensive and does not have any provisions that allow or condone violence against women or increase women's vulnerability.
3. Compare the criminal procedures under national criminal law with international recommendations, such as to ensure that investigations are carried out with a gender perspective, to consider the specific victim's vulnerabilities and needs and to use techniques that minimize intrusion into their lives while abiding by standards for the collection of evidence, as well as that the primary responsibility for initiating investigations and prosecutions lies with the police and prosecution authorities and does not rest with the women regardless of the level of violence.
4. Compare the evidentiary rules under national criminal law with international recommendations, such as to ensure non-discrimination, to allow the admission of all relevant evidence, to ensure that the credibility of a complainant in a sexual violence case is understood to be the same as that of a complainant in any other criminal proceeding, to prohibit the introduction of the complainant's sexual history when it is unrelated to the case, as well as not to draw any adverse inference solely from a delay in reporting.
5. Compare victim's rights under national criminal law with international recommendations, such as to enable victims to testify through measures that protect their privacy, identity and dignity while ensuring their safety and avoiding secondary or revictimization, to enable victims to speak to a female officer and inform them of the offender's release from detention or imprisonment.

Possible options for delivering the material

Plenary presentation and brainstorming questions – criminal offences



POWERPOINT PRESENTATION

Criminal Laws

- Ensure that all forms of violence against women are criminalized and prohibited (updated Model Strategies and Practical Measures, para. 14(b))
- Ensure that criminal laws are comprehensive and effective in eliminating all forms of violence against women (updated Model Strategies and Practical Measures, para. 14(a))

(cont.)

Criminal Laws

- To remove any provision that allows or condones violence against women or that increases the vulnerability or the re-victimization of victims (updated Model Strategies and Practical Measures, para. 14(a)) including by:
 - reviewing legislation and closing loopholes that might allow for impunity
 - eliminating discriminatory provisions (e.g., crimes of passion, defense of provocation, allowing rapists to escape prosecution if they marry victims)
 - precluding “adultery” as a defence invoked by perpetrators of domestic violence to escape criminal responsibility

The UNODC Blueprint for Action provides further elaboration on criminalization

- Violation of that person’s physical and/or sexual freedom and integrity, and not solely a violation of morality, honour or decency
- Consider using gender specific language in defining criminal offences
- Definition of offences should never condone myths or stereotypes
- Prohibit the use of gender prejudices or stereotypes as defences to a criminal charge
- Penalties are to be commensurate with the gravity of violence against women

Criminalizing sexual offences: guidance from international standards

- Laws adequately protect all persons against sexual acts that are not based on the consent of both parties (updated Model Strategies and Practical Measures)
- Consent based as opposed to force-based definitions are more compatible with human rights standards (CEDAW)
- Define consent as given voluntarily as a result of the adult women’s free will assessed in the context of the surrounding circumstances
- Sexual harassment means unwelcome sexually determined behaviour (Committee on the Elimination of Discrimination against Women), such as:
 - physical contact and advances
 - sexually coloured remarks
 - showing pornography
 - sexual demands, whether by words or actions
- Council of Europe Convention defines sexual violence, sexual harassment and stalking
- Criminalize sexual violence and rape between spouses, regular or occasional partners
- Special considerations when establishing sexual crimes against girls

Criminalizing intimate partner violence: guidance from international standards

- UN Declaration on the Elimination of Violence against Women refers to violence against women in family and mentions three types: physical, sexual and psychological (other resolutions refer to economic violence)
- Define intimate partner relationships broadly (Special Rapporteur on violence against women)
- Council of Europe Convention defines domestic violence (physical, sexual, psychological or economic violence) as well as physical violence and psychological violence
- Ensure that the legal definition of domestic violence fully captures the experiences of such violence in all its manifestations (e.g., consider criminalizing repeated or habitual violence rather than limiting to isolated actions (UNODC Blueprint for Action)

Large or small group exercises for further discussion on criminal offences



CASE STUDY: CRIMINALIZATION OF SEXUAL VIOLENCE

The following five short case scenarios can be used as hand-out or as PowerPoint slides.

Instructions: ask the plenary for volunteers to share how this case would be dealt with according to their national laws. Use follow-up questions to highlight similarities or differences with the international recommendations.

1. A woman was walking home from a late night shift when she was grabbed from behind and pulled into a bush. She was held down and anally raped. Other than the anal rape there was no other bodily injury. [Discussion of prohibited acts.]
2. A woman was on a third date with a man she met through a friend. He invited her to go to a café and on the way they stopped at his home for him to get his wallet. Once inside the home, he had sex with her despite her pleas to stop it. [Discussion of consent as opposed to force-based definition.]
3. A husband has sex with his wife against her will. [Discussion of marital rape.]
4. A woman is on a bus after her night shift and three men crowd her, grabbing her breast and taking her hand and forcing her to touch one of the men's penis. [Discussion of sexual assault.]
5. An ex-boyfriend is stalking his former girlfriend. He leaves her numerous emails, texts, phone messages, showing up outside her place of work, at her home and she often sees him on the street. He says that he loves her, will not stop till she is his and she will be never be with anyone else. She is fearful of him. [Discussion of stalking/sexual harassment.]

Trainers should make the following points:

- *Differences in definition and criminal elements.* State criminal laws differ widely on the definitions both of rape and of sexual assault and on the conditions under which they are prosecuted. As the discussion will likely show, there are significant challenges in definition of elements of the crime.
- *Prohibited acts of rape.* The traditional definition of rape remains in some States, which means the crime is completed only at the time of vaginal sexual intercourse and excludes other forms of sexual violence. Legal reforms have broadened the definition in various States. This might include any act of sexual penetration, of whatever kind and by whatever means.
- *Force-based definition or absence of consent.* In some countries, rape must be compelled by force or threat to constitute sexual intercourse, which excludes rape of a person who is not in the position to offer resistance. In other States, the law focuses on a lack of consent rather than on the use of force, defining sexual assault as any non-consensual contact. This can potentially shift the burden of proof to the person who acted recklessly without regard to consent or used other forms of pressure than physical force. Note the Council of Europe Convention, which provides that consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances. Other States have provisions which expand on a range of circumstances in which consent is immaterial, such as sexual assault by an individual in a position of authority (e.g., in a correctional facility) or in certain relationships (e.g., ongoing psychotherapist-patient relationship). Other States have provisions for a broad range of coercive circumstances around consent such as intimidation or fraud. Some States have expanded this to include consent achieved

by trickery or artifice or by taking advantage of a person who is not in a position to give free consent or to offer resistance.

- *Marital rape.* Marriage is not a defence to the crime of sexual violence in many jurisdictions. In these jurisdictions, a man may be criminally prosecuted for the crime of sexual assault for any non-consensual sexual contact with his wife.
- *Sexual assault.* Some States have broadly defined sexual assault to mean any sexual act, attempt to obtain a sexual act, sexual comments or advances, which are not consensual, or acts to traffic a person's sexuality, using coercion, threats of harm or physical force, by any person regardless of relationship to the victim, in any setting, including but not limited to home, work and school.
- *Sexual assault against girls.* In establishing sexual crimes against children, States vary in how they define the age of consent, or in other words, the minimum age at which a person is considered to be legally competent to consent to sexual acts. The relevant age may also vary by the type of sexual act or relationship between the parties, for instance where there was a position of trust or dependency as opposed to both parties being minors.
- *Sexual harassment.* A few States have criminalized sexual harassment, while other States prohibit such conduct in labour codes or in gender equality laws. The CEDAW General Recommendation No. 19 notes that equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace. Such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her connection with her employment, including recruitment or promotion, or when it creates a hostile working environment. Sexual harassment can take place in the workplace, schools, streets, public transport and social situations. It includes flashing, obscene and threatening calls and online harassment.
- *Stalking.* Only a handful of States have adopted a specific law against stalking. Other States might use the offence of harassment to cover acts of stalking. An element of the criminal offence often refers to a course of conduct or series of actions that may differ in kind, which taken as individual incidents may not amount to criminal behaviour and seem no more than a nuisance, but as a series, they constitute systematic intimidation and often the constant presence of threat and the danger of escalation into life threatening attacks.



CASE STUDY: CRIMINALIZATION OF INTIMATE PARTNER VIOLENCE

The following five short case scenarios can be used as hand-out or as PowerPoint slides.

Instructions: Hand out the four short case scenarios. Ask the plenary for volunteers to share how this case would be dealt with according to their national laws. Follow-up questions to highlight similarities or differences with the international recommendations.

1. A man regularly yells at his wife, calling her lazy, saying he must discipline her often to make her a better wife, and he has often "disciplined" her by hitting her. She feels constantly intimidated and fearful. In the latest incident, he grabs her by the neck and chokes her until she loses consciousness. [Discussion regarding the level of physical harm and whether certain harms are seen as less serious. For example, some countries do not criminalize physical harm that is less than a certain percentage or that does not result in incapacitation of less than a certain number of days, while others have defined offences such as gross violations of integrity.] (cont.)

2. A man has been controlling his wife's movements. He does not allow her to see her family and friends, is extremely jealous of other men looking at her and will tell her often that he will kill her if she leaves him. She has been missing work more and more because she is not feeling well. Her family, when they do try to see her, say that she shows no emotions and if she does, she is jittery and nervous. [Discussion of psychological violence.]
3. A man forces his live-in girlfriend to have what he describes as adventurous sex, using an object to penetrate his girlfriend, but she is not a willing partner. [Discussion of the definition of partner – common law relationship and sexual violence.]
4. A man intentionally burns the feet of his wife with a cigarette as punishment for not bringing home enough money. Since he lost his job, he has forced his wife to go to the tourist district to beg on the streets for money. He believes if she is maimed that she will be more successful for her begging. The cigarette burn leaves scars on the feet for two weeks before healing satisfactory. [Discussion of physical injury and economic violence.]

Trainers should make the following points during and after plenary discussion:

- At the national level, States vary in their criminal justice approach to intimate partner violence and domestic violence, in general. The call for criminalization in the international standards and norms does not necessarily mean that the form of violence against women appears as a specific named offence in the criminal or penal codes. Generally, the position is that violence should be considered violence regardless of whether it is committed by a spouse, an acquaintance or a stranger. However there is a concern that the approach to violence against women in the home and family, the very place where women should be able to expect safety and security, has not been effective, allowing for impunity and tolerance. It is therefore crucial to take effective measures to curb violence against women in the family. Generally the crimes covering domestic violence are defined in gender-neutral language, covering both female and male victims, although the majority of victims are female.
- Three (four) forms of Intimate partner violence: physical, sexual, and psychological (economic). While intimate partner violence/domestic violence includes a range of controlling and coercive behaviours, not all of them may be defined as crimes. Most States do not have intimate partner violence/domestic violence as a specific criminal offence, rather the criminal law covers physical violence (i.e., provisions for assault or injury to a person's life, health, and physical integrity). Psychological or economic violence as a crime appears to be more difficult to define, and some jurisdictions require a certain threshold to meet before the conduct becomes criminal. In other words, some acts which constitute intimate partner violence/domestic violence can either be criminal or civil wrongs or both. Also, depending on the jurisdiction, the discretion to proceed with a prosecution may lie with the police if it is a misdemeanour or common assault.
- States should ensure that the legal definition fully captures the experiences of intimate partner violence/domestic violence in all its manifestations. A good practice is criminalizing repeated or habitual violence (pattern of a series of violations) rather than limiting the definition to isolated action. Experiences of intimate partner violence can involve repeated acts involving all or some forms of violence [Examples: Viet Nam Penal Code s. 151 (old version) and Swedish Penal Code, chapter 4, section 4(a)].
- Intimate partners should be defined as expansively as possible. Definitions should encompass current or former spouses or partners, whether or not there is or has been cohabitation, partners of same sex, individuals with family relationships to one another and members of the same household.

Short film on the issue of consent and plenary presentation on criminal procedures



SHORT VIDEO CLIP EXPLAINING THE MEANING OF CONSENT BY ANALOGY WITH DRINKING TEA

Developed by the Thames Valley Police. Animation courtesy of Emmeline May at rockstardinosaurpirateprincess.com and Blue Seat Studios. Copyright © 2015

Link: <https://www.youtube.com/watch?v=pZwvrxVavnQ>

Instructions: Show the video and ask the plenary to share their reactions to the film.



POWERPOINT PRESENTATION

Criminal procedures: guidance from international standards

Investigations

- Should be carried out using a gender perspective, consider the specific victims' vulnerabilities and needs and use techniques that minimize intrusion into their lives while abiding by standards for the collection of evidence (updated Model Strategies and Practical Measures, para. 16(e))

Investigations and prosecutions

- The primary responsibility for initiating investigations and prosecutions lies with the police and prosecution authorities and does not rest with the women regardless of the level of violence (updated Model Strategies and Practical Measures, para. 15(b))

Evidentiary rules: guidance from international standards

The updated Model Strategies and Practical Measures provide that evidentiary rules:

- Be non-discriminatory
- Allow the admission of all relevant evidence
- Preclude the admissibility of the defence of "honour" or "provocation"
- Consider evidence of prior acts of violence by the perpetrator
- Ensure that the credibility of a complainant in a sexual violence case is understood to be the same as that of a complainant in any other criminal proceeding
- Prohibit the introduction of the complainant's sexual history when it is unrelated to the case
- No adverse inference is drawn solely from a delay of reporting
- No exemption from criminal responsibility for people who perpetrate acts of violence against women while voluntarily under the influence of alcohol, drugs or other substances

Victim's rights: guidance from international standards

- Victims should be enabled to testify through measures that protect their privacy, identity and dignity while ensuring their safety and avoiding secondary victimization (updated Model Strategies and Practical Measures para. 15(c))
- Victims should be enabled to speak to a female officer (updated Model Strategies and Practical Measures para. 16(l)) and should be informed of the offender's release from detention or imprisonment (updated Model Strategies and Practical Measures para. 17(c))

Exercise of powers: guidance from international standards

- The exercise of powers by police, prosecutors and other criminal justice officials should be in line with the rule of law and codes of conduct
- Police, prosecutors and other criminal justice officials should be held accountable for any infringement thereof through appropriate oversight and accountability mechanisms



QUESTIONS TO THE PLENARY

- How are these criminal procedures reflected in their national laws?
- How are the evidentiary rules reflected in their national laws?
- In what ways? Do you see any gaps?

Points to make:

- Evidentiary rules are linked to the ways the offences are defined.
- The way the offences are classified (e.g., as crimes against the person as opposed to crimes against the State) can have profound implications. For instance, where the crimes are classified as personal, the onus may be on the victim to make a formal complaint/denunciation and for victims to consent to have a criminal investigation to be initiated or there may be a different statute of limitation that is applied (e.g., three months in Thailand for personal crimes).
- The key to implementing criminal procedures and evidentiary rules to have a good appreciation of the current realities faced by victims of violence against women in accessing criminal justice. For example, are there any limitations within the law as to how many times victims must repeat their statements? Who she can choose to speak to? Are there any procedures in place to ensure victim's withdrawal is not due to intimidation or fear?
- Application of procedures and rules need to counter the excessive focus on the victim, her characteristics, sexual history, behaviour and perceived credibility, rather than on the action of the suspect and the credibility of the incident.
- How the prosecutor (and police, investigators) view and treat a victim will impact on their assessment of whether a crime has occurred, whether there is enough evidence to prosecute or to result in a conviction. Also, it will influence the way victims are treated, increasing the likelihood of secondary victimization and influences her decision whether to cooperate with the criminal justice system or not.
- Widespread use of mediation and settlement. Delay by authorities in bringing a charge serves as a signal to the victim and her family that the incident should be best dealt with informally between the parties concerned. The focus on negotiations may delay reporting, which then results in the police assessing that such delay compromises the physical evidence, thereby deciding not to proceed based on insufficient evidence. Among prosecutors, there may be a bias against victims if they take the view that reporting is only a strategy employed by victims to get more compensation in settlement negotiations.

Small group work – case study exercise



CASE STUDY

Provide each small group with one of the two "Common Course Cases", one on sexual violence and the other on intimate partner violence. Give the same case to half of the small groups and the other case to the second half. (cont.)

Instructions: In small groups discuss the case and answer how the case would be dealt with according to your national law:

1. What criminal code offence might be applicable according to your laws?
2. Are there specific criminal procedures and evidentiary rules that would apply to these particular victims (sexual violence victim and intimate partner violence victim)?

Note: this exercise is meant to generate a broad discussion of the national legal framework for violence against women cases. More detail will be provided in the following modules to delve into more detailed discussions.

As previously noted, the idea of using “Common Course Cases” is to establish a set of facts that can be built upon during the same course. This is done in order to limit the time needed by participants to review different fact sets primarily. The framework of the “Common Course Cases” is developed here, however national training teams are encouraged to modify and expand on them to ensure they reflect real kinds of cases being faced by national prosecutors.

THE COMMON COURSE CASE #1 – SEXUAL VIOLENCE

V is 25 years old, recently divorced. She had started dating P, someone she knew from high school and recently met again. She was on her second date with P. After dinner in a restaurant, P was driving V home, when he pulled his car over in a park and had sexual intercourse with her without her consent (the “incident”).

[The violence she experiences is vaginal rape, however you might want to change this to anal rape to raise the issue of prohibited acts under criminal law, and the issue is consent (no evidence of force or resistance) rather than identity, to raise the discussion of whether the definition of the offence of rape requires force or lack of consent.]

THE COMMON COURSE CASE #2 – INTIMATE PARTNER VIOLENCE

V is 40 years old married to P for 15 years. One evening, police attend the home of V and P after being called by the son. P has beaten and choked V. She had been unconscious for a couple of minutes.

[This case study will be built upon in the other modules to illustrate the history of pattern of control, coercion and violence. In this first module, we only use what is often received by the prosecutor – a police file only focusing on a single incident.]

In the plenary discussion, discuss whether there might be various options in terms of offences and procedures and highlight the issue of interpretation by prosecutors and other justice providers, such as police.

Building on this discussion, emphasize the difference between laws and the enforcement of the law, which has a subjective aspect to it when interpreting and applying the law (and which is often based on interpretation and application of the provisions that may be founded on harmful gender stereotypes and myths).

As each group presents, trainers could also highlight any good practices and discuss the challenges from perspective of:

- Victim
- Police
- Prosecutor
- Judge (Adjudicator)

Large group brainstorming – challenges faced by prosecutors



QUESTION TO THE PLENARY

What are the challenges you face as prosecutors when you handle cases involving violence against women?

During the discussion, trainers could consider asking the following follow-up or prompting questions:

1. Loopholes in the law
 - What are the gaps or discriminatory criminal offence definitions? Do the criminal offences reflect the reality of violence against women? Concerning intimate partner violence, how are habitual or repetitive patterns taken into account? Does the definition of rape require force as opposed to lack of consent?
 - How clear are the criminal procedures (e.g., with regard to protective measures)? How much burden is on victim? What statutory limitation issues arise?
2. Problems with police response and files provided to prosecutor
 - How well was evidence collection handled?
 - Can you detect any discriminatory attitudes? Are these attitudes reflected in the criminal justice professions (police, prosecutors, judges)?
3. Evidentiary issues
 - In cases perceived as weak, how did you go about assessing the evidence?
 - How does delayed reporting impact the strength of evidence?
 - What are the concerns if there is no forensic evidence for whatever reason and how does this impact your assessment of the strength of case?
4. Victims – links to evidentiary issues
 - What victims do you perceive as uncooperative, hostile, reluctant?
 - What victims do you consider as weak or unreliable? Those who recant or provide inconsistent statements?
 - What legal assistance is available to victims?
 - What victim support is available?
 - How are victims impacted by long delays within the criminal justice system?
5. Lack of specialization, expertise, training within prosecution agency
6. Lack of resources
 - What is the impact of heavy work burdens, or a lack of prosecutors?

7. Infrastructure issues

- What is the impact of limited office space? How to provide privacy and confidentiality for the victim in such circumstances?
- Which type of victim friendly facilities are in place to receive victims?

MODULE
03

**Assisting women who
experience violence**

PURPOSE OF MODULE 3

While the last two modules focused primarily on the role of prosecutors, their obligations and the challenges they face in dealing with violence against women cases, the purpose of this module is to focus on the women who suffer and survive violence. Having a better understanding of the dynamics of gender-based violence and the impact of victimization will lead prosecutors to a more effective investigation and prosecution in these kinds of cases. In addition, being able to identify some of the common myths and misconceptions around these types of cases and taking care that these do not influence a prosecutor's treatment of victims and the assessment of the case, can contribute to successful prosecutions. The gendered nature of crimes of violence against women, the status and roles of women in society and gender discrimination women face can factor into the victim's reaction to the violence as well as her treatment by and participation with the criminal justice system. A better appreciation of the unique challenges victims of gender-based violence face can ensure that all prosecutors' dealings with victims are victim-centred and promote the empowerment of the victim.

LEARNING OBJECTIVES

At the end of this module, participants will have the necessary knowledge and skills to:

- Better understand the local situation of women victims of violence
- Appreciate the dynamics of gender-based violence and the impact of victimization
- Identify common myths and realities faced by women and appreciate the impact on decision-making by prosecutors and victims
- List the main challenges/barriers for women to access the criminal justice system and consider measures prosecutors can take to address these barriers

THE LOCAL SITUATION OF WOMEN WHO SUFFER VIOLENCE

Substantive material

A common reaction to a prosecution training on violence against women can be “why the focus on violence against women?” or “aren’t there more urgent criminal justice priorities?”. Providing participants with information on the extent of the violence in their country and the rates of attrition in violence against women cases in their national criminal justice system can provide a good basis for responding to these questions as well as for the subsequent training modules on the role of the prosecutor in the criminal justice chain.

The following sections set out a framework that can be used for developing a presentation on the national situation. The framework below makes reference to some global studies. National trainers should incorporate their own national studies and statistics. More details on relevant global issues can be found in the section on the criminal justice response to violence against women and girls in the UNODC/UN Women/TIJ *Handbook on Effective Prosecution Responses to Violence against Women and Girls*.

Extent and nature of violence against women

Violence against women is widespread in various forms globally. Research has revealed the following facts:

- Although considered under-reported and despite the fact that many countries do not have reliable national prevalence data, the increasing availability of data shows that all forms of violence against women are known to be a problem that affects the lives of millions of women and girls worldwide.⁴⁶
- UN Women has published a global database that includes data on the prevalence of violence against women from various countries.⁴⁷

⁴⁶ *Report of the Secretary-General on the In-depth Study on Violence Against Women*, A/61/122/Add.1.

⁴⁷ Available from: www.evaw-global-database.unwomen.org.

- According to a 2013 global review of available data, 35 per cent of women worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence.⁴⁸
- Some country studies show up to 70 per cent of women experience physical or sexual violence from men in their lifetimes, the majority by husbands, intimate partners or someone they know.⁴⁹
- It is estimated that 150 million girls under 18 have experienced sexual violence.⁵⁰
- Gender-based power relations within society put many girls at a much higher risk for some forms of violence and sexual violence in particular, than boys. The first sexual experience of some 30 per cent of women was forced with the percentage as high as 45 per cent for those who were under 15 at the time of their sexual initiation.⁵¹

Consequences of violence against women

Violence against women entails a high cost and consequences at individual and the social level. It can have a devastating effect upon the victim, families and society, ranging from physical and psychological to social consequences, which can be short and long term. For the victim, there can be serious immediate and long term implications for health and life functioning, including sexual and reproductive health, increased vulnerability to HIV/AIDS and other sexually transmitted infections, unwanted pregnancy and unsafe abortions, depression, anxiety, phobias, post-traumatic stress disorder, sleep disturbance, suicidal ideation and attempts, substance abuse problems, eating disorders, difficulties at work and school.

Beyond the consequences for the individual, violence can also have a negative impact on the psychological, social and economic development of the families. Children who witness violence against women experience similar trauma and effects as the primary victim of the violence and are more likely to be future perpetrators or victims of such violence. Violence against women also has far-reaching consequences on the community and State. Gender-based violence hampers productivity, reduces human capital and undermines economic growth. One of the structural impacts is that the threat of violence against women undermines and restricts women's participation in public life.

Realities of women in the criminal justice system

Women involved in the criminal justice system face specific challenges. Studies across the globe illustrate that only a minority of cases of violence against women are ever reported to the police and an even smaller percentage of reported cases result in charges laid against a perpetrator, and only in a small fraction of those cases is there a

⁴⁸ World Health Organization, *Global and Regional Estimates of Violence against women*, available from: http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625_eng.pdf.

⁴⁹ Relevant facts and figures on the extent and nature of violence against women can be found at: <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>.

⁵⁰ Report of the independent expert for the United Nations study on violence against children, A/61/299.

⁵¹ World Health Organization, *Multi-Country Study on Women's Health and Domestic Violence against Women* (Geneva, 2005).

conviction.⁵² Research on attrition rates of criminal cases can be hard to find. Attrition refers to when, how and why cases are dropped from or otherwise lost in the criminal justice process. Many countries do not provide basic data on the numbers of reports, prosecutions and convictions, although this data is needed in order to accurately analyse attrition rates.

Based on information currently available, a paradox emerges. Despite increased attention and widespread reform in criminal laws and procedures to eliminate violence against women in recent decades, conviction rates are static or even declining in some countries.⁵³ For example, an international study found that:⁵⁴

- Generally, less than 20 per cent of women reported the last incident of violence they experienced to the police, implying that over 80 per cent of violence against women cases do not even enter the criminal justice system. Physical violence by non-partners is reported at a higher rate than sexual violence (physical assaults ranged from 15 to 27 per cent and sexual violence ranged from four to 13 per cent).
- The likelihood of charges being laid against a perpetrator is between one and seven per cent of all reported incidents.
- The likelihood that cases will result in a conviction is just one to five per cent.

Trainers are encouraged to check whether there is research in their country or region on:

- Men's use of violence and attitudes from the male's perspective. A good example is the Asia-Pacific regional study which revealed 26 to 80 per cent of men reported having perpetrated physical and/or sexual intimate partner violence and 10 to 40 per cent of men reported committing non-partner rape, citing sexual entitlement as the most common.⁵⁵
- Victimization or victim satisfaction surveys.

Possible options for delivering the material

Guest speakers/experts

Consider inviting a guest lecturer or organizing a panel of experts to discuss the situation of women victims of violence in the country or region. Ask them to bring any studies on the extent and nature of gender-based violence in the region and the realities faced by women who seek justice through the criminal justice system (e.g., attrition studies, victim satisfaction studies).

⁵² Holly Johnson and others, *Violence Against Women: An International Perspective* (HEUNI, 2008); UN Women, *Progress of the World's Women: In Pursuit of Justice: 2011–2012* (New York, 2012).

⁵³ Jo Lovett and Liz Kelly, *Different systems, similar outcomes? Tracking attrition in reported rape cases across Europe* (Child and Women Abuse Studies Unit, London Metropolitan University, 2009).

⁵⁴ Holly Johnson and others, *Violence Against Women: An International Perspective* (HEUNI, 2008).

⁵⁵ UN Women and others, *Why do some men use violence against women and how can we prevent it? Quantitative findings from the United Nations Multi-country Study on Men and Violence in Asia and the Pacific* (Bangkok, 2013).



NOTE TO TRAINERS

In advance of the training, identify a local gender expert or panel of experts who could deliver the presentation on the situation of women in the region or specific country where the training is taking place. Their presentation could cover the following points (using national /regional statistics and studies):

1. Extent, nature and consequences of violence against women.
2. The realities for women victims and the criminal justice system response. [The question why these challenges exist for women will be explored later in this module. The presenter might want to touch on some of the reasons but there is no need to spend too much time.]
3. Existing services for victims (such as specialized female police units/officers; legal aid; victim support or advocacy; counselling; shelters).

Short film – victims' voices and their experiences of the criminal justice system



SHORT FILM CLIP ILLUSTRATING THE VICTIMS' PERSPECTIVE

Advance preparation: Based on existing studies and/or with the assistance from Civil Society Organizations who support victims, develop a short video that compiles testimonies from a victim's perspective. These could be told either in the first person (with the actors faced shielded to emphasize the importance of privacy) or through others, such as non-governmental organization support workers about what they have seen in their job as to how victims have been treated.

Instructions: Show the video and ask the plenary to share their reactions.

THE DYNAMICS OF GENDER-BASED VIOLENCE AND THE IMPACT OF VICTIMIZATION

Substantive material

Investigating and prosecuting cases involving violence against women pose unique challenges for prosecutors and other criminal justice actors. Prosecutors are typically used to dealing with victims of violent crime who want justice and are eager to cooperate with them and engage in the criminal justice system. However, women who suffer violence, whether by intimate partners, male relatives or strangers, may not behave like victims of other crimes and prosecutors should not expect them to. The victim's reaction to the violence or her reluctance to participate in the criminal justice process is often misunderstood by prosecutors and judges.

Research shows that there are credible and reliable witnesses that exhibit behaviour that we do not usually associate with being strong, credible witnesses. These behaviours include

hostility, lack of cooperation and a tendency to recant or withdraw. While these behaviours are not seen in cases such as fraud or commercial crime, these behaviours are common in cases where women have been raped or have experienced domestic violence.

Examples that may look like irrational behaviour by what some might see as non-credible victims include the following:

- Where a victim was raped, but no evidence of resistance is available
- Where a victim waits for a very long time before she talks to anyone
- Where a victim is friendly to the perpetrator during and after the incident
- Where a victim is repeatedly abused and minimizes the violence in her first statement and only later in her second statement gives the full extent of the abuse
- Where a victim makes inconsistent statements about what happened in the numerous statements she has given

The science of victimology helps prosecutors understand that women who suffer violence may not behave like victims of other crimes, that they might not react to the violence in ways we think is “correct”.

Prosecutors should also be mindful of their reaction and interpretation of the victim’s behaviour. A number of questions can be asked:

- Do they believe that if the victim makes inconsistent statements or minimizes what has happened, she is lying to the prosecutor?
- If she comes across as unreliable and not credible enough, does the prosecutor decide not to pursue the case?
- If the prosecutors believe the violence has happened and do not believe the victim’s denials, do they hold negative feelings against the victim for having lied to them?
- If the victim remains in a relationship with the accused, do they think that proceeding would waste the court’s time?
- Where the victim is eager to report the violence, does the prosecutor suspect her of being vindictive, seeking advantage in divorce proceedings or trying to get a better private settlement of compensation?

The psychological and emotional experience and impact of the violence

The psychological and emotional experience of the violence is a significant factor that influences a victim’s decision to report, when to report or to withdraw support for the criminal case. Studies show that a significant portion of victims of gender-based violence:

- Suffer from significant mental trauma, such as post-traumatic stress disorder, depression and anxiety
- Feel socially isolated
- Experience low self-esteem
- Experience a negative impact on their sense of privacy, safety and well-being

For all victims of crime, whether they are victims of theft or violence, research shows that traumatizing experiences are often experienced as a sure threat, or a disruption of life. They generally produce an emotional shock on the individual that modifies the brain of the victim. Adults have a physical, emotional, mental and social balance which varies according to their life experiences. Each individual has the ability to adapt to the level of ordinary stress. When an individual suffers a traumatic experience, the usual balance is altered so decidedly that it must be rebuilt, partly or fully, by incorporating the memory of that traumatic event such as it was or modified. Repetition of trauma has a strong impact on the victim's reaction. For prosecutors, knowing the different potential reactions of victims and how to work with victims is crucial for the interventions to be focused and adapted to the victim in question. This is crucial to gathering reliable evidence and ensuring the victim's engagement with the criminal justice system.

Victims of sexual violence

Sexual violence victims often experience a profound sense of shame and violation. It is important to have a good understanding of the various ways victims sexual violence react to the violence, as there are many myths around how sexual violence victims should react and behave. One common myth is that when a woman's chastity is threatened she will violently resist, attempt to escape or scream for help. If she does not react this way to the violence she might be viewed as not credible.

It is therefore crucial to keep in mind that research shows the following:

- Victims make split-second decisions about how to react to sexual violence in order to survive. They respond initially at least, instinctively and reflexively.
- The part of the brain primarily responsible for detection of, and reaction to, a threat is called the amygdala. Threat detection and survival is given priority over all other brain functioning.
- The human system will respond to the perceived threat in one or more of five predictable ways: fight, flight, freeze, flop, friend.
 - Examples of fight and flight: Some victims resist and fight back, while others try to escape.
 - Example of freezing: Some victims respond to the severe trauma of sexual violence through the psychological phenomenon of dissociation, which is sometimes described as "leaving one's body," while some others describe a state of "frozen fright" in which they become powerless and completely passive. Physical resistance is unlikely in victims who experience dissociation or frozen fright or among victims who were drinking or using drugs before being assaulted.
 - Example of flopping: Some victims lose musculature tension and both their body and mind become malleable, especially where the victim is physically unable to resist the attacker. The victim believes that if impact is to occur the likelihood of surviving it will increase if her body yields.
 - Example of befriending: Some victims, such as a woman being raped by an acquaintance, may ask for a condom to avoid becoming pregnant or contracting sexually transmitted infections.
- The brain's objective is survival and it occurs at a time when the higher brain functions are suppressed. This means the victim will react with what might seem illogical or irrational behaviours.

- To a rape victim, a threat of violence or death is immediate regardless of whether the rapist uses a deadly weapon. The fact that a victim ceased resistance to the assault for fear of greater harm or chose not to resist at all does not mean that the victim gave consent.
- Each rape victim does whatever is necessary to do at the time in order to survive.

This also has implications as to how the victim reacts after the violent act:

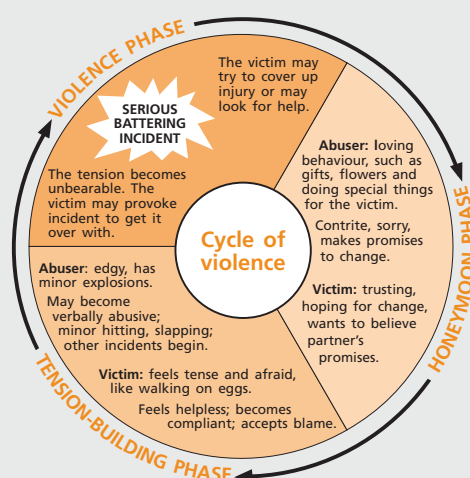
- She might try to dismiss or ignore what happened and even normalizes it by having contact with the perpetrator in the future.
- She might only decide to report when supported by a family member or friend confirming that the violence she experienced is not normal behaviour but wrong behaviour.

Victims of intimate partner violence

It is also important to have a good understanding of the various ways victims of intimate partner violence react to this type of violence, as there are a lot of myths around this as well. It is important to appreciate that domestic violence involving intimate partners can take a number of forms: physical violence, psychological violence, sexual violence and economic violence. These forms are often part of a pattern of coercion and control by which the perpetrator exerts his dominance over the victim through the use of assaultive and controlling behaviour. A number of acts form this pattern of abuse. One common myth is that when a woman withdraws her complaint or refrains from participating in the criminal justice system, the violence could not really be so serious.

A lot of research has been carried out on this issue. A key model to explain the behaviour of women subjected to intimate partner violence is the cycle of violence, which was developed in the 1970s by Lenore Walker.

According to this model, there are three phases to intimate partner violence:



1. **The tension building phase** begins with anger, blaming and increased tension. Many women learn to recognize this tension building phase and try to control it by becoming nurturing and attempting to keep the peace. Often, at this stage incidents are not reported to police or, if reported, the case is minimized. This encourages the abuser to proceed to the next phase.
2. **The violence phase** is characterized by an explosion of violence from the abuser. For women who have experienced violence before, a threat of violence can be disabling. The victims may be grateful that the violence ends and may consider themselves lucky that it was not worse, no matter how bad their injuries are.
3. **The honeymoon phase** is the contrite and loving stage of the cycle. Following the violence, the abuser is loving and calm, and often begs for forgiveness and promises to change.

Consequences of trauma

There are a number of consequences resulting from trauma which can have implications for prosecutors:

- Psychological violence can impact the victim's ability to coherently or fully recount her experience. This has implications for prosecutors who might consider her as unbelievable or not credible.
- Negative feelings or emotional numbness can complicate responsiveness to questioning. Prosecutors might consider that the violence was not serious if the woman does not appear to be appropriately upset.
- Interviews are often done by male criminal justice providers (which can create a gender dynamic that may be especially uncomfortable for a woman who has suffered violence at the hands of a man). This can affect the woman's ability to recount her experience and again lead to views of not being credible. This also feeds into the myth that many victims make false allegations. The belief that women often fabricate rape charges to seek revenge or to extort money is common. Research indicates that in reality only two to ten per cent of sexual assault cases involve false reporting. There is an over-estimation of the scale of false allegations by both police and prosecutors.
- Delayed reporting. Victims often need to feel safe and supported before reporting. Therefore they might report only after they have arrived at a safe location or after they have talked to family, friends, or support persons. Delayed reporting also creates views by prosecutors that the victim is lying. It feeds into the myth that a victim will report everything at the first available opportunity. However, the trauma experienced by women causes her to feel unsafe, resulting in delayed reporting.

Secondary victimization

Secondary victimization is an additional negative impact caused by the actions of those responsible to respond to the victim's needs. This type of victimization occurs not as a direct result of a criminal act but through the inadequate response of institutions and individuals to the victim.⁵⁶ Anyone entering into contact with the victim can be responsible for secondary victimization. Two forms can be distinguished:

- Structural, when the facilities are inadequate and services do not respect the privacy of victims.
- Behavioural, when victims are treated with disrespect by criminal justice actors.

The importance of a victim-centred criminal justice response

Understanding victim behaviour and its social context is critical to understanding the obstacles victims face in dealing with the criminal justice system. Any form of violence takes away the ability of the victim to control her own body and her own life. Repeated violations, often seen in cases of intimate partner violence, undermine her self-esteem and trust in others. The gendered nature of the crimes of violence against women and the context of women's roles in society and discrimination against women generally can factor

⁵⁶ Updated Model Strategies and Practical Measures, para. 15(c).

into the victim's reaction to the violence, as well as her participation in the criminal justice process. Victims of gender-based violence require distinctive consideration at each stage of the criminal justice process.

To be violated is to have power used against oneself, hence the importance of empowerment in all criminal justice interventions. This means that efforts to ensure that the victim's views and needs are respected should be at the centre of all prosecutorial and judicial considerations. Prosecutors and judges should avoid making assumptions about what is in the best interest of the victim and should not view the victim as a passive player in the justice system. Their action should focus on restoring the power that was taken away from the victim.

KEY POINTS FROM THIS SESSION

1. Prosecuting violence against women cases poses unique challenges for prosecutors.
2. Victims' reaction to violence against women (e.g., minimising, normalizing, self-blaming) and to the criminal justice system (e.g., hostility, uncooperative) is often misunderstood by prosecutors who view them as unbelievable, unreliable, or not credible enough.
3. A significant percentage of gender-based violence victims suffer significant mental trauma (such as post-traumatic stress disorder, depression, anxiety).
4. Research shows that when people are faced with a threat there are five different ways their brains (amygdala) react in split seconds: friend, fight, flight, freeze, or flop. Each victim does whatever is necessary to do at the time in order to survive.
5. The cycle of violence with its three phases (i.e. tension building, violence and honeymoon) helps understanding how victims of intimate partner violence react to the pattern of controlling behaviour.
6. The consequences of trauma impact a victim's ability to coherently or fully recount experience; result in emotional numbness (prosecutors might perceive this as if she is not appropriately upset); affect a victim's ability to talk to male prosecutors; delay reporting, etc. Insufficient understanding by prosecutors of these consequences results in viewing victims as not credible and feeds into misconceptions about the prevalence of false allegations.
7. Other factors that impact on victimization and cooperation with the criminal justice system include fear of retaliation and further violence; gender bias by criminal justice actors; mistrust or fear of the criminal justice system; fear of stigmatization or pressure from community.
8. Secondary victimization is an additional negative impact caused by the criminal justice system and its actors.
9. A victim-centred criminal justice response geared toward women's empowerment is crucial in cases of violence against women.

Possible options for delivering the material

Short audio clip – rape investigations and victims that recant



SHORT AUDIO CLIP ILLUSTRATING VICTIMS' PERSPECTIVE

The following radio segment is an example from the United States about rape investigations and victims that recant, how they are expected to behave, and the value of specialized training for investigators and violence against women service providers.

Link: <http://www.thisamericanlife.org/radio-archives/episode/581/anatomy-of-doubt>

(cont.)

Advance preparation: Select the part(s) of the audio clip to be used, which could be longer or shorter depending on the amount of time available for this exercise.

Instructions: Play the selected part(s) of the audio clip and ask the plenary to share their reactions.

PowerPoint presentation and plenary brainstorming



POWERPOINT PRESENTATION

Common perceptions of victims of violence against women by criminal justice actors

- Women who suffer violence may not behave like victims of other crimes
- Such victims may be perceived by prosecutors and judges as:
 - hostile
 - uncooperative
 - unbelievable
 - unreliable
 - not credible enough
 - not caring

The psychological and emotional experience and impact of the violence

Studies show that a significant portion of victims of gender-based violence is:

- Suffering from significant mental trauma, such as post-traumatic stress disorder, depression and anxiety
- Feeling socially isolated
- Experiencing low self-esteem
- Negatively impacted in their sense of privacy, safety and well-being

The need to understand the psychological and emotional experiences of victims

- Knowing these potential reactions and how to work with victims is crucial for the intervention to be focused and adapted to the victim in question
- This helps to gather reliable evidence; and prepare victims for the judicial process that will follow

Common victim experiences

- Adults have a physical, emotional, mental and social balance which varies according to experiences they undergo
- Each individual has the ability to adapt to the level of ordinary stress
- When an individual suffers a traumatic experience, his or her usual balance is altered and must be rebuilt, partly or fully, by incorporating the memory of that traumatic event such as it was or modified
- Repetition of trauma has a strong impact on the victim's reaction

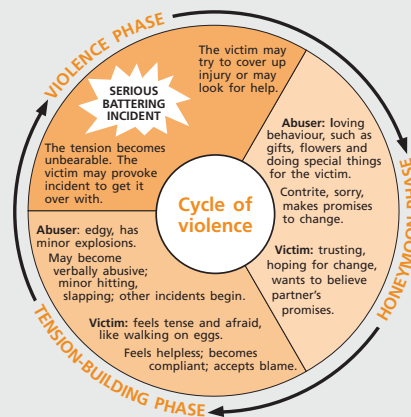
Victims of sexual violence

- Victims make split-second decisions about how to react to sexual violence
- The amygdala part of the brain is primarily responsible for detection of, and reaction to, a threat
- Typical responses to the perceived threat, include:
 - friend
 - fight
 - flight
 - freeze
 - flop

(cont.)

- The brain's objective is survival; higher brain functions are suppressed
- This means the victims will react with what might seem illogical or irrational behaviours
- Each rape victim does whatever is necessary to do at the time in order to survive

Victims of intimate partner violence



Consequences of trauma

- Inability to coherently or fully recount her experience
- Negative feelings, emotional numbness when recounting her experience
- Interviews often done by male criminal justice providers may be especially uncomfortable for a woman
- Delayed reporting

Other factors that have an impact on victimization

- Fear of retaliation and further violence
- Mistrust or fear of the criminal justice system
- Fear of stigmatization or pressure from community
- Women's economic position
- Perpetrators' behaviour

Secondary victimization

- Secondary victimization is an additional negative impact caused by the actions of those responsible to respond to the victim's needs
 - Structural: when the facilities are inadequate and services do not respect the privacy of victims
 - Behavioural: when victims are treated with disrespect by the criminal justice actors
- Anyone entering into contact with the victim can be responsible for secondary victimization

Video providing explanation on brain trauma

Consider showing a video that provides more information on the effects of trauma on the brain. Or consider inviting an expert on this subject matter to provide more detailed information on victimization.



VIDEO ON TRAUMA AND THE BRAIN

Trauma and the Brain: understanding abuse survivors' responses. This animation (made by mediaco-op: <http://mediaco-op.net/>) is for any professional working with a service user when gender-based violence is a feature in the case, in order to help them understand the effects of abuse (more information is available from: <http://bit.ly/1NGSlzU>).

Link: <https://www.youtube.com/watch?v=4-tcKYx24aA>

Instructions: Show the video and ask the plenary to share their reactions to the film.

This animation illustrates:

- How someone who has experienced rape or sexual assault might react in a police interview
- How a professional might respond to a service user if they do not know the effects of trauma
- How this can affect information and evidence gathering, and attitudes to victims
- How 'secondary' trauma can affect workers
- The three main parts of the brain and what each part does
- How the brain responds to danger – the survival instinct
- How instinctive 'fight', 'flight' and 'freeze' responses protect us
- Indicators of trauma
- New trauma-informed techniques for professionals to use, and a demonstration

The main messages of the animation are:

- Trauma response is the brain in survival mode
- Repeated abuse can make trauma symptoms worse
- In response to trauma, people can react in unexpected ways
- Trauma is a normal human response to abnormal events
- When working with service users, start from memories and move to the present; start from feelings and then move to the facts

Small group case study exercises



CASE STUDY

Instructions: Divide the large group into four smaller groups. Give the same case to two groups and a different case scenario to the other two groups.

Ask each group to answer two questions:

- Q1. How has V been victimized?
- Q2. What concrete suggestions does your group put forward that could have improved the treatment of V by the prosecutors and enhanced the likelihood of a successful prosecution?

Ask each group to nominate a rapporteur who will present their answers to the plenary.

THE COMMON COURSE CASE #1 – SEXUAL VIOLENCE

After V's divorce, she moved in with two girlfriends and got a job at a clothing store. Her friends encouraged her to start dating again, in order to get over her failed marriage. She was excited to begin dating P. She had not seen him for nearly 10 years but remembered him as a smart and serious boy from her high school. He was doing well, a junior lawyer in a large law firm downtown. Their first date involved getting a coffee during the day time. V was a bit nervous but thought it went well and she agreed to see him again. (cont.)

The second date was dinner. V was still a bit nervous, so she had three glasses of wine with dinner to calm her nerves. After dinner, P suggested they go back to his place but she said no and asked to be driven home. He became quiet after that. On the drive home, she felt sleepy as she normally did not drink so much. She noticed that he had pulled into a park. She told him that this was not the right way. He told her to be quiet. This made her nervous. She noticed that he locked the car doors on both sides. She found this odd and disconcerting. A few minutes after the doors locked he pulled into a dark lane in the park and stopped the car. He told her that he knew what she wanted. He grabbed her and started to undress her. She was disoriented, said no, but did not know what to do. She was scared being in the park all alone with him and worried what he would do to her if she pushed him away. She did nothing. After he had penetrated her, he said nothing, drove her home and told her to get out of the car.

When she entered her apartment, her two friends saw that she was upset and crying, with mascara running down her face. They asked her what happened. She said nothing and immediately had a shower. She was despondent for days. She called in sick from work. When she went back, her colleagues noted that she was not her usual cheerful self. She finally told her roommates about what happened one month later.

Her friends encouraged her to report the incident to the police. They went with her. The receiving officer told her to wait in the hall. It took over an hour before V told her account to a junior male police officer. She did so in the reception area of the station where everyone was coming and going. She was told to wait. After six hours of waiting, she was taken to another office and asked to tell her story again to male investigator. Her friends were not allowed to be there, so waited outside. In the same room, however, there were three other male police officers present, just listening. She was then told to go to forensics, but since it was late in the evening by that time, she was told to go there tomorrow morning. When she came out of the investigator's office, P was waiting in the hallway with his father, who was a well-known judge, chatting and laughing with some of the police officers.

The following morning she went to the hospital to have the forensic exam done. She found the exam confusing, degrading and had not really wanted to continue. Three months after her forensic exam, she was summoned to the prosecution office. She again went with her girlfriends as she had felt nervous. She waited for over an hour before the prosecutor called her name. When she and her friends moved to enter the room, the male prosecutor abruptly said, "only the accuser". He challenged her version of events, made her feel like she was on trial, and while she was trying her best to explain she felt she was muddling things up. He asked her why she did not resist. Why had she delayed reporting? Why did she have in it for P, who was a young man on the right track? Did she really want to ruin his life for "20 minutes of action"? He told her that the forensic report was not useful. Since she was a sexually mature woman, her hymen was already broken.

THE COMMON COURSE CASE #2 – INTIMATE PARTNER VIOLENCE

In the beginning of their marriage, P had told V that she should not work. He was jealous and did not like other men giving V attention. He needed to know where she went and who she saw. Earlier on in the marriage, his mother-in-law had made comments about how he treated V. She did not like to see how he belittled her daughter, telling her that she was a useless wife and worse mother. P discouraged her from visiting her mother or any of her former friends. V agreed in order to keep the peace. When P got mad, he would shout, call her names and at times hit her. He always apologized afterwards and would seem sorry but it happened again and again.

This last incident was when P returned home after drinking with his friends. He gave V a beating and choked her until she fell to the floor unconscious. The son called the police who came to the house. This was not the first time the police had been to the house. In the past, when the police thought the injury was serious, they had arrested P. However, V would return home soon after the arrest and would ask them to drop the charges. Thereafter, when the police were called to the home, they often decided not to arrest P, but would tell V not to make P angry and thereby avoid a beating. However, this last time, because V was unconscious when they arrived, they did arrest P and submitted a file to the prosecutor. V had time to think about what to do while P was detained and decided to take her children to the shelter. This time, V wanted the matter to proceed and the prosecutor initiated criminal charges against P.

(cont.)

V and the children stayed in the shelter for three days and then moved in with her mother who lives in another city. V did not hear any information regarding what was happening to P, whether he was still being detained or whether his charges were proceeding. Six months later, she received a summons to attend the criminal trial. She travelled to court, a fair distance for her and expensive, as she could not really afford the bus and hotel. It took her some time to find the right court room and she was worried that she was late. She did not want to see P but she was more afraid that she would be charged herself if she does not attend the trial. She did see P in the hallway at which he had given her a threatening look. When she was called to the stand, she saw P glaring at her the whole time she was answering the lawyers' questions. After giving her testimony, she was told to go. She would have liked to stay and watch the trial but she did what she was told. She did not hear anything about what happened and does not know who to ask.

Other possible case study scenarios

Case scenario 1 – Intimate partner violence

Nita married Po in 1995. In the beginning of their marriage, he told her not want her to work. He discouraged her from visiting her mother or any of her former friends. He was in control of the family finances, giving her a small allowance for the groceries and requiring her to account for it. He regularly criticized her cooking, her cleaning and her parenting skills. After their first anniversary, he hit her for the first time because he did not like the dinner she had prepared for him. She felt she had deserved the hit for being such a poor wife and mother. Soon thereafter, Po apologized and swore he would never do it again. However, after that first incident, he continued to beat her regularly.

In March 2010, when her eldest son reached the age of 13 years, he called the police after one beating when he saw his father beat and choke Nita until she fell to the floor unconscious. A month after that incident Nita asked the prosecutor to drop the case. She told the prosecutor that she did not want to go to court as her husband had promised never to be violent towards her again and the violence had not been very serious. The prosecutor agreed with her and told her how important it was to keep the family together and he advised her not to anger her husband anymore. Over the next couple of years the police received three more calls from the son, as the beatings became progressively more violent. However, each time the police would tell Nita that since she had withdrawn her complaint in the past, they would not waste their time as she would likely withdraw her complaint again. The most recent incident occurred in June 2015. Po pulled a knife and attacked Nita in front of her neighbours, which incapacitated her for several days. The police interviewed Nita in the hospital where she stayed for four days. The file was then submitted to the prosecutor.

Regarding this last incident, the prosecutor decided to initiate criminal charges against Po as he considered that the case was strong, with the medico-legal report and the witness statements of the neighbours. Nita again asked the prosecutor to drop the charges, but the prosecutor told her that he was proceeding due to the serious nature of the violence.

After being charged, Po kicked Nita out of the family home. She moved back to her parent's home in the countryside, 50 miles out of the city. The prosecutor sent the indictment of Po to the judge, however, Nita did not hear anything for six months. Then one day a police officer brought a summons to her parent's house which required her attendance in

court the next day at 8:00 am. She was very apprehensive when she read the summons. She and her mother had to get the 5:00 am bus to the city to get to the courthouse on time. When they arrived, they saw Po standing in front of the court building with his lawyer. This made Nita more apprehensive as she wondered if she should have a lawyer and if she could be charged herself. The clerk told them to sit down in the hallway outside the courtroom till they were called. Po and his lawyer entered the court room. Nita and her mother waited two hours with nothing to drink or eat; they were afraid to leave the bench where they had been told to wait. When her name was called out loud enough that everyone in the hallway could hear, she entered the courtroom. Her mother sat in the public area. Nita felt scared by the formality of the judge and the other court staff sitting on the podium. She did not know what to expect. The judge asked her several questions in formal language. She had only nodded to answer as she did not understand his questions but she wanted to be polite. Then she was asked to leave the courtroom again. She did not have any news for nearly two months and it was only when a former neighbour told her that Po was free and that he was saying that if he met her again he would make her pay for what she had done that she understood he was not in jail.

Questions:

Q1. How has Nita been victimized?

Q2. What concrete suggestions does your group put forward that could have improved the treatment of Nita by the prosecutor and hence the likelihood of a successful prosecution?

Points to make:

- Uncooperative, recanting, psychological reasons do not relate to credibility or reliability.
- Primary victimization: forms of intimate partner violence, cycle of violence; economic dependence; minimizing the violence.
- Secondary victimization: attitudes: blaming her for his violence and advising her to modify her behaviour to limit the violence.
- Secondary victimization: formal set up of the courts, lack of support, lack of preparation for trial and information, lack of privacy, her name yelled out in public court house.
- Lack of protection: lack of concern for her safety.

Case scenario 2 – sexual violence

Nita, a 25-year-old woman with one young child, worked part-time as a nurse and lived with her husband and her husband's family. In the last couple of months, a friend of her husband, Po, a regular visitor to the family home, started making sexual comments to her when no one was present. She pretended not to hear and ignored them. However, his remarks started to get bolder and more explicit. She was too scared to raise this with her husband as he was not very happy that she had decided to go back to work as a nurse after the birth of their first child. Furthermore, in the past he had commented that she was too modern in her dress and attitudes.

One day, while she was at her clinic, Po arrived as the clinic was closing for the day. He told the receptionist that he was waiting for Nita as he promised her husband that he would drive Nita home. After the receptionist left only Po and Nita remained at the clinic. He then threatened and raped her. After this incident, he continued to visit the family home. Po told her that her marriage would be ruined if she told anyone what happened. Nita felt that she was to blame for what happened as she allowed him to make sexual comments to her and did nothing about it. She started showing signs of depression, anxiousness and suffered panic attacks. Three months after the rape, Nita told a girlfriend what happened. Her friend convinced her to make a report to the police. The police interviewed Nita on two occasions. The file was then submitted to the prosecutor. She was also sent to take medical samples and that report was sent to the prosecutor.

Nita was summoned to the prosecutor's office to recount the case. She was told to sit in the corridor leading to the office of the prosecutor and to wait until called by the prosecutor. After an hour, she was called in and entered the office. The prosecutor was sitting on a big chair, writing something. After a few seconds he glanced up and, when she told her name, he picked a file from the table. He then wrote on the file for about a minute. He then looked straight into Nita's eyes and asked her to recount her case. He told her that all she had said would be produced before the court as evidence and hence that she should be very careful. Nita had already been a little frightened by the prosecutor and could not speak, so she just nodded. He continued asking for details about her family, her work, etc. He asked why she felt she needed to continue to work when she had a young child at home. The prosecutor asked Nita to tell him about the incident. While she did her best to explain, he was jotting down something on the file. Most of the time he looked at her in a way which gave Nita the impression that he was not listening to her at all. When he had completed his questioning, he remained silent for a minute. He then told her that the medical evidence was not useful. Since she was a sexually mature woman, her hymen was already broken and given that there was no physical evidence after three months, it did not help her case. Then the prosecutor said somebody was there to talk to her. He had asked the police to bring in Po. Po arrived and gave her a very threatening look. He sat down with his lawyer and the prosecutor told the lawyer "this is the woman." Nita started crying. The prosecutor asked Po if he knew her. Po said that he had met her only in the house of his friend and that she had talked to him in an immoral way. He said that he did not touch her. The prosecutor turned to Nita who was still crying. He asked her if this was the man she was accusing. "Do you know that you are ruining the reputation of an important man?" he said. Then he asked her "do you maintain your statement?" Nita was only able to nod.

Questions:

Q1. How has Nita been victimized?

Q2. What concrete suggestions does your group put forward that could have improved the treatment of Nita by the prosecutors and hence the likelihood of a successful prosecution?

Points to make:

- Initial victimization of sexual harassment, felt that she could tell no one and blames herself
- Likely suffering from simple post-traumatic depression

- Myth – delayed reporting
- Myth – rape is by stranger, force, physical injuries
- Secondary victimization (structural factors: no privacy, no support person or lawyer present)
- Secondary victimization (behavioural factors: attitudes of the prosecutor, he questions her choice in working, he treats her with disdain and questions her credibility)

Small group exercises option – short case scenarios on ways victims react to violence



CASE STUDY

Instructions: Divide the large group into smaller groups.

Ask each group to consider one or more of the short case scenarios and to list the victim's response to trauma and how this might impact their decisions as prosecutors.

Sexual violence – case scenario 1

V works at a drug store. She is closing up for the night when a man who appears to be high on drugs pushes through the front door, threatens her with a knife and tells her to lie on the floor. He holds the knife to her throat and unzips his jeans. She tries to reason with him, saying that she is a good girl and that he should not be doing this. When she realizes he is not changing his mind, she asks him to use a condom as the store stocks them.

Points to make:

- Reaction of befriending (she tries to minimize the harm and does not want to be pregnant or contract a sexually-transmitted disease)
- There will be evidence of condom use and no evidence of resistance

Case scenario 2

V is a 54-year-old married woman. She visits her dentist for cleaning and a check-up. While he leans over her, he puts his hand on her right breast and massages it for ten seconds. She freezes and says nothing to him. When she is leaving to make the follow-up appointment with the assistant, she does not disclose what has just happened to the assistant. One month later, as her second follow up appointment is approaching, she is becoming more anxious and she discloses what happened to a friend. The friend supports her and tells her to report this to the authorities.

Points to make:

- Reaction of freezing
- She does not disclose the incident at the first available opportunity, but normalizes the situation by making a further appointment and only discloses the incident after feeling safe and supported

Case scenario 3

V is a 25-year-old woman on a family holiday with her two children and her husband's unmarried brother. Her husband is on a business trip and plans to join them in two days. The brother-in-law, after the children are put to bed, comes to her room to discuss their plans for the next day and she offers him tea. He forces himself on her. He grabs her from behind when she is getting the tea, throws her on the sofa and holds her hands to stop her from pushing him away and hitting him. Afterwards, he tells her she is a bad person and enticed him, and that this was her plan all along.

Points to make:

- Reaction of fighting
- Example of victim blaming (focus will often be on her behaviour, such as offering tea when they are alone)

Case scenario 4

V and P are on a date. P takes her to a party where alcohol is being served. P convinces her to have a drink and then another. V wakes up in P's bed. She does not remember how she got there, but there is blood on the sheet and she feels sore in the genital area. V and P had already made plans to go to a friend's upcoming wedding in a month. She avoids discussing what happened with P, just wanting to forget it but feeling ashamed. One week before the wedding, he breaks up with her. She discloses to her mother what happened.

Points to make:

- Date rape by boyfriend
- She is not able to consent
- She normalizes the situation
- Common myth that she is vengeful

Intimate partner violence – case scenario 1

Professor P and Doctor V have been married for two years. He has become more and more critical of her housekeeping and he insists that she come home immediately after her hospital shift. He does not like her to see her friends and family without him. The neighbours have heard him shouting at her on numerous occasions. One evening, a neighbour, who has heard the shouting escalate, is looking out and sees the husband punching her in the head and throwing her out of the front door. She lands on her back in the garden. The neighbour observes that when she tries to head back inside, her husband punches her again, this time in the ribs. She leaves the property and is found standing in the street bleeding from the mouth by the neighbour who then calls police. She is in shock over the escalation in violence on this occasion and she is embarrassed that her neighbour observed this incident. She waits for the police at the neighbour's house. When the police arrive an hour later she has calmed down. The police observe the beginning of bruising on her ribs, her forehead, her right arm and blood coming from the scrape on her face. She does not want to talk to them and the police leave without taking photos or trying to make a statement.

Points to make:

- Hostility of the victim toward the authorities (she is uncooperative; if she does not care why should the authorities?)
- Common myth that violence against women is limited to certain social class or level of education

Case scenario 2

On 2 January 2016, the police are called for the fifth time in the last year to Mr. and Mrs. E's home. The four previous incidents did not result in charges. Two of the previous incidents in November 2014 were informally mediated between the couple by the police. The other two incidents involved more serious injuries. In June 2015, the police took Mrs. E to the hospital with a broken arm and dislocated fingers on her right hand. In July 2015, she was diagnosed with a suspected concussion and five cracked ribs. During the investigation of both the June and July incidents, Mrs. E begged the prosecutor to withdraw the case because her husband had apologized and promised that he would never do it again. She said that the family must stay together, that the children needed their father, that she had no money on her own and that she could not separate from her husband because she had nowhere else to live. On 2 January 2016, Mrs. E's older sister visits her and observes that she is in great pain and is missing a tooth. Mrs. E tells her sister what happened. Both women go to the hospital to get painkillers. The doctor advises Mrs. E that she has a broken jaw which requires surgery to reset. Hearing this, Mrs. E's sister decides to call the police even though Mrs. E asked her not to involve anyone outside the family. During her interview with the prosecutor, she asks again to withdraw her complaint because her husband has apologized and promised to stop the violence.

Points to make:

- Uncooperative victim (she does not care so why should they? Is it a waste of police resources?)
- Cycle of violence (honeymoon phase, tension building, escalation of violence)

Case scenario 3

V and P have been married for five years. P is generally a good husband and provides financially for her. He is overly protective, however, and does not allow her to leave the house except with him or in the presence of a family member. V starts to feel isolated and she becomes depressed. V suspects that her husband has not always been faithful to her. She accepts this initially and she says nothing until the birth of their first child. At this stage she starts to feel resentful of his long business trips away from the city, not only because she feels he is with other women, but also because he is not spending enough time with her and their new baby. When the child is three years old she decides it is time to confront him. One night after he criticizes her cooking, she yells at him telling him that he has too much freedom and she does not have enough. She tells him that she has suspected him of having affairs for several years. He becomes enraged and pushes her onto the couch. He then gets on top of her. She screams, so he puts his hand over her mouth. She finds it difficult to breathe. He then puts his hands around her neck and threatens to "silence her forever". V loses consciousness. Sometime later, when she wakes up, the baby is crying. P is no

longer in the house. Her neck is extremely sore and she has trouble talking. She is afraid of what P might do if she speaks out about anything so she keeps quiet for another month. One night, she decides to take the baby to a friend's house without telling P. He is away on a trip. When he calls her on her mobile phone to check on her at 9pm, he can hear music and people's voices in the background. She lies and says that she is at her mother's house. When he returns he checks with her mother. Knowing that she has gone out against his wishes and that she has lied to him, he gets angry. After the baby has been put to bed, he confronts her and slams her against the wall holding her there with his hands around her neck. She can feel her feet leave the floor. Again she loses consciousness and wakes up in the hospital. She is told that her neighbours heard the noise and found her unconscious on the floor. She decides to speak to the police. The officer who takes her statement asks her if she is "just a jealous wife". She feels embarrassed and tells him that she does not want to proceed with a statement. He tells her that this is a wise decision.

Points to make:

- Common myth that the victim is being vengeful (police view her as being overly cooperative)
- Common myth that a husband is entitled to correct his wife's bad behaviour
- Common myth that a husband cannot control his anger

Case scenario 4

Mr. and Mrs. E have been married for ten years and have no children. He blames her for not giving him heirs. He has become increasingly verbally abusive. Over the last year, he has regularly threatened to kill her cat. Last week, he does kill her cat and says "you are next, do what I say; you can see that I mean it". He has never physically assaulted her.

Points to make:

- Intimate partner violence include psychological violence
- When does it reach the threshold of a crime in your country?

DEMYSTIFYING COMMON MISCONCEPTIONS ABOUT VIOLENCE AGAINST WOMEN

Substantive material

General introduction to myths and misconceptions about violence against women:

- There are a number of negative beliefs about sexual and gender-based violence based on gender discrimination and stereotyping.

- Myths about violence against women develop in part because it can be difficult to understand why one person would hurt another, particularly in the context of an intimate relationship.
- If these myths are formally or informally embraced by criminal justice institutions, this results in downplaying the perpetrator’s responsibility and criminality while shifting the blame towards the victim.
- The result of these myths is that the victim’s behaviour and personal characteristics rather than the perpetrator’s actions take the centre stage. The victim’s claim of gender-based violence is treated with suspicion and little support or justice is provided to the victim. Victims themselves might believe these myths and this can result in underreporting.
- These myths also divert attention away from the actions of the perpetrator. They lead to blaming the victim or some other factor, such as alcohol or anger, for the violence. However, violence against women, such as intimate partner violence, is intentional conduct.
- Prosecutors need to be aware that there are a number of myths and stereotypes surrounding violence against women and that they should not allow these to influence their decisions. It is critical that all responses to violence against women share a common understanding of the violence and focus on the credibility of the incident, the perpetrator’s actions and not on the credibility of the victim.
- Understanding the myths and realities can help prosecutors focus on the responsibility of the perpetrator. The focus on the responsibility of the perpetrator is a critical part of any effective strategy for protecting victims and holding perpetrators accountable.
- In practice, myths surrounding rape and other forms of violence against women have historically served to justify unique case treatment evidenced in corroboration requirements, consent and resistance standards, and the admissibility of victim character evidence. In many States, the corroboration requirement has been removed from the law, however, it remains the case that for no other crime is the credibility of the victim so subject to preconceived notions. Victims of crime usually evoke feelings of sympathy and support, but these rape myths invite judgmental attitudes and scepticism.

MYTH	REALITY	POINTS TO RAISE IN DISCUSSION
Rape myths and realities		
<p>Rape is a crime of lust or passion.</p> <ul style="list-style-type: none"> • Similar myth: rape happens only to young, pretty or desirable women. 	<p>Rape is an act of violence and aggression in which the perpetrator uses sex as a weapon to gain power and control over the victim.</p> <p>There is no “typical” sexual assault victim. Sexual violence can happen to anyone, regardless of sex, race, age or other factors.</p>	<ul style="list-style-type: none"> • A common defence tactic in rape trials is to redefine the rape as sex and try to capitalize on the mistaken belief that rape is an act of passion that is primarily sexually motivated. • It is important to draw the legal and common sense distinction between rape and sex. • There is no situation in which an individual cannot control his sexual urges. • Sexual excitement does not justify forced sex and a victim who engages in kissing, hugging, or other sexual touching maintains the right to refuse sexual intercourse.

(cont.)

MYTH	REALITY	POINTS TO RAISE IN DISCUSSION
		<ul style="list-style-type: none"> • Rapists do not rape because they want to have sex and many rapists also may have partners with whom they engage in consensual sex. • Sexual deviance and character traits form the motives for rapists' behaviours. Their sexual deviance may cause them to be aroused by exploiting the physical and/or psychological vulnerabilities in their victims, whether they result from intoxication or physical or mental disabilities. • The belief that sexual assault victims are attractive, young or sexually inexperienced, is often related to the mistaken belief that rape is about sex, rather than violence, and that the attractiveness of the victim is one of the causes of the assault. • Although there is no typical sexual assault victim, studies indicate that certain groups are victimized at higher rates than others. Victimization is not based on whether the victim is attractive but rather on vulnerability and availability.
Rape more often involves a stranger, physical force and physical injury.	Rape more often involves some the victim knows, without visible physical injury.	<ul style="list-style-type: none"> • A victim is more likely to be sexually assaulted by someone she knows (e.g., friend, date, intimate partner, classmate, neighbour or relative) than by a stranger. • Many of the unwanted and forced acts that take place during a sexual assault do not result in visible non-genital injuries. • Most adult rape victims do not have any non-genital injuries from sexual assaults.
When a woman's chastity is threatened, she violently resists, attempts to escape or screams for help.	When a woman is being raped, she may freeze or try to make friends with the rapist.	<ul style="list-style-type: none"> • Victims make split-second decisions about how to react to sexual violence in order to survive. They respond, initially at least, instinctively and reflexively. • The part of the brain primarily responsible for detection of, and reaction to, a threat is called the amygdala. Threat detection and survival is given priority over all other brain functioning. • The human system will respond to the perceived threat in one or more of five predictable ways: friend, fight, fright, freeze and/or flop. • The brain's objective is survival and it occurs at a time when the higher brain functions are suppressed. This means the victims will react with what might seem illogical or irrational behaviours. • Some victims respond to the severe trauma of sexual violence through the psychological phenomenon of dissociation, which is sometimes described as "leaving one's body," while some others describe a state of "frozen fright" in which they become powerless and completely passive. Physical resistance is unlikely in victims who experience dissociation or frozen fright or among victims who were drinking or using drugs before being assaulted. (cont.)

MYTH	REALITY	POINTS TO RAISE IN DISCUSSION
		<ul style="list-style-type: none"> To a rape victim, a threat of violence or death is immediate regardless of whether the rapist uses a deadly weapon. The fact that a victim ceased resistance to the assault for fear of greater harm or chose not to resist at all does not mean that the victim gave consent. Each rape victim does whatever is necessary to do at the time in order to survive.
<p>Some women deserve to be raped, it is their fault. Either they are asking for it (sexy clothes incite men to rape), they wanted it, or they put themselves in dangerous situations (prostitution, drunk). [chose a scenario]</p>	<p>Women never deserve to be raped.</p>	<ul style="list-style-type: none"> Sexual violence is never the victim's fault. No other crime victim is looked upon with the same degree of blameworthiness, suspicion, and doubt as a rape victim. Victims who have been drinking, using drugs, dressing in a way that is perceived as provocative, engaging in prostitution or any other behaviour that may inappropriately cause victim blaming are not asking to be raped. Consent must be explicit. "No" means "no," no matter what the situation or circumstances. It does not matter if the victim was drinking or using drugs, if she was out at night alone, was lesbian, was sexually exploited, was on a date with the perpetrator, or if the perpetrators believed the victim was dressed seductively. No one asks to be raped. The responsibility and blame lie with the perpetrator who took advantage of a vulnerable victim or violated the victim's trust to commit a crime of sexual violence.
<p>Women who seek to avenge slights or to extort money often fabricate rape charges.</p>	<p>Women do not often falsely report rape.</p>	<ul style="list-style-type: none"> The mistaken belief that most sexual assault allegations are false is unfortunately common. Research indicates that only two to 10 per cent of sexual assault cases involve false reporting. The frequently inflated claims of false reporting have negative consequences for victims accessing justice. Many reports are classified as false where there has been: delayed reporting; victim indifference to injuries; vagueness; or a victim's attempt to steer away from unsafe details, suspect description or location of the offence; and inconsistencies in the victim's statement. There is an over-estimation of the scale of false allegations by both police and prosecutors. This feeds into a culture of scepticism and leads to poor communication and loss of confidence between victim and the criminal justice system.
<p>A victim's inconsistencies mean she is not credible.</p>	<p>Inconsistencies are common and can be explained or avoided through appropriate responses.</p>	<ul style="list-style-type: none"> The belief that many victims are not credible, place unreasonable requirements on victims to demonstrate that they are real and deserving victims. <p style="text-align: right;"><i>(cont.)</i></p>

MYTH	REALITY	POINTS TO RAISE IN DISCUSSION
		<ul style="list-style-type: none"> • Many victims are themselves aware of the myths and adjust their initial account in order to appear believable. • If prosecutors are not aware of myths, then they will consider inconsistencies as false complaints or as creating evidentiary problems. • Trauma might affect the victim's ability to coherently or fully recount her experience. • Being supported at the initial interview enables the victim to be more relaxed and develop trust for full disclosure of the incident.
A victim will report everything at the first available opportunity.	Victims often need to feel safe and supported before reporting.	<ul style="list-style-type: none"> • The trauma experienced by the victim causes her to feel unsafe. • Victims often only report after they have arrived at a safe location or after they have talked to family, friends or support persons.
Intimate partner violence myths and realities		
Domestic violence is only perpetrated by a strong man against a weak woman.	Relative physical strength or weakness is not the issue, power and control are.	<ul style="list-style-type: none"> • Far from being a powerless victim, a woman involved in a violent relationship often displays enormous resources of strength in the way she learns to live with fear, navigate unpredictability, and sense her partner's moods to protect herself and her children.
It cannot be that bad or she would leave.	There are many practical reasons why women stay in a violent relationship.	<ul style="list-style-type: none"> • Victims may be afraid of the repercussions if they attempt to leave. • They may be afraid of becoming homeless. • They may worry about losing their children. • They may fear poverty and isolation. • Women stay in violent relationships for emotional reasons ranging from love to terror. Some women return to their partners because they believe that their partner will change and the abuse will end. • Often, before the first physical assault, the abuser uses control tactics, such as isolation of the victim from social and family connections, threats, financial dependency. By doing this, the abuser degrades the victim to the point that she lacks self-confidence necessary to leave or appropriately respond to the violence. • Another explanation is that fear and uncertainty activate the attachment behavioural system. In traumatic situations, the victim turns to a person she is closest to, which is often the abuser.
Domestic violence is a private issue for families.	Domestic violence affects communities and society as a whole.	<ul style="list-style-type: none"> • Violence against women violates the law in most countries. This means that domestic violence is behaviour that the community does not accept. It is important for abusers to receive this message from the community and the justice system. <i>(cont.)</i>

MYTH	REALITY	POINTS TO RAISE IN DISCUSSION
Men who abuse are violent because they cannot control their anger and frustration.	Abusers are very much in control and use violence to control the victim.	<ul style="list-style-type: none"> Domestic violence is intentional conduct, and abusers are not out of control. Their violence is carefully targeted to certain people at certain times and places. They generally do not attack their bosses or people on the street, no matter how angry they may be. Abusers also follow their own internal rules about abusive behaviours. They often choose to abuse their partner only in private, or may take steps to ensure that they do not leave visible evidence of the abuse. They use acts of violence and a series of behaviours, including intimidation, threats, psychological abuse or isolation, to coerce and to control the woman. They choose their tactics carefully: some destroy property, some rely on threats of abuse, and some threaten children.
Husbands cannot rape their wives.	Husbands do rape their wives.	<ul style="list-style-type: none"> Rape occurs whenever sexual contact is not mutual, when choice is taken away. Any man who disregards a women's "no" is raping her.
If it was really serious she would come to court to provide evidence.	Many reasons may prevent her from coming to court.	<ul style="list-style-type: none"> A woman might withdraw her complaint or participation in the criminal justice system for a number of reasons. Withdrawing support for the prosecution of her abuser may appear to be her safest short-term choice in a context of many difficult choices. She may perceive it as the only way to keep herself and her children safe. The victim might be in the honeymoon phase of the cycle of domestic violence. A comprehensive understanding of the cycle of violence helps prosecutors who are assisting the victims.

KEY POINTS FROM THIS SESSION

1. Society, which includes prosecutors, other criminal justice actors and victims, holds a number of negative beliefs about gender-based violence based on gender stereotyping and discriminatory attitudes.
2. Myths result in downplaying perpetrators' responsibility while shifting blame towards victims.
3. Myths about violence against women often put victims' behaviour and personal characteristics "on trial" rather than the perpetrator's actions. This results in suspicion of the victim's claim and little support or justice for the victim.
4. Prosecutors need to be aware of these myths and ensure they do not follow them when making decisions regarding credibility issues, assessing the evidence and treatment of victims.

Possible options for delivering the material

Below are suggestions for trainers for developing an exercise to discuss myths and misconceptions.

Large group exercise – discussion on myths and realities



MYTH OR REALITY EXERCISE

Instructions: Based on the UNODC/UN Women/TIJ *Handbook on Effective Prosecution Responses to Violence against Women and Girls* (section on demystifying common misperceptions among criminal justice officers), write eight to ten myths/realities on separate flashcards focusing on sexual violence and domestic violence. Ask for volunteers to pick one flashcard and read it aloud. Ask them for their opinion as to whether true or false, myth or reality. Then ask the rest of the participants if they agree or disagree in order to lead to a discussion.

Option: To make the exercise more active, have the group stand up and move to one side of the room. Read out a statement and ask those who think the statement is a myth to move across the room. Those who think it is a fact should stay where they are. Ask one person from each group to explain why they chose to move or to stay.

PowerPoint presentation and plenary brainstorming

Prepare PowerPoint slides with key points to review after each myth/reality discussion. Below is an example which can be modified, depending how prevalent different myths are in each country. After reading the statement slide to the participants, trainers can either ask the question of whether the statement is a myth or reality to generate discussion, or ask each table (small groups) to discuss for five to ten minutes and then facilitate the discussion in the plenary group.



POWERPOINT PRESENTATION

The meaning of myth

"... myth is the triumph of belief over reality, depending for its survival not on evidence but on constant reiteration"

Helena Kennedy

Real rape involves a stranger, physical force and physical injury

Is this statement a myth or reality?

Real rape involves a stranger, physical force and physical injury: myth

Fact: Rape more often involves someone the victim knows, without visible physical injury

Implications:

- Criminal justice actors tend to perceive crimes between intimate partners as less serious than crimes between strangers
- Evidentiary rules may require a victim to prove she resisted the perpetrator
- Criminal justice actors tend to think that the victim is more credible if she physically resisted her attacker
- Victims are treated with skepticism, lack of support
- Loss of confidence between victim and the criminal justice system

(cont.)

Rape is a crime of lust or passion

Is this statement a myth or reality?

Rape is a crime of lust or passion: myth

Fact: Rape is an act of violence and aggression in which the perpetrator uses sex as a weapon to gain power and control over the victim

Implications:

- Common defence tactic in rape trials to redefine the rape as sex
- Excuses the perpetrators conduct and focuses on the victim's behaviour and personal characteristics
- Allows for raising the defence of mistaken belief
- Results in suspicion of the victim's claim and hostile treatment

Women never deserve to be raped

Is this statement a myth or reality?

Women never deserve to be raped: reality

Fact: Women never deserve to be raped

Implications of the myth that they do deserve to be raped in some cases:

- Criminal justice actors may condone or falsely believe that women bring on violence by their actions
- In blaming women for the violence, criminal justice actors treat victims with disdain or hostility or dissuade them from registering complaints
- Evidentiary rules may reflect this bias, e.g., a victim's past sexual history may be used to discredit her complaint
- Victims withdraw cooperation with the criminal justice system at an early stage if worried about such attitudes
- Victims might be subject to aggressive cross-examination based on negative gender stereotyping
- Contributes to victims' mistrust or fear of the system

Domestic violence involves men who cannot control their anger

Is this statement a myth or reality?

Domestic violence involves men who cannot control their anger: myth

Fact: Abusers are very much in control and use violence to control the victim

Implications of the myth men who abuse are violent because they cannot control their anger and frustration:

- Criminal justice actors dissuade her from continuing the case
- Sympathize with the male perpetrator

The domestic violence cannot be that bad or she would leave

Is this statement a myth or reality?

The domestic violence cannot be that bad or she would leave: myth

Fact: There are many practical reasons why women stay in a violent relationship

Implications:

- Criminal justice actors do not believe the women, dissuade her from continuing the case and/or treat her with disdain (cont.)

Conclusions to draw

- Myths results in downplaying the perpetrator's responsibility and criminality while shifting the blame towards the victim
- The victim's behaviour and personal characteristics take the centre stage rather than the perpetrator's actions
- The victim's claim is treated with suspicion and little support or justice is provided to the victim
- Myths have historically served to justify unique case treatment evidenced in corroboration requirements, consent and resistance standards, and the admissibility of victim character evidence
- Prosecutors and judges need to be aware of these myths and that they should not allow these to influence their decisions

The importance of ensuring victim-centred criminal justice responses

- Victims of gender-based violence require distinctive consideration at each stage of the criminal justice process
- Considerations should be grounded on empowerment
- Empowerment means ensuring the victim's views and needs are respected. This should be at the centre of all considerations

CHALLENGES AND BARRIERS FOR WOMEN'S ACCESS TO CRIMINAL JUSTICE

Substantive material

Women face numerous challenges and barriers in accessing criminal justice. In addition to the psychological impact of the violence, key factors that have an impact on victimization and create obstacles for women include fear of retaliation and further violence; gender bias of criminal justice actors; fear of the criminal justice system and fear of stigmatization or pressure from community. There are also a number of other challenges, barriers and obstacles.

Women's economic position. The victim might not be able to afford the costs associated with filing a case or securing a certified medical report to support her claim. She might not have resources for transportation to access a police station or courts, or be able to get child minders during her court appearances. In intimate partner violence cases, unlike other types of assault cases, the victim may be economically dependent upon the perpetrator and share children and a residence with him. The victim may lack job skills that prevent her from supporting herself and her children and therefore feel that staying with the perpetrator is in the children's best interest. Leaving might mean she will be homeless. The victim may fear the perpetrator will lose his job as a result of criminal conviction which impacts the financial situation of the family. The victim might lack legal immigration status. She may also not be

aware of support services or the support services might not accommodate the victim's characteristics, such as disability, substance abuse, mental illness, type of violence experienced. In some countries, it has been reported that the courts require the victim to pay for the food and incarceration costs of the very people they have accused of violence.

Perpetrators' behaviour. In intimate partner violence situations, in addition to the victim fearing further violence from the perpetrator, he might also threaten to take the children or harm the children if the victim leaves. He might have isolated the victim from her family and friends, as well as lowered her self-esteem by convincing her that she is worthless or that the violence is her fault. He may make excuses and minimize his violence or beg for forgiveness and promise to change. He might threaten to commit suicide if she leaves.

Discriminatory legal provisions. There may be existing discriminatory legal provisions that impede women to report an incident. Such provisions may be part of family and divorce law, property law, housing rules and regulations, social security law and employment law. One example are provisions that affect the right of married women to conclude contracts, own property, inherit, divorce, and have guardianship and custody of children, on an equal basis with men including.

Lack of capacity of women to seek justice. Victims may not have immediate capacity, in terms of time and/or money, to access and participate in the formal criminal justice system. Females have lower levels of literacy, are poorer, work longer hours and have more responsibilities at home than males in many countries. In most countries, the criminal justice system is staffed largely by men who might lack the necessary training on how to handle violence against women. Many women do not know what rights and services are available to them.

Lack of capacity of criminal justice institutions and actors. The national criminal justice system might suffer from limited resources, resulting in understaffed police, prosecution agencies and courts, heavy workloads and backlog of cases, causing lengthy delays for all victims.

Possible options for delivering the material

There are a number of exercises that can be used to discuss challenges and barriers for women. These exercises are meant to provide an opportunity for participants to think about all the challenges and barriers women face when accessing criminal justice and how they, as prosecutors, can respond to these challenges.

Brainstorming exercise



CHALLENGES AND OBSTACLES FACED BY WOMEN IN ACCESSING CRIMINAL JUSTICE

Instructions: Ask the plenary to identify the challenges and obstacles women face in accessing the criminal justice system. You can break this down into the stages in the criminal justice chain: initial contact/reporting; registering a complaint; investigation; pre-trial issues; trial; post-trial.

Make notes on a flip chart.

Group exercises on understanding the challenges and how prosecutors can respond to address them



BRAINSTORMING EXERCISE

Instructions: Ask the plenary to identify the challenges and obstacles women face in accessing the criminal justice system. Make notes on a flip chart. Group the ideas in main categories.



IMPACT ON VIOLENCE AGAINST WOMEN VICTIMS AND PROSECUTORIAL STRATEGIES IN RESPONSE

Instructions: From the brainstorming discussion, put the five main challenges experienced by victims on five flip charts (one issue per flip chart).

Divide the large group into five small groups and ask the groups to move around the room and list bullet points as to how these issues impact violence against women victims and their participation in the criminal justice system in one column and how prosecutors can respond in another column.

Have each of the small groups move clockwise, review the notes already on the flip charts and add any new points to each of the columns. Ask one group to nominate one person to present the final flip chart to the large group.

Below is an example of how this might be done.



The psychological impact of the violence. The violence has negatively impacted on their sense of privacy, safety and well-being and can result in significant mental trauma. Sexual violence victims often experience a profound sense of shame and violation.

IMPACT ON VIOLENCE AGAINST WOMEN VICTIMS	PROSECUTORIAL STRATEGIES IN RESPONSE
<ul style="list-style-type: none"> • The victim may be unable to coherently or fully recount her experience. • Victims may struggle to remember precise details of the violence or experience negative feelings when doing so. Emotional numbness can complicate responsiveness to questioning. • Interviews conducted by police or prosecutors are often done by men and this may create a gender dynamic that may be uncomfortable for a woman who has suffered violence at the hands of a man. • The trauma may also result in delayed reporting. Victims often need to feel safe and supported before reporting. They may report only after they have arrived at a safe location or after they have talked to family, friends, or support persons. • When a victim makes inconsistent statements or minimizes what has happened, prosecutors may view her as lying to them or the victim comes across as unreliable and not credible enough to pursue the case or prosecutors may disbelieve the victim's denials, but hold negative feelings for being lied to. 	<ul style="list-style-type: none"> • Assist and support traumatized victims and refer them to other service providers as appropriate. • Where possible, victims should be able to choose whether they would prefer to speak to a female prosecutor. • Given that delayed reporting of gender-based violence is common, this should not affect the commitment of prosecutors. • Some evidence may have been lost because of delayed reporting, but a full investigation should be undertaken and the available evidence reviewed. • Prosecutors should also be prepared to identify expert witnesses, if their jurisdiction permits. It may be necessary to educate judges if the victim's reaction to trauma appears problematic or counter-intuitive.

Fear of retaliation and further violence. Fear is cited as among the leading reasons expressed by victims for opposing prosecutions. Some victims may experience specific threats and/or pressure from the perpetrator, while others fear that the perpetrators will become more violent if they report an incident and participate in the criminal justice process. Research on intimate partner violence indicates that victims' fears are accurate.

IMPACT ON VIOLENCE AGAINST WOMEN VICTIMS	PROSECUTORIAL STRATEGIES IN RESPONSE
<ul style="list-style-type: none"> • Reporting and testifying against the perpetrator may be seen as ending the relationship, an act that dramatically increases the victim's risk of serious injury or death at the hands of her intimate partner. • Victims of intimate partner violence face the dilemma of how best to ensure their safety and their children's safety. This may explain why research suggests that victims do not generally report their initial intimate victimization, but typically suffer multiple assaults and/or related victimizations before they contact authorities and/or apply for protection orders. • In intimate partner violence situations, the perpetrator may threaten to take the children or harm the children if the victim leaves. He may have isolated the victim from her family and friends as well as lower her self-esteem convincing her that she is worthless or that the violence is her fault. He may make excuses and minimize his violence or beg for forgiveness and promise to change. He may threaten to commit suicide if she leaves. 	<ul style="list-style-type: none"> • Take appropriate measures to address the victim's fear of retaliation or fear of further violence or an escalation of violence. • Seek pre-trial detention or no-contact orders, where the law provides for these measures and victims are at risk and/or request special courtroom measures. • Establish effective collaboration with victim advocates and service agencies so that they can assist the victim in developing a safety plan. • Inquire about prior unreported domestic violence for evidence of crimes that may be charged depending on statutes of limitations and develop an accurate offender history to determine appropriate prosecution and sentencing recommendations. • Recognize the temporary nature of the so-called "honeymoon" period and counsel the victim to make an informed decision. Contact between the perpetrator and victim during the process may allow opportunities for the perpetrator to intimidate the victim.

Gender bias of criminal justice actors. Gender bias and the acceptance of the subordination of women in many countries still influence the understanding of violence against women by criminal justice professionals. Such professionals may condone or falsely believe that women bring on violence by their actions, such as arguing with a spouse or boyfriend, dressing provocatively to go out, or walking alone at night. Women are often blamed for the violence perpetrated against them.

IMPACT ON VIOLENCE AGAINST WOMEN VICTIMS	PROSECUTORIAL STRATEGIES IN RESPONSE
<ul style="list-style-type: none"> • Victims withdraw cooperation with law enforcement and legal professionals during proceedings at an early stage if worried about such attitudes. • If they report, police may not believe them or dissuade them from registering complaint and/or treat them with disdain or hostility. • Victims may be subject to aggressive cross-examination based on negative gender stereotyping. • Interpretation of evidentiary rules may be biased against victims, e.g. her past sexual history may be used to discredit her complaint, or the victim must prove she resisted the perpetrator. • Victims' mistrust of the system increases. 	<ul style="list-style-type: none"> • Treat all victims with respect and concern to avoid secondary victimization by the justice system. • Object to any evidence related to a victim's "bad" character (e.g. substance abuse) that does not directly relate to the incident being prosecuted. • Consider calling experts to provide evidence on the dynamics of violence against women to counter any harmful stereotyping in court.

Mistrust or fear of the criminal justice system. Victims may have had other unsatisfactory or even hostile experiences with the criminal justice system and therefore either distrust the system or do not believe that the system can help them.

IMPACT ON VIOLENCE AGAINST WOMEN VICTIMS	PROSECUTORIAL STRATEGIES IN RESPONSE
<ul style="list-style-type: none"> • Victims fear they will not be believed or treated with disdain. • In intimate partner violence cases, the intention of the victim in calling the police may be to stop the violence rather than to see the perpetrator prosecuted. She may be concerned that the criminal justice system will treat the perpetrator unfairly. • Victims may be afraid of the criminal justice process itself, from undergoing a forensic medical examination, to testifying in court. • Victims may fear that she will be arrested on unrelated criminal matters, e.g., illegal immigration status, sex work, or drug use. • In some countries, there is a crime of "false allegation of sexual offence", where the victim is liable for the same sentence as would have been imposed in the case of conviction. This risk of reverse penalty can have a chilling effect on the victim's participation in the criminal justice system. • Victims want the violence to end, to be safe and protected. If they do not believe the justice system can help them, they will not be cooperative. 	<ul style="list-style-type: none"> • Keep victims informed of the progress of their case to alleviate mistrust and fear in the system, as well as ensuring timeliness in criminal proceedings. • Meet victims early to develop rapport and to provide information. • Assess vulnerabilities of victims first, before tactical considerations, such as what kind of witness they may make. • If the victim may be economically dependent on the perpetrator, the prosecutor could refer her to community assistance, provide information about shelters, social support and job training.

Fear of stigmatization or pressure from community. Victims may be ashamed or afraid to make the violence public.

IMPACT ON VIOLENCE AGAINST WOMEN VICTIMS	PROSECUTORIAL STRATEGIES IN RESPONSE
<ul style="list-style-type: none"> • Victims may fear the loss of family approval. • The victim may not have any support from family or friends. • Family, friends, or even her children, in situations of spousal abuse, may pressure her to drop the case. • The community may minimize the violence, make excuses or blame the victim for the violence. • The victim may fear she will lose her status in her community or her husband may leave her if she continues the prosecution. 	<ul style="list-style-type: none"> • Take measures that ensure confidentiality. • Apply for closed court hearings and ban on publication. • Get involved in community awareness-raising programmes. • Communicate the message that violence against women is a crime and will not be tolerated. • Refer victims to support services.

MODULE
04

**Conducting gender-sensitive
interviews**

PURPOSE OF MODULE 4

The purpose of this module is to examine the role of the prosecutor in collecting the evidence, with a specific focus on the quality of the victim's statement. The previous module discussed how victimization, both primary and secondary, experienced by the victim can affect her participation in the criminal justice system, including the quality of her statement. This module provides an overview of skills in conducting gender-sensitive interviews, with particular emphasis on the importance of the first stage of an interview: building rapport and alleviating the victim's fears.

LEARNING OBJECTIVES

At the end of this module, participants will have the necessary knowledge and skills to:

- Appreciate the role of victims and understand their rights according to international law
- Conduct a gender-sensitive interview of victims
- Understand and respond when dealing with uncooperative or recanting victims

CONDUCTING GENDER-SENSITIVE INTERVIEWS OF VICTIMS

Substantive material

The role of victims and their rights under international law

The role of the victim in criminal cases may vary depending on each jurisdiction. Victims of violence against women typically act as a key witnesses for the prosecution. They are not clients of the prosecution nor are they generally viewed as parties to the criminal proceeding. In certain States, however, they can be *partie civile* to the case and have the right to legal counsel. It is important to point out that because the victim is not the plaintiff in the criminal case, it is not her responsibility to push the case through each phase of the system. Once the victim reports to the police, the State has the responsibility to investigate the case, prosecute the offence where there is sufficient evidence and ultimately hold the offender accountable by punishing his criminal behaviour.

A number of instruments contain relevant international standards and norms that are applicable to every legal tradition.

*The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.*⁵⁷ This instrument sets out the following basic rights that States should consider ensuring to all victims of crime and abuse of power:

- Victims should be treated with compassion and respect for their dignity
- Victims are entitled to access the criminal justice system and have prompt redress
- Victims should be informed of their rights, their role and the scope, timing and progress of their case and the disposition of their case
- Victims should be allowed to express their views and concerns and to have them presented and considered at appropriate stages of the criminal case
- Victims should have proper assistance throughout the legal process

⁵⁷ General Assembly resolution 40/34, annex.

- Measures should be taken to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as their families, from intimidation and retaliation
- Unnecessary delays in the disposition of cases should be avoided
- Victims are to be entitled to fair restitution and compensation
- Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means

The updated Model Strategies and Practical Measures. This instrument calls for States to prioritize the safety for victims throughout all stages of the criminal process, as well as contains a chapter on victim support and assistance.

*The Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.*⁵⁸ This instrument sets out the following basic rights and specific measures that States should take to ensure these rights:

- The right to be treated with dignity and compassion
- The right to be protected from discrimination
- The right to be informed
- The right to be heard and to express views and concerns
- The right to effective assistance
- The right to privacy
- The right to be protected from hardship during the justice process
- The right to safety
- The right to reparation
- The right to special preventive measures

*United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice.*⁵⁹ This instrument calls for a number of measures to provide effective protection to child victims of violence through the criminal justice process and avoid their secondary victimization. It calls for specific measures to prevent further hardship and trauma that may result from their participation in the criminal justice process:

- Special services, physical and mental health care and protection that take into account gender and are appropriate to the age, level of maturity and needs of the child in order to prevent further hardship and trauma and promote the physical and psychological recovery and social reintegration of child victims of violence
- Age-appropriate medical advice and counselling and physical and mental health care and support for children who have been subjected to sexual abuse, and especially girls who have become pregnant or children living with HIV/AIDS or other sexually transmitted diseases as a result of the abuse

⁵⁸ Economic and Social Council resolution 2005/20, annex.

⁵⁹ General Assembly resolution 69/194, annex.

- Assistance from support persons commencing at the initial report and continuing until such services are no longer required
- Measures to ensure that professionals who are responsible for assisting child victims make every effort to coordinate support to avoid unnecessary procedures and limit the number of interviews

*The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.*⁶⁰ This instrument calls on States to ensure the following:

- In jurisdictions where a victim/survivor has standing in criminal cases, affordable legal services and, for those without sufficient means or when the interests of justice so requires, legal services provided at no cost (legal aid, including legal information, legal advice, legal assistance and legal representation)
- If the means test for legal aid is calculated on the basis of the household income of a family, and the alleged perpetrator is a family member or the victim/survivor does not have equal access to the family income, only the income of the victim/survivor applying for legal aid is used for the purpose of the means test

On the basis of these international instruments, UNODC and its partners have developed tools that provide further guidance for prosecutors and other criminal justice professionals on the rights of victims of violence against women.

The UNODC Blueprint for Action recommends States to:

- Protect the rights of victims in the criminal justice system as well as develop minimum standards for victims who decide not to participate in or face obstacles in accessing the criminal justice process
- Ensure that victims of violence against women have a broad range of rights, including civil rights, economic rights, rights that protect their employment status in both public and private sectors and ensure specialized assistance, housing and legal aid
- Ensure that victims also have specific rights as participants in the criminal justice system, such as right to receive information, right to access to justice
- Guarantee that victims have the right to access State funded criminal injuries compensation funds, where they exist
- Enact legislation to provide for remedies when any of the rights are violated
- Ensure that victims are informed of avenues for recourse, including after exhaustion of domestic remedies

The UN Women *Handbook for Legislation on Violence against Women* provides further details on how the rights of victims should be protected during the criminal case. It states that legislation should:

- Allow the victim to decide whether or not to appear in court or to submit evidence by alternative means, including drafting a sworn statement/affidavit, requesting that the prosecutor present relevant information on her behalf, and/or submitting taped testimony

⁶⁰ General Assembly resolution 67/187, annex.

- Enable her to give evidence in court in a manner that does not require the her to confront the perpetrator, including through the use of in-camera proceedings, witness protection boxes, closed circuit television, and video link
- Ensure that victims testify only as many times as necessary
- Request closure of the courtroom during proceedings, where constitutionally possible
- Foresee a gag on all publicity regarding individuals involved in the case, with applicable remedies for non-compliance

Conducting gender-sensitive interviews of victims

In most jurisdictions, the testimony of the victim in violence against women cases remains the central piece of evidence put forth by prosecutors. Due to the nature of these kinds of crimes, with violence often perpetrated in a private space, there is usually no other witness than the victim herself. Given the importance of this evidence, care needs to be taken when interviewing victims in ensuring the perpetrator is held accountable. In addition, prosecutors should seek the victim's perception of risk or immediate threat of violence and her input regarding any conditions to be imposed on the accused during pre-trial release.

Due to the different legal traditions in each country, prosecutors meet the victims at different stages in the justice chain. Depending on the jurisdiction, prosecutors should meet the victim or the victim's lawyer as early as possible, in order to establish rapport with the victim or the victim's lawyer. In jurisdictions where the prosecutor is allowed to meet with the victim prior to the criminal hearing, prosecutors should review the rights and role of the victim, the role of the prosecutor and others in the criminal justice system, assess the risk or immediate threat of violence and obtain the victim's input.

The overall principle for prosecutors when talking to victims is that they should treat victims with courtesy, dignity, respect and particular sensitivity to the trauma they have experienced. How a prosecutor communicates with the victim at the very start is key to assisting the victim to provide a clear account of what happened. The victim needs to know that she is being listened to and that her changing justice needs are being understood and addressed. Information and the way it is communicated can empower her to make informed decisions regarding her engagement with the justice system.⁶¹

Pointers for preparing for interviewing the victim.

1. Never blame or judge the victim. No one, under any circumstances, deserves to be violated. It is important that you put the victim at ease by using safe and supportive language.
2. Listen to the victim. Permit free narrative by the victim. Give the victim time to tell you what happened in her own words (i.e., unstructured interview). If there are things left out of what you wanted to explore you can always come back to them with open-ended questions. When you ask a question, allow silence in the conversation for the

⁶¹ Additional information on how to prepare for interviewing the victim can be found in the UNODC/UN Women/TIJ *Handbook on Effective Prosecution Responses to Violence against Women and Girls*, section on interviewing the victim.

victim to compose her thoughts. While it is important to show compassion during the interview, do not become overly emotional or show your anger or frustration. Ensure that the victim has control over the flow of information and avoid the risk of imposing your own personal views of what the victim means to say.

3. Tell the victim that the violence was not her fault. Victims should be reminded and encouraged to recognize that the violation was not her fault and that she did nothing to deserve this offence.
4. Never ask the victim about her prior sexual history. It does not matter whether she has had other sexual partners.
5. Never ask her to repeat her story unnecessarily or ask unnecessary questions. Unfortunately, victims are often asked to repeat their story over and over again – to the police, doctor, psycho-social worker, and judges. Telling her story can be traumatic. Wherever possible, limit the number of times she is forced to recount the events of the crime.
6. Do not make promises that you cannot keep. The victim might seek reassurances from you that you cannot provide. For example, she might not want you to share parts of the report to others, but you will be required legally to provide the statement to others, such as the defence.
7. Be honest about the challenges of the legal process. Prosecuting a case can take a long time and this can be difficult for a victim. If she testifies (and in most cases you will need her testimony), she will likely be subject to an unpleasant cross-examination. However prosecutors should be sensitive to the fact that the victim might feel she is being discouraged to continue with the case.
8. Confidentiality. Keep personal information about the victim completely confidential. Redact personal information (such as the address of the victim) from any court documents that will be filed and made public. Only share information about the offence when it is necessary to provide assistance and intervention (such as a referral), and even then, only with the written permission of the victim.
9. Ensure she understands the language. Be ready to obtain an interpreter if necessary. If you are required to obtain an interpreter, check with the victim if the interpreter is appropriate or not. Ensure that the victim feels comfortable with the interpreter and that there are no concerns related to gender or other factors. Allow twice the amount of time for the interview involving an interpreter.
10. Try to understand the victim's challenges. Victims may have multiple problems, as perpetrators often choose victims that are already vulnerable. They may have difficulties making choices about being a witness. They may have low self-esteem, or may be reliving the past. They may be experiencing anxiety or aggression. They may feel isolated. They may be unable to express their needs or unable to plan for the future. They may be trying to please everyone. Be patient and take sufficient time with them.
11. Take any statement that the victim wants to hurt herself seriously. Consult your contact list of resources in the area, and refer the victim to a psycho-social counsellor. Ask for the victim's consent to call the counsellor on her behalf and try to arrange a meeting as soon as possible.

12. Ask the victim about safety concerns. Review the threat assessment and consider risk management issues.
13. In concluding the interview, ensure the victim is aware of your approachability.

During the debriefing sessions, keep in mind:

- Prosecutors may want to consider accommodating victims' requests to have relatives, friends or other support persons present during the interview, unless the presence of that person could be considered harmful.
- Prosecution agencies should consider whether they can accommodate a victim's request to speak to a prosecutor of a specific gender.

Special consideration when interviewing girl victims

Given their age, evolving capacities and the trauma they have experienced, girl victims require great care and sensitivity when being interviewed. They experience events, think, speak and behave differently from adults. Prosecutors should ensure that any contact with a girl victim allows her to participate in a meaningful manner in the justice process as well as protect her from further harm, including secondary victimization by the criminal justice system. For further information on dealing with child victims, see the UNODC/UNICEF *Handbook for Professionals and Policymakers on Justice in Matters Involving Child Victims and Witnesses of Crime*⁶² as well as the free on-line UNODC/UNICEF course for justice professionals dealing with child victims.⁶³

GUIDANCE FOR TALKING WITH GIRL VICTIMS

Avoid	Use
<ul style="list-style-type: none"> • Long sentences • Complicated sentences • The passive voice (e.g., "were you hit by the man?") • Negative voice (e.g., "didn't you tell somebody?") • Questions with more than one meaning • Double negatives (e.g., "didn't your mother tell you not to go out?") • Hypothetical situations (e.g., "if you are tired, tell me") • Frowning (as this can show negative judgment) • Tense body postures • Rushing her • Using your title or rank • Criticizing or judging a parent (even the abusive one) • Looking shocked 	<ul style="list-style-type: none"> • Short sentences • Simple sentences (age appropriate language) • The active voice (e.g., "did the man hit you") • Positive/leading sentences (e.g., "did you tell somebody?") • Questions with only one meaning • Single negatives (e.g., "did your mother tell you not to go out?") • Direct approach (e.g., "are you tired?") • Show interest and maintain appropriate eye-contact • Bring yourself down to the eye level of the child • Take time and build a rapport before asking about the incident • Introduce yourself by name • Provide assurances that she will not be in trouble talking about this • Provide assurances that you have talked with children about things like this

⁶² Available from: www.unodc.org/documents/justice-and-prison-reform/hb_justice_in_matters_professionals.pdf.

⁶³ Available from: www.unodc.org/justice-child-victims/login/login-form.jsp?lng=en.

KEY POINTS FROM THIS SESSION

1. An international legal framework exists for victim's rights. International basic rights for victims include being treated with compassion, dignity and respect, providing prompt redress, information and opportunities to express their views and concerns, protecting their privacy, and prioritizing their safety throughout criminal justice system.
2. Violence against women victim's testimony is a central piece of evidence put forth by prosecutors.
3. Conducting a gender-sensitive interview of the victim, particularly sensitive to their trauma, is essential to a successful prosecution (goes to the quality of a statement), as well as to reduce victim's secondary victimization.
4. Key interviewing skills include active listening, being non-judgmental and respectful, voice control, allowing for open narrative, avoiding to provide advice, but addressing her fears and concerns.
5. Good practices include allowing a support person to accompany the victim and providing the choice of speaking to a female prosecutor.

Possible options for delivering the material

PowerPoint presentation

**POWERPOINT PRESENTATION****General approach**

- Prosecutors should treat victims with courtesy, dignity, respect, and particular sensitivity to the trauma they have experienced
- In most jurisdictions, the testimony of the victim in cases of violence against women remains the central piece of evidence put forth by prosecutors

Creating an enabling environment

- Choose the appropriate place and time
- Ensure confidentiality
- Environment that makes victim feel safe

Communication with the victim

- Never blame or judge
- Active listening
- Tell the victim that the violence was not her fault
- Never ask her to repeat her story unnecessarily or ask unnecessary questions (e.g. irrelevant prior sexual history)
- Do not make promises that you cannot keep
- Be honest about the challenges of the legal process
- Ensure she understands the language
- Try to understand the victim's challenges
- Ask the victim about safety concerns

Some good practices when interviewing victims

- Allowing support persons during the interview
- Accommodating a victim's request to speak to a prosecutor of a specific gender

Video providing a demonstration of rapport-building during the interview

Consider preparing a local video of a national prosecutor who is conducting a gender-sensitive interview. This can focus on the first phase on the interview – rapport building.



A CANADIAN PROSECUTOR, WINSTON SAYSON BUILDING RAPPORT AND ALLEVIATING FEARS IN THE FIRST PHASE OF A GENDER-SENSITIVE INTERVIEW

In this short video, an experienced Canadian prosecutor is interviewing the mother of a victim who is a young girl who has been sexually assaulted. The video provides for a demonstration of only the first stage of interviewing, that is rapport building and addressing the victim and her family's fears and concerns.

Instructions: Show the video to the group and ask the plenary to share their reactions to the film. Before watching the video, ask them to take notes of any techniques the prosecutor uses that they consider helpful or unhelpful.

Questions after the video:

1. What did you think of the job he did? What did he do well? What could he have done better?
2. Are there any techniques that you think you could use as prosecutors in your criminal justice systems?

Role play exercise for interviewing victims



ROLE PLAY: INTERVIEWING VICTIMS

In small groups, conduct an initial interview with the victim (one volunteer per group), focusing on the first stage of the interview: building rapport and addressing the victim's concerns and fears.

Advance preparation: This exercise requires substantive facilitators for each small group and one volunteer to play the victim. Provide instructions on the role play to the volunteer victims prior to this exercise.

Instructions: After getting into small groups, each group facilitator should review the instructions again. Allow ten minutes for each participant to conduct an interview with the victim volunteer. Ensure that they only practice the first phase, rapport building and addressing the victim's concerns and fears, and not to go into details of the incident. After each practice, allow for prosecutor peers to provide feedback.

After every one gets the opportunity to practice, return to the plenary and allow for comments by those playing the role of victim.

Handout to the volunteer victims

In playing a victim for this role play exercise, you will be asked to play a different type of victim five times in a small group to allow each of the five prosecutors in your group to have the opportunity to conduct the first stage of the interview – building rapport and addressing the victim's concerns and fears. You are not being requested to go into the incident at all and if this happens you can stop the role play and the facilitator should repeat that this role play is only to practice the first stage of an interview only.

Here are some suggestions as to how you might play a victim and the types of concerns you might have.

1. Hostile, antagonistic, uncooperative
 - Does not want him to go to jail
 - He says he is sorry, he will not do it again
 - Depends on his income, cannot afford to have him jailed
 - Nowhere else to live
 - Blaming the system – "I only called the police because I wanted to stop him, I did not think it would go this far"

(cont.)

2. Frightened, anxious, troubled
 - Afraid of seeing him
 - Afraid he will recognize you, fixate on your face
 - Worried you will not remember everything perfectly and that you might be charged with lying
 - Afraid of the unknown, do not know what questions the judge will ask you
 - Afraid of retaliation if you proceed
3. Uncomfortable, awkward, embarrassed
 - Privacy – afraid your name will be in the news, media in the courtroom, ostracized
 - Just want to leave this behind, want to forget about it because you cannot sleep.
 - Your whole family is losing sleep
4. Distraught, upset, crying
 - Father/family is upset about you going to court and you are not sure why
 - Feel isolated and would like your mom or friends with you in court
 - Afraid of crying on the stand, breaking down, embarrassing yourself
5. Unemotional, impassive, aloof
 - Lack of confidence in the system – what good will it do to proceed when nothing comes of it in the end
 - Does not want to talk about it again, it was so awful and does not want to relive it

DEALING WITH UNCOOPERATIVE OR RECANTING VICTIMS

Substantive material

There are a number of challenges that prosecutors often face when dealing with victims of violence against women. Trainers should review the challenges that arise in these cases, which include the following:

- Women who suffer violence, whether by intimate partners, male relatives or strangers, may not behave like victims of other crime and prosecutors should not expect them to.
- Victims may be perceived as hostile or uncooperative. The victim's reluctance in participating in the criminal justice process is often misunderstood by prosecutors who believe that the victim does not care so why should they.
- Victims may seem unbelievable to prosecutors. When a victim makes inconsistent statements or minimizes what has happened, prosecutors might view her as lying to them or the victim comes across as unreliable and not credible enough to pursue the case.

- Prosecutors may disbelieve the victim's denials, but hold negative feelings against the victim for having lied to them.
- If the victim remains in the relationship, the prosecutor might think that proceeding will waste the court's time.

The following information has been revealed by recent studies:

- A majority of intimate partner violence victims support the prosecution, even while they may express ambivalence about the prosecution publicly in court.
- Even in studies where the majority of victims opposed prosecution, after trial they had changed their minds, with some reporting that the court experience gave them a "sense of control" or made them "feel much safer".
- Victims who are supported and treated in a respectful and compassionate manner and empowered by skilled professionals are not only less likely to withdraw support from the process at a later date, but also more likely to feel able to tell what they know in a clear and coherent manner.
- Studies show that the way victims are treated (i.e., with respect) is as important as eventual outcomes of the case. For example, in cases that resulted in acquittals but where victims were supported throughout by a support worker, while they were disappointed in the outcome none regretted pursuing the case.
- The more prosecution-related burdens are placed on victims, the less likely they are to cooperate. Examples of such burdens include requiring the victim to sign a complaint in order to file charges or to attend a charging conference within days of the arrest of the abuser.
- While perceptions of victims concerning the dangerousness of suspects are well-founded and are a good predictor of subsequent abuse, research has found that victims' preference of how the case should be prosecuted are not good predictors of subsequent abuse. Victims who wanted charges dropped were just as likely as those who did not want them dropped to be re-victimized. Victim cooperation with prosecutors did not prevent recidivism. In other words, if prosecutors proceeded with uncooperative victims, these victims were no more nor less likely to be re-victimized than victims that cooperated with prosecutors. This means that although prosecutors should listen to victims, they should explain to victims and to defendants that the decision to prosecute cannot be based solely on victim preferences.
- A study found that the non-cooperation of victims was reduced in sites with specialized prosecution programmes, victim advocacy measures and specialized domestic violence courts. These specialized response programs generally include fast track scheduling, reducing victim vulnerability pending trial, increasing victim contact pending trial, and victim-friendly proceedings that remove, as much as possible, victim involvement to proceed with prosecution.

Prosecutors should not allow the victim's opposition to automatically stop them from prosecuting cases. If prosecutors find that the overwhelming percentage of victims consistently oppose prosecution, they must examine both their and law enforcement's interaction with victims to increase victim support. Different approaches could be taken when dealing with unwilling or uncooperative victims.

Early contact with the victim to provide information about violence, the criminal court process and her role in it. Often the unwilling witness problem can be avoided by taking the time to explain the steps of the criminal justice system. She should also be provided with information about community resources which can provide her with support or protection (such as shelters, public assistance, victim advocates) and assistance to facilitate her contact with such services. Research shows that meeting with the victim early in the criminal court process can result in more women participating in the process.

Efforts to understand the victim's reluctance and to address it. For example, in intimate partner violence cases, the victim may think that the prosecutor expects her to leave the abuser. However, the prosecutor can make it clear that the decision about the relationship is her decision, not the prosecutor's. The message to convey is that both share the goal of ending the violence in her life. Explain how holding the perpetrator accountable and offering him court ordered programmes can provide him with an opportunity to change.

Use of expert witnesses. Depending on national legislation, consider whether an expert witness should be called to explain the reason why the victim is uncooperative at court, recants her statement or fails to appear.

Use of subpoena. Depending on national legislation, consider requesting a subpoena to get the victim to testify in the case. Subpoenas are useful because they shield the victim from pressure from the abuser; she can tell him that it is not her decision to testify. However, it should be noted that not all victims will comply with the subpoena and forcing a victim to comply with a subpoena is not advisable as a general rule.

Use of victim statement. Depending on national legislation, consider submitting as evidence the transcript of the victim's testimony.

Proceed without victim testimony. Prosecutors and police should build their cases so that they can be proved without the testimony of the victim (e.g., prior statements, emergency communications such as emergency call records, photos of the victim, the defendant and the scene of the crime).

A number of additional factors that may be useful in dealing with unwilling or uncooperative victims include:

- Availability of female professionals to talk to
- The same prosecutor continues to deal with the case throughout the entire process
- A culture of belief and support
- A private and calming environment when dealing with the prosecutor
- Being treated as a whole person and not a case
- Being treated with respect
- Access to information about the process and being informed about case progress
- Meeting the prosecutor in person
- Being prepared for the trial, being able to re-read statements in time before the trial, not just minutes before
- The prosecutor is familiar with the facts of the case and has the skill to advocate in these types of cases

- Building cases, pursuing supporting evidence and presenting a believable narrative that explains the victim's behaviour
- Protective measures for victims and their family

Recognizing that victim recantation and refusal to cooperate are often the outcome of threats by the abuser, prosecutors should not react by threatening to prosecute or by prosecuting the victim. In some countries, victims are subpoenaed or ordered to appear in court. As mentioned above, subpoenas can alleviate the pressure on a victim from the abuser to drop charges. Subpoenas also provide the victim with documentation of the necessity to be absent from work. The prosecutor needs to inform the victim of consequences of disobeying a subpoena. However, prosecutors should understand that a victim of violence may have important reasons for failure to appear. Prosecutors should use their best judgment and discretion in each case to consider whether a citation for contempt is an appropriate response.

In some countries, a preservative measure by prosecutor is allowed by which the victim is interviewed subject to presence of a judge and/or presence of the defence counsel. The victim's testimony transcript taken through this measure can be admitted as evidence later in the court even without the victim's trial testimony or against the victim's will. At the early stage of the victim's interview, prosecutors should consider this measure, taking into account the victim's situation and attitude.

Depending on applicable domestic legislation, the prosecutor may be able to decide to continue the prosecution against the victim's wishes. In cases where there is sufficient evidence, the prosecutor may be able to proceed without relying on the evidence of the victim. If the prosecutor wants to continue the prosecution but feels the need to rely on the victim's evidence to prove the case, prosecutors will have to decide whether they can use the victim's statement as evidence without the victim having to be present in court, or whether they can help the victim to attend court by the use of special measures, or whether they should require the victim to give evidence in person in court against their wishes. Background information is crucial in helping prosecutors make the correct decision about how to proceed with the case.

KEY POINTS FROM THIS SESSION

1. Victims of intimate partner violence often do not cooperate with prosecutors for a number of reasons, including the desire to remain in the relationship, fear of retaliation or economic dependence.
2. The more prosecution-related burdens are placed on victims the less likely they are to cooperate.
3. Research shows that the majority of intimate partner violence victims support prosecution even if they express ambivalence in public. Among those who oppose prosecution, the majority reported that the court experience gave them a sense of control.
4. Victims who are supported and treated in a respectful and compassionate manner and empowered by skilled professionals are not only less likely to withdraw from the criminal justice system, but also provide better evidence.
5. Strategies to deal with reluctant victims include early contact, provision of support and information, understanding her reluctance and trying to address her concerns, availability of protective measures, use of an expert on gender-based violence at trial to explain reluctance, and ensuring comprehensive collection of all relevant evidence to avoid solely relying on the victim's testimony.
6. Non-cooperation of victims was reduced in sites with specialized prosecution programs, increased victim advocacy and specialized domestic violence courts.

Possible options for delivering the material

Large group exercise – case scenarios for brainstorming on ideas how to deal with uncooperative or recanting victims



CASE STUDY: UNCOOPERATIVE VICTIMS OR RECANTING VICTIMS

Instructions: Using the Common Course Cases, ask how participants would handle these cases if the victims become uncooperative or recant and what other approaches they might take.

1. Case scenario where the victim approaches the prosecutor prior to trial wanting the charges dropped.
2. Case scenario where the victim turns out to be a hostile or uncooperative witness during trial.

Small group work – case study exercise



CASE STUDY

Divide the large group into smaller groups. Assign each group one of the two Common Course Cases. Each group is to answer the following questions:

As a prosecutor, how would you proceed? What options would you have, which ones would you consider and why?

THE COMMON COURSE CASE #1 – SEXUAL VIOLENCE

In addition to the facts already provided, consider the situation where the prosecutor is meeting the victim the day of the trial. The trial is set for 9:30 am and the prosecutor has arranged a meeting with the victim for 8:00 am. The victim enters the prosecutor's office. She will not meet the prosecutor's eyes and says in a very quiet voice that she does not want to proceed with the charges.

THE COMMON COURSE CASE #2 – INTIMATE PARTNER VIOLENCE

V and her children stay in the shelter for three days and while she is in the shelter, she gets a visit from P who apologises and wants her to return home. She sends a letter to the prosecutor which reads: "Please drop the charges against P. He has not drunk anything since that night and we can handle this ourselves. There is no reason to waste everyone's time. The whole thing was blown up way too big. I am not worried about him unless he is drinking."

MODULE
05

**Examining the role of prosecutors
in ensuring comprehensive
investigations**

PURPOSE OF MODULE 5

The purpose of this module is to build the capacity of frontline prosecutors in ensuring comprehensive investigations and the collection of relevant evidence whatever their role and task may be at the investigation stage. Building on the discussion from modules 3 and 4 on how trauma can affect the victim in providing a statement as well as her engagement in the criminal justice system, this module focuses on the importance of full and comprehensive investigations. Ensuring that all available evidence has been collected can enable prosecutors to reduce their reliance on the victim's testimony, reduce the risk of retaliation by the perpetrator and increase the likelihood of a successful prosecution.

LEARNING OBJECTIVES

At the end of this module, participants will have the necessary knowledge and skills to:

- Ensure a comprehensive investigation and collection of all relevant evidence has taken place
- Assess forensic evidence

ENSURING COMPREHENSIVE INVESTIGATION AND COLLECTION OF ALL RELEVANT EVIDENCE

Substantive material

The investigation process represents the entry point to the criminal justice system. A comprehensive and gender-sensitive investigation is vital for ensuring accountability for crimes against women, eliminating impunity and providing protection to the victims. While investigative processes are typically conducted by police or other investigative agencies, prosecutors from different legal systems take on different roles and tasks during the investigation stage. They may conduct, direct or supervise investigations.

In any situation, prosecutors are to cooperate with police and other investigators to ensure the effectiveness, efficiency and fairness of prosecutions involving violence against women. In whatever legal system, prosecutors perform an active role in scrutinizing the lawfulness and propriety of investigations and the gathering of evidence, in deciding if a prosecution should commence or continue and in monitoring the observance of human rights by investigators.

Prosecutors play an important role in the investigation of gender-based crimes as they can determine whether all necessary and reasonable inquiries have been made before taking a decision to prosecute or not or before taking other decisions that may affect the course of justice.

TABLE: CHECKLIST FOR PROSECUTORS WHEN REVIEWING, SUPERVISING OR ADVISING THE POLICE INVESTIGATION

✓	Where there is “weak” evidence due to the inability of the victim to provide a clear account of what happened, the prosecutor should review the file to determine why this is the case. Does the woman have learning difficulties, mental health problems, was she drunk or drugged? How has the trauma and fear affected her ability to coherently or fully recount her experience?
✓	Where the reason for the opinion that there is no prospect of a conviction is the failure to identify the perpetrator, the prosecutor might review whether DNA testing has been conducted.
✓	Where the reason for the opinion that there is no prospect of a conviction is that the perpetrator could not be traced (his identity was known, but was never formally interviewed), the prosecutor could check to see what efforts have been made to trace him. (cont.)

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- ✓ Where the case turns on evidentiary issues that are connected to the victim, such as where the victim account was either regarded with suspicion by the police or not supported by other evidence or where the case file refers explicitly to the victim's credibility, prosecutors may consider interviewing the victim themselves.
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- ✓ Where the victim of sexual violence is a girl, prosecutors should review the evidence and or seek further evidence to determine whether the alleged offender has applied "grooming techniques". Prosecutors unfamiliar with the dynamics of sexual violence may overlook perpetrator's grooming tactics or misperceive common victim reactions to the violence as evidence of the victim's lack of credibility.
-
- ✓ Prosecutors should not use evidential difficulties to dismiss cases if they find that these difficulties are due to lack of care and commitment in the investigative process as a result of police perceived stereotyping and myth relying attitudes. In these types of cases, there is often a discriminatory response as compared with other crimes. This means that the amount of evidence needed to convince police and prosecutors that an offence has taken place is higher than in other cases or that the decision has been made before a full investigation has taken place.
-

The following information has been revealed by recent studies:

- In certain types of violence against women cases (such as sexual assault) there is little evidence of attempts to build cases. Rather, there is evidence of poor investigation and understanding of the law and more focus on discrediting the victim than building a case.
- A focus on building cases, especially when applied to sexual assault cases where consent is the likely defence, can increase the number of cases prosecuted and convictions obtained.

Prosecutors are to ensure that all available evidence has been collected, whether this is by the police, another investigating body or by prosecutors themselves. A full and comprehensive investigation can mean that prosecutors need to rely less on the victim's testimony and thereby reduce the risk of retaliation by the perpetrator and increase the likelihood of a successful prosecution.

Abiding by the standards for evidence collection

Whether prosecutors advise investigators or supervise or conduct the investigation, they should ensure that the investigation and collection of evidence take into account the unique needs and perspectives of victims of violence and respect their dignity and integrity, while abiding by standards for the collection of evidence.

Prosecutors must work with police and investigators to take the following action:

- Gather as much evidence as possible
- Ensure that proper investigative and search techniques have been used, so that evidence is admissible in court
- Ensure that investigators have conducted detailed, private and respectful interviews of victims and witnesses
- Make sure that, where possible, female officers are available if the victim so chose.
- Ensure that the police report on the incident is fully completed
- Conduct follow-up interviews for additional information and evidence, while minimizing the number of times the victim is forced to recount the incident

- Understand the relevant laws on violence against women (including the elements of the crime and special criminal procedures applicable to these offences)
- Understand and apply the concept of self-defence and predominant aggressor policies, where relevant

Trainers should make the following points during the discussion:

- In many jurisdictions, the practice is to rely primarily on the victim's testimony. Prosecutors should endeavor to ensure that evidence gathering makes victim-absent prosecutions possible.
- Prosecutors must work with police and investigators to gather as much evidence as possible and accurately identify all potential witnesses and ways to contact them or third parties that will remain in touch with them.
- Vital witnesses may include third parties that victims spoke to at the time of the incident, as well as family members, such as children.
- Prosecutors should be familiar with a range of evidentiary rules that are applicable to cases involving gender-based violence in their jurisdiction, such as (a) the use of expert witnesses, (b) forensic testimony and (c) exceptions to the hearsay rule in appropriate jurisdictions.
- Particularly relevant in cases involving girl victims of violence or witnesses to violence, prosecutors should consider the role of children as witnesses in consultation with child psychologist or other such experts.

TABLE: TYPES OF POSSIBLE EVIDENCE⁶⁴

STATEMENTS	PHOTOGRAPHS	MEDICAL/FORENSIC	DOCUMENT	OTHER EVIDENCE
Victim	Victim's injuries, with victim's consent	Top to toe examination of victim for injuries, evidence of force	Utterance of suspect	Cell phone calls
Neighbour	Suspect's injuries, if any (i.e. offensive injuries or injuries inflicted in self-defence by victim)	Swabs of potential areas of physical contact		Any previous history that can be relied upon as bad character including in relation to other partners
Eye witnesses	Scene of the crime (disrupted or destroyed objects, blood stains)	Body examination of suspect	Victim's demeanor	Emergency call recordings
Witnesses as to how victim is behaving before/ after the incident (i.e. capable of consenting)		Crime scene evidence forensic examination (fingerprints, body fluids, footprints)	Suspect's demeanor	Cell phone mapping

(cont.)

⁶⁴ See UNODC/UN Women/TIJ *Handbook on Effective Prosecution Responses to Violence against Women and Girls*.

STATEMENTS	PHOTOGRAPHS	MEDICAL/FORENSIC	DOCUMENT	OTHER EVIDENCE
Teachers		Hospital/emergency room records	Torn clothing	Voice message tapes
Colleagues at work		Toxicology (alcohol levels) including back calculation	Smeared makeup	Letter or email correspondence; change in behaviour/mood
Friends at school		Victim's spontaneous utterances made to medical staff	Disarray in house	Social network
			Victim's injuries (using diagram)	CCTV evidence
				Weapons
				Family court files

Sexual violence cases

In many non-stranger rape cases, it is highly likely that the defence will argue that the victim consented to the sexual act. Defining the behaviour that constitutes “consent” requires careful consideration and an understanding of how the definition of consent differs among national jurisdictions, social and sexual mores. Prosecutors need to be aware of the ways in which women have been discriminated against by traditional interpretations of behaviour constituting consent. Enduring gender stereotypes have required active or earnest resistance on the part of the victim in order to negate consent. This ignores the possibility that women submit to intercourse out of fear of greater harm. It also fails to acknowledge the range of coercive circumstances in which women are sexually assaulted. Sexual intercourse induced by duress of a non-violent nature is inconsistent with consent.

In sexual violence cases where consent is the issue, trainers should cover the following aspects:

- A victim statement (print or recorded) is crucial. Prosecutors should take measures to ensure that the statement is of sufficient quality and in line with evidentiary requirements to be admissible. They should examine the statement with respect to consent, focusing also on the issue of capacity to consent. The defence of consent should require evidence that there is at least some form of affirmative speech or action on the part of the victim, rather than from an inference of passivity or acquiescence.
- Eye witnesses or other witnesses can provide important information as to how victim is behaving before or after the incident (e.g., neighbour, teachers, colleagues at work, friends at school). Such behaviour can provide an indication as to whether the victim was capable to consent.
- The suspect’s statement is important if he confirms he had sex with the complainant. As mentioned, there should be at least some form of affirmative speech or action on the part of the victim, rather than an inference of consent based on passivity or acquiescence.

- Documentation of the crime scene is a key measure to discover and preserve physical evidence.
- In addition to physical evidence, the utterances of the suspect, the victim's and the suspect's demeanour, any torn clothing or other relevant information should also be documented at the crime scene.
- A forensic exam should be undertaken, but only if appropriate. This includes both the victim and the suspect.
- A toxicology exam of victim may be necessary in order to prove incapacity to consent. The legal basis concerning intoxication and consent should be reviewed to determine whether a person who is incapacitated, even by self-induced intoxication, is able give consent under the applicable law. If the victim says she was intoxicated, prosecutors should check to see if there is a toxicology report available.
- The victim's spontaneous utterances made to forensic staff or other personnel should be documented.
- Further important information may be available from cell phone records, through a cell phone mapping, or an analysis of the phone, call records, voice/text messages, images, cell site, as well as computer records.
- Prosecutors should consider using experts, such as anthropologists, psychologists or gender experts.

In sexual violence cases where the identity of the perpetrator is the issue, trainers should cover the following aspects:

- A victim statement (print or recorded) is crucial. Prosecutors should take measures to ensure that the statement is of sufficient quality and in line with evidentiary requirements to be admissible.
- Eye witnesses or other witnesses may be able to identify who the victim was with before or after the incident.
- If any suspect or suspects are identified, their statements and photographs of their injuries, if any, should be taken (for example offensive injuries or injuries inflicted in self-defence by the victim).
- Documentation of the crime scene is a key measure to discover and preserve physical evidence.
- Forensic evidence linking the accused to the victim or the crime scene can also be collected through a body exam of any suspect or the collection of DNA, fingerprints and other forensic evidence at the crime scene.
- Forensic evidence can be crucial to identify the perpetrator. Relevant exams include a top to toe examination of victim for injuries or evidence of force, and swabs of potential areas of physical contact. DNA testing and "rape kits" are useful in gathering evidence for sexual assault cases, if administered in the required timeframe and according to established procedures. However, in some jurisdictions, there is a lengthy backlog to testing the DNA samples collected from rape kits. Prosecutors should follow-up with relevant staff to ensure that such evidence is collected and tested in a timely manner.
- Hospital and emergency room records can provide useful information.

- In addition to physical evidence, the utterances of the suspect, the victim's and the suspect's demeanour, any torn clothing or other relevant information should also be documented at the crime scene.
- Further important information may be available from cell phone records, through a cell phone mapping, or an analysis of the phone, call records, voice/text messages, images, cell site, as well as computer records.

Intimate partner violence cases

In intimate partner violence cases, trainers should cover the following aspects:

- A victim statement (print or recorded) is crucial. Prosecutors should take measures to ensure that the statement includes reference to previous intimate partner violence, if relevant, as well as responses to risk assessment questions.
- Eye witnesses could include family members, including children.
- Other witnesses could include neighbours, friends, colleagues at work, or classmates at school who could speak to any change in the victim's demeanour and behaviour.
- The suspect's statement may contain important information. In such cases, suspects often talk to police to minimize or provide excuses for the violence.
- Photographs of the victim's injuries can reveal not only the visible traces of the most recent incident but can be useful to document past abuse if taken over time.
- Photographs of the suspect's injuries, if any, should be taken (for example, offensive injuries or injuries inflicted in self-defence by the victim). Prosecutors need to be aware of complex cases, such as allegations of an assault committed by the woman or mutual allegations of violence.
- Photographs of crime scene should be taken (for example of overturned or damaged furniture, blood stains, etc.).
- In addition to physical evidence, the utterances of the suspect, the victim's and the suspect's demeanour, any torn or smeared clothing, any disarray of the house or other relevant information should also be documented at the crime scene
- A top-to-toe examination of victim for injuries may be needed to collect evidence of any use of force.
- Hospital or emergency room records can provide useful information.
- The victim's spontaneous utterances made to medical staff should be documented.
- A diagram of the victim's injuries is a useful tool. Prosecutors need to be aware of complex cases, such as strangulation of victims by perpetrators.
- Emergency call recordings or reports may contain useful information. Most reports of intimate partner violence are made by the victims. Emergency call tapes of such incidents are important as they may contain possible excited utterance evidence. If the call was made by a third party, prosecutors should identify potential witnesses.
- Prosecutors should also review the suspect's previous police records and bail history, if any, as well as any records of previous intimate partner violence incidents, and/or a previous risk analysis.

- Prosecutors should also check for the existence of any civil protection order. These files may contain information on prior uncharged crimes that may be prosecuted along with more recent charges.
- Prosecutors should consider using experts, such as anthropologist, psychologist or gender experts.

KEY POINTS FROM THIS SESSION

1. Prosecutors scrutinize the lawfulness and propriety of investigations and the gathering of evidence and therefore play an important role in ensuring the comprehensiveness of investigations in cases of violence against women.
2. In certain types of violence against women cases, research shows that little efforts are made to build cases, as the focus is predominately on discrediting the victim's statement.
3. Prosecutors need to be careful when assessing 'weak' evidentiary cases, whether this relates to an inability of the victim to provide a clear statement, to a lack of forensic evidence or a lack of care and commitment in the investigative process, as a result of the police engaging in stereotyping and relying on myths.
4. A full and comprehensive investigation can mean that prosecutors are able to reduce their reliance on the victim's testimony and thereby reduce the risk of retaliation by the perpetrator and increase the likelihood of a successful prosecution.
5. Checklists are available to ensure comprehensive evidence is collected for sexual violence cases where consent is in issue, sexual violence cases where identity is in issue and intimate partner violence cases.

Possible options for delivering the material

PowerPoint presentation



POWERPOINT PRESENTATION

Collection of all available evidence

- Gathering all relevant statements
- Photographic evidence
- Medical/forensic evidence
- Expert witnesses
- Electronic and other types of evidence
- Evidence of prior acts of violence

Example: types of possible evidence

Statements	Photographs	Medical/forensic	Document	Other evidence
Victims	Victim's injuries, with victim's consent	Top-to-toe examination of victim for injuries, evidence of force	Utterance of suspect	Cell phone calls
Neighbours	Suspect's injuries, if any (i.e. offensive injuries or injuries inflicted in self-defence by victim)	Swabs of potential areas of physical contact		Any previous history that can be relied upon as bad character including in relation to other partners
Eye witnesses	Scene of the crime (disrupted or destroyed objects, blood stains)	Body examination of suspect	Victim's demeanour	Emergency call recordings

(cont.)

Use of expert witnesses

- Clarify popular myths regarding violence against women
- Explain the victim's perplexing behaviour
 - post-traumatic stress disorder
 - dynamics of domestic violence or sexual abuse
- Analyse and explain issues relating to medical and forensic issues
- Explain issues related to child abuse
 - continuing "love" for the perpetrator despite the abuse
 - dynamics and effects of "grooming"

Common course cases for a discussion on comprehensive evidence gathering



CASE STUDY

Instructions: Divide the large group into two or four smaller groups. Each group is given a case study.

Each group is to answer three questions:

- Q1. Identify the types of possible evidence.
- Q2. What further information would you like to see on the file?
- Q3. Who would be listed as witnesses?

Each group is to nominate a rapporteur who will present their answers to the plenary.

THE COMMON COURSE CASE #1 – SEXUAL VIOLENCE

In addition to the facts already provided, the police file that the prosecutor receives provides some more details to that already described. The police noted that V, according to her statement, took off her clothes immediately after the incident and threw them in the closet, as she did not want to use them ever again, and immediately took a shower. The police also made notes on a spontaneous remark of P when he and his father were at the police station: "I knew she wanted it so I gave it to her. She did not say no". Thereafter, P's position was that nothing happened.

THE COMMON COURSE CASE #2 – INTIMATE PARTNER VIOLENCE

In addition to the facts already provided, the police file notes that the son's call was made at the neighbour's home after the son ran out of the family home seeking help. When the police attended, they looked into the window and saw V lying on the floor not moving. The police noted that one of the kitchen chairs was smashed and there was a hole in the plaster of the wall. The police file noted an utterance of P as the police removed him from the house: "I hardly touched her". The police took V to the local hospital.

Other case study scenarios for a discussion on comprehensive evidence gathering



CASE STUDY

Instructions: Divide the large group into three smaller groups. Each group is given a case study.

Each group is to answer three questions:

- Q1. Identify the types of possible evidence.
- Q2. What further information would you like to see on the file?
- Q3. Who would be listed as witnesses?

Each group is to nominate a rapporteur who will present their answers to the plenary.

Case study 1: Sexual violence where consent is the issue

In mid-November 2015, V had not gone to her college classes for over two weeks. Her parents noticed that she had been despondent and irritable for a while. Worried about her, V's father tried to find out why. V eventually told her father that one of her professors, Mr. P had asked her if "she wanted to have an excellent mark for his class" in exchange for sex. She told her father that in the afternoon of 26 October 2015, after a physical education lesson, Mr. P had asked V to stay and he had sex with her. V's father sent a denunciation letter to the police.

In the initial investigation, Mr. P admitted to having a relationship with V but rejected that he had forced her to have sex with him. He said V volunteered to do it. However, when questioned by the police, V said that Mr. P had forced her to have sex with him in a male toilet of the college. No one else was in the male toilet at the time and that she had run out and was embarrassed as two of her male classmates saw her come out of the male toilet with her blouse unbuttoned. During the investigation, the testimony of the complainant and the suspect remained contradictory. When Mr. P was interviewed by the prosecutor, he only admitted that he had made inappropriate gestures and behaviours, such as holding and kissing V in the male toilet, but affirmed that these actions were spontaneous. V was sent to a forensic examiner who reported that while her hymen was broken, there was no specific injury noted. The police interrogated V after receiving the report and V admitted to having consensual sex with her boyfriend. After receiving the denunciation letter, the college told the police that Mr. P had taught at the school for ten years and there had never been any formal complaint prior to this one.

V, a student in the third year of college, was 21 years old at the time of the incident. Now she no longer goes to college. She says she is scared and does not want to go to school again.

Questions:

- Q1. Identify the types of possible evidence.
- Q2. What further information would you like to see on the file?
- Q3. Who would be listed as witnesses?

Points to cover:

- Victim statement. Prosecutors should look at statement with respect to consent and capacity to consent. The defence of consent should require evidence that there is at least some form of affirmative speech or action on the part of the victim, rather than an inference of consent from passivity or acquiescence.
- Eye witnesses or other witnesses can provide information as to how a victim is behaving before or after the incident (e.g., neighbour, teachers, colleagues at work, friends at school), which could speak to the issue of capacity to consent. In this case, relevant witnesses include the parents and the two male classmates who saw her rush out of the male toilet.
- Statement of the suspect. At first he confirms he has sex with her with her consent, then in his next statement, he says they only kissed. Is there is at least some form of affirmative speech or action on the part of the victim, rather than passivity or acquiescence?
- Documentation of the crime scene.
- Forensic exam for victim and suspect, if appropriate. Was the forensic exam of the victim necessary and appropriate in this case?
- Experts, such as anthropologists, psychologists or gender experts.
- Sexual intercourse induced by duress of a non-violent nature is inconsistent with consent. In this case, the position of authority (professor over student) should be taken into consideration when determining consent.

Case study 2: Sexual violence where identity is the issue

V, a single woman working in a travel agency was celebrating her 25th birthday with a group of female friends at a nightclub. Throughout the evening, three young men sent a number of complementary non-alcoholic drinks to the women's table. Later in the evening, V felt dizzy and warm so she told her friends that she was just going out to get a breath of fresh air. One of her friends saw the group of three men also leave at the same time through the same back door of the club as V had just left. When V did not return after 30 minutes, her friends became worried and went out to find V. They found her in an alley way close by, on the ground unconscious, with her clothes disarrayed and her underwear torn.

An ambulance was called and she was taken to the nearest hospital. The doctor conducted a physical exam, a blood test and called in a forensic examiner. The blood test revealed that V had the drug Rohypnol (Flunitrazepam) in her bloodstream. The forensic examiner noted external genital injury and collected DNA evidence (semen). When questioned by the police, V told them that she remembered going outside for some air but nothing else after that until she woke up in the hospital.

Questions:

- Q1. Identify the types of possible evidence.
- Q2. What further information would you like to see on the file?
- Q3. Who would be listed as witnesses?

Points to cover:

- Victim statement. Prosecutors should look at statement with respect to consent and capacity to consent. Eye witnesses or other witnesses who might be able to identify who the victim was with before or after the incident. Prosecutors need to talk to people at the nightclub (bartender, waiter, regulars, bouncers, etc.) to see if anyone knew the three men. They should check whether the nightclub had CCTV cameras and view the footage.
- Documentation of the crime scene. Prosecutors should review DNA and other forensic evidence linking the accused to the victim or to the crime scene. Did the police go to the alley to see if there was any physical evidence at the scene (footprints, fingerprints, etc.)?
- Relevant exams to collect forensic evidence include a top to toe examination of victim for injuries or evidence of force, and swabs of potential areas of physical contact.
- Information to document at the crime scene includes torn clothing.

Case study 3: Intimate partner violence

The police received a telephone call from Ms. N reporting that her neighbour's nine year-old son had come to her door crying that his father and mother were fighting. The police could hear crying in the background. Police officers were dispatched immediately to the address. When the police arrived at the address given, they saw Ms. N at home in front of her open door with a young boy who appeared upset. She pointed out the house where the boy had run from. The little boy asked the police to help his mother.

As the police approached the front door, they could see through the window a woman lying on the floor of the kitchen not moving and a man eating at the table. Upon knocking, the man answered the door, smelling of alcohol, red in the face and sweating. Laughing, he pointed to his wife saying "there is my lazy wife, sleeping as usual". The police checked the woman on the floor, who was awake, appeared distraught and the front of her blouse was torn. The police asked how she was. She said that she was okay. Her voice was breathless and raspy. The police explained that there had been a report of a disturbance at this residence and that the police were there to check on the safety of the occupants.

One police officer took the woman's statement. V reported that her husband had come home late that evening. When he walked in the door, she could see that he was angry and drunk. He asked her where his dinner was. She had put it away over an hour ago as it was getting cold. She was just about to go to the kitchen to reheat it when he grabbed her from behind and started hitting her in the face. He then threw her against the wall. She fell and he started kicking her. The last thing she remembered was his hands on her throat.

The other police officer took the husband to the police car to question him. On the way to the car, the husband uttered spontaneously "I hardly touched her". Once at the car, the husband said "she deserved it, she is always late with my dinner. I am the one working hard all day to earn the money to feed and clothe her and the children and the very least she could do was have supper ready in time."

Questions:

- Q1. Identify the types of possible evidence.
- Q2. What further information would you like to see on the file?
- Q3. Who would be listed as witnesses?

Points to cover:

- The victim statement should include reference to previous domestic violence if relevant.
- Eye witnesses could include family members, including children (the nine-year-old son).
- Other witnesses could include neighbours, friends, colleagues at work and school who could speak of the change in demeanour. In this case, the neighbour is a witness.
- The suspect's statement may contain important information. In such cases, suspects often talk to police to minimize or provide excuses for the violence.
- Photographs of the victim's injuries can reveal not only the visible traces of the most recent incident but can be useful to document past abuse if taken over time.
- Photographs of the suspect's injuries, if any, should be taken (e.g., offensive injuries or injuries inflicted in self-defence by the victim). Prosecutors need to be aware of complex cases, such as allegations of an assault committed by the woman or mutual allegations of violence.
- Photographs of crime scene should be taken (e.g., overturned or damaged furniture, blood stains, etc.).
- In addition to physical evidence, the utterances of the suspect, the victim's and the suspect's demeanour, any torn or smeared clothing, any disarray of the house or other relevant information should also be documented at the crime scene
- A top-to-toe examination of victim for injuries may be needed to collect evidence of any use of force.
- Hospital or emergency room records can provide useful information.
- The victim's spontaneous utterances made to medical staff should be documented.
- A diagram of the victim's injuries is a useful tool. Prosecutors need to be aware of complex cases, such as strangulation of victims by perpetrators.
- Emergency call recordings or reports may contain useful information. Most reports of intimate partner violence are made by the victims. Emergency call tapes of such incidents are important as they may contain possible excited utterance evidence. If the call was made by a third party, prosecutors should identify potential witnesses.
- Prosecutors should also review the suspect's previous police records and bail history, if any, as well as any records of previous intimate partner violence incidents, and/or a previous risk analysis.
- Prosecutors should also check for the existence of any civil protection order. These files may contain information on prior uncharged crimes that may be prosecuted along with more recent charges.
- Prosecutors should consider using experts, such as anthropologists, psychologists or gender experts.

FORENSIC EVIDENCE

Substantive material

The fact that some forms of violence against women usually leave physical evidence can be both a benefit and a challenge.

BENEFITS	CHALLENGES
<ul style="list-style-type: none"> • When collected and analysed, forensic evidence might be able to corroborate the victim’s account • Identify the perpetrator • Place the perpetrator at the scene • Establish use of force or resistance • Indicate an inability to consent due to the influence of alcohol and drugs or an otherwise diminished mental capacity 	<ul style="list-style-type: none"> • Forensic evidence is not always available, collected or analysed • The State might lack capacity to collect and analyse forensic evidence • The victim might inadvertently compromise the evidence by washing or delayed reporting • The form of violence, such as psychological violence, may not produce forensic evidence • Collection can be inconsistent or limited in quality and scope

In some States, a medico-legal certificate issued by the government authorities documenting the victim’s injuries, is formally required by procedural or evidentiary laws in order to proceed with prosecution. Prosecutors, to the extent possible, should ensure that the collection of medical and forensic evidence is done in a timely way, free of charge and in a manner that avoids secondary victimization. However, prosecutors should not rely only on such evidence to move forward with the prosecution.

A general over-reliance on forensic and medical evidence might cause the investigation to stop if such evidence is not available in a particular case. In this regard, trainers should make the following general points:

- Prosecutors should know who has conducted the forensic examination and who has analysed the findings, as this may result in different outcomes. Due to the invasive nature of such an examination, it should be performed by medical personnel rather than a crime scene technician. Personnel should be trained to perform rape exams. Prosecutors should check to ensure the collection of evidence is done correctly and completely. If the collection is done insensitively, this can have negative implications with respect to victim cooperation.
- Standardized packages, for example rape kits allow for medical and forensic exams to be done at the same time.
- Stabilizing, treating and engaging victims contributes to a more victim-centred evidence collection, which better meets their needs while at the same time promoting the criminal justice response.

- Often, victims need time to decide if and when they are ready to engage in the criminal justice process, so the medical forensic report could be a “blind report” taken at the appropriate time but not used until the victim makes her decision.
- Good practices include Sexual Assault Nurse Examiners (SANE) or Sexual Assault Forensic Examiners (SAFE) who provide extensive psychological, medical and forensic services for victims of sexual violence and who have medico-legal knowledge.
- Forensic and DNA analysis is costly. The State may not have the ability or the willingness to conduct the analysis or, due to underfunding, the analysis might be unreliable or subject to extensive backlogs. Legal requirements regarding the collection of medico-legal evidence can restrict which health-care providers may testify in court.
- Forensic examiners may exhibit gender biases which can influence the collection, processing and interpretation of the medico-legal evidence. They may not believe the victim or blame the victim, which can have implications for what evidence, if any, is collected. Some may view forensic testing as a tool to protect men from false accusations of rape. Prosecutors should be alert to any language in the report that raises concern (such as comments that the victim is experienced, old enough or promiscuous enough to consent to the sexual act).
- There are a number of reasons for not having a forensic examination, including difficulties in access, problems with seeking consent (e.g., the victim might be required to sign written consent to release of evidence to the police and prosecutor prior to the examination; she might not have decided yet whether she wants to proceed with a criminal investigation and prosecution), delays in reporting or lack of referrals to forensic examination.
- In general, it is considered a good working practice to ensure easily accessible, cost free (to the victim) male and female sexual assault examiners who are well-trained and authorized to gather evidence and testify in court and who are sensitized to the negative impacts of erroneous beliefs and attitudes regarding sexual assault and sexually assaulted women. These examiners should be located across jurisdictions and available 24 hours, seven days a week. It is important to ensure collaborative networks, with well-constructed standardized protocols.

These issues have implications for the work of prosecutors, including the following:

- Prosecutors should be aware of the challenges that victims undergo to access medical forensic examinations.
- The failure of the victim to consent to an intrusive and lengthy forensic medical examination should not result in automatic dismissal of the case.
- In jurisdictions which there is an over-reliance on forensic evidence, prosecutors should be in a position to rebut the suggestion that a lack of forensic evidence is a reason not to proceed with prosecution or to convict.
- The prosecutor can consider calling the victim’s doctor or health-care worker as an expert witness, if the victim consents to release privileged information about herself as a patient.
- The absence of a medico-legal examination or the absence of injuries or physical evidence, such as semen, should never preclude a prosecution.

Possible options for delivering the material

KEY POINTS FROM THIS SESSION

1. The fact that some forms of violence against women usually leave physical evidence can be both a benefit (corroborate victim's account; identify perpetrator) and a challenge (not always available or collected, delayed reporting, compromised, lack of capacity of forensic examiner).
2. Prosecutors need to be aware of the challenges victims undergo to access forensic exams. The fact that a victim does not consent to an intrusive and lengthy forensic exam should not result in automatic dismissal of the case.
3. An over-reliance on forensic and medical evidence may cause the investigation to stop if such evidence is not available.
4. Victims need time to decide if and when they are ready to engage in the criminal justice process, so the medical forensic report could be a "blind report" until the victim makes her decision.

Invite a local forensic expert to lecture

It would be useful to ask a local forensic examiner to make a presentation on this technical issue. If such an expert is not available, the information below can assist trainers in presenting this topic.

Guidance note for local forensic expert

In case you are able to invite a local forensic expert, she or he may request some guidance from you as to what to cover in the presentation. The bullet points below include some suggestions:

- Scientific basis of forensic examination, including the importance and technicalities of forensics (e.g., DNA, Locard's principle)
- Limitations and challenges of forensic evidence (not finding injuries or trace evidence does not mean rape did not happen; time element, delayed reporting)
- How to interpret forensic findings from prosecutorial perspective (concerns of over-reliance)
- Instructions by police or prosecutors to forensic examiners and the importance of broad language in order not to unduly restrict the forensic examination (e.g., a blood test might not show drug after six to 12 hours whereas could be found in urine for three to four days; ask for head to toe exam; not to limit exam to vagina only, as might have been anal rape)
- Advice by police or prosecutors to victims waiting to undergo a forensic examination (e.g., not to wash or not to comb her hair; if she has to use the toilet, not to use water or toilet paper, to provide her with a seat as gravity can compromise semen if she has no underwear and is required to stand too long)

- The need to ensure timely forensic exams where relevant and to consider whether such an intrusive exam is needed in all cases (e.g., 72 hours after the assault the value of evidentiary material decreases dramatically)
- Date rape drugs and drug-facilitated sexual violence
- Clothing (how to ensure a proper chain of evidence)
- Measures to avoid reflecting myths, stereotypes and personal opinion in the forensic report
- Any recommendations to raise performance of forensic exams in violence against women cases

PowerPoint presentation and plenary questions



POWERPOINT PRESENTATION

Types of forensic evidence

Type	Purpose
Hair (head and pubic)	May identify perpetrator
Semen, saliva and hair and fibres and debris	May link perpetrator to victim; may link victim to crime scene
Blood (for drug and alcohol analysis)	May indicate inability to consent
Urine (for drug and alcohol analysis)	May indicate inability to consent
Mouth, vagina and anus swab	May indicate recent sexual contact, may indicate penetration
Extra-genital injury (bruises, lacerations, abrasions, swellings, bites, scratches)	May indicate use of force
Fingernail scrapings	May indicate resistance, identify perpetrator
Ano-genital injuries (swellings, redness, tenderness, lacerations, contusions, abrasions, tears, bruises, bleeding of the vulva, introitus, hymen, vagina, cervix or anus)	May indicate use of force, penetration
Emotional state of victim	May indicate recent victimization
Clothing (tears, semen, fibres, soil, rips)	May indicate use of force, identify perpetrator, link victim to crime scene
Foreign debris (from victim's body and clothes)	May link victim to crime scene
Body examination of accused (i.e., penile swabs, clothes of accused)	May link perpetrator to the crime scene and to victim

Interpreting forensic evidence

A forensic report may contain different scenarios:

- Sometimes no injury is noted
- Limitations to the significance of genital injury
- Most (but not all) genital injury may be external
- Most (but not all) genital injury may be internal

Limitations of forensic evidence

- Challenges in rape cases where the mistaken belief defence is used
- Timing issues and delayed reporting
- Costs in collection and analysis
- Gender bias among forensic examiners
- Concerns regarding effectiveness of some of the common tools
- In intimate partner violence cases, does not consider repeated injuries



QUESTIONS TO THE PLENARY

What are the benefits of forensic evidence?

What are some of the challenges?



QUESTIONS TO THE PLENARY

Are forensic exams mandatory in certain cases according to your national laws?

Discuss the procedures – e.g., must they be conducted by authorized forensic examiners?

Is there a fee? Are there any guidelines to ensure sensitive examinations?

Common Course Cases for discussion on forensic evidence or lack thereof



CASE STUDY

Instructions: Divide the large group into two or four smaller groups. Each group is given a case study.

Ask each group how they would proceed in terms of prosecution. How would they interpret the forensic report? What are the challenges?

THE COMMON COURSE CASE #1 – SEXUAL VIOLENCE

In addition to the facts already provided, the file sent to the prosecutor also includes the report of the forensic examiner. He noted that there was no injury.

Points to cover:

- This is a situation where a victim delays reporting to the police and where forensic reports note no injury.
- No injury can be a common finding and does not in itself disprove sexual assault.
- Prosecutors should check whether the examination was limited by what could be assessed by the naked eye, due to lack of specialty tools and techniques.
- Prosecutors may still consider calling the medical expert to help the fact finder understand an exam concluding with a finding of no injury (without an expert medical explanation, fact finders might assume that lack of injury means no sexual assault happened).

THE COMMON COURSE CASE #2 – INTIMATE PARTNER VIOLENCE

In addition to the facts already provided, the file sent to the prosecutor also includes the report of V's family doctor. In the last three years, she has gone to her family doctor seven times and she has documented her injuries, such as a dislocated shoulder, missing tooth, bruises to her stomach and breast, sprained ankle and head concussion. The family doctor has prepared a medico-legal report, with V's consent and has included details of the injuries incurred during the last three years.

Points to cover:

- In many cases the victim might seek medical attention for the purpose of clinical care but not undergo a forensic examination. Victims likely first go to their health-care providers to address the clinical care concerns for the injuries. These health-care professionals might not be certified or trained to collect the medico-legal or forensic samples. This means the victim will have to undergo another medical examination for forensic purposes if she wants the evidence for prosecution. This could subject the victim to repeated discomfort and humiliation. It can also be frustrating if the victim does not know where to go for the forensic examination.
- In intimate partner violence cases, forensic reports do not consider the impact of repeated injuries over a period of time and do not measure the psychological injury.

Large group exercise – other case scenarios regarding forensic evidence or lack thereof



CASE STUDY: FORENSIC EVIDENCE

Instructions: Put to the group case scenarios and ask how they would proceed in terms of prosecution. How would they interpret the forensic report? What are the challenges?

Case scenario 1

V is raped by her neighbour, runs home and immediately tells her mother. Her mother and V go directly to the police station to make a report. They are told to go to the hospital right away to meet the forensic examiner. Unfortunately, the forensic examiner who is on call is busy and does not see V for the examination until 24 hours later. The forensic report states that the hymen is broken but that no semen and therefore no evidence of recent sexual activity and of sexual violence could be found. She used the toilet before the forensic examination but did not have a shower.

Points to cover:

There is no mention in the report there was genital injury. External genital injury is seen by speculum examinations that can fully visualize the vagina vault and cervix. The evidence collected from the cervix may yield the best DNA evidence, even in cases where the victim delayed reporting. While the vast majority of genital injury noted following sexual assault is external, internal genital injury is also possible and more likely in cases with digital or foreign object penetration.

- The failure to recover semen is not an indication that a sexual assault did not occur. There are a number of reasons why semen might not be recovered in these cases, for example (a) perpetrators might have used condoms, ejaculated somewhere else or not ejaculated at all; (b) other factors might suppress semen production, including alcohol or drug abuse, chemotherapy, congenital abnormalities, frequent ejaculation prior to the assault; (c) there was time delay between the assault and collection of evidence; (d) the victim bathed; (e) evidence was improperly collected; or (f) an object other than a penis was used for penetration.
- Timing in conducting forensic examination is critical. Ideally, evidence should be collected within the first 72 hours after the assault. Evidence can be lost if the

victim bathes or even uses the bathroom before undergoing a medical exam. However, advancing DNA technologies continue to extend time limits because of the stability of DNA and sensitivity of testing. These technologies are even enabling forensic scientists to analyse evidence that was previously unusable when it was collected years ago.

Case scenario 2

V reports to the police that she has been raped and is taken to the hospital. She waits for an hour until the forensic examiner arrives. She must then follow the forensic examiner, the police officer and nurse through the hospital to the examination room, where many people look curiously at her. V comes out crying from the examination room. No forensic exam of the victim is on file except for her blood test. The accused states that there was sex but that it was consensual.

Points to cover:

- Consent claims typically arise from a lack of evidence and documentation concerning force and coercion.
- Prosecutors should review the report for any documentation of physical findings related to whether force or coercion was used against victims. This might include findings that reveal injuries, drugs taken involuntarily or signs of a struggle.
- The absence of physical trauma does not mean that coercion or force was not used and it does not prove that victims consented to sexual contact. It should also be noted that some physical findings that suggest force are not necessarily indicative of sexual assault (e.g., cases in which the defence of consent to “rough sex” is used).

Case scenario 3

V reports that she was raped one year ago. There is no forensic report or medical records available.

Points to cover:

- While medical evidence is helpful for a prosecution, it is not necessary.
- It is the victim’s choice to seek medical attention and to consent to the use of her medical information in a criminal proceeding.

MODULE
06

**Deciding to prosecute
and selecting charges**

PURPOSE OF MODULE 6

The purpose of this module is to assist prosecutors in making decisions on whether to prosecute or not in cases involving violence against women and in selecting appropriate charges. This module builds on the previous modules. For instance, prior to deciding whether to prosecute or not, prosecutors need to ensure that they have before them all relevant evidence and, in assessing the evidence, prosecutors need to be mindful of the common misconceptions in cases involving violence against women.

LEARNING OBJECTIVES

At the end of this module, participants will have the necessary knowledge and skills to:

- Exercise prosecutorial discretion in cases involving violence against women by evaluating relevant factors focusing on case characteristics
- Identify relevant issues surrounding charge assessment
- Deal with diversion and restorative justice

EXERCISING PROSECUTORIAL DISCRETION – TO PROSECUTE OR NOT AND THE SELECTION OF CHARGES

Substantive material

Prosecutors typically control the doors to the courthouse, deciding who will be charged and what charges will be filed. In some jurisdictions, police may play a role in selecting charges for some crimes. However, generally it is the prosecutors' responsibility to approve the charge or decide whether the criminal case should proceed or not to the courts.

The extent to which prosecutorial discretion exists varies among criminal justice systems:

- In some countries, the prosecutor's discretion is very limited and the prosecutor, under the principle of strict legality, is required to prosecute every case where there is sufficient evidence to sustain a prosecution.
- In other countries, the prosecutor has the discretion to drop a case completely if there is no public interest in continuing a particular prosecution.
- In other countries, prosecuting authorities not only have the discretion whether or not to prosecute, but also have the ability to suspend the prosecution in certain cases, often subject to conditions and obligations on the suspected offender, provided he agrees.
- In some countries, prosecutors have a broad discretion to do what is fair and just in the circumstances.

While the prosecutor also exercises discretion in other decisions, such as pre-trial release, plea bargaining decisions or diversion, none is more critical than the initial decision to prosecute or not prosecute.

There are different criteria for exercising prosecutorial discretion. The exercise of discretion to prosecute depends on a range of factors such as the following:

- An assessment of the merits of a case relative to the elements of possible criminal offences

- The adequacy and quality of the evidence
- The likelihood of conviction
- A consideration of the public interest

The exercise of the discretion whether or not to prosecute is an onerous one as the decision can have serious consequences for the suspect, for the victim and for the community. In many States, there are no legislative or judicial guidelines about charging and a decision to not prosecute is not subject to review.

Some countries have developed specific guidelines on prosecuting sexual offences. In South Africa, for example, prosecutors are to regard all complaints as credible and valid unless the contrary is clearly indicated. If the prosecutor is of the view that the case should not be prosecuted (or that prosecution should be withdrawn), the matter must be referred to a control prosecutor or senior prosecutor for review. In the event of a complainant being under the age of 14 years and the control prosecutor or senior prosecutor is of the opinion that the case should not be prosecuted, the matter must be referred to the relevant Director of Public Prosecution for decision.

Steps prosecutors need to take when deciding to prosecute or not

Step 1: Ensure all relevant evidence is available

Prosecutors should review the police report or case file and decide whether there is sufficient evidence to support a prosecution. Prosecutors should take every step necessary to access all legally available information and evidence before evaluating the case.

Step 2: Evaluate the adequacy of the evidence

Prosecutors usually decide to prosecute in cases where they assess the odds of conviction to be good and decide not to prosecute in cases in which they assess the odds of conviction as unlikely. These assessments are based primarily on legal factors, such as the seriousness of the offence, the strength of evidence in the case or the culpability of the suspect.

The following information has been revealed by recent studies:

- In cases involving violence against women, prosecutors often include in their assessment irrelevant characteristics of the suspect and the victim.
- The prosecutor's subjective evaluation of the character and credibility of the victim is often one of the key factors in determining whether to prosecute or not.
- Prosecutors are more likely to file charges when they believe the evidence is strong (e.g., if there is physical evidence to connect the suspect to the crime), the suspect is culpable (e.g., if the suspect has a prior criminal record), and the victim is blameless (e.g., if there are no questions about the victim's character or behaviour at the time of the incident).

The United Nations *Essential Services Package for Women and Girls Subject to Violence* notes that evaluating evidence should focus on the credibility of the allegation rather than the credibility of the victim/survivor.

In cases involving violence against women there is often little physical evidence to connect the suspect to the crime or to not have witnesses that can corroborate the victim’s testimony. The likelihood of conviction in such cases depends primarily on the victim’s ability to articulate what happened and to convince the judge and/or jury that the crime occurred. Therefore, the prosecutor’s assessment of the convictability and decision to prosecute or not is influenced by the way the victim’s background, character and behaviour may be interpreted and evaluated by the judge and/or jury.

Prosecutors need to be aware of how they are assessing the victim’s character, behaviour and credibility and ensure that their assessment is not based on stereotypes of “real rapes”, “genuine victims” and “appropriate behaviour”. Prosecutors must pay great attention on how they assess the aspects listed in the table below.

TABLE: ASPECTS TO CONSIDER IN DETERMINING WHETHER TO PROSECUTE OR NOT

THE OFFENDER-VICTIM RELATIONSHIP	
<p>Research shows that in cases involving intimate partners and acquaintances, prosecutors are significantly less likely to file charges if the victim engaged in risk taking behaviour at the time of the incident or if her reputation or character are questioned.</p>	<ul style="list-style-type: none"> • Do prosecutors tend to perceive crimes between intimate partners as less serious than crimes between strangers? • Do they consider the victim’s characteristics more often when the violence involves intimate partners or acquaintances than when involving strangers?
THE VICTIM’S CHARACTERISTICS	
<p>This includes the victim’s gender, race and age as well as “blame and believable factors”, which are characteristics of the victim that might cause prosecutors to blame the victim and/or question her credibility.</p>	<ul style="list-style-type: none"> • Do prosecutors think that the victim is more credible if she physically resisted her attacker or made a prompt report to the police? • Do they think the victim is less credible if she was engaged in some type of risk-taking activity at the time of the incident (such as commercial sex work, drug or alcohol use, at a bar alone, walking alone late at night, hitchhiking, willingly accompanying the suspect to his residence or inviting him to her residence) or her moral character is in question, such as information on the victim’s prior sexual activity with someone other than the suspect or on an out of wedlock pregnancy?
THE SUSPECT’S CHARACTERISTICS	
<p>This includes the suspect’s age, race, prior criminal record and relationship to the victim and/or standing in the community (e.g. principal of the school, biological father of the victim).</p>	<ul style="list-style-type: none"> • Do prosecutors think the suspect is less likely to be culpable if he does not have a criminal record?
THE CASE CHARACTERISTICS	
<p>This includes the seriousness of the offence or the strength of evidence in the case.</p>	<ul style="list-style-type: none"> • Do prosecutors tend to think the case is more serious if the suspect used a weapon or the victim suffered collateral injuries? • Do they measure the strength of the case by existence of a witness to the incident or the presence of physical evidence such as semen, blood, clothing or hair that could corroborate the victim’s testimony?

A note about physical evidence. Studies also indicate that the availability of evidence, including emergency call tapes, photographs, medical records and police testimony are not associated with the likelihood of conviction. The implication is that a lack of evidence does not seem to deter judges from convicting perpetrators or perpetrators from pleading guilty. In fact, the increased time prosecutors spent with victims preparing the case was positively associated with successful prosecutions.

Step 3: Other factors to consider when exercising discretion

In those countries where prosecutors consider whether prosecution is required in the public interest, this is done only when the evidential stage is passed. This involves considering legitimate concerns of the community and balancing this with the wishes of the victim.

There is potential for conflict between a victim's interest in protection and the State's interest in holding the offender accountable for his violent actions and in deterring others from committing similar actions. This is why it is important to involve the victim in the decision whether or not to prosecute.

Policies that promote prosecution, such as pro-prosecution or mandatory prosecution, aim at removing the need for victims to initiate prosecutions and are designed to prevent the abuser from using violence or threats to pressure the victim to halt the prosecution. However, any policy needs to have flexibility to allow for victim agency, which recognizes that the victim herself is competent to decide what is best for her or her children and make her own risk assessment.

It is important to ensure that the victim's decision not to participate in the criminal justice system is due to her assessment of what is best for her and her family's protection and not a reaction to her interaction with the prosecutor, who may not have supported her own plan for dealing with continuing violence. Prosecutors need to consider the facts in each case to determine whether they should prosecute without the victim's agreement. In this regard, they should consider the following:

- Ascertain if there is a clear indication that harm will come to the victim if the perpetrator is not prosecuted. Furthermore, ascertain if there is any prior history of violence, mental illness of the perpetrator.
- Get an understanding of the victim's concern of her and her family's safety.
- Consider the seriousness of the offences, the victim's injuries (both physical and/or psychological), if a weapon was involved, premeditation and planning, threats made before or after the violence, any violations of court orders, and the perpetrator's criminal history.

TABLE: EXAMPLES OF POLICIES/GUIDELINES

In England and Wales, when considering the public interest stage, one of the factors that Crown Prosecutors should always take into account is the consequences for the victim of the decision whether or not to prosecute; and any views expressed by the victim or the victim's family. They are to think very carefully about the interests of the victim when deciding where the public interest lies. But they also keep in mind that they prosecute cases on behalf of the public at large and not just in the interests of any particular individual. Striking this balance can be difficult. The views and interests of the victim are important, but they cannot be the final word on the subject of a prosecution. (cont.)

The UN Women *Handbook for Legislation on Violence against Women* promotes pro-prosecution policies, which means that prosecution is likely but not mandatory. Pro-prosecution policies are recommended in cases of violence against women, where there is probable cause to believe that a crime has occurred. Pro-prosecution policies are a response to the traditional reluctance by prosecutors to pursue prosecution in these cases. Despite legal reforms and training, some prosecutors continue to believe that violence against women, particularly domestic violence, does not constitute a crime or do not institute a prosecution due to perceptions that the victims are not trustworthy or will not cooperate or due to difficulties in gathering evidence. It is important to stress that pro-prosecution policies differ from “mandatory” or “no drop” prosecution policies in the sense that the first ones are more flexible and retain a level of agency of the victim, while ensuring that the issue is treated seriously by prosecutors and that stereotypical thinking in the exercise of prosecutorial discretion is not applied. Caution is needed in exercising these policies. If adopted in isolation or exercised too rigidly, these policies can sacrifice the safety and empowerment of individual women. Such policies need to be part of a coordinated response to violence against women. In Honduras, for example, the Law on Domestic Violence provides that if a victim wishes to drop a case, the judge cannot close it without an investigation of the reasons for which the victim wishes to drop the case.

Absent victim prosecution policies or evidence-based prosecutions are another promising practice. In the absent victim prosecutions, the initial gathering of evidence is especially critical. By relying primarily on the evidence collected by the police rather than the victim’s testimony, prosecutors may be able to reduce the risk of retaliation by the offender and increase the likelihood of a successful prosecution in the event that the victim is unable or unwilling to testify. Prosecutors should plan to instruct police during the investigation to collect, corroborating evidence such as physical evidence, medical records, forensic report, anthropological evidence, psychologist and other expert witnesses. Prosecutors should plan to use the above evidence and other trial strategies to strengthen cases in which a victim is unavailable to testify. All available sources of evidence that supports charges independent of a victim’s direct testimony should be used, including past police reports and orders for protection; evidence from the scene such as photos of damaged property, ripped clothes, or broken phones; testimony of neighbours, friends, or family members present during instances of violence; emergency call tapes; email, voicemail or text communications; prior arrests and convictions; medical records; and family court files.

Step 4: Always inform the victim of the decision whether to prosecute or not

Where charges are filed, prosecutors should inform the victim as to the status of formal charging and what offence(s) will be charged. Where no charges are to be filed, they should inform the victim of the decision not to charge and provide her with an opportunity to discuss the decision with the prosecutor. Informing the victim whether she has civil legal options regarding the suspect is also crucial and she could consult an attorney to understand the specifics of what those options may be.

Charge assessment

The criminal law often provides prosecutors with a choice of charges in cases of violence against women. Therefore, depending on the jurisdiction, the prosecutor may have discretion in determining the level of seriousness and the specific crime to charge.

Guidelines for selecting appropriate charges in gender-based violence cases include the following:

- Reflect the seriousness of what took place, any element of premeditation or persistence in the suspect’s behaviour, the provable intent of the suspect and the severity of injury (physical and psychological) suffered by the victim.

- Bear in mind that different charges may provide the court with the power to impose pre-trial detention, as well as impose a suitable sentence.
- Consider all charges that could result from a pattern of intimidation, coercion and violence. (The perpetrator might have committed more than one offence.) Consideration should be given to any other crimes that may be charged along with the main offence. In some States, prosecutors may charge the offender with other offences so long as each offence has at least one element that the other offence does not have.
- Consider adding the charge of violating a court order in situations where there was a protection order or restraining order in effect at the time of the offence.
- Seek out other information on the suspect's history and use it in charging decisions. Consider whether prior violations against the same victim, if provable and within the statute of limitations, may be charged as separate counts.
- Charge the case as an aggravated assault by a trusted person in cases of intimate partner violence or non-stranger sexual assault.
- Consider whether stalking charges are available if there is a history or pattern of intimidation.
- Consider whether other charges should be included that stem from a suspect's action after police arrival on the scene, such as obstruction of justice, disorderly conduct, or assault of a police officer.

Prosecutors should be aware of the complex nature of violence against women cases, particularly where it occurs within the family and where a woman uses force to resist violence. Treating victims of violence against women as offenders often has devastating consequences for the victims. Prosecutors are uniquely situated to prevent or at least minimize these negative consequences. However, prosecuting violence against women is very challenging, especially if there are mandatory or no drop policies or pro-prosecution policies that curtail prosecutor's discretion.

Subsequent charges

Prosecutors should pursue criminal charges that arise from the defendant's behaviour after the initial criminal charges have been filed. This can include witness tampering from jail, violations of pre-trial release conditions or no contact orders. In this regard, prosecutors could take the following steps:

- Ask about intimidation tactics when obtaining a victim's input regarding the no contact order and the charges.
- Actively look for evidence of such tactics. With prison logs, prosecutors can determine whether the abuser has called the victim while in custody and, if recordings of those calls are available, they should be reviewed for possible evidence of intimidation.
- In some States, any violation of a protection order is criminalized. Prosecutors should exercise diligence in charging these violations and seeking sanctions that will enhance the safety of the victim, which could include amending aspects of the protection order, using electronic devices to track the abuser or placing the abuser in pre-trial detention, as well as the appropriate sentence for the crime of violating a court order.

Special considerations for victims who are suspected or accused of criminal behaviour

Research shows that a substantial number of victims will not self-disclose their victimization. Determining whether a woman is a victim of intimate partner violence is therefore crucial, especially when the woman is herself accused of a violent offence. Prosecutors should look beyond the current case and obtain the following information:

- Details about the complainant’s and defendant’s entire relationship
- The defendant’s motive and intent in using violence, for example out of fear, anger or to exercise control
- Additional information from other relevant professionals, such as a coordinated community response committee
- The criminal history of both parties, whether charged or uncharged

The issue of self-defence is an important aspect of cases where women victims of violence are subject to prosecution. Prosecutors should evaluate any evidence of self-defence and dismiss the case where self-defence can legitimately be established. While it is the defendant’s burden to raise self-defence at trial, prosecutors must become aware of any evidence that suggests that a defendant may have acted in self-defence when determining whether to file criminal charges. Key sources of information on this issue include the complainant’s and defendant’s statements, emergency call records, witness statements, pictures of physical injuries or other evidence collected at the scene, all of which may establish whether or not the defendant’s actions were defensive in nature. Accurately evaluating and charging these cases requires prosecutors to understand each person’s use of violence within the context of their relationship. In cases involving a long history of domestic violence, patterns of violence often emerge and victims become adept at identifying “red flags” that indicate imminent violence. Specifically, conduct that initially appears benign to prosecutors may, as a result of history and experience, signal imminent danger. The level of justifiable force increases when used in response to imminent danger of unlawful deadly force.

A useful approach for prosecutors is to conduct an informed predominant aggressor analysis.⁶⁵ Even where legislation does not include predominant or primary aggressor language, prosecutors are encouraged to utilize this sort of analysis when conducting their contextual evaluation of the current case and the parties. They should consider the history between the parties, and not just create an inventory of aggressive physical acts. Victims of violence may be aware of, and react to, subtle behavioural indicators of the abuser’s pending violence. The challenge in evaluating these precursors to violence is that they often do not rise to the level of physical “aggression” as that term is normally defined. The victim may react with more aggressive assaultive conduct against the abuser in an effort to prevent an impending assault.

Prosecutors should use their discretion to ensure appropriate and just dispositions in these cases. This may include alternatives to prosecution and withdrawal or dismissal of charges. In exercising their discretion, prosecutors should balance the accused victim’s ongoing safety concerns with appropriate levels of accountability for her conduct, which remains illegal. Cases in which it is determined that the accused acted in self-defence should be dismissed. Cases where neither self-defence nor any other legal justification exists are more difficult: the conduct is illegal, yet it is not clear how prosecuting the case

⁶⁵ See UNODC/UN Women/TIJ *Handbook on Effective Prosecution Responses to Violence against Women and Girls*.

will advance justice or safety. In deciding whether to charge or prosecute a case, prosecutors may consider a number of factors such as: the harm caused by the offence; possible improper motives of the victim, and whether the punishment will be disproportionate to the circumstances. Alternative dispositions (in which the accused agrees to complete several conditions in exchange for the prosecutor's decision not to proceed with a criminal case) may allow prosecutors to minimize the negative collateral consequences of a conviction and still hold the victim accused appropriately accountable for their illegal conduct.

KEY POINTS FROM THIS SESSION

1. Exercising prosecutorial discretion requires appropriate assessment of the adequacy and quality of the evidence, particularly the assessment of relevant, rather than irrelevant factors.
2. Research indicates that often in violence against women cases, prosecutors focus on irrelevant characteristics of the relationship between victim and suspect, the victim (her moral character, behaviour, 'blame and believable factors') and the suspect (past culpability).
3. Evaluating evidence should focus on the credibility of the allegation rather than the credibility of the victim.
4. Given the historical gender biases and beliefs in gender-based violence myths, some States have an explicit policy that they must regard all complaints as credible and valid unless the contrary is clearly indicated.
5. There is potential for conflict between the interests of the victim and the State in decisions to prosecute. It is important to involve and empower the victim, but not to place the onus or burden on the victim to consent as a prerequisite for initiation of a prosecution.
6. In selecting appropriate charges, prosecutors should ensure charges reflect the seriousness of violence against women. They should consider all charges that could result from a pattern of intimidation, coercion and violence, any charges resulting from violation of protection measures and charges that stem from a defendant's action after the arrival of the police on the scene (obstruction of justice, assault of a police officer, etc.).
7. Prosecutors should keep in mind subsequent charges that arise from behaviour of the accused after the initial charges.

Possible options for delivering the material

PowerPoint presentation and brainstorming questions



POWERPOINT PRESENTATION

Range of factors to be considered when exercising prosecutorial discretion

- An assessment of the merits of a case relative to the elements of possible criminal offences
- Adequacy and quality of the evidence
- Likelihood of conviction
- Consideration of the public interest (in some States)

International recommendations regarding the decision to initiate prosecution

- Ensure the primary responsibility for initiating prosecution rests with the prosecution authorities and not with the victim
- The consent of the victim should not be required in order to initiate criminal prosecution in cases concerning physical violence, sexual violence or of dangerous threats in the family context
- Allow for victim agency

(cont.)

International recommendations regarding the decision to prosecute

- Access all legally available information and evidence before evaluating the case
- Ensure that gender myths and stereotypes are consistently recognized when reviewing case files
- In considering the adequacy and quality of the evidence, make sure that all complaints are regarded as credible and valid unless the contrary is clearly indicated
- Depending on the national legal framework, prosecutors should be encouraged to regard violence against women as a decisive factor or an aggravating factor in deciding whether or not to prosecute or as a decisive factor when considering public interest

International recommendations regarding the selection of charges

- The charge decision should reflect the gravity of the offence
- Consider all possible charges
- Review whether other charges that stem from the defendant's action with authorities can be included
- Pursue actively any subsequent charges that arise from the defendant's behaviour after the initial criminal charges have been filed



QUESTIONS TO THE PLENARY

What is the extent of prosecutorial discretion in your country?
Are there guidelines for exercising prosecutorial discretion? If so, what are they?



QUESTION TO THE PLENARY

Are there specific national guidelines for prosecuting cases involving violence against women?



QUESTION TO THE PLENARY

What are the main legal factors used in assessing convictability?



PROVIDE A COUPLE OF EXAMPLES TO GENERATE DISCUSSION ON HOW TO EVALUATE EVIDENCE

Relevant examples can be found in the UN Women publication *Gender stereotypes in Laws and Court Decisions in Southeast Asia: A Reference for Justice Actors*.



DECIDING TO PROSECUTE OR NOT AND HOW TO INVOLVE THE VICTIM

Divide the group into four small groups.

Instructions: Ask each group to develop prosecution policy guidelines on how to take into account the victim's wishes when exercising prosecutorial discretion to prosecute or not.

Large group exercise regarding charge assessment



DISCUSSION OF EXAMPLES FROM PARTICIPANTS

Instructions: Ask participants in advance to bring examples with them and share the factors they would consider in assessing the charge. Ask them to present their examples to the group to for discussion Examples should focus on the following types of cases:

1. A case that involves a series of intimate partner violence incidents, using different forms of such violence (physical, sexual, psychological, economic violence)
2. A case where the accused resists arrest
3. A case where the accused is intimidating the victim, threatening her and her family

Use these examples and ask the other participants what factors they would consider when assessing the charge. Does any of the participants bring up a case where the victims of intimate partner violence are charged with crimes?

Common Course case studies – decision to prosecute and selection of charges



CASE STUDY

Instructions: Divide the large group into smaller groups. Each group is given a case study.

Each group is to list the relevant and irrelevant facts and decide whether to prosecute or not and then what charges they would select.

THE COMMON COURSE CASE #1 – SEXUAL VIOLENCE

In addition to the facts already provided, the police have included some additional facts in the file to the prosecutor. The police questioned V's ex-husband who provided names of one man whom he believed V had an intimate relationship with while she was married, as well as two other names of men that he believes she had sex with since they separated. The file also contains a witness statement from the waiter who served them at the restaurant who confirmed that V had drunk three glasses of wine and was obviously drunk as she "had trouble walking to the door". The waiter also made the statement that V was "wearing a low cut dress, lots of make-up and was primed for action". The file also includes a document from the official register stating that P has no criminal record with a notation that in the handwriting of the police "likely not culpable since no record". One week after reporting the incident to the police, V returns to the police station to report that she has been receiving text messages from P telling her to drop the charges or else.

THE COMMON COURSE CASE #2 – INTIMATE PARTNER VIOLENCE

In addition to the facts already provided, the police have included some additional facts in the file with respect to the incident. The police file includes a statement from the neighbour who allowed the son to make the emergency call to the police. The neighbour has been living beside P and V for five years and has on ten or more occasions heard loud arguments coming from the house and recalls seeing V the day after with a black eye or some other injury. The neighbour mentioned to the police that six months ago, he had to drive V to the doctor when her arm was dislocated. When the neighbour asked V what happened, she said that her husband "got mad again".

When the police went to the hospital after that incident to talk to V, P entered the hospital room, yelling at his wife saying that if she complained to the police, she would be sorry. One police officer tried to calm P down but was shoved into the wall. This upset the police officer and he was about to react when his partner told him that this was a family affair and not their business.

Other case study scenarios for discussion on the decision to prosecute and selection of charges

The case studies can be used in a number of ways to discuss prosecutors' decisions whether to initiate criminal charges and review the relevant and irrelevant considerations.

Option 1: Given a case scenario, participants will be able to discriminate between relevant and irrelevant facts and decide whether to prosecute or not and then what charges they would select.

Option 2: Given a case scenario and after a discussion on developing a matrix for assessing relevance, participants will be able to discriminate between relevant and irrelevant facts and decide whether to prosecute or not and then what charges they would select.



CASE STUDY: DECIDING WHETHER TO PROSECUTE OR NOT

Instructions: Divide the group into small groups, giving one case to half of the groups and the other case to the other half.

Part 1: Considering the essential elements of the offence of sexual assault/rape, the participants are to identify relevant and irrelevant facts related to proving sexual assault/rape and in deciding whether or not to prosecute. Ask them to explain how they reached their decision.

Part 2: Ask participants what charges they would select.

Case Scenario: Non-partner sexual violence

Part 1 – Decision whether to prosecute or not

Grace is a 20-year-old second year university student from a small town. She moved to the big city to attend university. She lives with her aunt whose house is a long way from the campus and requires two buses to commute each day. During her first year of university, her aunt discouraged her from socializing with her classmates and insisted that she spend all of her free time at home studying. Grace became bored with the life of full-time study and was ready to have a more interesting social life.

After her first history class of the fall session, a group of classmates, both male and female, invited Grace to go with them to a new bar. As she did not know any of the students, she felt awkward but was so pleased to be included that she agreed to go. Grace did not tell her aunt that she was going out with her classmates as she feared that her aunt would tell her to come home immediately. Grace very much wanted to socialize as she found it difficult making friends in the city. The group of approximately eight students walked a short distance to the bar and arrived at 8pm. They all had a few drinks. Grace was enjoying herself and she did not notice the time. At about 11pm, Grace started to worry about getting back to her aunt's house because there were few buses after 11pm.

One of the male students in her class noticed that she was getting anxious and looking at her watch. He offered her a ride home in his vehicle. She was grateful and agreed. He was very handsome and seemed charming so she was quite pleased to have a chance to talk to him alone. They left the other students at the coffee shop and walked to his car a few blocks away. Once they were in the vehicle, he started to drive in the opposite direction of

her aunt's home. She politely told him that he was going in the wrong direction. He said that he knew a way to avoid traffic and get there more quickly but it was not a direct route. She believed him and they continued to talk. After 15 minutes she asked him again. This time he became angry at her, told her he knew what he was doing and told her to "be quiet". She noticed that he locked the car doors on both sides. She found this odd and disconcerting. A few minutes after the doors locked he pulled into a dark alley and stopped the car. He told her that she was smiling at him all night and that he knew what she wanted. He grabbed her and started to roughly rip her clothes. Although she tried to push him away at first and said "stop", he was much larger and stronger than her and he overcame her resistance. She stopped hitting him when he smacked her in the face and she tasted blood in her mouth and saw it on her blouse. As he got on top of her and forced himself on her, she made no more sounds, gave no more resistance. After he was finished, he unlocked the car doors and threw her and her clothing out of the car.

She ran a short distance and called her aunt. She did not tell her aunt why she was upset. Her aunt was angry with her for being late so told her to get a taxi home. When she arrived home, she immediately had a shower. She was crying so hard, she could not speak for an hour. When she finally was able to speak to her aunt, she did not tell her the full story. She did not tell her aunt that she had agreed to get into a vehicle or that a classmate had forced himself on her. Grace only told her aunt that a student, who she did not know, had kissed her and fondled her outside the bar in an alley.

She stayed in bed for two days and refused to attend her classes because she was afraid she would see the male classmate. After not sleeping for two days, she finally told her aunt the truth. Grace said she was too ashamed to tell her aunt the whole truth the first evening and she had feared her aunt would tell her family. Grace's aunt told her to go to the hospital to see a doctor. The doctor told Grace that she had some signs of trauma in her vagina. He also noted a cut on her lip. When her aunt heard this, she insisted that she and Grace go to the police station to report the incident.

Question: Considering the essential elements of the offence of sexual assault/rape, identify relevant and irrelevant facts related to proving sexual assault/rape and in deciding whether or not to prosecute. Explain how you reached your decision.

Part 2 – Selection of charges

In addition to the above facts, the police have included some additional facts in the file to the prosecutor. One week after Grace and her aunt reported the incident to the police, Grace and one of her classmates returned to the police station to report that a classmate, a friend of Grace's, received a text from the boy asking her to talk to Grace and convince her to withdraw her complaint.

Question: What charges would you select?

Case study 2: Intimate partner violence

Part 1 – Decision whether to prosecute or not

Mr. and Mrs. Vasu have been married for 30 years. He is a manager in a government department and she has been a housewife all her life, raising three children who are now

adults living outside the family home. Her eldest daughter, Maya, lives in the neighbourhood and visits her mother regularly. Maya has always been protective of her mother as she has witnessed the violence, both physical and psychological, that her mother has suffered from her father since she can remember. On 15 March 2015, Maya brought her mother to the local police station to report the latest incident. Mrs. Vasu disclosed that her husband shoved her into the wall and she fell over and sprained her ankle. She was recalcitrant but her daughter wanted her to make the report as Maya was present and witnessed this latest incident. The police took statements from both Mrs. Vasu and Maya and referred the file to a prosecutor. Within the week of receiving the file, the prosecutor got a telephone call from Mrs. Vasu who told him that she wanted to recant.

On 1 April 2015, Maya called the police from the hospital to inform them that her mother had been admitted to the hospital with a broken arm that required surgery. The police were told that a repairman who was in another part of the house, heard yelling and screaming and when he came to where the noise was coming from, he saw Mrs. Vasu's arm hanging strangely and that she had blood coming from a large gash on her forehead. He immediately took her to the hospital. She asked him to call her daughter. Mrs. Vasu told her daughter what had happened – that her husband beat her. The police informed the prosecutor who attend the hospital the next day. During this interview, Mrs. Vasu said she blamed herself for her husband's anger and told the prosecutor she did not want to have her husband sent to jail. On 1 May 2015, the police were called to the home of Mrs. Vasu. They found her dead at the bottom of the stairs.

Question: Considering the essential elements of the offence of physical assault, identify relevant and irrelevant facts related to proving physical assault and in deciding whether or not to prosecute for each of the incidents: 15 March, 1 April and 1 May. Explain how you reached your decision.

Part 2 – Selection of charges

In addition to the above facts, the police have included some additional facts in the file with respect to the incident of 1 April. When the police attended at the hospital to talk to Mrs. Vasu and Maya, Mr. Vasu entered the hospital room, yelling at his wife saying that if she complained to the police, she would be sorry. One police officer tried to calm Mr. Vasu down but was shoved into the wall. This upset the police officer and he was about to react when his partner told him that this was a family affair and not their business.

Question: What charges would you select?

Large and small group exercises on criteria to assess evidence

This exercise can be used to demonstrate the usefulness of a matrix to assess the evidence based on transparent criteria for the decision. One or more of the preceding case studies can then be used to provide the opportunity for small groups to use the matrix in their determination of whether to prosecute or not and the selection of appropriate charges. This exercise should come after the discussion about international standards.



DEMONSTRATE HOW TO DEVELOP A DECISION MATRIX USING THE GENERIC EXAMPLE OF BUYING A CAR

The idea of introducing a “decision-making matrix” is to provide participants with one technique or tool that can be used to ensure transparent and justifiable decisions that are based on review of relevant evidence and not based on preconceptions. In order to explain this technique, consider using a generic example such as deciding to buy a car. One member of the family might want a sports car and the other might want a mini-van. Set up the matrix and brainstorm with the group. First: what are the values or elements that need to be weighed? List them in the left hand column. Then ask them to weigh each value (from 0 to 5, 0 being low and 5 being high value).

VALUES	Sports car	Mini-van
Speed	5	2
Safety	2	4
Cost of fuel	1	4
Maintenance/repairs		
Seating capacity		
....		

This exercise illustrates how participants vary in terms of what they think the relevant “values” are, as well as differences in how they weigh the “values”. This is useful to highlight that exercising prosecutorial discretion is subjective.



BRAINSTORMING EXERCISE

Ask each small group to brainstorm to identify and examine the criteria they use currently for decision making. Ask them to make notes on flip charts.

Ask the groups to move around the room to review the lists of other small groups to find commonalities and differences.



DEVELOPING A DECISION MATRIX

A spokesperson for each small group should briefly explain to the large group the criteria listed by the small group. Each small group spokesperson should be asked if they would like to add or remove criteria from their list after having reviewed others’ lists.

Place the flip charts at the front of the room.

Rank the criteria in order of importance (through consensus agreement).

SAMPLE MATRIX

	Case meets criteria (relevance)	Case does not meet criteria	Partially meets criteria
Criteria #1 Strength of evidence			
Criteria #2 Corroborative evidence			
Criteria #3 Evidence of lack of consent			
Criteria #4 Serious harm			
Criteria #5 Woman's right to protection under the law/vulnerable victim needs protection			
Criteria #6 Repeated nature of violence by perpetrator against this victim			
Criteria #7 Need to deter this individual and others			
Criteria #8 Society needs to condemn			
Criteria #9 Abuse of authority			



CASE STUDY

Instructions: Each small group is given the case scenario. The objective is to assess whether, given the criteria upon which they have all agreed, they would charge or not charge, and if it partially meets criteria, whether they would investigate further.



REPORTING TO THE PLENARY: REASONS AND CRITERIA FOR THE CHARGING DECISION

Instructions: Turn to the previously covered flip chart page that lists international standards that should be considered. Ask the group to discuss whether national decision-making criteria are in line with the international standards.

Another case study option



DECIDING WHETHER TO PROSECUTE OR NOT AND HOW TO INVOLVE THE VICTIM

Instructions: Explain to the prosecutors that they received the case file from the police which summarizes the following situation of intimate partner violence.

Facts

The police received a telephone call from Ms. N reporting that her neighbour's nine-year-old son, Chi, had come to her door crying that his father and mother were fighting. The police could hear crying in the background. Police officers were dispatched immediately to the address. When the police arrived at the address given, they saw Ms. N at home in front of her open door with a young boy who appeared upset. She pointed out the house where the boy had run from. The little boy asked the police to help his mother.

As the police approached the front door, they could see through the window a woman lying on the floor of the kitchen not moving and a man eating at the table. Upon knocking, the man answered the door, smelling of alcohol, red in the face and sweating. Laughing, he pointed to his wife, saying "there is my lazy wife, sleeping as usual". The police checked the woman on the floor, who was awake, appeared distraught and the front of her blouse was torn. The police asked how she was. She said that she was okay. Her voice was breathless and raspy. The police explained that there had been a report of a disturbance at this residence and that the police were there to check on the safety of the occupants.

One police officer took the woman's statement. V reported that her husband had come home late that evening. When he walked in the door, she could see that he was angry and drunk. He asked her where his dinner was. She had put it away over an hour ago as it was getting cold. She was just about to go to the kitchen to reheat it when he grabbed her from behind and started hitting her in the face. He then threw her against the wall. She fell and he started kicking her. The last thing she remembered was his hands on her throat.

The other police officer took the husband to the police car to question him. On the way to the car, the husband uttered spontaneously, "I hardly touched her". Once at the car, the husband said "she deserved it, she is always late with my dinner, I am the one working hard all day to earn the money to feed and clothe her and the children and the very least she could do was have supper ready in time."

Ask the groups to answer the following questions:

- What are some of the key factors you would look at?
- What should the charges be?
- What is the strength of the case (review the evidence – the victim’s statement, admissions of the accused)?
- What further information would you like to see on the file?
- Who would be listed as witnesses?

Scenario 1

You request the police to collect more information, particularly about the history of abuse. The police report that V told them what had happened last month. Her husband came home late and woke her up in the middle of the night as he pulled at her nightgown. He smelled of beer and smoke and was drunk. She did not want to have sex with him. He told her that he was her husband and she could not say no to him. As he punched her face, he yelled that he knew she was probably seeing some other man while he worked, and that was why she did not have any energy for him. He had sex with her very roughly, leaving her upset, bruised, sore and with a blackened eye. She was too ashamed to tell anyone about that night. This was not the only time he beat her, but she was vague as to when the other incidents took place.

Ask the participants if there are changes in the way they would answer the first set of questions.

Scenario 2

The file also contains a medical certificate which indicates that V’s injuries included a few bruises, a black eye, sprained wrist, red marks on her throat and some degree of permanent hearing loss in her right ear. The certificate concludes with an infirmity rate of 25 per cent. The medical examination was conducted the same night of the incident as the police officer drove her to the hospital.

Ask participants if there are changes in consideration of their answers to the first set of questions.

Scenario 3

While the prosecutor is reviewing this file, V sends a letter which reads:

“Please drop the charges against my husband. He hasn’t drunk anything since that night and we can handle this ourselves. There is no reason to waste everyone’s time. The whole thing was blown up way too big. I’m not worried about him unless he’s drinking.”

Ask participants if there are changes in consideration of their answers to the first set of questions.

Reconvene all groups and ask them to report back to the larger group. Allow for discussion.

ISSUES OF DIVERSION AND RESTORATIVE JUSTICE

Substantive material

TABLE: KEY TERMS

Diversion	Means any action that suspends criminal justice case processing of the charge, with one or more of the following results: no charges filed, charges dismissed, or charges expunged. The diversion decision can be taken by the police, prosecutors or courts.
Restorative justice	Recognizes how crime affects the victim and community and focuses on repairing the damage caused by the offence and making reparations to the community and to the victim and returning the offender to a productive place in the community.

While diversion may be closely linked to restorative justice, it is important to note the difference between a diversionary programme (known also as “alternative measures” or “extra-judicial measures”) and a restorative justice programme. The goals of diversionary programmes are related to the formal court process and do not operate within a different way of thinking about the crime. A restorative justice framework is a way of thinking outside of the system, allowing for a more community-based, holistic response to crime, while diversion operates within that system. Although the processes used in diversionary programmes may be the same models as some restorative justice programmes use, the two are not the same.

General rule. In cases involving violence against women, the starting position is that diversion is not appropriate. If it is to be allowed, it should be done only in extraordinary circumstances and with extreme caution. In cases involving violence against women, restorative justice practices (such as negotiation, conciliation, mediation, conferencing and sentencing circles) can be detrimental because of the power imbalance and safety risks for women interacting with perpetrators during face to face meetings. International law prohibits mandatory mediation, because of (a) the seriousness of violence against women, and (b) the traditionally weak responses by the criminal justice system to this violence.

Guidelines if diversion is used

In cases of violence against women where prosecutors decide to use diversion, they should consider the following guidelines:

- Any diversion should, at the very least, be premised on an acknowledgement of responsibility for the offence and on an agreement to make amends for the crime, such as compensating the victim.
- Consider agreeing to diversion only if the accused agrees to attend an appropriate programme. This could be a course to deal with a specific problem, such as drug addiction, sexual offences, anger management or self-esteem issues. Where such diversion programmes exist, prosecutors should only refer the accused if operators of such programmes work with victim services to enable feedback from the victim on recurrence of violence and only if justice officials provide continuous monitoring of compliance through regular, formal reviews and immediate reports to probation offices and police if violence reoccurs.

- Prosecutorial diversion must be grounded in an understanding of the context and complexities of violence against women and pay particular attention to the safety and needs of the victim.

When considering diversion, the following implications from various studies should also be taken into account:

- Research indicates that arrest deters repeated violence and re-abuse. The implication of this for prosecutors is that one of the best ways prosecutors can encourage law enforcement to arrest suspects is to follow-through where possible by filing charges against those arrested.
- Prosecutors should be aware that if a prior conviction is a requirement for enhanced charging, they should think twice when considering diversion that will not result in a conviction. If the abuser continues the violence, diversion might free him from the more serious punishment in the future.
- Research indicates that a prior record for any crime is as accurate a predictor of subsequent domestic violence as a prior record for domestic violence. Therefore in making charging or diversion decisions, prosecutors should understand that if an abuser has a prior record or prior arrests for any crime, the prosecutor should assume him to be a high risk domestic violence offender, not a low risk “first” offender.

Guidelines if restorative justice is used

In cases of violence against women, especially intimate partner violence, where prosecutors decide to use restorative justice, they should consider the following guidelines:

- The restorative justice process should offer the same or greater measures of protection of the survivor’s safety as does the criminal justice process.
- The referral to the restorative justice process is made after the perpetrator has been charged with a crime and with the approval of the prosecutor.
- The restorative justice process should be used only with the free and voluntary consent of the victim and the offender.
- Survivor support must be provided where the survivor is asked to participate in the alternative justice process.
- The offender fully accepts responsibility for his actions.
- Trained and qualified personnel, using validated risk assessment tools, determine that the case is not high-risk (in other words, if after consideration of a variety of factors, including any history of violence, threats of serious violence, prior breaches of protective court orders, the use or presence of weapons, employment problems, substance abuse and suicide threats, the offender is assessed to be at low risk of re-offending and therefore of low risk of harm to the survivor’s safety, as well as her children and other dependents, both throughout and after the process).
- The restorative justice process is part of a programme approved and overseen by government for the purpose of providing restorative justice responses to intimate partner violence.

- The restorative justice process is transparent (i.e., it maintains formal records of the actions taken by those engaged in the process) and is undertaken in a timely and reasonable manner.
- The restorative justice process has the capacity to deal with spousal abuse cases and is delivered and supervised by persons possessing the requisite skill, training and capacity, including the ability to recognize and address any power imbalances, as well as cultural differences.
- The possibility of criminal conviction and sentence remains if the process fails.

For restorative justice considerations, the following implications should also be considered:

- Restorative justice processes can minimize the effect that violence has in women's lives.
- These processes can perpetuate discrimination against women. Informal justice mechanisms often reflect customary or prevailing attitudes of the community towards women victims and consequently often present gaps in accountability of perpetrators.
- These processes can risk women giving up their individual rights so as to preserve harmony within a social group. Informal justice mechanisms often involve the community as well as the victim and perpetrator.
- These processes can create risks to victim safety associated with bringing the victim and perpetrator together for negotiation and dialogue. There is often an imbalance of power between the victim and the perpetrator.
- In some situations, some restorative justice practices presume that both parties are equally at fault for violence and this reduces offender accountability.
- Women may be pressured to use these mechanisms or may use them when formal justice mechanisms are not readily available.
- Some States that do not preclude restorative justice practices have issued guidelines for applying restorative justice in violence against women cases.

KEY POINTS FROM THIS SESSION

1. Diversion and restorative justice can be closely linked, however the terms mean different things. Diversion refers to actions that suspend the formal criminal justice process whereas restorative justice provides a different way of thinking of justice, focuses on repairing the damage caused by the offence and making reparations to the community and to the victim and returning the offender to a productive place in the community.
2. The general rule is that in cases involving violence against women, diversion and restorative justice is not appropriate. Extreme caution should be used.
3. International law prohibits mandatory mediation in violence against women cases.
4. Diversion should only be used if the offender acknowledges responsibility for the offence and agrees to make amends for the crime (i.e. compensation to the victim), to attend appropriate diversionary programmes and to be monitored, with any violation having legal consequences.
5. Restorative justice should only be used if the restorative justice process offers the same or greater measures of protection; a referral is made only after the accused is charged and with approval of the prosecutor; the case is low risk based on a risk assessment tool; the victim consents; the offender fully accepts responsibility for the violence; the restorative justice process is transparent, part of a programme approved and overseen by government and has the capacity to deal with violence against women; and if the restorative justice process fails then the criminal justice process continues.

Possible options for delivering the material

PowerPoint presentation and brainstorming questions



POWERPOINT PRESENTATION

Diversion: explaining the terminology

Diversion means any action that suspends criminal justice case processing of the charge, with one or more of the following results: no charges filed, charges dismissed, or charges expunged. The diversion decision can be taken by the police, prosecutors or courts

Restorative justice recognizes how crime affects the victim and community and focuses on repairing the damage caused by the offence and making reparations to the community and to the victim and returning the offender to a productive place in the community

International recommendations on the use of diversion

- Caution needs to be exercised when considering diversion in violence against women cases
- International standards prohibit mandatory alternative dispute resolution processes, including mediation and conciliation in relation to all forms of violence against women
- Diversion should be premised on an acknowledgment of responsibility for the offence and an agreement to make amends for the crime
- Diversion decisions should be grounded in an understanding of the context and complexities of violence against women and pay particular attention to the safety and needs of the victim
- If diversionary programmes exist, there should be minimum standards for prosecutors to use them



QUESTIONS TO THE PLENARY

Is diversion or restorative justice allowed in your jurisdiction?

If yes, are there guidelines for using diversion or restorative justice in cases involving violence against women?

MODULE

07

Considering pre-trial issues

PURPOSE OF MODULE 7

The purpose of this module is to assist prosecutors in ensuring that victim safety and protection is given paramount importance in all decisions made during the pre-trial stage. The focus is on how to conduct or review threat assessments and risk analysis as the basis for many of the decisions prosecutors make in terms of pre-trial release, bail conditions or sentencing conditions. The module also provides guidance on how prosecutors can use the threat assessments when conducting pre-trial release or bail hearings and the range of protective measures and conditions that are relevant.

LEARNING OBJECTIVES

At the end of this module, participants will have the necessary knowledge and skills to:

- Undertake threat assessments and risk analysis in violence against women cases
- Conduct pre-trial release hearings or make bail decisions considering the safety of the victim
- Balance disclosure obligations with the privacy of the victim and safety concerns

Substantive material

The safety of victims must always be the prosecutor's primary concern in any decisions taken by them, particularly decisions relating to pre-trial detention and bail. In particular, prosecutors should consider that:

- Involvement in the criminal justice system may be extremely dangerous for some victims. They may be at great risk of intimidation, further harm and retaliation.
- Protective measures should take into account the physical and emotional needs of the victim.
- While protective measures are usually applied before the trial in order to ensure that the victim will be available for the criminal trial, these measures should continue as long as they remain necessary.

Prosecutors should carefully review all their options, including whether to seek pre-trial detention of the accused or to ensure that appropriate conditions are applied if he is released.

Threat assessment and risk analysis

In order to ensure the safety, privacy and dignity of victims and their families at all stages of the criminal justice process, prosecutors must be fully informed with respect to the potential risks and threats. Prosecutors need to know whether a risk assessment has already been conducted and, if not, they need to know how to conduct a risk assessment that indicates the level or extent of harm a victim may be subjected to, based on her vulnerability, threats, the presence of weapons and other determining factors.

Prosecutors should consider who is responsible for conducting threat assessments and risk analysis. In some countries, this is done by the police, while in other countries this is done by civil society or similar organizations. In some countries, there is a coordinated inter-agency group which includes prosecutors who work together to undertake such an assessment.

Prosecutors can utilize danger or risk assessment standards at different stages:

- Setting pre-trial release (bail)
- Making charging decisions

- Reaching plea agreements
- Considering diversion and sentence recommendations

It should be noted that the criteria for charging should not be confused with the criteria for determining future risk. Perpetrators charged with minor offences are as likely to be as dangerous as those charged with more serious offences. Prosecution offices should set priorities which give precedence to cases which demonstrate the greatest risk to victims and their families. A victim who feels safe will be a more effective witness.

The following information has been revealed by recent studies:

- *Stalking and femicide.* Research suggests a close association between stalking and femicide (gender-related killing of women and girls). One study found that 54 per cent of female intimate partner murder victims had reported stalking to police prior to their murders by the stalkers. It is important for prosecutors to correctly identify stalking behaviour in order to use available options under the law to prevent gender-related killing.
- *Fatal domestic violence.* Domestic Violence Fatality Reviews in the United States between 1997 and 2004 found domestic violence fatality cases involved female intimate partners but also children, friends and family members of the primary intimate victim, co-workers of the primary victim, new boyfriends of the primary victim and police officers responding to the call.
- *Multiple domestic violence victimization.* One study found that 18 per cent of women who experienced abuse, experienced systemic abuse, meaning they were likely to suffer physical attacks, with or without weapons, and strangulation, with a quarter experiencing sexual assault and almost half experiencing stalking. Prosecutors should consider conducting a post-arrest investigation as this may reveal additional, even more serious, incidents of domestic violence. Rarely in domestic violence situations does the reported abuse represent a single isolated, atypical act.

Prosecutors should keep in mind the following key elements in undertaking a risk and danger assessment:

- It is important for prosecutors to use risk and danger assessment tools to foster a conversation with the victim, rather than as a checklist or a collection of discrete data.
- Engaging a victim in a discussion of these risks and dangers improves the information available to prosecutors, not just by learning of certain events or behaviours that took place, but by establishing the larger context and pattern in which this particular incident occurred.
- Prosecutors should analyse the risk using all available information and make decisions based upon the totality of the circumstances.
- When reviewing the victim's responses, however, it is critical to remember that, while victims are accurate reporters of risk factors for lethality, they consistently underestimate their own risk for future assaults.
- In using any checklist, remember that the presence of any of the factors can indicate elevated risk of serious injury or lethality. The absence of these factors is not, however, evidence of the absence of risk of lethality.

- The checklist lists those factors that are the most commonly present when the risk of serious harm or death exists. Additional factors assist in prediction of re-assault.
- Victims may face and fear other risks such as homelessness, poverty, criminal charges, loss of children or family support.
- It is important to note that the level and type of risk can change over time.
- The most dangerous time period is the days and months after the alleged perpetrator discovers that the victim might attempt to separate from him, terminate the relationship or disclose the abuse to others, especially the legal system.
- Prosecutors need to solicit this information in a private setting, and not in open court in front of the alleged perpetrator. This will likely improve the accuracy of the information and provide an opportunity to give information and resources to the victim.

**TABLE: STANDARD RISK AND DANGER ASSESSMENT
(ASSESSMENT OF THE LETHALITY RISK AND RISK OF REPEATED VIOLENCE)⁶⁶**

PRIOR VICTIMIZATION	
<ul style="list-style-type: none"> • Type, severity and frequency of assault • Date of most recent assault • Severity of this incident: strangulation, burning, permanent physical damage, head injuries, weapons involved, sexual aggression and coercion, drugging, poisoning, confinement • Serious injury in prior assaults • History and nature of past violence towards this victim • Is there a pattern of ongoing intimidation, coercion and violence • Who is perpetrating such a pattern, and against whom? • What is the severity of the violence? • Who has been injured and how? • Who is afraid and in what ways? (include non-physical fears such as losing children, home, job, etc.) • Was the victim assaulted during pregnancy or shortly after giving birth? • Current or past orders for protection • Previous domestic violence charges dismissed, previous domestic violence contacts with police or prosecutor's office 	
I. PERPETRATOR'S DRUG AND ALCOHOL PROBLEMS	
<ul style="list-style-type: none"> • Alcohol or drug use 	
II. PERPETRATOR'S OBSESSIVE/POSSESSIVE BEHAVIOUR AND EXCESSIVE JEALOUSY	
<ul style="list-style-type: none"> • Jealous or controlling behaviours • Intimidation of victim if she seeks help • Nature of controlling behaviour: threats of future injury or death (the more specific the threat, the greater the risk), threats to use a weapon, threats of child abduction or denial of visitation rights, threats made openly and in presence of others • What kind of threats or coercion have been used to dissuade the victim from participating in the prosecution? • Who is most vulnerable to ongoing threats and coercion? 	<i>(cont.)</i>

⁶⁶ See UNODC/UN Women/TIJ *Handbook on Effective Prosecution Responses to Violence against Women and Girls*.

III. PERPETRATOR'S MENTAL HEALTH HISTORY (i.e. SUICIDAL IDEATIONS, PLANS, THREATS AND PAST ATTEMPTS)

- Threats of homicide or suicide
- Evidence of depression
- Evidence of paranoid thinking
- History of mental health or emotional problems

IV. PERPETRATOR'S THREATS TO KILL THE VICTIM OR HER CHILDREN

- Threat to harm victim or children
- Has the perpetrator harmed the children, in what ways?
- Has the perpetrator threatened to harm the children? In what ways?
- Does the victim fear that the abuser will take the children in retaliation for the cooperation with prosecutors?
- Did the children witness offence or other violence or threats?

V. PERPETRATOR'S USE OF VIOLENCE IN SETTINGS OUTSIDE THE HOME

- Prior criminal history, and whether there are other pending charges
- History and nature of past violence towards others (i.e. history of violence in prior relationships)

VI. EVIDENCE OF ESCALATING VIOLENCE OR INTIMIDATION

- Stalking behaviour
- Use of weapon
- Sexual abuse
- Animal abuse
- Property damage or threats of future property damage
- Hostage-taking
- Victim's increased vulnerability due to age, disability, pregnancy

VII. PERPETRATOR'S POSSESSION OF, ACCESS TO, FAMILIARITY WITH AND DEGREE OF FASCINATION WITH GUNS

- Access to firearms/availability of weapons

VIII. PERPETRATOR'S PROCLIVITY TO RESPECT COURT RULES

- Record of violation of court orders
- Record of failure to follow pre-trial release or probation rules
- Previous participation in batterer treatment program

IX. THE STATUS OF THE RELATIONSHIP

- Are the victim and perpetrator separated or separating, estranged?
- Is the victim in the process of fleeing?
- What is the status of any family or other court case?
- Imminent break-up, separation or divorce initiated by victim; imminent change in child custody and/or imminent change in victim's residence

OBTAIN INFORMATION REGARDING THESE FACTORS THROUGH ALL APPROPRIATE AND AVAILABLE SOURCES

IMPORTANT: prosecutors must insist that law enforcement officers and investigators provide them with appropriate information about prior activities especially those associated with increased risk for lethality.

- Police reports of the current offence
- Additional information obtained from officers/investigators
- Emergency calls, past police reports involving the same perpetrator
- Prior arrests and convictions of the same perpetrator
- Input from victim advocate if the victim has given the advocate permission
- Petitions for civil protection orders and any supporting documents, prior pre-sentence investigation reports
- Any probation status and/or compliance.

TABLE: ESSENTIAL JUSTICE AND POLICING SERVICES FOR WOMEN AND GIRLS SUBJECTED TO VIOLENCE⁶⁷

CORE ELEMENT	GUIDELINES
8.3 Risk Assessment	<ul style="list-style-type: none"> • Ensure risk assessment is supported by timely gathering of intelligence: <ul style="list-style-type: none"> - gather intelligence from multiple sources - seek victim/survivor perspective on potential threat - develop and implement strategies to eliminate or reduce victim/survivor risk. • Ensure ongoing risk assessments identify changes in victim/survivor vulnerability and that appropriate measures are taken to ensure the victim remains safe. • Ensure risk assessments are shared with relevant justice service providers for use in decision making. • Ensure risk assessments include at a minimum, an assessment of: <ul style="list-style-type: none"> - lethality risk and risk of repeated violence - level or extent of harm to the victim/survivor, her family or other relevant persons - prior victimization - the threats to which she is exposed and the presence of or threat to use weapons - evidence of escalating violence or intimidation - the status of the relationship.
8.4 Safety Planning	<ul style="list-style-type: none"> • Ensure timely development, implementation and evaluation of appropriate safety plans: <ul style="list-style-type: none"> - safety plans are based on risk assessment. • Work with the victim/survivor to: <ul style="list-style-type: none"> - identify the options and resources available - plan how she will protect herself and her family and relevant others in a variety of settings and circumstances. • Safety plans are reviewed and updated on an on-going basis.

Protective measures

Prosecutors play a key role in ensuring that comprehensive protection measures are in place to preserve the safety, privacy and dignity of victims and their families at all stages of the criminal justice process. Such protection measures should be available whether or not the victim is able or willing to participate in the prosecution. The victim's safety should be central to any decision taken by the prosecutor, particularly as relates to bail or conditional release pending trial.

Possible measures include:

- Civil/family law protection measures, including barring orders, restraining orders, no-contact orders. While prosecutors are generally not involved in relating to these measures, many States have made breaches of civil protection orders a criminal offence

⁶⁷ See UN Essential services package for women and girls subject to violence.

- Applying criminal no-contact orders, such as peace bonds, which are similar to restraining orders
- Requesting conditions on bail, conditional pre-trial release
- Requesting conditions on parole or probation
- Witness protection programmes
- Police protection. In cases where the level of risk is determined to be higher, the police may provide close (body guard) protection, regular patrolling around the victim's home and workplace, escorts to and from the court, installation of security devices at the victim's home, monitoring mail and phone calls, and even temporary change of residence

Various conditions that might be considered in any protective measure include:

- Suspension of the aggressor's license to carry weapon
- Removal of the aggressor from the home
- Keeping distance from the victim and others
- Prohibiting contact with the victim and others through any means of communication
- Prohibiting the aggressor from going to certain places in order to preserve the physical and psychological integrity of the victim
- Restriction or suspension of visits to dependent minors
- Provision of provisional or temporary alimony

In some countries, prosecutors can also ask the court to take the following action:

- Refer the victim to a program of protection or assistance (shelters, counselling, etc.)
- Allow the victim and her dependents to return to their home, after removal of the aggressor
- Restitution of property unduly taken from victim by the aggressor
- Temporary prohibition to sell the common property

Steps to take in conducting pre-trial release or bail hearings

Step 1: Seek victim input regarding risk

In reviewing the options, prosecutors should confer with the victim to seek her input and to assess the risk of future violence.

Step 2: Check past history of suspect

Prosecutors also should gather information as to whether the suspect has violated any previously ordered conditions of release or other court orders concerning the victim (such

as protection orders). If there is a pattern of reoffending, then the prosecutor may consider requesting pre-trial detention.

Step 3: Prepare relevant and complete material/information for the pre-trial hearing

Prosecutors should utilize danger or risk assessment standards as well as available research on the risks victims of further violence face. Prosecutors need to coordinate and cooperate with all agencies that are providing support and assistance to the victim to ensure they have all the necessary information for a bail hearing.

KEY INFORMATION IN INTIMATE PARTNER VIOLENCE CASES	KEY INFORMATION IN SEXUAL VIOLENCE CASES
<ul style="list-style-type: none"> • Whether there is a history of violence • Whether the victim fears further violence and the basis for that fear • The victim's opinion on the likelihood that the accused will obey a term of release, particularly a no-contact order • Whether the accused has a history of alcohol or drug problems, or mental illness • Whether the accused has a history of breaches of judicial orders • The details of all previous intimate partner violence charges and convictions • Evidence that the accused possesses firearms, weapons (such as license, registration) 	<ul style="list-style-type: none"> • The view of the victim regarding risk of danger, threats or pressure • Whether the accused has a criminal record • Whether the accused has a history of breaches of judicial orders • The degree of violence implicit in the charge • A threat of violence the accused may have made to any person

Step 4: Initial appearance and pre-trial release

At the initial appearance, the prosecutor should determine whether a mental health evaluation of the suspect is appropriate. Conditions of pre-release should prioritize the safety of the victim and her family. Prosecutors should strike a balance between the accused's right to bail with the victim's right to safety. This means, in particular, that bail should be opposed in cases in which there is a risk of further violence. Prosecutors should consider asking the court to apply the following conditions depending on the case:

- No contact provisions (no contact with the victim and any other designated witnesses or persons, such as the victim's children). This can include restriction of movement of the defendant, for example victim's home, work or school
- Prohibition of third parties contacting the victim on behalf of the defendant
- Obligation not to commit any criminal offences
- Travel restrictions (e.g., not allowed to leave the jurisdiction of the court without prior court order or required to relinquish passport to court)
- Prohibition on possession of firearms, ammunition, explosives or weapons
- For sexual assault charges, DNA and/or HIV/STD test of the defendant
- House arrest

- Reporting obligation (i.e., regularly reporting to probation or a pre-trial service)
- Maintaining full employment
- Refraining from the use of alcohol or controlled substances, attend alcohol or substance treatment programme
- Wearing of a Global Positioning System (GPS) monitoring ankle bracelet
- Compliance with any civil protection orders
- Restriction on driving a car (if one has been used in committing the offence)
- Limitation or prohibition of use or possession of computer or other electronic device (if the offence involved the use of such a device)

Step 5: Prosecutors should notify the victim

The prosecutor should notify the victim if and when the defendant is released and give the victim a copy of the order outlining the conditions of release and information of who to contact if the defendant breaches any condition.

Situation where the victim makes a request to modify the court order

Some victims of domestic violence want the violence to end but not the relationship or contact with the perpetrator. Prosecutors thus need to understand that there could be a number of reasons for the victim to request dropping a no-contact order:

- She wants the relationship to continue and has focused on the violence stopping.
- There might be negative collateral consequences, especially if the victim relies on the abuser or his family for financial and child care needs.
- The victim might make the request out of fear. She may have experienced intimidation or violence by the perpetrator. Studies have shown that women are most at risk of violence after ending or while trying to end an abusive relationship. And the imposition of criminal charges and a no-contact order is viewed by perpetrators as a step towards separation.

Prosecutors must be very careful in agreeing to lift or modify the no-contact order. By doing so, they may be granting an abuser greater access to the victim which could place her in greater danger. However, on the other hand, the victim's perception of her risk of further abuse is one of the most important predictors of future violence. Prosecutors should appreciate that sometimes a victim's request may actually be a rational assessment of her danger and a calculated strategy of resistance and survival and not a sign of weakness. It is therefore important for prosecutors to speak to the victim and obtain accurate information to determine her motivation in seeking the termination or modification of a no-contact order.

There are several measures prosecutors can take to improve victim safety while empowering her to make her own decisions. The most significant step is to ensure that victims have access to confidential advocates with whom they can work to identify the risks of their current situation and to develop safety plans to complement any court orders.

Prosecutors should have the victim make her request before the court in person and on the record. Written requests or receiving requests via telephone may not be from the victim, but perhaps from a female family member of the perpetrator. Prosecutors, while empathizing with the victim, should shift the focus onto the perpetrator’s responsibility to have done something to justify the lifting of the no contact order. If the perpetrator has done nothing to address his violence since the incident, the prosecutor should point this out to the court.

In some situations, the prosecutor might want to explore the possibility of various modifications, rather than termination, especially when serious safety concerns remain. Partial no-contact orders can allow for limited contact, while providing some level of protection. However, even limited contact can provide the opportunity for the abuser to intimidate and exploit the victim. Partial no-contact orders are difficult to enforce and violations are more difficult to investigate.

Every case is different, and prosecutors and judges must obtain as much relevant information as possible in order to achieve justice, protect victims and hold offenders accountable.

TABLE: GUIDELINES FOR THE MODIFICATION OF NO-CONTACT ORDERS

<p>Consider shortening the duration of order to provide for victim safety while reducing other burdens on the victim.</p>	<p>This may allow victim to:</p> <ul style="list-style-type: none"> • File for a civil protection order if she wishes • Locate alternative housing • Make decisions about the charges without influence from the defendant
<p>If a victim requests contact, keep in mind that in some cases a prolonged no-contact order may result in hardship for the victim.</p>	<p>Prosecutor needs to:</p> <ul style="list-style-type: none"> • Obtain specific information about the victim and implications of the order on victim and family • Evaluate the case in context while considering the totality of circumstances, including victim opposition, economic impact, offender intimidation, victim fear, and danger posed by the defendant • Be sensitive to victim’s reliance on the defendant for child care, transportation or income and collaborate closely with advocates/agencies to fill gaps created by restrictions on contact with the defendant in order to provide victim with necessary resources and assistance
<p>Consider options that allow limited contact where risk factors indicate minimal risk, the victim has requested contact and there is no evidence of coercion or intimidation.</p>	<p>Consider the following options:</p> <ul style="list-style-type: none"> • The limited contact (e.g., public places or only emails, letters or phone calls) should be monitored • Topics of communication could be limited (eg. discussions about children) • Prohibit assaultive, harassing, threatening and stalking behaviours and communication • Prohibit firearms possession • Request random drug testing when abuse is indicated • Request compliance with treatment programmes (e.g. alcohol treatment) • Allow contact but exclude defendant from victim’s residence

Any modification should only be considered when a victim is present in court and requests modification.

Considerations for prosecutors when a no-contact order is violated

In cases where the defendant violates a no-contact order or breaches pre-trial release conditions, prosecutors should consider the following points:

- Whether any new offences, in addition to the conditions being breached, have been committed.
- If there is a condition of no-contact, it does not matter if the victim has agreed to or initiated any contact with the defendant. It is the perpetrator who is subject to the pre-release conditions. The defendant, and not the victim, is responsible for complying with any conditions until released from those conditions by the authorities.
- Violations of criminal no-contact orders, or conditions of release, can be prosecuted as contempt or as additional crimes.
- The prosecutor should also seek pre-trial detention or argue that greater restrictions should be imposed upon release.

Trainers should reiterate at the end of the discussion that while it is impossible to predict with any degree of certainty when relationships will escalate to lethal violence, researchers have identified some common factors. The absence of those factors does not necessarily indicate that violence will not become lethal. Prosecutors can, however, help women to identify some of the factors that indicate that they may be at an increased risk of lethal violence.

Disclosure considerations

Prosecutors have a duty of disclosure of evidence to the defence to ensure a fair trial. In many States, this also extends to evidence that they have no intention of relying on. In cases involving violence against women, particularly sexual violence, prosecutors should consider the following aspects:

- The need to balance the victim's right to privacy and her confidentiality concerns and the defendant's right to a fair trial.
- Victims may be reluctant to proceed with the criminal case due to concerns of disclosing sensitive personal information such as mental health records or counselling records.
- Some States provide for limited disclosure of certain types of information in sexual violence, such as records that contain personal information for which there is a reasonable expectation of privacy, including medical, psychiatric, therapeutic, counselling, personal journals and diaries.

KEY POINTS FROM THIS SESSION

1. The safety of victims must always be the prosecutor's primary concern in any decision taken by them, particularly decisions relating to pre-trial detention and bail.
2. Prosecutors need to know whether a risk assessment is available, and if not, how to conduct a risk assessment that indicates the level or extent of harm a victim may be subjected to, based on her vulnerability, threats, the presence of weapons and other determining factors.

(cont.)

3. Standard checklists for risk assessment include various elements, such as prior victimization, perpetrator's drug and alcohol problems, obsessive/possessive behaviour and excessive jealousy, mental health history, threats to kill the victim or her children, possession of weapons, proclivity to respect court rules, evidence of escalation of violence and status of the relationship.
4. In using any checklist, the presence of any of the factors can indicate elevated risk of serious injury or lethality. However, the absence of these factors is not evidence of the absence of risk of lethality.
5. If the accused is released on bail, conditions that protect the victim and her family include no-contact orders, restraining provisions, barring orders, prohibition of weapons, etc.
6. Prosecutors should be careful when dealing with victim's requests to modify protective measures.
7. Prosecutors should seek immediate action if a protection measure is violated (e.g. seek pre-trial detention, charge the violation as an offence if possible, consider whether any new offences have been committed).
8. The prosecutor's duty of disclosure to the defence to ensure a fair trial is to be balanced with the victim's right to privacy, confidentiality and safety.

Possible options for delivering the material

PowerPoint presentation and brainstorming questions



POWERPOINT PRESENTATION

Importance of safety considerations

- Involvement in the criminal justice system may be extremely dangerous for some victims. They may be at great risk to intimidation, further harm and retaliation.
- Protective measures should take into account the physical and emotional needs of the victim.
- While protective measures are usually applied before the trial in order to ensure that the victim will be available for the criminal trial, these measures should continue as long as they remain necessary.

Risk assessment tools

- Prior victimization
- Perpetrator's
 - drug and alcohol problems
 - obsessive/possessive behaviour and excessive jealousy
 - mental health history
 - threats to kill victim or her children
 - use of violence in settings outside the home
 - possession of weapons
 - proclivity to respect court rules
- Evidence of escalation of violence
- Status of the relationship

(cont.)

Elements for a standard checklist

I. Prior victimization

- Type, severity and frequency of assault
- Date of most recent assault
- Severity of this incident: strangulation, burning, permanent physical damage, head injuries, weapons involved, sexual aggression and coercion, drugging, poisoning, confinement
- Serious injury in prior assaults
- History and nature of past violence towards this victim
- Is there a pattern of ongoing intimidation, coercion and violence
- Who is perpetrating such a pattern, and against whom?

Elements for a standard checklist

I. Prior victimization (cont.)

- What is the severity of the violence?
- Who has been injured and how?
- Who is afraid and in what ways? (include non-physical fears such as losing children, home, job, etc.)
- Was the victim assaulted during pregnancy or shortly after giving birth?
- Current or past orders for protection
- Previous domestic violence charges dismissed, previous domestic violence contacts with police or prosecutor's office

Elements for a standard checklist

II. Perpetrator's drug and alcohol problems

- Alcohol or drug use

III. Perpetrator's obsessive/possessive behaviour and excessive jealousy

- Jealous or controlling behaviours
- Intimidation of victim if she seeks help
- Nature of controlling behaviour: threats of future injury or death (the more specific the threat, the greater the risk), threats to use a weapon, threats of child abduction or denial of visitation rights, threats made openly and in presence of others
- What kind of threats or coercion have been used to dissuade the victim from participating in the prosecution?
- Who is most vulnerable to ongoing threats and coercion

Elements for a standard checklist

VI. Perpetrator's mental health history

- Threats of homicide or suicide
- Evidence of depression
- Evidence of paranoid thinking
- History of mental health or emotional problems

Elements for a standard checklist

V. Perpetrator's threats to kill the victim or her children

- Threat to harm victim or children
- Has the perpetrator harmed the children, in what ways?
- Has the perpetrator threatened to harm the children? In what ways?
- Does the victim fear that the abuser will take the children in retaliation for the cooperation with prosecutors?
- Did the children witness offence or other violence or threats? (cont.)

Elements for a standard checklist

- VI. Perpetrator's use of violence in settings outside the home
 - Prior criminal history, and whether there are other pending charges
 - History and nature of past violence towards others (i.e. history of violence in prior relationships)
- VII. Evidence of escalating violence or intimidation
 - Stalking behaviour; use of weapon; sexual abuse; animal abuse; property damage or threats of future property damage; hostage-taking; victim's increased vulnerability due to age, disability, pregnancy

Possible sources of information about prior activities especially those associated with increased risk for lethality can be found in:

- Police reports of the current offence
- Additional information obtained from officers/investigators
- Emergency calls, past police reports involving the same perpetrator
- Prior arrests and convictions of the same perpetrator
- Input from victim advocate if the victim has given the advocate permission
- Petitions for civil protection orders and any supporting documents, prior pre-sentence investigation reports
- Any probation status and/or compliance

Effective safety plans should be:

- *Personalized.* There is no one-size-fits-all safety plan. Because every situation is different, every safety plan needs to reflect the specific details of the individual victim.
- *Supported by the community.* Work through the plan with the victim, who can identify which family members, friends and community resources they feel comfortable in contacting when they feel in danger.
- *Realistic.* A safety plan will not work if it is difficult to follow. The plan needs to address the reality of the situation. In domestic violence situations, safety planning must recognize that some women will continue to cohabit with an abuser, that others might reunite after an arrest or prosecution and that others will continue to raise children together despite the threat or presence of violence.
- *Holistic.* Should cover every aspect of the victim's life – at home, at school, at work, in transit, on-line and in social situations.

Protective measures: importance of safety considerations

- Involvement in the criminal justice system may be extremely dangerous for some victims – due to the risk of intimidation, further harm and retaliation
- Consider protective measures that take into account the physical and emotional needs of the victim
- Measures should address urgent, immediate, short term and long term protective needs

Various conditions that might be considered in any protective measure

- Suspension of the aggressor's license to carry weapons
- Removal of the aggressor from the home
- Keeping distance from the victim and others
- Prohibiting contact with the victim and others through any means of communication
- Prohibiting the aggressor from going to certain places in order to preserve the physical and psychological integrity of the victim
- Restriction or suspension of visits to dependent minors
- Provision of provisional or temporary alimony



QUESTIONS TO THE PLENARY

Who is responsible in your country for conducting threat assessments and risk analysis?
Do prosecutors receive training on this?
Has there been research/statistics on risks and violence against women in your country?



QUESTIONS TO THE PLENARY

What kinds of protection measures are available to victims in your country?
Which ones are prosecutors involved in ensuring?



QUESTIONS TO THE PLENARY

What role do prosecutors play in pre-trial hearings? (initial appearances, bail hearings, arraignment)
Are there guidelines for gender-based violence cases?

Role play exercise on lethality assessment



ROLE PLAY: LETHALITY ASSESSMENT

Advance preparation: This exercise requires two volunteers to take on the role of the first responder and the victim.

Instructions: Explain that this exercise will involve a role play that illustrates a discussion between an officer and the victim. While the participants are watching, they should write down the lethality indicators the officer asks the victim about during the interview.

Part 1: After the role play, reconvene the large group and lead a guided discussion with participants on the following questions:

- What lethality indicators did the officer ask about?
- What do you think the officer did well?
- What could he have improved?
- Is there anything else you noticed?

Part 2: Protective measures. Using the same role play facts, divide participants into small groups and ask them to prepare arguments for a bail hearing and their position on whether detention or pre-trial release should be applied and, if so, under which conditions.

Sample role play on Lethality Assessment

Adapted from Presentation on Lethality at the Inter-Balkan Conference on Strategies to Combat Domestic Violence, Loretta Frederick, November 1997

V called the police after a particularly brutal attack by her husband. The police arrived at her home, removed the husband to the police station and the officer went to the neighbour's house where V had gone. He initially questioned her about what happened and now was focusing on additional questions...

- Officer: I know this is a difficult time for you, but I need to ask you a few more questions so I can assess what danger your husband might be to you, how difficult the situation is and what has gone on before. Do you have children?
- V: Yes, one daughter.
- Officer: Did she witness the incident?
- V: No. She was in her room.
- Officer: She was not involved in any way?
- V: No.
- Officer: Do you know if your husband was abused as a child by a family member?
- V: I don't know.
- Officer: Did he witness physical abuse of his mother?
- V: It is possible. He told me his parents fought a lot.
- Officer: Does he show remorse for hurting you? Is he sorry when you fight?
- V: Sometimes.
- Officer: Did he assault you when you were pregnant?
- V: Yes.
- Officer: Has your husband ever been convicted of assaulting you in the past five years?
- V: No.
- Officer: Has he been convicted of assaulting somebody else in the past two years, someone other than your family?
- V: Not that he's told me about.
- Officer: Does he commit non-violent crimes, like stealing or something like that?
- V: No.
- Officer: Does he have a history of violence to people who are not family members?
- V: No.
- Officer: Has he experienced any unusually high stress in the past 12 months? Financial problems?
- V: We argue a lot about money. He recently lost his job. He has not been able to find another and we haven't been able to pay our electricity bill.
- Officer: Can we talk a little about tonight? Do you have injuries? It looks like your neck is a little red.
- V: Yes. He started hitting me in the face and then threw me against the wall. I fell and he started kicking me. He put his hands around my neck, and I guess you could say he started to strangle me. I passed out, I think. I remember waking up and seeing him eating his dinner. I grabbed my daughter, ran out of the apartment and called the police from a neighbour's apartment.
- Officer: Do you want to go to the hospital?
- V: No, I don't think he hurt me that much. I feel fine.
- Officer: Was a weapon involved, when he assaulted you tonight?

- V: No, not tonight.
- Officer: Has he threatened you with a weapon in the past?
- V: Yes, he has threatened me with a knife before.
- Officer: Does your husband have access to a gun or any other type of weapon?
- V: He doesn't have a gun, but his best friend is in the military and he could easily get one from him.
- Officer: Could you describe past violence, past injuries you may have had during fights with your husband?
- V: He started beating me about five months after we were married. He usually just hits me or pushes me down and kicks me, maybe twice a month. A few times, if we were in the kitchen, he's grabbed a knife and threatened me, but he has never actually stabbed me.
- Officer: Do you feel he is becoming increasingly more violent, brutal or dangerous towards you?
- V: Yes, he has been much more violent ever since he lost his job.
- Officer: When did that happen?
- V: About two months ago.
- Officer: How frequently has he hurt you in the last couple of weeks?
- V: I think he is now punching or pushing me around maybe twice a week. It has gotten much more frequent and although it isn't always serious, he is much more brutal than he used to be.
- Officer: Have your injuries as a result of your husband's violence ever required medical attention?
- V: Yes, I've been to the hospital once. They fixed a cut on my face. I haven't gone again because I'm afraid that if my husband will find out and be angry.
- Officer: Has he ever forced sex on you or used sexual coercion?
- V: Yes.
- Officer: Do you believe that he may seriously injure or kill you at some point?
- V: I've been worried about that a lot lately. He seems to be getting angry all the time. Tonight, he came home late and exploded because his dinner was cold, even though I told him I could warm it up for him.
- Officer: Has he ever threatened to kill you?
- V: He threatened to kill me tonight. He said there was no point in me being around if I couldn't even be a good wife and mother.
- Officer: Has he threatened to kill himself?
- V: Not exactly, but he has been very depressed since he lost his job. It was so important to him. One time, he said that if he couldn't find a new job, there wasn't any reason to keep living.
- Officer: Does he use drugs or alcohol?
- V: He has been drinking much more since he lost his job. If he beats me when he is drunk, he usually hurt me much more than when he is sober.

- Officer: From what you have told me, it sounds like there may be a serious risk of being harmed seriously or killed. Although there is no way to predict when an abuser will kill his wife, there are some indicators that may be associated with a greater risk of that happening. Some of these indicators include threats of suicide and murder, use of alcohol, escalation of the violence in severity and frequency, strangling, and the availability of weapons. I want to talk to you about the risk you may be in if your husband gets out of jail so that you can understand better the choices and options that are available to you. You, though, are the only one who can make decisions about what course of action is best. Are there people you can ask for help? Do you have a car, a phone? What about friends or family you can phone?
- V: Yes, I can call my mother. Maybe I can stay with her for a few days so that I can think about what to do.
- Officer: I think it might be a good idea for you to go to the hospital, even if you don't feel at the moment that you have been seriously injured. You may have injuries that are not apparent right now. You said he tried to strangle you. Are you having problems breathing?
- V: I didn't think so, but now that you ask, yes, it is a bit difficult to breathe and my throat is feeling worse.
- Officer: Do you want me to drive you to the hospital.
- V: Yes, maybe that would be a good idea.

Small group exercise – using the Common Course Cases to prepare pre-trial arguments



PREPARE AND PRESENT THE PROSECUTION POSITION IN A PRE-TRIAL HEARING

Instructions: Divide the group into four groups. Based on the facts provided in the Common Course Cases, ask each group to prepare submissions on behalf of the prosecutor regarding their position at a pre-trial release hearing.

Questions: What would be your position – detention or pre-trial release? If pre-trial release, what conditions would you seek?

THE COMMON COURSE CASE #1 – SEXUAL VIOLENCE

In addition to the above facts, V reports to the police that she feels she is being followed. Over the last few weeks, she has seen P on the same street as the clothing shop where she works, and someone that looked like him at the coffee shop she frequents on the weekends. She is receiving a number of telephone calls both at home and at work where the caller would hang up after a few seconds. She is getting very scared for her safety.

COMMON COURSE CASE #2 – INTIMATE PARTNER VIOLENCE

In addition to the above facts, when the police questions V in the hospital, she tells them that her husband's violence has been getting worse in the last month. He has lost his job, which has made him more depressed than he was before. He was already on anti-depression medication and while on it, he is not supposed to be drinking, but he is drinking much more than he usually does. He told her last week that he would kill himself and then she would be sorry.



CASE STUDY: REQUEST BY VICTIM TO MODIFY PRE-TRIAL RELEASE CONDITIONS

Instructions: Using the same case studies, ask how prosecutors should approach a request by a victim of intimate partner violence to modify or terminate the condition of no-contact?



CASE STUDY: DEALING WITH A VIOLATION OF NO-CONTACT ORDERS

Instructions: Using the same case studies, ask how prosecutors should approach a violation of the no-contact order?

Further case scenarios for this exercise

Case 1

P is charged with unlawful confinement, assault and threatening his four children and his wife, V. P was arrested just before midnight on 23 October, at the family home by police responding to an incomplete emergency call. He was seen by a psychiatrist within 36 hours of his arrest and the psychiatrist's report was sent to the prosecutor. The report notes that Mr. P acknowledged a lengthy history of alcohol abuse and admitted to drinking the evening of 23 October. The report also notes that it appeared Mr. P was suspicious of his wife. He had read some of her emails to a friend, who had been a classmate of hers at university many years ago. Mr. P was deemed fit to stand trial and was not mentally ill.

The victim, V, has been married to the accused for 10 years. During this time he would drink to excess and physically and verbally abuse his wife. The situation got worse in early 2010 when the accused's drinking increased and he started using drugs. His wife and daughters noticed that he was more ill-tempered and angered very quickly and his aggression towards his family was described as "scary". For several months before the offences, the victim was communicating via email with an old male friend. She had been asking the accused for a separation for months before but he had refused to discuss it with her, getting angry when she broached the subject.

Approximately a week before the offence, the accused went onto the computer and found the emails between his wife and this man, who they had both known since university. Since then, he had become withdrawn, angry and confrontational with the entire family and his alcohol and drug consumption increased. On the evening of the incident, P was shouting at V and throwing things around in the living room of the house. He told her that he had deleted the man from her account and had sent a message to the man's wife. He hit the wall in the living room with his belt, threw a framed picture of his oldest daughter on the floor and kicked things on the floor around. V was frightened by his behaviour and went into one of the two bedrooms to avoid him. He came to the room and continued yelling at her. He hit her at least twice on the head with an open hand. He pushed her. All the children came into the room and the accused went out into the living room. He was still drinking and they heard him screaming. He went into the kitchen and then came into the room where she and the four children were located, carrying a drill, a screw, a propane blow torch and a lighter. He said "we'll all just die" or "I'm gonna lock you in and you can all die" or "we can all die in this room together". He was pointing the lighter at the children and victim. V tried to grab the door but the accused was too strong. He slapped his

eldest daughter. Then he started screwing the door to the room shut. V and her children were terrified and scared for their lives. One child managed to get a cell phone and dial the emergency number. The accused saw this and tried to grab the phone which allowed V to get out the door. V went to a second bedroom to gather some clothes so that they could leave the house. The accused followed her trying to keep her in that room telling her that nobody was getting out. It was at this point that the police responded to the emergency call. The accused was arrested and taken to jail. During the search of the residence, police found a propane blow torch, a butane lighter, an electric drill and a 10 cm screw on the dresser in the bedroom. They located a gun in a holster in the closet.

P was interviewed by police and denied that he had any intention of wanting to hurt his children and wife. When asked what made him go into the room and say that he was going to kill them, he said “I don’t know”. When asked if he had any remorse for what had happened the night before, he said no.

Points to make:

- This is an actual case from Canada and the following points were included in the judge’s decision.
- The judge characterized the events as very serious and stated that the material presented to him at the bail hearing satisfied him that the accused appeared determined to cause harm or worse to himself and his family.
- The judge decided to detain the accused and expressed concern about the risks posed to victims of spousal assaults.
- Previous cases differentiated between types of spousal assaults. At one end of the spectrum is the offender who repeatedly assaults and causes bodily harm as an expression of rage, jealousy, cruelty or control. Some victims feel unable, for financial, psychological, religious or other reasons to end the relationship and opt instead to deal with and even accept continuation of abuse. Other victims respond by ending the relationship and turning to the law for justice and protection. Some offenders will not accept the loss of the relationship or the loss of the control over the victim and respond by stalking or continuing their assaultive behaviour. These situations are dangerous and require vigilance in considering whether to grant bail pending trial.
- The judge determining bail must understand the circumstances of the offence and the background of the offender in order to decide whether the offender is likely to resort to further violence or intimidation if released.
- The judge in this case considered all the past actions of the accused and considered the circumstances of the offences charged in measuring the risks to V and her children and determined that the risks were too great to warrant release before trial.
- Domestic violence cases require the court to be especially vigilant in bail applications. This is because, unlike many other crimes, there is a continuing relationship and a greater likelihood of repetition. Moreover, at the time of separation or planning of separation or when court intervention causes a separation, the risk of further physical injury actually increases. Some studies have indicated that the risk increases dramatically.
- Examples of tools developed in Canada to do risk assessments include the *Manual for the Spousal Assault Risk Assessment Guide (SARA)*, which is a clinical checklist of

risk factors for spousal assault. Another one is B-SAFER (Brief Spousal Assault Form for Evaluation of Risk).

- Consistent with research, the most common risk factors associated to domestic homicide are a prior history of domestic violence and an actual or pending separation.

Case 2

The following case is based on a report by the British Columbia Representative for Children and Youth, *Honoring Christian Lee – No Private Matter: Protecting Children Living with Domestic Violence* (September 2009).

Facts: Peter Lee and Sunny Parks, a married couple, were involved in a car crash. Police learned from Sunny that she believed the crash was intentional. She told police that she was a victim of her husband's violent behaviour for many years and that she was extremely concerned for her safety. She thought her husband was going to kill her. She began initiating divorce proceedings with a lawyer. As a result of the car crash, Peter was charged with dangerous driving causing bodily harm and unlawfully causing bodily harm to Sunny. Police records noted that they had been called to the home for a domestic dispute in 2003.

Question: Pre-trial release hearing – as a prosecutor what position would you take and what arguments would you advance?

Subsequent facts: Peter Lee was released on bail by consent of the prosecutor. Peter Lee engaged in behaviour that can only be described as stalking Sunny, including calling her lawyer's office and making it known that he knew Sunny was there less than a day after being warned by a police officer regarding the same type of conduct at a dentist's office. The police, bail supervisor and prosecutors were aware and very concerned about Peter Lee's behaviour.

Points to make:

- This is an actual case from Canada.
- In the early hours of the morning of 4 September 2007, Peter Lee murdered his son, Christian, his wife, Sunny Park, his parents-in-law and then killed himself.
- Prior to committing the murders, Peter Lee was banned from the family home.
- He was under a court order, which prohibited him from contacting Sunny, from visiting the family home, from visiting the family's downtown restaurant, and from possessing explosive substances or weapons, such as knives.
- He was not prohibited from contacting his son.
- While the police, bail supervisor and prosecutors were aware and very concerned about Peter Lee's behaviour, Peter killed his family and himself before the various agencies involved acted.
- A government Domestic Violence Death Review Committee reviewed the number of different service providers that the family had met, including service providers, three police departments, social workers, medical staff, Crown counsel (prosecutors), two therapists and several lawyers.
- The report noted that the experienced and professional bodies were not working together to prevent Peter Lee from killing his family and himself.

MODULE
08

**Considering issues at trial,
including sentencing**

PURPOSE OF MODULE 8

The purpose of this module is to ensure prosecutors understand the fundamental aims of victim safety and empowerment and offender accountability during the trial and sentencing stage.

LEARNING OBJECTIVES

At the end of this module, participants will have the necessary knowledge and skills to:

- Apply for special measures to create enabling court room environments
- Ensure gender-sensitive application of evidentiary rules
- Appreciate the prosecution role in seeking appropriate sentences (including issues of restitution and reparations)

APPLYING SPECIAL MEASURES TO CREATE ENABLING COURT ROOM ENVIRONMENTS

Substantive material

Trial and trial-related practices often discourage victims from testifying and re-traumatize those who choose to do so. Even for those victims who are motivated to testify, trials can be an emotionally difficult experience, as well as putting them at further risk of violence. This may be due to the following reasons:

- The victim's unfamiliarity with the legal process
- Her uncertainty as to whether she may be required to testify at trial
- Her shame and embarrassment of having to disclose intimate details in a public forum
- Her fear of being in close proximity to the perpetrator and his family
- Her fear of being harassed by the defendant in abusive cross examination

Prosecutors need to consider whether they can apply for special measures that can create an enabling court room environment for the victim, as well as how to protect victim witnesses when one of the defense's questions is inappropriate or provocative. Different jurisdictions have different ranges of protective measures designed to ease victims' experiences of the trial and facilitate their testimony. Prosecutors should be aware of the measures available in their State and the procedures for application.

It is important to note that victims are more likely to testify and feel better about their experience with protective or "special" measures in place that can help create the conditions for safe and effective testimony. These measures can assist vulnerable and intimidated witnesses give their best evidence in court and help to relieve some of the stress associated with giving evidence. Stress can affect the quantity and quality of their testimony.

Confidentiality measures. Measures designed to protect the identity of the victim from the press and public include:

- Removing any identifying information such as names and addresses from the court's public records and media

- Using a pseudonym for the victim
- Prohibiting disclosure of the identity of the victim or identifying information to a third party
- Permitting victims to testify behind screens or through electronic or other special methods
- Allowing *in camera* proceedings or closed sessions during all or part of the trial, such as excluding the public during victim's testimony

Privacy measures. Special evidentiary rules designed to limit the questions that can be posed to a victim during her trial include:

- Prohibiting questions about the victim's prior or subsequent sexual conduct
- Not requiring corroboration of the victims testimony

Victim support measures. Measures designed to ease the victim's experience during testimony include:

- Permitting victims to testify in a manner that allows to avoid seeing the accused (such as closed circuit TV or screens)
- Limiting the frequency, manner and length of questioning
- Permitting a support person, such as a family member or friend, to attend the trial with the victim
- A video-recorded interview with a vulnerable or intimidated witness before the trial, which may be admitted by the court as the witness's evidence-in-chief
- Examination of the witness through an intermediary

Prosecutors should consider making an application for special measures and be ready to respond to arguments by the defence regarding how these measures effect the defendant's right to a fair trial. The special measures are decided upon by the judge in line with his or her discretion under applicable law.

The court must satisfy itself that the special measure or a combination of measures is likely to maximize the quality of the witness evidence. The court will likely want to hear from the prosecutor about the views and wishes of the victim. Prosecutors should be prepared to have sufficient information when applying for special measures.

Special considerations for girls subjected to violence

There is special need to consider also the best interests of the child and to guarantee their other rights under the Convention of the Rights of the Child. Prosecutors should also be aware of:

- The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime⁶⁸

⁶⁸ ECOSOC res 2005/20, annex.

- The United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice⁶⁹
- The UNODC/UNICEF *Handbook for Professionals and Policymakers on Justice in Matters involving Child Victims and Witnesses of Crime*

Prosecutors should take the following action when dealing with cases involving girl victims:

- Applying for the assignment of a support person to accompany a girl victim or witness at all times during her involvement in the justice process
- Assigning a single person to the child, preferably one of the gender of the child's choice who has undertaken specific training on child-sensitive issues, to follow her throughout the case
- Familiarizing children with court proceedings before their appearance in court
- Contributing to children's familiarization with the court environment, personnel and proceedings by getting involved in the organization of educational processes such as "kids' courts" and/or by publishing and disseminating posters or booklets in child-friendly language
- Acting so as to avoid any delay in the proceedings
- Interviewing children in a child-friendly environment, such as at his or her school, in a specific room decorated in a child-friendly way or at a child advocacy centre
- Encouraging the creation of multidisciplinary child abuse teams, including child advocacy centres
- Limiting as far as possible the number of child interviews by keeping an accurate record of the original evidence given, whether by way of a written statement or audio or video recording

THE UPDATED MODEL STRATEGIES AND PRACTICAL MEASURES PARA. 15(c)

15. Member States are urged to review, evaluate and update their criminal procedures, as appropriate and taking into account all relevant international legal instruments, in order to ensure that: ... (c) Women subjected to violence are enabled to testify in criminal proceedings through adequate measures that facilitate such testimony, protect their privacy, identity and dignity; ensure safety during legal proceedings; and avoid secondary victimization. In such jurisdictions where safety cannot be guaranteed to the victim, refusing to testify should not constitute a criminal or other offence.

⁶⁹ General Assembly resolution 69/194.

TABLE: ESSENTIAL JUSTICE AND POLICING SERVICES FOR WOMEN AND GIRLS SUBJECTED TO VIOLENCE⁷⁰

CORE ELEMENT	GUIDELINES
5.1 Safe and friendly court room environment	<ul style="list-style-type: none"> • Permit a support person such as family member, friend or professional support person to be with the victim/survivor during the trial process. In the case of the girl victim, measures should be taken to appoint specialists and family members to accompany the girl, and a guardian to protect the girl's legal interests. • Provide for user friendly and fit-for-purpose court environments, including waiting areas. • Remove all unnecessary persons, including the alleged offender, whilst the victim/witness gives her evidence. • Take appropriate measures to ensure no direct contact between victim/survivor and accused, using court-ordered restraining orders or ordering pre-trial detention. • Notify appropriate authorities in the case of or suspicion of the victim/survivor being harmed or at risk of being harmed during the trial or hearing process.
5.2 Protection of privacy, integrity and dignity	<ul style="list-style-type: none"> • Apply for available measures that can protect the victim/survivor's privacy, integrity and dignity, including: <ul style="list-style-type: none"> - limit or ban public present at the trial, for example, in-camera trials or closed trials - limit or restrict media publishing of personal information of victims/survivors. • Object to or disallow any misstatements or attempts to intrude too far on the witnesses' safety (such as matters that could tend to reveal the witnesses' identity). • Remove any identifying information such as names and addresses from court's public record or use a pseudonym for the victim/survivor. • In the case of the girl victim take appropriate measures to: <ul style="list-style-type: none"> - maintain confidentiality and restrict disclosure of information relating to the girl's identity and involvement in the process - exclude public and media from courtroom during the girl's testimony, where permitted by national law.
5.3 Opportunity for full participation	<ul style="list-style-type: none"> • Apply for and/or where possible allow for available measures that can facilitate the victim/survivor's testimony in trial/hearing: <ul style="list-style-type: none"> - measures that permit the victim to testify in a manner that allows her to avoid seeing the accused, for example screens, behind closed doors, closed circuit television (CCTV). • Adopt case management approaches that ensure the victim/survivor has an opportunity to fully participate in the proceedings with the least amount of secondary victimization: <ul style="list-style-type: none"> - reduce unnecessary delays - promote practices that issues not in dispute are agreed upon and admitted at the start of the trial/hearing. • Undertake approaches and ways to reduce the victim/survivor's stress: <ul style="list-style-type: none"> - limit her evidence to relevant evidence - allow for short recess when she is too distressed to proceed - identify options to avoid or minimize direct examination of the victim/survivor by the defendant, where possible - if allowed, have the examination conducted through an intermediary - if allowed, use video-recorded interview as evidence in chief. • In the case of the girl victim, use child-sensitive procedures, including interview rooms, modified court environments and take measures to ensure hearings and interviews are limited and are scheduled at times of the day appropriate to the age of the girl and separate from the accused.

⁷⁰ See UN Essential services package for women and girls subject to violence.

KEY POINTS FROM THIS SESSION

1. Trials can be a difficult experience for victims for a number of different reasons, as well as put them at further risk of violence.
2. Prosecutors need to consider whether they can apply for special measures that can create an enabling court room environment for victims of violence against women.
3. Prosecutors should use confidentiality measures designed to protect the identity of the victim from the press and public including, such as redacting victim's information from public records, use of a pseudonym for the victim, closed hearings or banning media.
4. Prosecutors should use privacy measures and special evidentiary rules designed to limit the questions that can be posed to a victim during her trial, such as those concerning her past sexual history.
5. Prosecutors should use victim support measures, designed to ease a victim's experience during their testimony, including the use of CCTV or screen for the victim, permitting a support person or limiting aggressive questions.

Possible options for delivering the material

PowerPoint presentation and brainstorming questions

**POWERPOINT PRESENTATION****Court environment and infrastructure**

- Confidentiality measures
- Privacy measures
- Victim support measures
- Organizational and infrastructure measures
 - separate waiting space for victims
 - victim support unit

Enabling courtroom environment: confidentiality measures

- Removing any identifying information such as names and addresses from the court's public records and media
- Using a pseudonym for the victim
- Prohibiting disclosure of the identity of the victim or identifying information to a third party
- Permitting victims to testify behind screens or through electronic or other special methods
- Allowing *in camera* proceedings or closed sessions during all or part of the trial, e.g., during victim's testimony (excluding public)

Enabling courtroom environment: privacy measures

- Special evidentiary rules designed to limit the questions that can be posed to a victim during her trial
- Prohibiting questions about the victim's prior or subsequent sexual conduct
- Not requiring corroboration of the victims testimony (according to national laws)

(cont.)

Enabling courtroom environment: victim support measures

- Permitting victims to testify in a manner that allows her to avoid seeing the accused (e.g., closed circuit TV or screens)
- Limiting the frequency, manner and length of questioning
- Permitting a support person, such as a family member or friend, to attend the trial with the victim
- A video-recorded interview with a vulnerable or intimidated witness before the trial may be admitted by the court as the witness's evidence-in-chief
- Examination of the witness through an intermediary

Enabling courtroom environment: child-sensitive measures

- Interview rooms designed for children
- Interdisciplinary services for child victims integrated in the same location
- Modified court environments that take child witnesses into consideration
- Recesses during a child's testimony
- Hearings scheduled at times of day appropriate to the age and maturity of the child
- An appropriate notification system to ensure the child goes to court only when necessary

**BRAINSTORMING EXERCISE**

Part 1: What are some of the reasons why victims may experience apprehension in participating at trial? What are the impediments in your experience that prevent a violence against women victim/witness from effective involvement in the justice system?

Part 2: What are the ways to address these impediments?

Are there any measures and/or actions that prosecutors can apply for or take in order to create a more enabling environment for victims who attend and testify in court?

Instructions: list all suggestions on flip charts and then categorize them into three main groups

1. Confidentiality measures
2. Privacy measures
3. Victim support measures

Case study – making an application for special measures**MAKING AN APPLICATION BEFORE A JUDGE**

Instructions: Ask each group to prepare arguments for an application for special measures based on a summary of facts, using the Common Course Cases or any of the previous case studies (or ask the participants to use real cases they have brought that are appropriate). Appoint one member of the group to make the application to the plenary as a whole who then takes on the role of the court to vote and decide by majority whether to make an order or not.

Use the facts from previous case studies. Use the checklist in the section for the various types of possible measures: confidentiality measures, privacy measures and victim support measures.

When reporting back to the plenary, trainers may want to review the larger ‘justice objectives’ at a trial and how these objectives can be met through the use of special measures. Provide examples of good practices from other countries (see UNODC/UN Women/TIJ *Handbook on Effective Prosecution Responses to Violence against Women and Girls*). Trainers could list the larger ‘justice objectives’ on the top of a matrix on a flip chart. Such objectives can include:

- That the best evidence comes out at trial
- Increasing the likelihood of a proper conviction
- That the dignity of the victim is preserved
- That, by not re-victimizing the victim, other victims will be encouraged to come forward and give evidence
- All of the above, while at the same time protecting the legal rights of the accused

List the special measures down the left side of the matrix. Discuss how each one responds or not to an objective and in which way they respond/help to fulfil these objectives.

TABLE: MATRIX EXERCISE

	Ensure conviction	Get best evidence from witness	Protect victim’s dignity	Encourage victims to come forth and go to trial	Protect accused’s right to fair trial
Ban on publication					
Support person					
Screen or CCTV					
[include other measures, as relevant]					

EVIDENTIARY CONSIDERATIONS FOR TRIAL

Substantive material

A range of evidentiary issues were already discussed in module 5, including the use of forensic testimony and exceptions to the hearsay rule in appropriate jurisdictions. This section focuses on ensuring a gender-sensitive application of evidentiary rules during the trial.

Sexual history of the victim. Many countries’ evidentiary rules include the principle of relevance. Some countries have a specific evidentiary rule that prohibits the introduction of evidence of the victim’s sexual behaviour that is unrelated to the incident being prosecuted

to prevent the defence from abusing the criminal justice system to harass the victim. This rule has been explicitly included in many evidentiary laws to rebut the traditionally held notion that a woman who has consented to sex previously is more likely to have consented to the incident in question.

- For those jurisdictions that have so-called rape shield laws (typical such laws provide that in a prosecution of rape, reputation or opinion evidence of the alleged victim's prior sexual conduct is not admissible), prosecutors should ensure that this is not weakened by loopholes or by unfavourable judicial interpretation.
- For those jurisdictions without such laws, the prosecutor should strenuously object to evidence of the alleged victim's prior sexual conduct as being irrelevant and prejudicial. This type of evidence is typically used by the defence to challenge the respectability and credibility of the victims and rely on damaging stereotypes of victims as being promiscuous and, by extension, immoral and not worthy of protection. This defence tactic aims to remove the focus from the perpetrator's conduct and to shift it to the victim. Prosecutors need to be aware of this and object to the relevance of such evidence. A more legitimate line of defence would be to ask if the victim is in the habit of making false allegations of sexual assault and not about her sexual habits.

Bad character of the defendant. In some jurisdictions, the prosecution may not introduce evidence about the defendant's bad character to prove that he acted in conformity with that bad character trait. However, certain jurisdictions allow for an exception to this general rule prohibiting character evidence. If the defendant has introduced character evidence in his own defence to show that he acted in conformity with a good character trait, he has "opened the door" and then prosecution is permitted to rebut this evidence.

No adverse inference from delay in reporting. It is not uncommon for women victims of violence to delay reporting the violence to the authorities. There are legitimate reasons why the victim chooses to delay reporting, and prosecutors should be prepared to argue or call an expert witness to explain this behaviour. Furthermore, prosecutors should object to the defence or the courts drawing any adverse inference from the delay and to holding that delay against the victim and her credibility. In some jurisdictions legislation specifically prohibits drawing adverse inferences from delay in reporting.

Removing the cautionary warning or corroboration rule. Traditionally, in some jurisdictions there existed a rule of procedure requiring a judicial direction or warning to the jury in sexual violence cases of the danger of convicting a defendant on uncorroborated evidence of the complaint. This was based on the reasoning that rape is easy to charge but difficult to defend. Some jurisdictions have legislatively removed the mandatory warning, although it may remain in practice as a matter of judicial discretion. Other countries still practice using the cautionary warning that it is dangerous to convict on the uncorroborated evidence of the victim. Prosecutors should object to this cautionary warning on the grounds that it leads to discrimination by treating the testimony of a rape victim with special caution not applicable in any other type of criminal case.

THE UPDATED MODEL STRATEGIES AND PRACTICAL MEASURES, PARA. 15(d), (e) AND (g)

15. Member States are urged to review, evaluate and update their criminal procedures, as appropriate and taking into account all relevant international legal instruments, in order to ensure that:
- ... (d) Evidentiary rules are non-discriminatory and all relevant evidence can be brought before the court and rules and principles of defence do not discriminate against women and such defences as honor or provocation do not allow perpetrators of violence against women to escape criminal responsibility; ... (e) The credibility of a complainant in a sexual violence case is understood to be the same as the credibility of a complainant in any other criminal proceeding; the introduction of the complainant's sexual history in both civil and criminal proceedings should be prohibited where it is unrelated to the case; and no adverse inference should be drawn solely from a delay of any length between the alleged commission of a sexual offence and the reporting thereof; ... (g) Evidence of prior acts of violence, abuse, stalking and exploitation by the perpetrator is considered during court proceedings, in accordance with the principles of national criminal law.

The need to ensure that fact finders eliminate gender bias

Prosecutors will face tremendous barriers to achieving justice for victims and holding perpetrators accountable for their crimes if the fact finders, the judge or jury, have any biases or mistaken beliefs. Prosecutors should be aware of strategies they can use to educate juries or judges about forms of gender-based violence and overcome common misconceptions. One of the strategies discussed in detail below is calling an expert witness to specifically address these myths.

Prosecutors should use opportunities to educate judges concerning violence against women, in order to ensure that:

- There is no confusion between sex and sexual violence and aggression
- They do not excuse sexual violence as something that men “simply cannot control”

Prosecutors need to be aware of any statements made by judges that indicate bias and respond to those. In particular, prosecutors should be aware of the following:

- A judge may be less likely to convict a defendant of rape if that defendant were a partner, friend or acquaintance of the victim. This may reflect the myth that “real rape” is committed by a stranger, with force, whereas in reality the majority of rapists are non-strangers.
- Judges are not immune to victim blaming. No other crime victim is looked upon with the degree of blameworthiness, suspicion and doubt as a rape victim. They may think she has either enjoyed it or wanted it, or she asked for it or brought it on herself or she lied or exaggerated.
- In some cases, it may be important to gauge whether the judge will still follow the law when the facts do not present the victim in the most sympathetic way. Victims may be drinking, using drugs, dressed in a way that the judge perceives as provocative, engaging in prostitution or in any other behaviour that may inappropriately cause victim blaming.
- Certain behaviours may cause the fact finders (judges or jurors) unease and may interfere with their ability to follow the court's instructions and render a fair verdict.

Using expert witnesses

Prosecutors should consider calling expert witnesses (e.g., a forensic psychologist, physician, sexual assault nurse or examiner, etc.) when such experts can explain particular issues that are beyond the understanding and experience of the average judge or juror and that negatively impact their ability to impartially evaluate the evidence presented at trial.

Research shows that the effects of gender-based violence upon victims are often beyond fact finders' understanding and experience and therefore they turn to myths. To those who do not understand the victim's vacillating behaviour towards the defendant, this might suggest that the victim's version of events is not reliable and not worthy of belief.

The type of evidence expert witnesses can address to assist the courts with the understanding and prediction of human behaviour include:

- Issues relating to popular myths regarding violence against women
- Issues relating to the victim's perplexing behaviour (e.g., behaviour caused by post-traumatic stress disorder, dynamics of domestic violence or sexual abuse)
- Issues relating to medical and forensic issues such as DNA evidence, serology, fingerprints or sexual assault examination

The following considerations need to be taken into consideration by prosecutors when calling expert witnesses:

- Inform judges or jurors of common characteristics of abuse victims so that they can compare the behaviour of the victim with that profile
- Reduce the likelihood that the judge or jury will develop negative feelings against the victim based on myths and misunderstandings
- Enable the judge or jury to examine the facts without interference of bias or emotion
- Challenge the plausibility of the victim's account at trial, not to bolster the victim's own personal qualities of truth-telling or falsehood
- Explain why victims retract and give the judge or jury reason to assess in-court retractions
- Assist the judge or jury to evaluate credibility, not to enhance that credibility

Expert testimony would not be appropriate for use in cases where the only other evidence available would be insufficient to satisfy the test of a realistic prospect of conviction.

Prosecutors need to consult the laws in their State to determine whether experts can be called as witnesses and which professionals have been qualified to testify on these issues. In jurisdictions which do not allow expert witnesses, prosecutors should consider whether other witnesses can provide testimony regarding common behaviours exhibited by child victims (such as doctors, police officers, counsellors).

TABLE: ESSENTIAL JUSTICE AND POLICING SERVICES FOR WOMEN AND GIRLS SUBJECTED TO VIOLENCE⁷¹

CORE ELEMENT	GUIDELINES
5.5 Non-discriminatory interpretation and application of evidentiary rules	<p>In criminal justice matters:</p> <ul style="list-style-type: none"> • Ensure all relevant evidence is brought before the court: <ul style="list-style-type: none"> - consider allowing expert witnesses with appropriate experience to provide information about the dynamics and complexities of violence against women and girls. • Complaints are regarded as credible and valid unless contrary is clearly indicated. • Take steps to mitigate the potential impact of existing discriminatory evidentiary rules and procedures: <ul style="list-style-type: none"> - object to or disallow any unfair, unnecessarily repetitive, aggressive and discriminatory questioning by defence - object to or disallow any questioning that relies on myths and stereotyping - object to or disallow questions about the victim /survivor's sexual history when it is unrelated to the case. • Do not allow any adverse inference to be drawn solely from a delay in reporting or lack of reporting. • If the defence applies to introduce what appears to be highly prejudicial evidence, ensure the following steps are taken: <ul style="list-style-type: none"> - request the defence's application to be made in writing - ensure such request is made at pre-trial and only allow during trial if defence can show exceptional circumstances (such as they had not been aware of the information until trial) - provide the victim/survivor the opportunity through representation to voice her concerns and arguments against the discriminatory evidence. • Ensure the application of the rules (in particular gender-based cautionary rules) and principles of defence do not discriminate against women or be interpreted in ways that allow perpetrators of violence against women to escape criminal responsibility.

KEY POINTS FROM THIS SESSION

1. Unfortunately, a discriminatory interpretation and application of evidentiary rules in violence against women cases is common in many countries. This includes the belief that rape is an accusation easily made but difficult to defend, the application of stereotypical assumptions about 'appropriate' female behaviour and the traditionally held notion that a woman who has consented to sex previously is more likely to have consented to the incident in question.
2. International standards and norms have been developed to address these historical biases.
3. Prohibiting the introduction of evidence of the victim's sexual behaviour that is unrelated to the incident being prosecuted serves to prevent the defence from abusing the criminal justice system to harass the victim.
4. The rule regarding no adverse inference from delay in reporting recognizes that it is not uncommon for victims of violence against women to delay reporting to authorities.
5. The removal of the cautionary warning or corroboration rule serves to ensure that the testimony of violence against women victim is not met with special caution that is not applicable in any other type of criminal case.

⁷¹ See UN Essential services package for women and girls subject to violence.

Possible options for delivering the material

PowerPoint presentation and brainstorming questions



POWERPOINT PRESENTATION

Addressing historical use of discriminatory evidentiary laws in violence against women cases

- Traditionally rape was believed to be an easily made accusation
- Continued application of stereotypical assumptions about “appropriate” female behaviour
- Minimization of the criminal nature of gender-based violence
- Victims viewed as less credible witnesses
- International norms and standards address these historical biases

Non-discriminatory evidentiary rules

- Relevance of evidence of prior acts of violence by the perpetrator
- Irrelevance of previous sexual history of the victim
- No adverse inference from a delay in reporting
- Victim’s statement or testimony
 - credibility or competence to testify
 - understand reasons for victims’ decision to withdraw
- Sensitive questioning techniques



SMALL GROUP WORK

Divide the group into groups of four or five participants. Allow each participant to role play before the small group in raising objection to gender stereotyping being made by the judge or defence counsel. After each individual has the opportunity to do a role play, ask the small group to discuss each prosecutor’s performance and review what was done well and what needs further improvement.

PROSECUTORS’ ROLE IN SEEKING APPROPRIATE SENTENCES

Substantive material

Differing roles played by prosecutors in sentencing

The prosecutor’s role in sentencing and post-conviction decisions varies from jurisdiction to jurisdiction. While sentencing is a decision for the court, prosecutors generally have a duty to offer assistance to the sentencing court in reaching its decision as to the appropriate sentence. Depending on the jurisdiction, prosecutors may have the following roles:

- To draw the court's attention to the relevant factors, such as aggravating or mitigating factors, disclosed by the prosecution case
- To assist the court by providing details of the offence and the impact of the offending on society (including victim impact statement)
- To supply the court with relevant legal provisions, precedent cases, or drawing attention to sentencing guidelines
- To apply for appropriate ancillary orders, which need to take into account the victim's needs, including their future protection

International standards regarding appropriate sentences in violence against women cases

The updated Model Strategies and Practical Measures provide detailed guidelines for sentencing and corrections of violence against women. In particular, Member States are urged to ensure the following:

- That penalties are commensurate with the gravity of violence against women and explicitly provide for a consideration of aggravating factors for sentencing purposes, including for example, repeated violent acts, abuse of a position of trust or authority, perpetration of violence against a spouse or a person in a close relationship.⁷²
- To review sentencing policies and procedures to ensure that they hold offenders accountable, denounce and deter violence against women, stop violent behaviour, promote victim and community safety, take into account the impact on the victims and their families, provide reparations, and promote rehabilitation of the perpetrator.⁷³
- To take into account in the sentencing process, the severity of the physical and psychological harm and the impact of victimization, including through victim impact statements.⁷⁴
- To make available to the courts, through legislation, a full range of sentencing dispositions to protect the victim, other affected persons and society from further violence, and to rehabilitate the perpetrator, as appropriate.⁷⁵
- To develop and evaluate treatment and reintegration/rehabilitation programmes for perpetrators of different types of violence against women that prioritize the safety of the victims.⁷⁶
- To ensure that judicial and correctional authorities, as appropriate, monitor perpetrators' compliance with any treatment ordered.⁷⁷

Developing sentencing strategies

In cases involving violence against women, prosecutors should consider:

- Requesting a sentencing hearing and ensuring that the court has all the information it needs to sentence appropriately

⁷² Updated Model Strategies and Practical Measures, para. 17(b).

⁷³ Ibid., para. 17(a).

⁷⁴ Ibid., para. 17(d).

⁷⁵ Ibid., para. 17(e).

⁷⁶ Ibid., para. 17(f).

⁷⁷ Ibid., para. 17(g).

- Ensuring that the court considers a risk-assessment of offender dangerousness at the time of sentencing
- Ensuring that the court hears from the victim at the time of sentencing
- Recommending a sentence that considers the nature and gravity of the offense, the history of sexual and physical abuse, previous efforts at rehabilitation, the defendant's character and current rehabilitative needs as well as the interests of the community in protection and punishment
- Being alert to arguments in mitigation that detract from the character of a witness and be ready to challenge anything which is misleading, untrue or unfair
- Arguing against reducing sentencing for "honour-related" crimes, or where the victims are viewed as particular "types", such as sex workers or non-virgins

Victim's input

Victim's participation at the sentencing stage can vary from jurisdiction to jurisdiction. At the time of sentencing, there might be a variety of ways available to the victim to discuss the impact of the violence on her life including:

- Orally addressing the court
- Writing a letter to the judge
- Submitting a victim impact statement
- Having family, friends and members of the community address the court (orally or in writing)
- Cooperating with the probation officer or court appointed officer who is conducting a pre-sentence report

The prosecutor should prepare the victim for the sentencing hearing and advise her of her options. The victim should describe, whether in a victim impact statement or other means, her opinion for sentencing of the perpetrator, describe how she and her family and friends have been affected by the crime and raise any other concerns that she believes are relevant to sentencing or in need of public expression (e.g., if she believes there is continued risk). Victim impact statements can help to re-focus a judge's attention on the harm caused to the victim and to the community at the time of sentencing. Having the opportunity to express herself might assist in the victim's recovery.

Recommending sentences

Based on international standards and available evidence, prosecutors should be guided by the following recommendations when recommending sentences for perpetrators of violence against women.

Promote the application of more intrusive dispositions. Research shows that specific dispositions in violence against women cases can reduce re-abuse. The more intrusive sentences, such as incarceration, work release, electronic monitoring and conditioned probation, significantly reduced re-arrest for domestic violence compared to the less intrusive sentences of fines or suspended sentences without probation.

Take into account the whole prior criminal record. Some disposition studies reflect that domestic violence dispositions differ from standard sentencing patterns in that they often only focus on whether there is an abusive history and tend to disregard prior criminal history that are not domestic violence-related. However, research suggests that both the domestic violence history and non-related criminal histories indicate risk of re-abuse as well as general criminality.

Take into account “failure to appear”. Studies show that perpetrators who do not show up for court appearance are more at risk for re-abuse than those who do show. Prosecutors should consider them higher risk for re-abuse and this should be reflected in the recommended sentence.

Exercise caution in recommending conditional discharges for “first” offenders. There are some studies to show that at least a quarter of “first” offenders who are diverted or given dispositions without guilty findings will re-abuse or violate the terms of their conditional release. Prosecutors should consider requesting suspended sentences.

Consider whether fines may negatively impact the victim. When a convicted perpetrator maintains a continuing obligation to pay child support to the victim or the victim and her children are continuing to live with the perpetrator, and the victim believes that a significant fine would negatively impact the perpetrator’s ability to support her and her children, then the prosecutor should oppose any recommendation for fines. For example, in Brazil’s Maria da Penha Law, pecuniary sentences in domestic violence cases (payment of fines or basic food baskets) are forbidden.

Consider whether there are aggravating factors. Prosecutors should review whether there are aggravating factors that could enhance sentences. If the jurisdiction allows, the prosecutors should consider introducing evidence of aggravating circumstances at the sentencing hearing. This might include the use or threatened use of weapons, serious physical injury to the victim, the offender’s criminal history, the intimate relationship between the victim and the accused and the abuse of trust, stalking behaviour, evidence that demonstrates the offender’s propensity toward sexual deviancy or sexual violence and any other factors which make the crime particularly repugnant to the community.

Recommend that any offender treatment/rehabilitation programmes be closely monitored and enforced. With the increasing number of offender treatment programmes being established in some jurisdictions, prosecutors need to review the structure of the programmes when recommending that the offender attend any of them, either as a condition of diversion, probation, or even during incarceration. Offenders ordered to treatment should be subject to court supervision and court sanctions if they do not satisfactorily complete treatment programmes. These programmes need to therefore have adequate funding and resources to ensure timely monitoring and immediate enforcement. To increase programme participation, prosecutors should recommend post-dispositional compliance hearings as well as the placement of offenders on supervised probation.

Consider the effectiveness of offender treatment/rehabilitation programmes. Research indicates programmes that incorporate alcohol and/or drug treatment adds to the likelihood of reduction in re-abuse as many perpetrators abuse alcohol and drugs. According to some studies, there is no evidence that anger management or couple counselling programmes effectively prevent court mandated offenders from re-abusing or committing new offences

after treatment. Longer programmes are considered more effective than shorter programmes. However, some research suggests that treatment programmes as such are not likely to protect most victims from further harm caused by higher risk abusers. Prosecutors should consider supplementing the programmes with other measures to assure victim safety from these abusers. Accredited programmes that are associated with an organization supporting survivors provide feedback from the victim regarding whether the violence is continuing.

Consider the issue of restitution and reparations. Where the national legal system permits, the prosecutor should request an order of restitution to the victim who suffered loss as a proximate result of the perpetrator's criminal conduct. Several jurisdictions have an inclusive reparation system, whereby victims can file an application for reparations within a trial procedure on criminal matters. Restitution means that the perpetrator has to pay the victim a sum of money for actual damages and costs incurred by the victim as a result of the crime. This may include lost wages, property damage, medical bills, relocation costs, etc. In some jurisdictions, the courts may order restitution in addition to a prison sentence or to another sentence. While restitution may be an element in penalizing perpetrators it should not be a substitute for other penalties. Restitution is intended to enable victims rebuild their lives and, in domestic violence situations, may provide them with a choice of whether or not to return to the relationship. In recommending restitution, prosecutors should seek to prioritize this ahead of court costs, fines and penalties.

Possible options for delivering the material

PowerPoint presentation and brainstorming questions

KEY POINTS FROM THIS SESSION

1. International standards provide guidance on appropriate sentencing in violence against women cases.
2. Prosecutors should ensure that all relevant information and evidence is before the courts for a sentencing hearing, including concerning the severity of the physical and psychological harm and the impact of victimization through victim impact statements.
3. Prosecutors should consider more intrusive dispositions (incarceration, work release, electronic monitoring and conditional probation) rather than less intrusive sentences, such as fines or suspended sentences without probation.
4. Where national law permits, prosecutors should request that restitution to the victim is considered as part of the sentencing hearing. The victim's actual damage and costs incurred as a result of the crime should be given as expansive a meaning as possible.



POWERPOINT PRESENTATION

Roles in sentencing

- **Judges:** Sentencing is a decision for the court. Sentencing guidelines may exist, but discretion remains with the judge.
- **Prosecutors:** Generally, prosecutors have a duty to offer assistance to the sentencing court in reaching its decision as to the appropriate sentence. (cont.)

International standards regarding appropriate sentences in violence against women cases

The updated Model Strategies and Practical Measures provide detailed guidelines for sentencing and corrections of violence against women

- Penalties to be commensurate with the gravity of violence against women (para. 17(b))
- Sentencing policies and procedures to ensure that they hold offenders accountable, denounce and deter violence against women, stop violent behaviour, promote victim and community safety, take into account the impact on the victims and their families, provide reparations, and promote rehabilitation of the perpetrator (para. 17(a))
- To take into account the severity of the physical and psychological harm and the impact of victimization (para. 17(d))
- A full range of sentencing dispositions to protect the victim and others from further violence, and to rehabilitate the perpetrator, as appropriate (para. 17(e))
- Treatment and reintegration/rehabilitation programmes for perpetrators of different types of violence against women that prioritize the safety of the victims (para. 17(f))
- Ensure monitoring of perpetrators' compliance with any treatment ordered (para. 17(g))

International recommendations regarding sentencing hearings

- Ensure that all relevant information and evidence is before the courts
- Develop policies/checklists for types of relevant information for hearings
- Take into account the severity of the physical and psychological harm and the impact of victimization
- Take into account the offender's risk of repeat offending at the time of sentencing
- Take into account the whole prior criminal record of the offender
- Take into account other relevant information

International recommendations regarding intrusive versus less intrusive dispositions

- Consider more intrusive dispositions (incarceration, work release, electronic monitoring and conditional probation) rather than the less intrusive sentences of fines or suspended sentences without probation
- Ensure careful consideration is given to whether a fine is appropriate in intimate partner violence cases
- Ensure that caution is exercised when sentencing "first time" offenders of violence against women to conditional discharges

International recommendations regarding issues of restitution and reparations

- The right of victims to reparations should be defined as expansively as possible
- Where national law permits, restitution to the victim should be considered as part of the sentencing hearing
- The victim's actual damage and costs incurred as a result of the crime should be given as expansive a meaning as possible
- Consider including an assessment of physical and mental damage; lost opportunities including employment, education and social benefits, material and moral damages; measures of rehabilitation, including medical and psychological care, as well as legal and social services
- Prioritize restitution ahead of court costs, fines and penalties



QUESTIONS TO THE PLENARY

What role do you play in sentencing in your country?

Are there any sentencing guidelines on cases involving violence against women?

Wrap up exercise to review course material

This exercise aims at wrapping up the past days and considering what has been discussed during the training, by pulling together your reflections on the topic. Depending on the available time, trainers could consider mixing some of the following optional approaches.

Option 1: Large group method



WRAP UP

Instructions: Place flip charts at the front of room, divided into two segments, "Impediments" at the top of left column and "Ways to Improve" at the top right column. Ask the group to reflect on the discussions over the past days and to mention specific impediments and ways to improve. Take notes in the appropriate columns on the flip chart.

Option 2: Small group method



WRAP UP

Instructions: Each small group is to work on their own divided flip chart and to report back. If there is time, this exercise can be split in two parts, focusing first on impediments and then on ways to improve. Allow sufficient time for each group to report back to the plenary.

Option 3: Wrap up through using a case scenario



WRAP UP

Instructions: Use the Common Course Cases or present another case scenario that starts with a complaint to police and ends with sentencing. Each small group is to review the case and to note impediments and ways to improve on a flip chart. Allow sufficient time for each group to report back to the plenary.

For all options:

Starting at the top and using an arrow, to the right column, the group should list ways in which each impediment could be addressed listing the easiest way first (i.e., the ways that do not require changes in policy or law such as closing the door when interviewing a victim to the more difficult ones such as introducing the use of a screens). Participants could use red pens to underline the easiest ways and blue pens to underline the more long term methods.

A more detailed matrix could also be used instead of the two columns. If trainers have not already done so, they may want to review the large 'justice objectives' and how these objectives can be met. The larger 'justice objectives' are placed on top of a matrix on a flip chart. They may include:

- That the best evidence comes out at trial
- Increasing the likelihood of a proper conviction
- That the dignity of the victim is preserved
- That, by not re-victimizing the victim, other victims will be encouraged to come forward and give evidence
- All of the above, while at the same time protecting the legal rights of the accused

Special measures are listed on the left side of the matrix, starting from the first complaint to the sentencing stage. Some examples are provided in the table below. Trainers should discuss with participants whether each measure responds to an objective and in which way these measures help to fulfil these objectives.

TABLE: MATRIX EXERCISE FOR SETTING OUT SPECIAL MEASURES

	Ensure conviction	Get best evidence from witness	Protect victim’s dignity	Encourage victims to come forth and go to Trial	Protect accused’s right to fair trial
Private interview rooms					
Female investigators					
Referrals to NGOs					
Victim Impact Statements					
[include other measures, as relevant]					

ANNEX
01

**Sample agenda for
a three-day course**

Below is a sample timetable which can be used as a template when developing a detailed training schedule for a specific national training. It is meant to be flexible, depending on the target audience, which may include prosecution trainers, frontline prosecutors and/or senior policy officers at the prosecution agency. The timetable for each day is based on an 08:30 am to 17:00 pm working day with a one hour lunch break and two fifteen minute breaks, for a total training time of seven hours each day. However, the training schedule, starting times and ending times can be modified as needed by the national training team as per local requirements.

DAY	TIME	TRAINING MODULE	ISSUES COVERED	HOURS
Day 1	AM 08:30–12:00 (15 min break)	Opening ceremony	<ul style="list-style-type: none"> Formal opening remarks, speeches, etc. 	08:30–09:00 0.5 hour
		Opening, training objectives and general principles	<ul style="list-style-type: none"> Opening by training team Overview of training's objectives Icebreaker, ground rules Allow time to fill in pre-test 	09:00–10:00 1.0 hour
		Understanding the prosecution's obligation to effectively respond to violence against women	<ul style="list-style-type: none"> The concept of gender and gender equality Defining violence against women and identifying the common forms Due diligence obligation The importance of a criminal justice response 	2.0 hours with tea break
	PM 13:00–17:00 (15 min break)	Legal framework to respond to violence against women	<ul style="list-style-type: none"> International framework reflected in national laws 	1.5 hour
		Assisting women who suffer violence	<ul style="list-style-type: none"> Victimization Myths and realities 	2.5 hours with tea break
Day 2	AM 08:30–12:00 (15 min break)	Review of Day 1		15 min
		Assisting women who suffer violence	<ul style="list-style-type: none"> The local situation of women who suffer violence 	1.25 hour with tea break
	PM 13:00–17:00 (15 min break)	Conducting gender-sensitive interviews	<ul style="list-style-type: none"> Interviewing skills 	2.0 hours
		The role of prosecutors in ensuring comprehensive investigations	<ul style="list-style-type: none"> Comprehensive investigation strategies Forensic evidence 	2.5 hours with tea break
		Deciding to prosecute and selecting charges	<ul style="list-style-type: none"> Exercising prosecutorial discretion 	1.5 hours

(cont.)

DAY	TIME	TRAINING MODULE	ISSUES COVERED	HOURS
Day 3	AM 08:30–12:00 (15 min break)	Review of Day 2		15 min
		Deciding to prosecute and selecting charges	<ul style="list-style-type: none"> • Selecting charges • Dealing with diversion 	1.25 hours with tea break
		Pre-trial considerations	<ul style="list-style-type: none"> • Threat assessments 	2 hours
	PM 13:00–17:00 (15 min break)	Trial considerations	<ul style="list-style-type: none"> • Special measures • Evidentiary rules 	2.0 hours
		Post-test/evaluation		0.5 hour
		Final wrap up/review discussion		1.0 hour
	Closing ceremony		0.5 hour	

ANNEX

02

Sample detailed lesson plans

These sample lesson plans do not necessarily fit into a three day agenda. They are meant to provide ideas as to how the material in the different modules can be organized.

TIME BREAK DOWN – OPENING SESSION: 60 MINUTES				
Outline	Content	Activity	Time	Notes
0.1	Opening by training team	Presentation	5 min	
0.2	Introduction of trainees/icebreaker	Exercise	20 min	PowerPoint slide
0.3	Overview of training objectives	Presentation	5 min	PowerPoint slide
0.4	Overview of training materials, schedule and methodology	Presentation	5 min	Handout of training schedule
0.5	Training expectations	Plenary discussion	10 min	Flip chart
0.6	Establishing ground rules	Plenary discussion	5 min	PowerPoint slide Flip chart
0.7	Pre-test		10 min	Handout in opening module
TIME BREAK DOWN – MODULE 1: 180 MINUTES				
Outline	Content	Activity	Time	Notes
1.1	The concept of gender and gender equality	Individual exercise Brainstorming Lecture of terms	60 min	Handout – true or false Flip chart PowerPoint slides
1.2	Defining violence against women and identifying the common forms	Presentation Brainstorming exercises	20 min	PowerPoint slides Flip charts
1.3	International obligation of due diligence	Presentation Case study	50 min	PowerPoint slides Handout – case study
1.4	The importance of a criminal justice response	Presentation Discussion	20 min	
1.5	Guiding Principles	Presentation Discussion	20 min	PowerPoint slides
1.6	Review True or False exercise	Discussion	10 min	PowerPoint slide – answers
TIME BREAK DOWN – MODULE 2: 180 MINUTES				
Outline	Content	Activity	Time	Notes
2.1	Comparing international and national legal frameworks	Presentation Large group case scenario discussion	90 min	PowerPoint slides
2.2	Application of legal frameworks – case studies	Small group work Plenary discussion	75 min	Handout – case study
2.3	Linking the work of prosecutors with law reform	Presentation	15 min	(cont.)

TIME BREAK DOWN – MODULE 3: 270 MINUTES

Outline	Content	Activity	Time	Notes
2.1	The situation of women	Guest lecture Q & A Short film Discussion	90 min	Organize panel
2.2	Impact of victimization	Presentation Case study	90 min	PowerPoint slides
2.3	Myths and realities	Brainstorming Discussion	60 min	PowerPoint slides
2.4	Challenges/barriers for women's access to justice	Brainstorming Discussion	30 min	Handout – case study

TIME BREAK DOWN – MODULE 4: 150 MINUTES

Outline	Content	Activity	Time	Notes
4.1	Introduction on interviewing victims	Introduction Presentation	15 min	PowerPoint slides
4.2	Demonstrating good practice	Video Discussion Video explaining approach	30 min	Organize technical
4.3	Practicing interviewing	Role play exercise Plenary feedback session	75 min	Organize instructions for facilitators and victim volunteers
4.4	Dealing with uncooperative victims	Plenary discussion/ brainstorming	30 min	

TIME BREAK DOWN – MODULE 5: 180 MINUTES

Outline	Content	Activity	Time	Notes
5.1	Prosecutor's relationship with police/investigators	Presentation Discussion	30 min	PowerPoint slides
5.2	Ensuring a comprehensive investigation – collection of evidentiary	Presentation Discussion Small group work	90 min	Handout – case studies
5.3	Forensic evidence	Presentation Discussion Case scenarios	60 min	Find a local forensic expert

TIME BREAK DOWN – MODULE 6: 150 MINUTES

Outline	Content	Activity	Time	Notes
6.1	Prosecutorial discretion	Presentation Discussion Small group work	90 min	PowerPoint slides Handout – case studies
6.2	Charge assessment (including where victims of violence against women are charged)	Presentation Discussion	60 min	PowerPoint slides Handout – case studies
6.3	Settling cases outside the criminal justice system	Presentation Discussion	30 min	

TIME BREAK DOWN – MODULE 7: 180 MINUTES

Outline	Content	Activity	Time	Notes
7.1	Threat assessment	Presentation Discussion Role play	90 min	PowerPoint slides Handout – case studies
7.2	Bail hearing conditions	Presentation Case study Plenary discussion	90 min	PowerPoint slides Handout – case studies

TIME BREAK DOWN – MODULE 8: 270 MINUTES

Outline	Content	Activity	Time	Notes
8.1	Enabling court room environment	Presentation Discussion	60 min	PowerPoint slides
8.2	Evidentiary rules	Small group work Plenary discussion	75 min	PowerPoint slides Handout – case studies
8.3	Appropriate sentences	Presentation	45 min	PowerPoint slides
8.4	Wrap up and review	Brainstorming Case study	90 min	Handout – case studies

ANNEX
03

**Sample end-of-training
evaluation form**

EVALUATION FORM

Name of workshop

Date

Location

The organizers of this workshop are very interested in obtaining your views about the workshop in order to improve its effectiveness. Your answers will be anonymous. Comments you make may be used verbatim in the trainers' final report.

Please take a few minutes to complete this evaluation before leaving the workshop.

1. How did you feel about this workshop?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Very dissatisfied	Somewhat dissatisfied	Neither satisfied nor dissatisfied	Quite satisfied	Very satisfied

2. Please comment on why you felt this way.

3. What helped you to participate in this workshop?

4. What hindered you from participating more fully in this workshop?

5. Please indicate your **LEVEL OF AGREEMENT** with each of the following statements. **Circle** the number that best represents your level of agreement.

1 = Strongly disagree 2 = Moderately disagree 3 = Don't know
4 = Moderately agree 5 = Strongly agree

6. The workshop content was relevant to my work as a prosecutor.

Disagree 1 2 3 4 5 Agree

7. Workshop objectives were understandable.

Disagree 1 2 3 4 5 Agree

8. Workshop objectives were met.

Disagree 1 2 3 4 5 Agree

9. Workshop tasks were relevant to the workshop objectives.

Disagree 1 2 3 4 5 Agree

10. The time allocated to workshop tasks was appropriate.

Disagree 1 2 3 4 5 Agree

11. The written materials were informative and useful.

Disagree 1 2 3 4 5 Agree

12. The workshop was well designed.

Disagree 1 2 3 4 5 Agree

13. The workshop leaders were effective.

Disagree 1 2 3 4 5 Agree

General impressions

14. This workshop was an enjoyable experience.

Disagree 1 2 3 4 5 Agree

15. This workshop was a valuable experience.

Disagree 1 2 3 4 5 Agree

16. This workshop met my expectations

Disagree 1 2 3 4 5 Agree

17. The workshop content was new to me.

Disagree 1 2 3 4 5 Agree

18. I would recommend this workshop to colleagues.

Disagree 1 2 3 4 5 Agree

19. Compared with other workshops you have attended would you say that this workshop was:

Excellent

Above average

Average

Below average

Poor

Reasons:

20. In your view, were there any extrinsic factors affecting the conduct and success of this workshop (e.g., days when held, absence of key groups, key individuals, etc.)

21. Please rate the amount of time given to the following areas by ticking the box that matches your view:

	Not enough time	Sufficient time	Too much time
Lectures			
Group work			
Discussion			
Experience sharing			
Expressing your views			

General comments

22. What did you find most useful about this workshop that will help you with your work?

23. How would improve this workshop?

24. What are the major strengths or major weaknesses of the workshop? What elements did you especially like? What elements did you especially dislike?

**Thank you for your workshop participation and your advice on this form.
Please hand this form to a workshop leader before leaving.**

ANNEX

04

Post-test answers

1. A woman who has been beaten by her husband might be reluctant to participate in the criminal justice system for a number of reasons (check all which apply).
 - She fears retaliation from her husband
 - She does not believe that the police can protect her
 - She is ashamed of what the community will think
 - She loves her husband
 - She does not want her husband to be removed from the home

2. In a case where the victim reports rape, if she had agreed to go to the accused's apartment for a drink, is this strong evidence that she consented to the subsequent sexual intercourse?
 - Yes
 - No

3. You have received a file involving a woman who has been injured and who gave a statement to the police stating that her husband assaulted her. If you receive a voice message from the woman telling you she wants to withdraw the case, should you respect her wishes and decide not to proceed?
 - Yes
 - No

4. A victim was beaten by her husband by being punched, kicked and choked, and hospitalized for five days with a broken leg. The only evidence in the file includes a report from her family doctor, a statement from her nine year-old son who witnessed the incident and the victim's statement. Would you decide to prosecute?
 - Yes
 - No

5. Risk factors for lethal violence include which of the following:
- Unemployment
 - Threats of suicide
 - Jealous behaviour
6. The majority of rape cases involve strangers, physical force and physical injury.
- True
 - False
7. The victim's past sexual history with others is relevant to her credibility in a rape case.
- True
 - False
8. Victims are knowledgeable about the criminal justice system and their role in it.
- True
 - False
9. The police have taken an initial statement from a victim of sexual violence. You subsequently interview the victim. The day after your interview you realize that you have follow-up questions, so you arrange another interview. This is good practice.
- True
 - False
10. It is good practice to allow a victim of a sexual offence to have a support person beside her when she is being interviewed and when she testifies in court.
- True
 - False

ANNEX
05

**Overview of the Common
Course Cases**

COMMON COURSE CASE #1 – SEXUAL VIOLENCE

Module 2

V is 25 years old and recently divorced. She had started dating P, someone she knew from high school and recently met again. She was on her second date with P. After dinner in a restaurant, P was driving V home when he pulled his car over in a park and had sexual intercourse with her without her consent (the “incident”).

Module 3

After V’s divorce, she moved in with two girlfriends and got a job at a clothing store. Her friends encouraged her to start dating again in order to get over her failed marriage. She was excited to begin dating P. She had not seen him for nearly 10 years but remembered him as a smart and serious boy from her high school. He was doing well, a junior lawyer in a large law firm downtown. Their first date involved getting a coffee during the day time. V was a bit nervous but thought it went well and she agreed to see him again.

The second date was dinner. V was still a bit nervous, so she had three glasses of wine with dinner to calm her nerves. After dinner, P suggested they go back to his place but she said no and asked to be driven home. He became quiet after that. On the drive home she felt sleepy as she normally did not drink so much. She noticed that he had pulled into a park. She told him that this was not the right way. He told her to be quiet. This made her nervous. She noticed that he locked the car doors on both sides. She found this odd and disconcerting. A few minutes after the doors locked he pulled into a dark lane in the park and stopped the car. He told her that he knew what she wanted. He grabbed her and started to undress her. She was disoriented, said no, but did not know what to do. She was scared being in the park all alone with him and worried what he would do to her if she pushed him away. She did nothing. After he had penetrated her, he said nothing, drove her home and told her to get out of the car.

When she entered her apartment her two friends saw that she was upset and crying, with mascara running down her face. They asked her what happened. She said nothing and immediately had a shower. She was despondent for days. She called in sick from work. When she went back, her colleagues noted that she was not her usual cheerful self. One month later she finally told her roommates about what had happened.

Her friends encouraged her to report the incident to the police. They went with her. The receiving officer told her to wait in the hall. It took over an hour before V told her account to a junior male police officer. She did so in the reception area of the station where everyone was coming and going. She was told to wait. After six hours of waiting, she was taken to another office and asked to tell her story again to male investigator. Her friends were not allowed to be there, so waited outside. In the same room, however, there were three other male police officers present, just listening. She was then told to go to forensics, but since it was late in the evening by that time, she was told to go there tomorrow morning. When she came out of the investigator's office, P was waiting in the hallway with his father, who was a well-known judge, chatting and laughing with some of the police officers.

The following morning she went to the hospital to have the forensic exam done. She found the exam confusing, degrading and had not really wanted to continue. Three months after her forensic exam, she was summoned to the prosecution office. She again went with her girlfriends as she had felt nervous. She waited for over an hour before the prosecutor called her name. When she and her friends moved to enter the room, the male prosecutor abruptly said, "only the accuser". He challenged her version of events, made her feel like she was on trial and, while she was trying her best to explain, she felt she was muddling things up. He asked her why she did not resist. Why had she delayed reporting? Why did she have in it for P, who was a young man on the right track? Did she really want to ruin his life for "20 minutes of action"? He told her that the forensic report was not useful. Since she was a sexually mature woman, her hymen was already broken.

Module 4

In addition to the facts already provided, consider the situation where the prosecutor is meeting the victim the day of the trial. The trial is set for 9:30 am and the prosecutor has arranged a meeting with the victim for 8:00 am. The victim enters the prosecutor's office. She will not meet the prosecutor's eyes and says in a very quiet voice that she does not want to proceed with the charges.

Module 5(I)

In addition to the facts already provided, the police file that the prosecutor receives provides some more details to that already described. The police noted that V, according to her statement, took off her clothes immediately after the incident and threw them in the closet, as she did not want to use them ever again, and immediately took a shower. The police also made notes on a spontaneous remark of P when he and his father were at the police station: "I knew she wanted it so I gave it to her. She did not say no". Thereafter, P's position was that nothing happened.

Module 5(II)

In addition to the facts already provided, the file sent to the prosecutor also includes the report of the forensic examiner. He noted that there was no injury.

Module 6

In addition to the facts already provided, the police have included some additional facts in the file to the prosecutor. The police questioned V's ex-husband who provided names of one man whom he believed V had an intimate relationship with while she was married, as well as two other names of men that he believed she had sex with after they separated. The file also contains a witness statement from the waiter who served them at the restaurant who confirmed that V drank three glasses of wine and was obviously drunk as she "had trouble walking to the door". The waiter also made the statement that V was "wearing a low-cut dress, lots of make-up and was primed for action". The file also includes a document from the official register stating that P has no criminal record with a notation that in the handwriting of the police "likely not culpable since no record". One week after reporting the incident to the police, V returns to the police station to report that she has been receiving text messages from P telling her to drop the charges or else.

Module 7

In addition to the above facts, V reports to the police that she feels she is being followed. Over the last few weeks, she has seen P on the same street as the clothing shop where she works, and someone that looked like him at the coffee shop she frequents at the weekends. She is receiving a number of telephone calls both at home and at work where the caller would hang up after a few seconds. She is getting very scared for her safety.

COMMON COURSE CASE #2 – INTIMATE PARTNER VIOLENCE

Module 2

V is 40 years old and has been married to P for 15 years. One evening, police attend the home of V and P after being called by their son. P has beaten and choked V. She had been unconscious for a couple of minutes.

Module 3

At the start of their marriage, P had told V that she should not work. He was jealous and did not like other men giving V attention. He needed to know where she went and who she saw. Earlier on in the marriage, his mother-in-law had made comments about how he treated V. She did not like to see how he belittled her daughter, telling her that she was a

useless wife and worse mother. P discouraged her from visiting her mother or any of her former friends. V agreed in order to keep the peace. When P got mad, he would shout, call her names and at times hit her. He always apologized afterwards and would seem sorry but it happened again and again.

This last incident was when P returned home after drinking with his friends. He gave V a beating and choked her until she fell to the floor unconscious. The son called the police who came to the house. This was not the first time the police had been to the house. In the past, when the police thought the injury was serious, they had arrested P. However, V would return home soon after the arrest and would ask them to drop the charges. Thereafter, when the police were called to the home, they often decided not to arrest P, but would tell V not to make P angry and thereby avoid a beating. However, this last time, because V was unconscious when they arrived, they did arrest P and submitted a file to the prosecutor. V had time to think about what to do while P was detained and decided to take her children to the shelter. This time, V wanted the matter to proceed and the prosecutor initiated criminal charges against P.

V and the children stayed in the shelter for three days and then moved in with her mother who lives in another city. V did not hear any information regarding what was happening to P, whether he was still being detained or whether his charges were proceeding. Six months later, she received a summons to attend the criminal trial. She travelled to court, a fair distance and expensive for her, as she could not really afford the bus and hotel. It took her some time to find the right court room and she was worried that she was late. She did not want to see P but she was more afraid that she would be charged herself if she did not attend the trial. She did see P in the hallway at which he had given her a threatening look. When she was called to the stand, she saw P glaring at her the whole time she was answering the lawyers' questions. After giving her testimony, she was told to go. She would have liked to stay and watch the trial but she did what she was told. She did not hear anything about what happened and does not know who to ask.

Module 4

V and her children stay in the shelter for three days and while she is in the shelter, she gets a visit from P who apologises and wants her to return home. She sends a letter to the prosecutor which reads: "Please drop the charges against P. He has not drunk anything since that night and we can handle this ourselves. There is no reason to waste everyone's time. The whole thing was blown up way too big. I am not worried about him unless he is drinking."

Module 5(I)

In addition to the facts already provided, the police file notes that the son's call was made at the neighbour's home after the son ran out of the family home seeking help. When the police attended, they looked into the window and saw V lying on the floor not moving. The police noted that one of the kitchen chairs was smashed and there was a hole in the plaster of the wall. The police file noted an utterance of P as the police removed him from the house: "I hardly touched her". The police took V to the local hospital.

Module 5(II)

In addition to the facts already provided, the file sent to the prosecutor also includes the report of V's family doctor. In the last 3 years, she has gone to her family doctor seven times and she has documented her injuries, including a dislocated shoulder, missing tooth, bruises to her stomach and breast, sprained ankle and possible head concussion. The family doctor has prepared a medico-legal report with V's consent and has included details of the injuries incurred during the last 3 years.

Module 6

In addition to the facts already provided, the police have included some additional facts in the file with respect to the incident. The police file includes a statement from the neighbour who allowed the son to make the emergency call to the police. The neighbour has been living beside P and V for five years and has on ten or more occasions heard loud arguments coming from the house and recalls seeing V the day after with a black eye or some other injury. The neighbour mentioned to the police that six months ago, he had to drive V to the doctor when her arm was dislocated. When the neighbour asked V what happened, she said that her husband "got mad again".

When the police went to the hospital after that incident to talk to V, P entered the hospital room yelling at his wife saying that if she complained to the police, she would be sorry. One police officer tried to calm P down but was shoved into the wall. This upset the police officer and he was about to react when his partner told him that this was a family affair and not their business.

Module 7

In addition to the above facts, when the police questions V in the hospital, she tells them that her husband's violence has been getting worse in the last month. He has lost his job, which has made him more depressed than he was before. He was already on anti-depression medication and while on it, he is not supposed to be drinking, but he is drinking much more than he usually does. He told her last week that he would kill himself and then she would be sorry.





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