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Handbook on effective prosecution responses to violence against women and girls

CRIMINAL JUSTICE HANDBOOK SERIES



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HANDBOOK ON EFFECTIVE PROSECUTION RESPONSES TO VIOLENCE AGAINST WOMEN AND GIRLS

CRIMINAL JUSTICE HANDBOOK SERIES



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Introduction

Violence against women and girls is a widespread and serious violation of human rights that has severe physical, psychological, emotional and social consequences. The process of bringing a complaint into the criminal justice system can be a difficult and traumatizing experience for many victims for different reasons. Gender bias and discrimination fuel myths around such violence which shape the criminal justice response to these crimes. Many victims never report their victimization or they have been filtered out of the criminal justice system, resulting in low charge and conviction rates. A victim's decision to report gender-based violence and continue within the criminal justice system is one of the most important factors affecting the prosecution of cases. The way in which the criminal justice professionals initially respond to victims is critical in determining whether a victim chooses to participate in further legal action, or abandons it because she has experienced secondary victimization¹ or harsh treatment by the criminal justice system.

Prosecutors play a critical role in the criminal justice response to violence against women and girls. While prosecutors face different duties and tasks depending on their State's legal system, they generally represent the authority of the State in bringing a criminal case against the accused perpetrator, ensuring the application of the law during the criminal proceedings. 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 and girls when examining the credibility of the victim and the facts of the case.

The goals of prosecution are to protect the victims while holding perpetrators accountable for their actions, and communicate a strong message to the community that violence against women and girls will not be tolerated. The rule of law is undermined when impunity characterizes the criminal justice response to violence against women and girls. Prosecutors handling these cases have the difficult task of balancing the imperative of victim safety with their traditional goal of presenting the case for the State according to the rule of law and the attendant duty to ensure that a person

¹“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. See provision 15(c) of the United Nations updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, General Assembly 65/228.

accused of a crime receives a fair trial. In some situations, participating in a prosecution may endanger a woman's physical or emotional well-being. Prosecutors should apply fair and consistent procedures and strengthen links and cooperation with other institutions and agencies to ensure victim safety and offender accountability. It is the prosecutor's actions that ensure a credible criminal justice system for female victims of violence thereby contributing to their trust in the system.

In December 2010, the United Nations 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 Justice² which provide a comprehensive policy framework to assist States in developing responses and carrying out actions to eliminate violence against women and to promote equality between men and women within the criminal justice system.

The updated Model Strategies and Practical Measures provide a series of broad recommendations for countries organized around the following themes: criminal law; criminal procedure; police, prosecutors and other criminal justice officials; sentencing and corrections; victim support and assistance; health and social services; training; research and evaluation; crime prevention measures; and international cooperation.

Drawing upon the recommendations and guidance contained in the updated Model Strategies and Practical Measures, the United Nations Office on Drugs and Crime (UNODC), in cooperation with the Thailand Institute of Justice, has drafted this *Handbook* with a view to assisting prosecutors in their duty to uphold the rule of law, firmly protecting human rights and serving their community with impartiality and fairness in cases involving violence against women and girls.

Recognizing that prosecutors work in different legal systems, this *Handbook* is meant to be a resource to build on for individual prosecutors and prosecution services. Given the sheer diversity of prosecution structures and approaches, the *Handbook* will restrict itself to covering the general prosecutorial powers and functions. This includes: (a) deciding whether or not to initiate or continue criminal proceedings in cases of violence against women and girls; (b) directing or supervising investigations; (c) dealing with victims; (d) presenting cases before the courts; (e) deciding on alternatives to prosecution; and (f) playing a role in sentencing.

At the outset of the *Handbook*, it should be stressed that it includes information on aspects and requirements that may not fall within the role and functions of prosecutors in all national jurisdictions and legal systems, especially as regards interviewing and preparing the victim for trial, plea bargaining or the use of experts witnesses.

The *Handbook* is divided into three parts.

- *Part One* discusses current reflections, theories and research on violence against women and girls, the importance of the criminal justice response and some of the common misconceptions and myths surrounding sexual and gender-based violence.

² General Assembly resolution 65/228, annex.

- *Part Two* focuses on the role of a prosecutor in cases involving violence against women and girls. This part covers dealing with victims, role in investigations and the relationship with police, the decision to prosecute, the selection of charges, pretrial considerations such as release pending trial and no contact orders, evidentiary issues, trial considerations, role in sentencing and post-conviction, and restorative justice concerns.
- *Part Three* explores some of the institutional approaches that a prosecution agency can consider to ensure an effective response to violence against women and girls.

The focus of this *Handbook* is on violence against women and girls, based on the United Nations definition i.e. “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 in public or private life”.³ Therefore, the reference to gender-based violence is limited to those acts where the victim is female. Gender-based violence includes the term “gender” which is based on the two sexes, male and female and explains the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men. Underlying this violence is the belief of the inferiority of women or stereotyped gender roles. Therefore, the term gender-based violence in this *Handbook* refers to violence that is directed against a woman because she is a woman or that affects women disproportionately. It differs from other types of violence in that the victim’s gender is the primary motive for the acts of violence. While recognizing that certain groups of individuals experience discrimination on the basis of their gender identity, including transgendered or transsexual persons, cross-dressers and transvestites, this *Handbook* does not specifically discuss these groups.

While this *Handbook* speaks to the different forms of violence against women and girls, the focus is predominantly on domestic violence and sexual violence (inflicted both by strangers and non-strangers) as those tend to be the most common cases seen by prosecutors across the world.⁴

In this *Handbook*, the terms victim or complainant are mainly used, as this resource is focused on the prosecution role in the criminal justice system. This is not intended to negate terms that have been utilized in other contexts to refer to women who have suffered violence, such as survivors.

The *Handbook*’s focus has been limited to prosecutors and prosecution agencies involved in the formal justice systems at the national level. Therefore, prosecution tasks in the informal justice system, parallel State-sanctioned justice system, the International Criminal Court or other international tribunals, are beyond the scope of this handbook.

³ Article 1, United Nations Declaration on the Elimination of Violence Against Women, General Assembly resolution 48/104.

⁴ The situation of trafficking in women and girls is extensively covered in the UNODC *Anti-Human Trafficking Manual for Criminal Justice Practitioners* (2009) available at www.unodc.org/unodc/en/human-trafficking/2009/anti-human-trafficking-manual.html

Lastly, the *Handbook* provides a number of examples of national practices in boxes in order to illustrate certain points and concepts. In this regard, it should be noted that a structured and systematic evaluation of these national practices was not undertaken for this *Handbook*. They have been gathered from relevant United Nations entities and offices, government and academic sources as well as identified at the Expert Group Meeting organized by UNODC and the Thailand Institute of Justice from 8 to 10 April 2013 in Bangkok.

Part One

Current reflections on
violence against women and
girls and the role of
the criminal justice system

A. Violence against women and girls

Violence against women is both a cause and consequence of gender inequality. It is a widespread and pervasive violation of the enjoyment of human rights and a major impediment to achieving gender equality. It is rooted in historically unequal power relations between men and women. 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 United Nations Committee on the Elimination of Discrimination against Women, in its General Recommendation No. 19, notes 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.⁵ Most States have incorporated the principle of non-discrimination, as articulated in international human rights instruments, into their domestic laws.

Violence against women is often embedded in and supported by social and cultural values, structures and practices. The criminal justice system, including prosecutors, is not immune to such values and thus has not always regarded violence against women and girls with the same seriousness as other violence. It is therefore important for prosecutors to have a full appreciation of the gendered nature of this problem and how violence against women is an expression of power and inequality. Additionally, the harms of this violence undermine women's status and sense of self. Prosecutors, therefore, 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. Furthermore, prosecutors have a key role to play in reducing the high level of impunity for perpetrators of violence against women and girls by ensuring accountability and sending a message to society that such violence will not be tolerated.

1. Defining violence against women and girls

There are a number of international and regional instruments which provide the international context for the prohibition of violence against women and girls (see

⁵ General Recommendation No. 19 recommended by the Committee on the Elimination of Discrimination against Women.

annex 1). States may have international and regional obligations as parties to treaties and conventions. As State agents, it is important for prosecutors to be aware of these international standards to which their State strives to adhere.

The United Nations' definition of violence against women

Violence against women is defined in the Declaration on the Elimination of Violence against Women to mean “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”.⁶ This definition reflects the breadth of the issues involved in violence against women and also the gendered nature of the abuse. Such violence is directed against a woman because she is a woman or affects women disproportionately.⁷ 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 context 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, and
- Physical, sexual and psychological violence perpetrated by the State, wherever it occurs

Violence against women is manifested in a continuum of multiple, interrelated and sometimes recurring forms—physical, sexual and psychological violence and economic abuse and exploitation, experienced in a range of settings, from private to public, and in today’s world, transcending national boundaries.⁸

Regional definitions of violence against women

Prosecutors should also be aware that there might be regional instruments signed and ratified by their State that further elaborate on the definition of violence against women.

- European prosecutors should be aware that the 2011 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic

⁶ Article 1, United Nations Declaration on the Elimination of Violence against Women, General Assembly resolution 48/104.

⁷ General Recommendation No. 19 recommended by the Committee on the Elimination of Discrimination against Women.

⁸ Secretary-General’s In-depth Study on Violence against Women (2006), A/61/122/Add.1.

Violence (hereinafter Council of Europe Convention), in its article 3(a) provides that violence against women should be understood as a violation of human rights and a form of discrimination against women. The definition is similar to the United Nations definition above with one exception. It expands the acts of gender-based violence to include not only physical, sexual and psychological harm or suffering but also economic harm and suffering. The Convention defines psychological violence as “intentional conduct of seriously impairing a person’s psychological integrity through coercion or threats”. Article 3(d) defines gender-based violence against women to mean “violence that is directed against a woman because she is a woman or that affects women disproportionately”. Article 3(c) defines gender to mean “the socially constructed roles, behaviours, activities and attributes that a given society considered appropriate for women and men”.

- African prosecutors should be aware that the Protocol to the African Charter on Human Rights and Peoples’ Rights on the Rights of Women in Africa (1995) defines violence against women to mean “all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war”.
- North, Central and South American prosecutors should be aware of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (the so-called Belém do Pará Convention) which provides for a similar definition of violence against women as set out by the United Nations. However, the description of the violence within the family and the community is more detailed. For instance, the violence that occurs in the family includes reference to the domestic unit or any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the women, including, among others, rape, battery and sexual abuse. Violence also includes that occurring in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place.
- South East Asian prosecutors should be aware that the Declaration on the Elimination of Violence Against Women endorsed by the Association of South East Asia Nations (ASEAN) recalls the United Nations definition on violence against women.

The various forms of violence against women and girls

All forms of violence against women and girls are human rights violations and many constitute criminal offences in the legal framework of most States. Recognizing that the scope of crimes varies from State to State, as well as the definition or elements of the crimes, the following table covers the main forms of violence against women and girls referred to in international and regional instruments. Please note that these categories are not mutually exclusive and may overlap. This will be further discussed later in this section.

Table 1. The main forms of violence against women and girls referred to in international and regional instruments

Domestic violence	<p>International law does not define the term domestic violence. However article 2(a) of the United Nations Declaration on the Elimination of Violence against Women refers to violence occurring 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 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.</p> <p>-----</p> <p>The only regional treaty that defines domestic violence is the Council of Europe Convention. Article 3(b) states that: "All 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." Domestic violence is a gender neutral-term in the Convention.</p>
Sexual violence	<p>Internationally, 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 female children in the household, marital rape, rape, sexual abuse and sexual harassment.</p> <p>-----</p> <p>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), adopted by the General Assembly in 2010, calls on Member 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.</p> <p>-----</p> <p>The only regional treaty that defines the term sexual violence is the Council of Europe Convention. 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 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".</p>
Sexual harassment	<p>The United Nations Declaration on the Elimination of Violence against Women refers to sexual harassment but does not define the term. However the Committee of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 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."</p> <p>-----</p>

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".

Stalking

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".

Human trafficking

The Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children (hereinafter United Nations Trafficking Protocol), supplementing the United Nations Convention against Transnational Organized Crime, calls on States Parties to criminalize human trafficking. Article 3(a) defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The Council of Europe Convention on Action Against Trafficking in Human Beings uses the same definition of trafficking in person as the United Nations Trafficking Protocol.

The South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution defines trafficking to be the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other consideration with or without the consent of the person subjected to trafficking. Persons subjected to trafficking means women and children victimized or forced into prostitution by the traffickers using deception, threats, coercion, kidnapping, sale, fraudulent marriage, child marriage, or any other unlawful means.

Forced prostitution

The Convention on the Elimination of All Forms of Discrimination against Women, in article 6, calls on States Parties to take appropriate measures to suppress exploitation of prostitution of women, but does not define forced prostitution.

Forced and early marriage

The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages mandates consent of both parties, recommends a minimum marriage age and requires that the marriage be registered to better review the occurrences of forced and early marriages. The Convention does not suggest what the minimum age should be.

Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women calls for the elimination of discrimination against women in all matters relating to marriage.

Forced marriage is defined in article 37 of the Council of Europe Convention as: "the intentional conduct of forcing an adult or a child to enter into a marriage and the intentional conduct of luring an adult or a child to the territory of a party or State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage".

Forced and early marriage (continued)

The African Charter on the Rights and Welfare of the Child recommends that 18 years be the minimum age of marriage.

Female genital mutilation (FGM)

In article 2(a), the United Nations Declaration on the Elimination of Violence against Women explicitly identifies female genital mutilation (FGM) as a form of violence. The Declaration, however, does not define FGM.

Article 38 of the Council of Europe Convention calls for the criminalization of the following intentional conducts: (a) excising, infibulating or performing any other mutilation to the whole or any part of a woman's labia majora, labia minora or clitoris; (b) coercing or procuring a woman to undergo any of the acts; and (c) inciting, coercing or procuring a girl to undergo any of the acts listed in point (a).

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, in its article 5, calls for States Parties to prohibit, through legislative measures backed by sanctions all forms of FGM, scarification, medicalization and para-medicalization of FGM and all other practices in order to eradicate them.

The Cairo Declaration for the Elimination of FGM explicitly calls on States to implement legislation to criminalize and prohibit FGM.

Crimes against women committed in the name of honour

Article 42 of the Council of Europe Convention states that "Parties shall take the necessary legislative or other measures to ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion, tradition or so-called "honour" shall not be regarded as justification for such acts. This covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour".

Harmful practices

The United Nations Declaration on the Elimination of Violence against Women explicitly includes FGM and other traditional practices harmful to women as a form of family violence in article 2(a) but provides no further elaboration. The Special Rapporteur on violence against women, its causes and consequences, elaborated on the forms to include FGM, early marriage and dowry-related violence and other practices such as widow-burning.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (1995) provides that harmful practice means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity.

The African Charter on the Rights and Welfare of the Child calls on States Parties to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child.

Gender-related killings

Gender-related killings of women are defined by the Special Rapporteur on violence against women, its causes and consequences^a and in the text of the Agreed Conclusions endorsed by the Commission on the Status of Women at its 57th session (4–15 March 2013) as violent gender-related killings of women and girls.^b It should be noted that gender-related killing of women and girls is criminalized in some countries as "femicide" or "femicide" and has been incorporated as such into national legislation in those countries

Forced abortion and forced sterilization

The 1995 Beijing Platform of Action provides that acts of violence against women also include forced sterilization and forced abortion, coercive/forced use of contraceptives, female infanticide and prenatal sex selection.

According to article 39 of the Council of Europe Convention, the following intentional conducts should be criminalized: (a) performing an abortion on a woman without her prior and informed consent and (b) performing surgery which has the purpose or effect of terminating a woman's capacity to naturally reproduce without her prior and informed consent or understanding of the procedure

Physical violence

According to article 35 of the Council of Europe Convention, the intentional conduct of committing acts of physical violence against another person should be criminalized.

Psychological violence

According to article 33 of the Council of Europe Convention, the intentional conduct of seriously impairing a person's psychological integrity through coercion or threats should be criminalized.

^aReport of the Special Rapporteur on violence against women, its causes and consequences on the expert group meeting on gender-motivated killings of women, A/HRC/20/16/Add.4.

^bReport of the Commission on the Status of Women at its 57th session (4–15 March 2013), E/2013/27–E/CN.6/2013/11.

Crimes specifically applicable to the girl child

The above definitions of the various forms of violence are experienced by both women and girls. In addition, there are additional international and regional instruments that define crimes against children, both girls and boys.

The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography calls on States Parties to prohibit all three acts irrespective of whether the offences are committed domestically or transnationally or on an individual or organized basis.

Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration. States Parties are to criminalize at a minimum, the offering, delivery or accepting, by whatever means, a child for the purpose of: sexual exploitation of the child; transfer of organs of the child for profit; and engagement of the child in forced labour.

Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration. Acts to be criminalized include offering, obtaining, procuring or providing a child for child prostitution.

Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes. Acts to be criminalized include producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes.

The updated Model Strategies and Practical Measures provide that the law protects all children against sexual violence, sexual abuse, commercial sexual exploitation and sexual harassment, including crimes committed through the use of new information technologies, including the Internet (Provision 14(c) (iv)).

The Inter-American Convention on International Traffic in Minors (1997) calls on ratifying States to criminalize trafficking in minors and to protect minors and prevent their improper removal from the country.

In addition to the international and regional instruments listed above, prosecutors are referred to the Joint Report of the UNODC, the United Nations Office of the High Commissioner for Human Rights (OHCHR) and the Special Representative of the Secretary-General on Violence against Children on the prevention of and responses to violence against children within the juvenile justice system.⁹ This report builds on the 2006 United Nations Study on Violence against Children to describe the current situation of violence against children in juvenile justice system, identifies the risks of violence to which children, including specific risks of girls, are exposed and analyses factors which contribute to violence.

Criminalizing forms of violence against women and girls in national legislation

As previously stated, the scope of crimes against women and girls varies from State to State, as well as the definition or elements of the crimes. For example, in some jurisdictions there is no specific criminal offence of domestic violence, rather, such violence may be covered by assault provisions. Many States do not have a specific criminal offence of stalking, marital rape or child grooming. While recent years have seen growing recognition worldwide of the range of acts that should be criminalized, there continues to be need for legal reform. Therefore, national prosecutors should review their criminal laws for an appreciation of the specific criminal offences in their jurisdiction that apply to violence against women and girls.

Table 2. Specific criminal offences that apply to violence against women and girls

Domestic violence	At the national level, States vary in their criminal justice approach to domestic violence. While domestic violence includes a range of controlling and coercive behaviours, not all of them may be defined as crimes. Most States do not have 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 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 misdemeanor or common assault.
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⁹ Joint report on the prevention of and responses to violence against children within the juvenile justice system, United Nations Office of the High Commissioner for Human Rights, United Nations Office on Drugs and Crime and Special Representative of the Secretary-General on Violence against Children, A/HRC/21/25.

The United Nations Special Rapporteur on violence against women, its causes and consequences, developed a “Framework for model legislation on domestic violence”.⁹ This Framework provides that 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. 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.

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.

Some jurisdictions use terms such as spousal abuse, intimate partner violence, child abuse, incest or child sexual assault, family violence and marital rape. Domestic violence can also include forced and child marriages, female genital mutilation, dowry harassment and other harmful practices.

In certain jurisdictions (for example, Spain), the term domestic violence includes crimes committed in the family but exclude those crimes committed by the husband or other intimate partner, rather those acts of domestic violence are defined in the legislation as gender violence.

Sexual violence

Sexual violence takes many forms, including rape, sexual assault, sexual slavery or forced pregnancy, as well as defilement, sexual harassment, incest and trafficking for the purposes of sexual exploitation.

While the statutory framework for prosecuting sexual violence has improved in recent years, significant challenges remain. State criminal laws differ widely on the definitions both of rape and of sexual assault and on the conditions under which they are prosecuted.

The traditional definition of rape remains in some States, meaning that the crime is completed only at the time of vaginal sexual intercourse and excludes other forms of sexual violence. In some countries, rape has to be compelled by force or threat to have sexual intercourse, which excludes rape of a person who is not in the position to offer resistance.

Other States focus on lack of consent rather than on 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. The Council of Europe Convention provides that consent must be given voluntarily as the result of the person's free will be assessed in the context of the surrounding

**Sexual violence
(continued)**

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 (i.e. in a correctional facility) or in certain relationships (i.e. ongoing psychotherapist-patient relationship). Other States have provisions for a broad range of coercive circumstances around consent such as intimidation or fraud.

Legal reforms have broadened the definition in various States. This might include any act of sexual penetration, of whatever kind and by whatever means, committed against another person by the use of violence and threats or 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.

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.

Marriage is not a defence to the crime of sexual violence in many jurisdictions. In these jurisdictions, a spouse may be criminally prosecuted for the crime of sexual assault for any non-consensual sexual contact with his wife.

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, i.e. if there was a position of trust or dependency versus 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.

Human trafficking

The definition of human trafficking contained in the United Nations Trafficking Protocol is broad and describes the crime in detail, focusing on conditions of forced labour and slavery-like practices, without required cross-border movement.

The Organization for Security and Co-operation in Europe (OSCE) recommends that the definition of trafficking contains at least the following three elements: acts: recruitment, transportation, transfer, harbouring or receipt of a person; means: threat or use of force or other forms of coercion, of abduction, fraud, deception, abuse of power or a position of vulnerability; and purpose: forced labour or services, slavery, slavery-like practices or servitude.

Domestic legislation should ensure that the trafficking victim is not punished for her connections to the trafficking.

The United Nations Trafficking Protocol neither defines the term exploitation of the prostitution of others nor the term sexual exploitation. This was necessary to achieve consensus among Member States. It allows for the existence of different domestic laws on adult sex work (i.e. States vary in their criminalization of non-coerced adult sex work).

Forced prostitution

States vary in their criminalization of prostitution and prostitution-related acts with respect to adult prostitution. Some States criminalize all forms of prostitution, arguing that all forms of prostitution exploit women, and refer to the structural inequalities between men and women. Yet other States have decriminalized non-coerced adult prostitution. Some States criminalize the buying of sexual services but not the selling.

Many States include a number of prostitution-related offences in their criminal laws, such as public solicitation, pimping, operating a brothel, trafficking in persons.

Most States criminalize the commercial sexual exploitation of children.

Some States explicitly provide in their laws that any criminalization of prostitution should ensure that trafficked persons are not prosecuted.

Forced and early marriage

In some States there are laws criminalizing the practice of bride kidnapping and forced and early marriages. Where early marriage is a criminal offence, States vary as to what constitutes minimum age. Some States allow marriages of girls if parental or judicial consent is received.

In States that do not have specific criminal offences for forced or early marriage, other crimes related to the act might be applicable, for example, rape, attempted rape, physical and psychological, sexual violence, bodily harm, threatening with a weapon or dangerous object, ill-treatment, trespass to the person, false imprisonment, kidnapping and abduction, etc.

Female genital mutilation (FGM)

Some States have specifically criminalized FGM that occurs within their jurisdiction. Conduct that is criminalized includes conducting FGM, coercing or procuring a woman to undergo FGM, and inciting, coercing or procuring a girl to undergo FGM.

Some States have extended the definition of criminal offences to include those nationals that carry out, aid, abet, counsel or procure the carrying out of FGM abroad on a national even in countries where the practice is legal.

It is not usually an offence for a girl to carry out a FGM operation on herself.

Crimes against women committed in the name of honour	Honour-based violence is a crime or incident, which has or may have been committed to protect or defend the honour of the family and/or community. Honour crime is a collection of practices used to control behaviour within families to protect perceived cultural and religious beliefs and/or honour. Such violence can occur when perpetrators perceive that a relative has shamed their family and/or their community by breaking their honour code.
	Some States have addressed this violence by eliminating the defence of “honour” in cases of violence against women.
Other harmful practices	Increasingly, States have enacted criminal laws that address one or more harmful practices. The forms of harmful practices that have been criminalized include FGM, forced and early marriages, maltreatment of widows, female infanticide, prenatal sex-selection, virginity testing, HIV/AIDS cleansing, acid attacks, crimes committed in relation to bride-price and dowry, forced pregnancy, and trying women for sorcery/witchcraft.
	Some States have enacted laws that provide for extra-territorial jurisdiction in cases involving harmful practices.
Gender-related killings/femicide	Some States have incorporated the crime of femicide or feminicide into their national legislation as well as increasing penalties for such offences in some cases.
Forced abortion and forced sterilization	Some States have defined forced abortion as a specific criminal offence. Other States cover forced abortion and forced sterilization as crimes under assault or aggravated assault.

^a Report of the Special Rapporteur on violence against women, its causes and consequences on a framework for model legislation on domestic violence, E/CN.4/1996/53/Add.2.

Overlap and intersections of forms of violence against women

While prosecutors focus on the prosecution of crimes of violence against women as defined in their State’s criminal or penal codes, they also have an important role to play in ensuring a holistic, collaborative and integrated response to addressing violence against women. As such, by seeing the overlapping and connection of various forms of violence against women, prosecutors’ interventions can respond to the victim’s whole experience of violence, including assisting the victim in seeking the support and assistance she needs beyond the criminal justice response.

These following examples illustrate how forms of violence against women and girls overlap and intersect:¹⁰

- Intimate partner violence may include not only physical assaults, sexual violence and psychological abuse but also stalking, of which the latter takes place mostly post-separation.
- Some women are coerced into prostitution by abusive partners.
- Child sexual abuse can be connected to early entry into the sex industry.

¹⁰ Kelly, L. and Coy, M., *Building Blocks: A Strategy and Action Plan for Addressing Violence Against Women and Girls in Thurrock* (March 2012), available at www.thurrock-community.org.uk/serice/pdf/thurrock_vawg_201203.pdf

- Sexual abuse in childhood increases the likelihood of experiencing sexual violence and/or domestic violence as an adult.
- Forced marriage often includes coerced sex.
- Child marriage often results in forced sex.
- Trafficked women and girls are repeatedly raped.
- Victims of domestic violence are more likely to be repeat victims than other victims of crime.
- Domestic violence is likely to become more frequent and more serious the longer it continues and can result in death, which may meet the criminal elements of gender-related killings/femicide.
- Many perpetrators are known to the victim, despite the form the violence takes, i.e. intimate partners in domestic violence, parents in forced marriages, families in trafficking women and girls.

Over the course of women's life, many women encounter a range of forms of violence, from everyday incidents of sexual harassment in public, at work and in schools through to life-threatening physical and sexual assaults.¹¹ Women who face multiple forms of discrimination are exposed to a greater risk of violence, compounding their suffering. The challenge for prosecutors is to expand their approach to victims beyond the immediate and current violent incident and appreciate that the experiences of the women might cause distrust in State agencies such as law enforcement and prosecution agencies, as well as creating dilemmas with respect to reporting and supporting prosecutions.

2. Extent and nature of violence against women and girls

Violence against women and girls exists in every country in the world and has been described by the United Nations Secretary-General as reaching pandemic proportions.¹² 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 and girls are known to be a problem that affects the lives of millions of women and girls worldwide. The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) has compiled violence against women prevalence data from various countries as of December 2012.¹³

Consequences of violence

Violence against women and girls can have a devastating effect upon the victim, families and society. The consequences can be short- and long-term, physical, psychological and social. There can be serious immediate and long-term implications

¹¹ For the original formulation see Kelly L., *Surviving Sexual Violence*, (1987), Polity Press. For an update see Brown, J. and Walklate, S., *Handbook on Sexual Violence* (2012), Routledge.

¹² Secretary-General's In-depth Study on Violence against Women (2006), A/61/122/Add.1

¹³ Relevant facts and figures on the extent and nature of violence against women and girls are available at www.saynotoviolence.org/issue/facts-and-figures

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, and difficulties at work and school. Violence also has a negative impact on the psychological, social and economic development of individuals, families, communities and States. 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. One of the structural impacts is that the threat of violence against women and girls undermines and restricts women's participation in public life.

More vulnerable

Violence against women and girls occurs in all sectors of society; however, there is evidence that some groups of women who face multiple forms of discrimination are more vulnerable to violence and its consequences. In 2010, the General Assembly¹⁴ listed a number of categories of groups of women and girls who might be more vulnerable to violence:

- Women and girls from minority communities and indigenous women
- Women and girls with disabilities
- Destitute women and girls
- Those involved in the commercial sex trade
- Older women, widows and young women and girls
- Refugees, internally displaced and migrant women and girls
- Women living in rural or remote communities
- Women and girls living in institutions or in detention
- Women and girls living in situations of armed conflict or in territories under occupation
- Women and girls with HIV/AIDS
- Lesbians and transgendered persons

It is important to remember that female victims of violence tend to experience multiple intersecting or aggravated forms of discrimination. Gender-based discrimination intersects with discrimination based on other forms of "otherness", such as race, ethnicity, religion and economic status.¹⁵ This means that many women experience situations of double or triple marginalization. For example, victims of domestic violence who belong to marginalized ethnic or racial groups confront further obstacles

¹⁴General Assembly resolution 65/457.

¹⁵ Report of the Special Rapporteur on violence against women, its causes and consequences to the Preparatory Committee for the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance on the subject of race, gender and violence against women, A/CONF.189/PC.3/5.

in addition to the physical, sexual or psychological harm faced by all domestic violence victims. Victims of cross-border trafficking may face the combined effects of racism and gender discrimination as migrants, minorities or marginalized women.

3. The international and regional human rights framework

Prosecutors, as agents of the State, should be aware of the internationally and regionally applicable human rights framework. They should review which treaties their States have ratified and should take into consideration the relevant international standards and norms adopted by the Member States of the United Nations. A State that ratifies a human rights treaty accepts obligations that international law requires it to fulfill in good faith. How a treaty is implemented, that is, how it is given force under domestic law, or what legal or regulatory changes are made to allow the State to act in accordance with its international obligations, often varies enormously from State to State, legal system to legal system and treaty to treaty. Prosecutors from monist systems, where the State's constitution allows in principle for the direct incorporation of international norms into domestic law once the treaty has been ratified, should be familiar with the treaties ratified by their State. Prosecutors from dualist systems, which generally require a distinct step (typically through the adoption of legislation) for international obligations to be incorporated into the domestic legal system, should be familiar with the national legislation that incorporates international human rights. The United Nations standards and norms, while not binding on States, provide guidance to States as to how to effectively implement the broad human rights framework.

Human rights are universal and inalienable, belonging to every human in every society irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Individuals, whether they are victims, suspects, accused, defendants, offenders or prosecutors, are entitled to these rights.

See annex 1 for a complete listing of all relevant international and regional instruments mentioned throughout the Handbook.

B. The role of the criminal justice system in combating violence against women and girls

1. The international framework

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.¹⁶ 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 by private persons. If a State fails to act, it has violated its international obligations.¹⁷

Prosecutors, as part of the State apparatus, are charged with providing a fair and effective response to acts of violence against women. An effective criminal justice response prioritizes victim safety and offender accountability. It includes the opportunity to access redress for violence in a timely manner, the avoidance of re-victimization, 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. States should organize their response to all forms of violence in a way that allows relevant authorities to diligently prevent, investigate, punish and provide reparations for such acts of violence. Several recent cases at the European Court of Human Rights have found that States and State agencies had failed to fulfill their “due diligence” responsibilities in this respect. In other countries, domestic homicide reviews have pointed in similar directions.

¹⁶ A requirement of due diligence has been adopted in a number of international human rights instruments, interpretations, and judgments with respect to violence against women. These include CEDAW Committee General Recommendation No. 19 on violence against women; Article 4 of the United Nations General Assembly Declaration on the Elimination of Violence against Women; the Inter-American Convention on the Prevention of Violence against Women and the Council of Europe Convention Preventing and Combating Violence against Women and Domestic Violence.

¹⁷ For further information, see the 2013 annual report of the United Nations Special Rapporteur on violence against women, its causes and consequences, which studies the obligation of due diligence on States to eliminate violence against women and girls (A/HRC/23/49).

NATIONAL EXAMPLES

Motion for cassation, Second Court of Appeals, Chamber for Criminal Cassation, 30 November 2010—Argentina (Case No. 13,240)^a

The Argentinian Court of Appeal expanded on legal considerations related to the duty to act with due diligence required for investigating and punishing violence against women under the Convention of Belém do Pará and indicated that: “fair and effective legal procedure for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures, should be established”.

K. v. Slovakia, App. No. 7510/04 (European Court of Human Rights), 31 May 2007

The plaintiff alleged that she had suffered years of physical and emotional abuse by her husband, including beating with an electric cable that left her unable to work for a week. Her husband later threatened to kill himself and their children. Although K. made a series of visits and phone calls to local police regarding these threats they did little to intervene. In fact, after one incident, the police assisted her in withdrawing her complaint when she returned to the police station accompanied by her husband. Shortly thereafter her husband did in fact shoot and kill their children and himself. The court developed a test detailing when a State must act to protect an individual: “For a positive obligation to arise, it must be established that the authorities knew of or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.”

^aCase No. 13,240 as cited and discussed in Organization of American States, Inter-American Commission on Human Rights, *Legal Standards related to gender equality and women’s rights in the Inter-American Human Rights System: Development and Application* (OEA/Ser.L/V/II.143, Doc. 60, 3 November 2011), available at www.oas.org/en/iachr/women/docs/pdf/REGIONAL%20STANDARDS.pdf.

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

In order to assist criminal justice systems and professionals in meeting their due diligence obligations, in December 2010 the United Nations adopted the updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice.

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. 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.

The updated Model Strategies and Practical Measures set out the following elements of an effective criminal justice system response to violence against women and girls:¹⁸

¹⁸ See General Assembly resolution 65/228, annex.

Victim-centred. Victim safety and well-being are paramount goals of criminal justice response. A victim-centered approach to criminal justice system responses recognizes that victims are central participants in the criminal justice process, and they deserve timely, compassionate, respectful and 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. 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 re-victimize the victim.

Offender accountability. In violence against women cases, the criminal justice system needs to shift the focus away from questioning the credibility of victims to enhancing evidence-gathering and case-building and ensuring consistency in investigation, prosecution and punishment. 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.

Comprehensive, coordinated and multidisciplinary approach. The various institutions of the criminal justice system need to 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 relevant sectors of civil society to ensure a comprehensive response to victims of violence. For instance, support agencies could work with police and prosecutors to ensure support to victims during statement taking and providing 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-shop 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 resources to ensure an effective response.

Monitoring mechanism. The criminal justice stages need to be monitored in order to evaluate the effectiveness of criminal justice strategies as well as to provide oversight.

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. 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.

2. The criminal justice response to violence against women and girls

Violence against women and girls is a complex social problem deeply rooted in structures of gender inequality and 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 or discounting of this violence. The criminal justice system has a leading role in efforts to prevent and respond to violence against women. Criminal legislation sets the standards for what society deems unacceptable conduct, and provides criminal justice officials with the authority to investigate, prosecute and punish gender-based crimes. The objectives of any criminal justice system in cases involving violence against women and girls should be to ensure the victim's safety while holding the perpetrator accountable for his actions, and to send a clear message to society that violence against women will not be tolerated. Prosecutors have a crucial part to play in ending impunity for violence against women and girls. Vigorous and successful prosecutions can send a consistent message about society's intolerance and past impunity. This can contribute to transformative changes in social and cultural practices needed to eliminate this violence.

Despite the pervasiveness of violence against women and girls, 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 and girls do report, the rates of perpetrators being charged and convicted are very low, alongside high levels of withdrawal of complaints to the police and prosecutors.

Attrition rates in violence against women and girls cases

Understanding attrition is essential when exploring the efficacy of criminal justice in addressing violence against women. Research on attrition rates can be hard to find. Attrition refers to when, how and why cases are dropped from or otherwise lost to the criminal justice process. Many countries do not provide basic data on the numbers of reports, prosecutions and convictions which are needed in order to accurately analyse attrition rates. However from what information is 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.¹⁹

¹⁹ "... Comparative data on reporting, prosecution and convictions for rape from Justice Ministries in all European Union member states as well as Norway and Switzerland show that the conviction rate has fallen in most countries since the 1970s. England and Wales, Finland, Ireland, Scotland and Sweden show increasing attrition with increased reporting..." in Council of Europe, *Combating violence against women: Stocktaking study on the measures and actions taken in Council of Europe member States* available at [www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/CDEG\(2006\)_en.pdf](http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/CDEG(2006)_en.pdf). See also Regan, L. and Kelly, L., *Rape: Still a forgotten issue: Briefing Document for Strengthening the Linkages—Consolidating the European Network Project* (Rape Crisis Network Europe, September 2003) available at www.ec.europa.eu/justice_home/daphnetoolkit/files/projects/2001_020/rape_still_a_forgotten_issue.pdf

UN Women 2011–2012 Progress of the World's Women: In Pursuit of Justice^a

This report highlights the findings of research in Gauteng Province (South Africa) on attrition in the justice chain in rape cases. Only 17 per cent of reported rape cases reached the court and just 4 per cent ended in a conviction for rape. The report notes that these statistics are typical of rape case attrition rates in many other countries. In response, the Government of South Africa has invested in a network of one-stop shops which have significantly increased conviction rates. The Soweto Thuthuzela Car Centre in Gauteng Province attends to approximately 165 survivors per month, including many children as young as two years old. The trial completion time for cases dealt with by the Centre has decreased to 7.5 months from the national average of around 2 years, and conviction rates have reached up to 89 per cent.

^aUN Women, *Progress of the World's Women: In Pursuit of Justice* (2011). See also Vetten, L., Jewkes, R., Sigsworth, R., Christofides, N., Loots, L., and Dunseith, O., *Tracking Justice: The Attrition of Rape Cases through the Criminal Justice System in Gauteng, Johannesburg*, Tshwaranang Legal Advocacy Centre, the South African Medical Research Council and the Centre for the Study of Violence and Reconciliation (July 2008).

The International Violence Against Women Survey study on attrition rates

The International Violence Against Women Survey undertaken in 2008²⁰ interviewed over 23,000 women in 11 countries about their experiences with gender-based violence. The results below illustrate that “while only a minority of cases of violence against women are ever reported to the police, an even smaller share of cases result in charges laid against a perpetrator, and in only a small fraction of cases is there a conviction”.²¹

Reporting. Generally fewer than 20 per cent of women reported the last incident of violence they experienced to the police. The study showed that women were more likely to report a case of non-partner violence than partner violence, with the exception of three of the eleven countries studied. In all countries studied, 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 4 to 13 per cent).

Charging. The likelihood of charges being laid against a perpetrator is between 1 and 7 per cent of all victimization incidents. There was little difference in the percentage of cases resulting in charges against perpetrators of partner violence or violence perpetrated by other men. There was one exception, in Poland, where there was a higher than average reporting rate of 31 per cent for partner violence and charges were laid in almost one-third of these cases (10 per cent of cases). In all countries studied, the difference in the percentage of physical and sexual violence cases resulting in a charge was not great. Charges were laid in fewer than 6 per cent of physical and sexual assaults in those 11 countries.

Conviction rates. The likelihood that cases of partner or non-partner violence will result in a conviction is just 1 to 5 per cent in all studied countries, except for Poland, which had a 10 per cent conviction rate. Regarding the different conviction

²⁰ Johnson, H., Ollus, N. and Nevala, S., *Violence Against Women: An International Perspective*, HEUNI (2008).

²¹ *Ibid.*, page 146.

rates for physical and sexual violence, there were too few convictions in the data to be able to analyse this.

Appreciating attrition rates and understanding the underlying causes

In appreciating attrition rates and the underlying causes, national prosecutors should bear in mind that criminal justice professionals in various countries have different tasks and powers. In many jurisdictions, criminal justice professionals at the various stages of the criminal justice system act as gatekeepers, not allowing what they consider as weak cases to enter the next level. However, in some countries, this gatekeeper role might be restricted by laws or policies, for example, mandatory or pro-arrest prosecution policies in cases involving violence against women.

One study identified six points of attrition:²²

- The victim's decision to report to the police
- The police's judgment of no evidence or of a false allegation
- Insufficient evidence
- Early withdrawal
- Decision-making by the prosecutor
- Attrition at the court and trial stage

Evidentiary challenges and victim withdrawal account for high attrition rates. Some of the reasons include: (a) where the victim had learning difficulties, mental health issues or was unable to give a clear account; (b) DNA testing was not conducted; or (c) the offender was identified but not traced. In a substantial number of cases the decision not to proceed was linked with victim credibility. Victims who declined to complete the investigative process and victim withdrawal accounted for over one-third of cases lost at the police stage. Key factors in not completing the initial process were being disbelieved or fear of the police and the criminal justice system.

Another complexity in understanding attrition rates is the use of different terminology. For example, it is not always clear whether cases were "lost" or "dropped". Dropped cases are those where either the police or prosecutor makes a clear and explicit decision not to proceed with a case. Cases can be lost for a number of reasons including failure to identify or find the suspect, withdrawal by the victim, or acquittals in court. In appreciating the extent to which victims' withdrawals contribute to attrition rates, one must realize that early assessment by the police of the difficulties of prosecution and conviction may be interpreted by the victim as discouragement to continue. An assessment of the difficulties in the case might be due to complaints not being believed by police or prosecutor. Furthermore, perceptions of being treated poorly by the criminal justice system lead many victims to screen themselves out of law enforcement and legal proceedings at an early stage. Victims who are treated insensitively or unsympathetically often decide not to continue with the process. Victims want the violence to end and to be safe and protected. If they do not believe the criminal justice system can help them in that, they will not be cooperative.

²² *St Mary's, Service User Interview 11*, in Kelly, L., Lovett, J. and Regan, L., *A Gap or a Chasm? Attrition in reported rape cases*, Home Office Research Study 293 (2005), Home Office Research, Development and Statistics Directorate.

Underlying gender bias contributing to attrition rates

Gender bias and the acceptance of the subordination of women and girls in many countries still influence the understanding of violence against women and girls by criminal justice professionals. Many countries have adopted laws and policies to respond to these biases, however, women and girls worldwide continue to experience violence, discrimination and difficulties accessing justice. They may fear that they will be shamed by criminal justice professionals and their community if they report violence. Criminal justice professionals may condone or falsely believe that women and girls 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 and girls are often blamed for the violence perpetrated against them. Evidentiary rules may be biased against females. For example, in some countries, a victim's past sexual history may be used to discredit her complaint, or the victim must prove she resisted the perpetrator.

Women and girls may not have immediate capacity, in terms of time and/or money, to access and participate in the formal criminal justice system. Females have greater literacy challenges, are poorer, work longer hours and have more responsibilities at home than males in most countries. In many countries, the criminal justice system is staffed largely by men who might lack the necessary training on how to handle violence against women and girls. Moreover, the national criminal justice system might suffer from limited resources, resulting in understaffed police, prosecutors and judges, heavy workloads and a backlog of cases causing lengthy delays for all victims.

Table 3. Changing attrition rates in rape cases: a case study of England and Wales

<p>From A Gap or a Chasm? Attrition in Reported Rape Cases (2005)^a</p>	<p>Under-reporting Estimates rates of reporting range from 5 to 25 per cent, meaning 75 per cent or more of rape cases do not even enter the criminal justice system.</p>
	<p>Case not passing reporting stage Twenty-five per cent of reported cases are "no crimes" (unfounded). Of these, 9 per cent of reported cases were designated as false, however researchers determined false reports amounted to 3 per cent.</p>
	<p>Cases dropped at investigative stage Between 50 and 75 per cent of reported cases dropped at investigative stage (initial response, forensic examination, statement taking and/or interviewing of suspects)</p>
	<p>Cases discontinued by prosecutors Six per cent of cases were discontinued by prosecutors.</p>
	<p>Cases dropped at trial or acquittal Only 14 per cent of cases reached the trial stage, with a proportion of these not proceeding due to late withdrawal or discontinuance at court. Around half of all convictions were the result of guilty pleas. Where a trial took place, an acquittal was the more likely outcome</p>
	<p>Conviction rates The conviction rate for reported rape cases is 5.6 per cent. Another research report analysed this conviction rate based on victimization surveys instead of reported cases to police and found 3.4 per cent of rape incidents lead to a conviction.^b</p>

From *Violence against Women and Girls Crime Report 2011–2012*^c

This Crown Prosecution Service (CPS) report lists a number of good practice actions undertaken to reduce attrition in rape cases, including: (a) the establishment of specialized Rape and Serious Sexual Offence Units (RASSO) or Public Protection Units (PPUs); (b) availability of trained rape specialist prosecutors; (c) the establishment of Violence against Women and Girls Scrutiny Panels (qualitative violence against women and girls assurance monitoring and assessment of local community engagement); (d) availability of Independent Sexual Violence Advisers (ISVAs); and (e) development of Third Party Protocols (to ensure social service records are reviewed by investigating officer and prosecutors).

Charging by prosecutors

There was a rise in the proportion of cases that were charged of those referred to the CPS by the police for charging decisions. In 2011–2012, 42.1 per cent were charged, a rise of 5.4 percentage points on the previous year.

Discontinuing by prosecutors

Fewer cases were discontinued, only 16.2 per cent of all cases.

Conviction rates (including guilty pleas)

The proportion of convictions, out of all cases prosecuted, has risen from 58.6 per cent in 2010–2011 to 62.5 per cent in 2011–2012. Guilty pleas increased from 35.7 per cent in 2010–2011 to 39.9 per cent in 2011–2012. Of all successful outcomes, 64 per cent were due to guilty pleas, an increase from 61 per cent in the previous year.

Of all the reasons for unsuccessful outcomes, jury acquittals rose slightly, from 48 per cent in previous year to 51 per cent in 2011–2012. Of all the unsuccessful outcomes, those due to victim issues fell to just under 12 per cent from 14 per cent in the previous year.

In one case, a team of CPS lawyers successfully prosecuted a historical rape case involving a rape that took place in 1986. The defendant was acquitted at his first trial in 1988. The discovery of new DNA evidence (not available at the time of the first trial) allowed CPS to make a successful application under the “double jeopardy” provisions. The defendant pleaded guilty in March 2012. The victim said: “At long last he has lost the power over my life. ... My case was dealt with sympathetically and with care, so much better than 25 years ago when it was almost brushed under the carpet. Without your support I don’t think I would have been strong enough to go through the ordeal again”.^d

^aSt Mary’s, Service User Interview 11 in Kelly, L., Lovett, J. and Regan, L., *A Gap or a Chasm? Attrition in Reported Rape Cases*, Home Office Research Study 293 (2005), Home Office Research, Development and Statistics Directorate.

^bUnited Kingdom Centre for Research on Violence Against Women “Question 7. What percentage of rape gets prosecuted? What are the rates of conviction?”, Research to Practice Brief (December 2011).

^cEngland and Wales Crown Prosecution Service, *Violence against Women and Girls Crime Report 2011–2012* (London, United Kingdom).

^d*Ibid.*

3. Demystifying common misperceptions among criminal justice officers

There are a number of negative beliefs about sexual and gender-based violence based on gender discrimination and stereotyping. If these myths are formally or informally

embraced by the criminal justice institutions, this results in downplaying the perpetrator's responsibility and criminality while shifting the blame towards the victim. The victim's behaviour and personal characteristics take centre stage rather than the perpetrator's actions and generally results in suspicion of the victim's claim of gender-based violence and little support or justice being provided to the victim. The victims themselves might believe these myths and this can result in underreporting. Prosecutors need to be aware that there are a number of myths and stereotypes surrounding violence against women and girls and that they should not allow these to influence their decisions.²³

Most common myths surrounding rape and other sexual violence²⁴

Myth: Rape is a crime of lust or passion.

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. It is a common defence tactic in rape trials 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. Rapists do not rape because they want to have sex and many rapists may also 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. Rapists are also motivated by character traits common to many criminals.

Myth: "Real rape" involves a stranger, physical force and physical injury.

Fact: A victim is more likely to be sexually assaulted by someone she knows (i.e. friend, date, intimate partner, classmate, neighbour, or relative) than by a stranger. One study on women raped or sexually assaulted during 2002 found that 67 per cent of the women identified the perpetrator as a non-stranger.²⁵ Another study found that 8 out of 10 victims know the people who raped them.²⁶ Most victims do not incur physical injuries from sexual assaults. 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

²³ "...Myth is the triumph of belief over reality, depending for its survival not on evidence but on constant reiteration..." in Helena Kennedy, *Eve was Framed: Women and British Justice* (London, Vintage, 1992) as cited in Kelly, L., *Routes to (in)justice: a research review on the reporting, investigation and prosecution of rape cases*, Child and Women Studies Unit, University of North London (2001), available at www.hmcpso.gov.uk/documents/reports/CJJI_THM/BOTJ/Rapelitrev.pdf

²⁴ The rape myths were summarized from a number of sources including Du Mont, J. and White, D. *The use and impacts of medico-legal evidence in sexual assault cases: a global review*, World Health Organization (2007).

²⁵ The studies described in this section are reviewed in Mallios, C. and Meisner, T., "Educating Juries in Sexual Assault Cases—Part I: Using Voir Dire to Eliminate Jury Bias" in *Strategies—The Prosecutors' Newsletter on Violence against Women*, AEquitas, Issue No. 2, July 2010.

²⁶ Tjaden, P. and Thoennes, N., *Full Report of the Prevalence, Incidence, and Consequences of Intimate Partner Violence Against Women: Findings from the National Violence Against Women Survey*, National Institute of Justice, United States of America (2000).

sexual assaults. According to a study examining the prevalence of injuries from rape, only 5 per cent of forcible rape victims had serious physical injuries and only 33 per cent had minor injuries.²⁷

Myth: When a woman's chastity is threatened, she violently resists, attempts to escape or screams for help.

Fact: Victims make split-second decisions about how to react to sexual violence in order to survive. When humans are threatened, they respond, initially at least, instinctively and reflexively. The part of the brain primarily responsible for the detection of, and reaction to, a threat is called the amygdala. Threat detection and survival is given priority over all other brain functions. 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.²⁸ 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.²⁹ Physical resistance is unlikely in victims who experience dissociation or frozen fright or among victims who were drinking or using drugs before being assaulted. 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.

Myth: Rape happens only to young, pretty or desirable women.

Fact: There is no "typical" sexual assault victim. Sexual violence can happen to anyone, regardless of sex, race, age, sexual orientation, socio-economic status, ability, or religion. 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. One study found that people with disabilities have an age-adjusted rate of rape or sexual assault that was more than twice the rate for people without disabilities.³⁰ For individuals with psychiatric disabilities, the rate of violent criminal victimization including sexual assault was two times greater than in the general population.

²⁷ Rennison, C., *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1999-2000*, Bureau of Justice Statistics, Department of Justice, United States of America (2002).

²⁸ For further information on the functions of the brain see Lodrick, Z., "Psychological trauma—what every trauma worker should know" in *The British Journal of Psychotherapy Integration*, Vol. 4(2), (2007), pages 18–28.

²⁹ Mallios, C. and Meisner, T., "Educating Juries in Sexual Assault Cases—Part I: Using Voir Dire to Eliminate Jury Bias" in *Strategies—The Prosecutors' Newsletter on Violence against Women*, AEQuitas, Issue No. 2 (July 2010).

³⁰ *Ibid.*

Myth: Rape is committed by maniacs or perverts.

Fact: There is no racial, socio-economic, professional, or other demographic profile that typifies a rapist. This type of criminal is not physically identifiable and often appears friendly and non-threatening. Sexual assault defendants commonly appear in court well groomed and well dressed. They might also be married and have children. The defendant could also be a friend or family member of the victim and uses that relationship to gain, and then betray the victim's trust. Perpetrators often are very adept at being charming and social, as they are often grooming people to trust them.

Myth: Rape happens only in poorly-lit or secluded places.

Fact: Sexual violence can occur at any time and there is no way to adequately predict who might be a perpetrator. One study found that nearly six out of ten sexual assault incidents occurred in the victim's home or at the home of a friend, relative or neighbour.³¹

Myth: Some women deserve to be raped, it is their fault. Either they're asking for it (sexy clothes incite men to rape), they wanted it, or they put themselves in dangerous situations (prostitution, drunk).

Fact: 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 are perceived as provocative, being prostituted, or engaging in 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 doesn't 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.

Myth: Women seek to avenge slights or to extort money often fabricate rape charges.

Fact: The mistaken belief that most sexual assault allegations are false is unfortunately common. Significantly, research indicates that only 2 to 10 per cent of sexual assault cases involve false reporting.³² The frequently inflated claims of false reporting have negative consequences for the victim 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 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 the victim and the criminal justice system.

³¹ *Ibid.*

³² Archambault, J., "So how many rapes are false?", *STOP Newsletter (2005, Winter)* retrieved from the Pennsylvania Coalition Against Rape: http://www.pcar.org/sites/default/files/STOP_2005_False_Reporting.pdf

Research on false allegations

The prevalence of falsely reported cases of sexual violence is low. A review of research undertaken in 2009 indicates that only 2 to 10 per cent of sexual assault cases involve false reporting.^a Yet when victims come forward, many face disbelief. Understanding the prevalence of false reporting is complicated by terminology—“unfounded” versus “false allegations”.

A “false report” is a crime reported to police that an investigation factually proves never occurred. “Unfounded or baseless cases” are those in which it is determined that the incident does not meet the elements or legal criteria of the crime. “Unsubstantiated cases” are those where insufficient evidence is available to determine whether or not a crime occurred. An overestimation of the scale of false allegations by prosecutors feeds into a culture of scepticism, which in turn leads to poor communication and loss of confidence between the victim and the criminal justice system.

Recent research from England and Wales shows that false allegations of rape and domestic violence are perhaps more rare than previously thought. Furthermore, in only a very small number of cases was it considered that there was sufficient evidence and that it was in the public interest to prosecute a person suspected of making a false allegation of rape or domestic violence.^b In the period under review, there were 5,651 prosecutions for rape and 111,891 for domestic violence. During the same period there were 35 prosecutions for making false allegations of rape, six for making false allegations of domestic violence and three for making false allegations of both rape and domestic violence. The Director of Public Prosecutions noted “The report shows that a significant number of these cases involved young, often vulnerable people, and sometimes even children. Around half of the cases involved people aged 21 and under, and some involved people with mental health difficulties. From the cases we have analysed, the indication is that it is therefore extremely rare that a suspect deliberately makes a false allegation of rape or domestic violence purely out of malice. It is within this context that the issue should be viewed, so that myths and stereotypes around these cases are not able to take hold”.^c

^aLongsway, K.A., Archambault, J. and Lisak, D., “False Reports: Moving beyond the issue to successfully investigate and prosecute non-stranger sexual assault” in *The Voice*, 3(1) 1–11, (2009), retrieved from the National District Attorneys Association and available at www.ndaa.org.

^bLevitt, A., Principal Legal Advisor and the Crown Prosecution Service Equality and Diversity Unit, *Charging Perverting the Course of Justice and Wasting Police Time in Cases Involving Allegedly False Rape and Domestic Violence Allegations* (March 2013).

^cStatement from Mr. Keir Starmer, Q.C., Director of Public Prosecutions for the Crown Prosecution Service, available at www.cps.gov.uk.

Myth: A victim’s inconsistencies mean she is not credible.

Fact: The belief that many victims are false places unreasonable requirements on victims to demonstrate that they are real and deserving victims. Aware of the myths themselves, many victims adjust their initial account in order to appear believable. If this is understood through the lens of myths, then the prosecutor will see the inconsistency as making a false complaint or as creating evidentiary problems. The 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.

Myth: A victim will report everything at the first available opportunity.

Fact: The trauma experienced by the victim causes her to feel unsafe. Victims often need to feel safe and supported before reporting. They often only report after they have arrived at a safe location or after they have talked to family, friends or support persons.

These rape myths 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 judgment and scepticism.

The most common myths about child sexual assaults

Myth: The biggest danger is from strangers.

Fact: Although parents often fear that strangers will abuse their children, it has been well-documented that most child sex offenders are known to their victims.³³ Research from Australia states that of all those who reported having been victimized sexually before the age of 15 years, only 11.1 per cent were victimized by a stranger. More commonly, child sexual abuse was perpetrated by a male relative, a family friend, an acquaintance or neighbour, another known person, or the father or stepfather.³⁴

Myth: All child sex offenders are adults.

Fact: As many as 40 per cent of the offenders who victimized children under age six were under age 18.³⁵

Myth: Child sex offenders are isolated, anti-social loners.

Fact: Many child predators are charming, charismatic and very social. They are adept at charming the child and they may ingratiate themselves into a family in order to gain the parents' trust so that they can become closer to the child.

The most common myths surrounding domestic violence³⁶

Myth: Domestic violence is only perpetrated by a strong man against a weak woman.

Fact: Relative physical strength or weakness is not the issue; power and control are. 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 intuit her partner's moods in order to protect herself and her children.

Myth: It can't be that bad or she'd leave.

Fact: There are many practical reasons why women stay: they may be afraid of the repercussions if they attempt to leave; they may be afraid of becoming homeless;

³³ Richards, K., "Misperceptions about child sex offenders" in *Trends and Issues in Crime and Criminal Justice* No. 429, Australian Institute of Criminology (2011).

³⁴ Australian Bureau of Statistics, *Personal Safety Survey* (2005).

³⁵ Statistic drawn from the Bureau of Justice Statistics, United States of America, and discussed in de Becker, G., *Protecting the Gift: Keeping Children and Teenagers Safe (and Parents Sane)*, Dell Publishing (1999).

³⁶ These myths were summarized from Dempsey, M. M., *Use of Expert Witness Testimony in the Prosecution of Domestic Violence*, England and Wales Crown Prosecution Service Publication, March 2004 (London, United Kingdom).

they may worry about losing their children; or they may fear poverty and isolation. Additionally, 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, and by doing this the abuser has degraded the victim to the point that she lacks the 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.

Myth: Domestic violence is due to poverty or lack of education.

Fact: Domestic violence is common throughout all levels of society, whether rich/poor, educated/uneducated or rural/urban. Studies consistently find that violence occurs among all types of families regardless of income, profession, religion, ethnicity or educational level. Violence is not caused by poverty or lack of education; rather it is rooted in the historically unequal power relationship between men and women.

Myth: Domestic violence is a private issue for families.

Fact: Violence against women and girls 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.

Myth: Men who abuse are violent because they cannot control their anger and frustration.

Fact: Domestic violence is intentional conduct, and abusers are not out of control. Their violence is carefully targeted at 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, isolation, etc. to coerce and to control the other person. They choose their tactics carefully: some destroy property, some rely on threats of abuse, and some threaten children.

Myth: Husbands cannot rape their wives.

Fact: Rape occurs whenever sexual contact is not mutual, when choice is taken away. Any man who disregards a women's "no" is raping her.

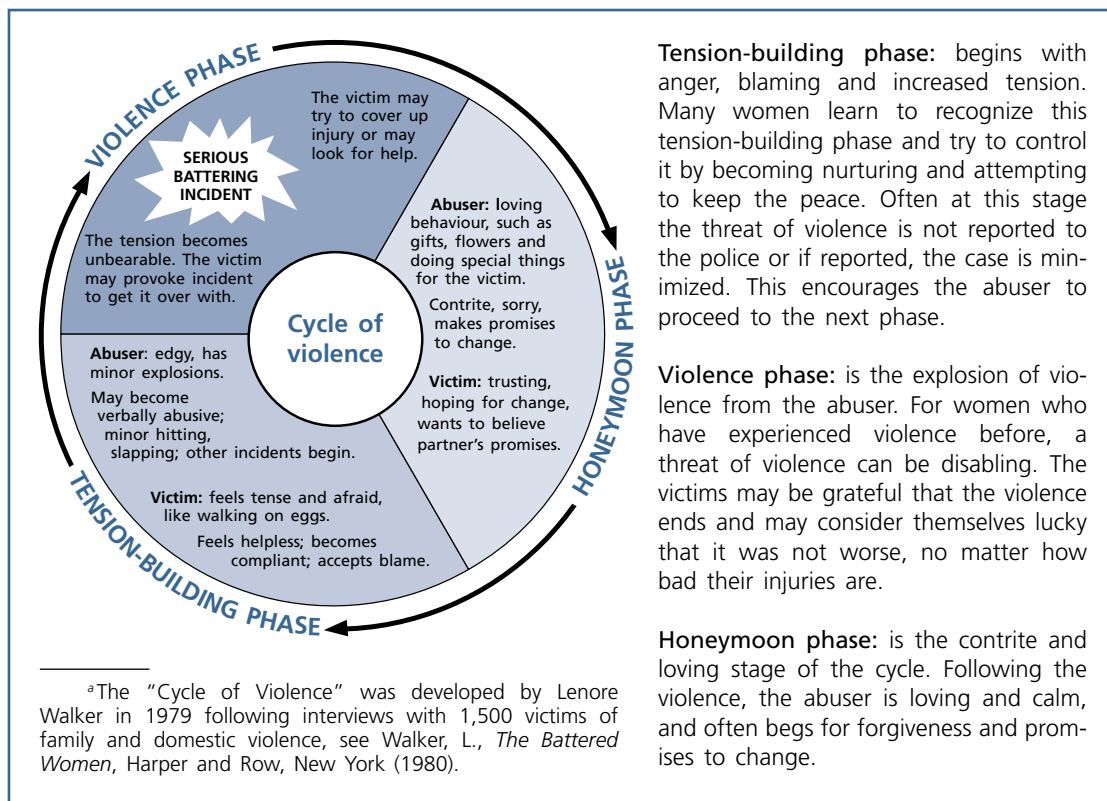
Myth: Men have a right to discipline their partners for misbehaving. Battering is not a crime.

Fact: While most societies derive from a patriarchal legal system that afforded men the right to physically chastise their wives and children, this is no longer the legal system in most countries.

Myth: If it was really serious she would come to court to provide evidence.

Fact: 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.

Figure 1. Cycle of violence: the three phases^a



The most common myths surrounding sexual harassment

Myth: The seriousness of sexual harassment has been exaggerated. Most so-called harassment is harmless flirtation.

Fact: Sexual harassment can be devastating. Studies indicate that most harassment has nothing to do with flirtation or sincere sexual or social interest. Rather, it is about control, domination and/or punishment. It is offensive, often frightening and insulting to women. Research shows that women are often forced to leave school or jobs to avoid harassment and may experience serious psychological and health-related problems.

Myth: Many women make up and report sexual harassment to get back at their employers or others who have angered them.

Fact: Research shows that fewer than 1 per cent of complaints are false. Women rarely file complaints even when they are justified in doing so.

Myth: Women who are sexually harassed generally provoke harassment by the way they look, dress or behave.

Fact: Studies have found that victims of sexual harassment vary in physical appearance, type of dress, age and behaviour. The only thing they have in common is that over 99 per cent are female.

The most common myths surrounding human trafficking³⁷

Myth: Trafficking in persons can only be foreign nationals or are only immigrants from other countries.

Fact: Depending on how the crime of trafficking is defined in various jurisdictions, it often includes both nationals and foreign nationals. Human trafficking encompasses both transnational trafficking that crosses borders and domestic or internal trafficking that occurs within a country.

Myth: There must be elements of physical restraint, physical force, or physical bondage when identifying a human trafficking situation

Fact: Human trafficking does not always require physical restraint, bodily harm or physical force. Psychological means of control may be used, such as threats, fraud or abuse of the legal process. There can be subtler forms of coercion and therefore, definitions of the crime should include a wide spectrum of forms of coercion.

Myth: Victims of trafficking will immediately ask for help or assistance and will self-identify as a victim of a crime.

Fact: Victims of human trafficking often do not immediately seek help or self-identify as victims of a crime due to a variety of factors, including lack of trust, self-blame or specific instructions from the traffickers regarding how to behave when talking to police or social services. Trust often takes time to develop, so trust-building and patient interviewing is often required to get the whole story and uncover the full experience of what a victim has gone through.

³⁷ Polaris Project, “Myths and Misconceptions: Human Trafficking”, found at www.polarisproject.org

Part Two

Effective responses in cases involving violence against women and girls: the role of the prosecutor

A. Dealing with victims

Prosecuting violence against women and girls poses unique challenges for prosecutors. Victims of gender-based violence require distinctive consideration at each stage of the criminal justice process.

Prosecutors need to appreciate that any form of violence takes away the ability of the victim to control their own body and life space. Repeated violations undermine the self and trust in others. To be violated is to have power used against you; hence the importance of empowerment in all interventions. The importance of ensuring that victims' views and needs are respected should be at the centre of all the prosecutors' consideration. All their dealings with victims should be rooted in empowerment. Prosecutors should avoid making assumptions about what is in the best interests of the victim and should not view the victim as a passive player in the justice system

Given the importance of a victim-centered prosecution strategy in cases involving violence against women and girls, this section focuses on understanding, supporting and protecting the victims. The remaining sections in part two follow the prosecutors as these cases go through the criminal justice process.

1. Understanding the victims of violence against women and girls

Understanding victim behaviour and its social context is critical to understanding the obstacles victims face in dealing with the criminal justice system. Prosecutors need to appreciate the gendered nature of the crimes of violence against women and girls and how the context of women's roles in society and discrimination against women generally may factor into the victim's reaction to the violence as well as her participation in the criminal justice process.

Generally, prosecutors are used to dealing with victims of violent crime who want justice and are therefore ostensibly eager to cooperate with them. However, women and girls 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 victims may be perceived as hostile or uncooperative or even unbelievable

to prosecutors. The victim's reluctance to participate in the criminal justice process is often misunderstood by prosecutors who believe that the victim does not care so why should they. When a victim makes inconsistent statements or minimizes what has happened, prosecutors might view her as lying to them. The victim might come across as unreliable and not credible enough for the prosecutor to pursue the case. If the prosecutor decides to pursue the case, he or she 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. Where the victim does report the violence, sometimes her eagerness to pursue a criminal case is questioned and she is suspected of being vindictive or seeking an advantage in other court proceedings such as divorce or custody cases. Below are some of the main factors that influence victims' decisions to report, when to report or withdraw support for prosecutions.

The psychological impact of the violence

Studies have reported that a significant portion of victims of gender-based violence suffer from trauma, such as post-traumatic stress disorder, depression and anxiety.³⁸ Victims can feel socially isolated and have low self-esteem. Sexual violence victims often experience a profound sense of shame and violation. The violence has negatively impacted on their sense of privacy, safety and well-being and can result in significant mental trauma.

Such trauma might affect the victim's ability 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. In many countries, the interviews conducted by police and prosecutors are often done by men and this might create a gender dynamic that may be especially uncomfortable for a woman or girl who has suffered violence at the hands of a man. The trauma might also result in 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.

Prosecutors must be able to assist and support traumatized victims and be able to make the appropriate referrals to other service providers. 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. The reality could be that some evidence may have been lost because of the delay; however, 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

Some studies cite fear as among the leading reasons expressed by victims for opposing prosecutions.³⁹ Victims may experience specific threats and/or pressure from the

³⁸ Klein, A., *Practical Implications of Current Domestic Violence Research, Part II: Prosecution*, National Institute of Justice, United States of America (2008).

³⁹ These studies are summarized in Klein, *ibid.*

perpetrator against prosecution, while others fear that the perpetrators will become more violent if they report and participate in the criminal justice process. Research on domestic violence indicates that victims' fears are accurate.⁴⁰ Often reporting and testifying against the perpetrator might 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. Studies show that women who are separating from their partners are at a much higher risk of domestic violence.⁴¹ Other studies show that those who leave their abusers are as or more likely to be re-abused as those who remain with them.⁴² Also those who maintain restraining orders or no-contact orders against their abusers are as likely to be re-abused as those who drop the orders. The victims of domestic violence face the dilemma of how best to ensure their safety and that of their children. This might explain why other 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.

There are a number of implications for prosecutors. First, prosecutors need to take appropriate measures to address the victim's fear of retaliation or fear of further violence or an escalation of violence. This could include seeking pretrial detention or no-contact orders, where the law provides for these measures and risk can be predicted for the victim, or ensuring special courtroom measures. Prosecutors need to establish effective collaboration with victim advocates and service agencies so that they can assist the victim in developing a safety plan. Secondly, prosecutors should always inquire about prior unreported domestic violence for evidence of crimes that may be charged depending on statutes of limitations and to develop an accurate offender history to determine the appropriate prosecution and sentencing recommendations.

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. They might feel that they won't be believed or that they will be treated with disdain by criminal justice professionals. Or the victim might be concerned that the criminal justice system will treat the perpetrator unfairly. In cases of domestic violence, the intention of the victim in calling the police might be to stop the violence rather than motivated by a desire to see the perpetrator prosecuted. Or the victim might be afraid of the criminal justice process itself, from undergoing a forensic medical examination, to testifying in court. The victim may also fear that she will be arrested on unrelated criminal matters, i.e. 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.

⁴⁰ Long, J., Mallios, C. and Murphy, S., "Model Policy for Prosecutors and Judges on Imposing, Modifying and Lifting Criminal No Contact Orders", The Battered Women's Justice Project (2010).

⁴¹ The British Crime Survey (1999) found that 22 per cent of separated women were assaulted in the previous year by their partners or ex-partners. Metropolitan police review of domestic violence murders, in 76 per cent of cases the victim was killed after they had terminated the relationship.

⁴² Klein, A., *Practical Implications of Current Domestic Violence Research, Part II: Prosecution*, National Institute of Justice, United States of America (2008).

Victims' fear of being charged with the crime of "false allegation of sexual offence"

In Kenya, the Government repealed Section 38 of the 2006 Sexual Offences Act (i.e. "any person who makes false allegations against another person to the effect that the person has committed an offence under this Act is guilty of an offence and shall be liable to punishment equal to that for the offence complained of") after concerns were raised about the scope of the provision that might punish a complainant in the event that a case was dismissed.

Many countries have offences such as wasting police time or perverting the course of justice that can apply to false allegations of crimes involving violence against women. This can apply to complainants that make a false allegation as well as those who retract allegations or provide inconsistent statements under oath. However, there might be credible reasons why a complainant of gender-based violence retracts a truthful allegation or has inconsistent statements. Prosecutors need to ensure that they fully appreciate the reasons for the retraction or inconsistencies. In jurisdictions where prosecutors have discretion, before instigating prosecution, prosecutors need to consider what interest is being served and the dynamics involved. In cases of gender-based violence where the victim retracts her complaint or makes inconsistent statements in court, prosecuting the victim for perverting the course of justice or making false allegations should be considered as a last resort.

Prosecutors need to treat all victims with respect and concern to avoid "secondary victimization" by the justice system. Keeping victims informed of the progress of their case is crucial to alleviating mistrust and fear in the system as well as ensuring timeliness in the criminal proceedings. Prosecutors should meet the victims early to develop a rapport and to provide information. Prosecutors should look at victim vulnerabilities first and worry about tactical considerations, such as what kind of witness they might make later. Prosecutors should be ready to object to any evidence related to a victim's "bad" character (i.e. substance abuse) that does not directly relate to the incident being prosecuted.

Women's economic position

In domestic 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. She might not have access to transportation to escape. The victim may fear the perpetrator will lose his job as a result of criminal conviction which has an impact on 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 (i.e. disability, substance abuse, mental illness, type of violence experienced).

In some countries, a lack of resources will be prohibitive to pursuing the case. 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. 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. If the prosecutor appreciates

that the victim might be economically dependent on the perpetrator, the prosecutor could make referrals 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. They may fear the loss of family approval. The victim might not have any support from family or friends. Family, friends or even her children, in situations of spousal abuse, might pressure her to drop the case. The community might minimize the violence or make excuses or blame the victim for the violence. Possibly the victim may fear she will lose her status in her community or her husband might leave her if she continues the prosecution. She might hold religious beliefs that prevent her from leaving the marriage. In situations where the victim is a child, she might fear being sent away from her home to a State-run children's home.

Reasons why women report

There has been less research on what victims want from the criminal justice system^a. In the limited studies that ask victims why they chose to report, some of the reasons include:

- Acting automatically/it seemed the right thing to do
- Wanting to prevent attacks on others
- Desire for justice/redress
- Wanting protection for oneself

^aJordan, J., "Worlds apart? Women, Rape and the Police Reporting Process", *British Journal of Criminology*, 41 (4) (2004), page 679.

Perpetrators' behaviour

In domestic violence situations, the perpetrator might threaten to take the children or harm them if the victim leaves. He might have isolated the victim from her family and friends as well as lowering 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 might threaten to commit suicide if she leaves. There are a number of implications for prosecutors. Prosecutors should recognize the temporary nature of the so-called "honeymoon" period (see figure I) 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.

Discriminatory legal provisions

There may be existing discriminatory legal provisions that are impediments for women to report an incident. For instance, family and divorce law, property law,

housing rules and regulations, social security law and employment law may discriminate against women. Prosecutors should be aware of any discriminatory legal provisions and how this might have an impact on the cooperation of the victim as well as on her safety.

Additional considerations for understanding girl victims of violence

Girl victims of violence may suffer physical injury, depression, self-destructive behaviour, anxiety, feelings of isolation and stigma, shame, poor self-esteem, difficulty in trusting others, a tendency toward re-victimization, substance abuse and sexual maladjustment. When the perpetrator is a family member, victims often suffer the emotional scars of guilt, betrayal and fear or may face disbelief when they disclose to the non-offending caregiver. Girls might exhibit fear of getting in trouble, shame or even love of the perpetrator.

Prosecutors should understand offender grooming techniques. The perpetrator often grooms both the victim as well as the victim's family members into trusting him. Therefore, the perpetrator is often perceived as less dangerous or has "normalized" inappropriate touching. Prosecutors need to be aware of the fact that girl victims are in relationships of power and dependency with adults. Therefore without robust family support, girl victims will often not be able to proceed unless taken into care.

NATIONAL EXAMPLE

Crown Prosecution Service interim guidelines on prosecuting cases of child sexual abuse (summary)^a—England and Wales

Allocation. All child sexual abuse cases must be dealt with by specialists.

Early consultation. In large or complex child abuse cases, there should be early consultation between the police and the Crown Prosecution Service. Joint case review meetings should take place periodically so that progress can be checked and advice on cases issues given.

Support. From the outset of the investigation, victims and witnesses should be made aware exactly what is expected of them and they should be offered support to help them in the process.

Identifying risk. Prosecutors should be aware of typical vulnerabilities exhibited by children who may have been abused. These include, but not limited to: being missing from home, school or care; drug or alcohol misuse; being estranged from family; self-harm; being involved in offending; and physical injury.

Credibility. When assessing the credibility of a child or young person, police and prosecutors should focus on the credibility of the allegation, rather than focusing solely on any perceived weaknesses in the victim. In particular, police and prosecutors should avoid making assumptions about victims. A reluctance to co-operate with those in authority, failure to report allegations of abuse swiftly and providing inconsistent accounts, are not uncommon in victims of child sexual abuse, especially during initial interview.

Taking the victims account. Particular care should be exercised when deciding how to take the victim's account. A video recorded interview is often the most appropriate means, but may not always be so. Consideration should be given to the use of a Registered Intermediary at an early stage.

Support at court. Prosecutors should discuss with the police at an early stage what special measures should be used to support a victim at court.

Challenging myths and stereotypes. Prosecutors should challenge myths and stereotypes at court. In appropriate cases, prosecutors should consider adducing expert evidence or inviting the trial judge to give specific directions to the jury.

^aEngland and Wales the Crown Prosecution Service, "Interim Guidelines on Prosecuting Cases of Child Sexual Abuse", issued by the Director of Public Prosecutions on 11 June 2013 (London, United Kingdom). Summary found at: http://www.cps.gov.uk/consultations/csa_consultation.html.

2. The role and rights of victims

The role of the victims in violence against women cases

The role of the victim in criminal cases is usually as a key witness for the prosecution. The victims are not clients of the prosecution nor are they generally viewed as parties to the criminal proceedings. In certain States, however, they can be *partie civile* to the case and have the right to legal counsel. Nevertheless, 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.

Generally, in inquisitorial legal systems, the victim has a more recognized role as they usually have the status of a party to the proceedings. In some jurisdictions, victims have a formal role in the pretrial investigative stage, including a recognized right to request particular lines of inquiry or to participate in interviews by the investigating authority. At the trial, they generally have independent standing and some jurisdictions allow victims to be represented by their own lawyer. In adversarial systems, victims are not a party to proceedings. Prosecutors act on behalf of the State and do not represent the victim.

NATIONAL EXAMPLE

Victim's right to free legal counsel in criminal cases—Brazil and Spain

In Brazil and Spain, the victim has the right to have her own legal representation free of charge. The role of the victim's lawyer is an important one, as they represent the victim in her dealings with the police and prosecutors. This contributes to ensuring the victim has access to justice and avoids secondary victimization.

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

This Declaration of 1985⁴³ 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.
- 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 United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime

The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, adopted in 2005,⁴⁴ provides a framework on how to enhance the protection of child victims and witnesses, including girl victims of gender-based violence, in the criminal justice system. These Guidelines set forth good practices based on the consensus of contemporary knowledge and relevant international and regional norms, standards and principles. These Guidelines recognize that girls are particularly vulnerable and may face discrimination at all stages of the justice system and provide that girl victims and witnesses of crime have the right to:

- Be treated with dignity and compassion. This includes ensuring that girls are treated in a child-sensitive manner throughout the justice system, including evidence collection, interviews, examinations and other forms of investigation.
- Be protected from discrimination. Age should not be a barrier to a child's right to participate fully in the justice process. Every child should be treated as a capable witness, subject to examination, and her testimony should not be presumed invalid or untrustworthy by reason of the child's age alone as long as her age and maturity allow the giving of intelligent and credible testimony, with or without communication aids and other assistance. This right

⁴³ General Assembly resolution 40/34.

⁴⁴ Economic and Social Council resolution 2005/20.

recognizes that special services and protection will be needed to take account of gender and the different nature of special offences against children, such as sexual assault.

- Be informed. From their first contact with the justice process and throughout the process, children, their parents or guardians should be promptly and adequately informed of their rights, the available protective measures, dates and location of hearings, etc.
- Be heard and to express views and concerns. This includes consulting with children as well as enabling them to freely express their views.
- Effective assistance. This includes access to a wide range of assistance, such as financial, legal, counselling, health, social and educational services, physical and psychological recovery services and other services necessary for the child's reintegration.
- Privacy. Measures should be taken to protect children from undue exposure to the public.
- Be protected from hardship during the justice process. Measures could include accompanying the children throughout the justice process, with trials to take place as soon as practical, etc.
- Safety. Appropriate measures should be in place that require the reporting of safety risks. Safeguards should be put in place to prevent intimidation, threats and harm to the child.
- Reparations. Reparations should achieve full redress, reintegration and recovery. Procedures for applying for reparation should be readily accessible and child-sensitive. Reparations include restitution from the offender ordered in the criminal court, aid from victim compensation programmes administered by the State and damages ordered to be paid in civil proceedings.
- Special preventive measures. This focuses on children who are particularly vulnerable to recurring victimization or offending.

In addition to the rights for victims provided for in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and in the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, it should be noted that the UN Women *Handbook for Legislation on Violence against Women*⁴⁵ provides further details as to the appropriate rights for victims during the criminal case, including:

- Allowing 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.
- When appearing in court, give evidence in a manner that does not require the victim to confront the perpetrator, including through the use of in-camera proceedings, witness protection boxes, closed circuit television and video links.

⁴⁵UN Women, *Handbook for Legislation on Violence against Women* (2010), page 37, available at www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf

- Victims should testify only as many times as necessary.
- Requesting closure of the courtroom during proceedings, where constitutionally possible.
- A gag on all publicity regarding individuals involved in the case, with applicable remedies for non-compliance.

3. Interviewing the victim⁴⁶

In all jurisdictions, prosecutors should treat victims with courtesy, dignity, respect and particular sensitivity to the trauma they have experienced. Depending on the jurisdiction, prosecutors should meet the victim or the victim's lawyer as early as possible in order to establish a 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, establish the risk or immediate threat of violence and obtain the victim's input as to any conditions of pretrial release.

Pointers for preparing for interviewing the victim⁴⁷

- Be prepared to provide information or referrals to support services. Make a directory with local resources for the victim.
- Organize a team interview. If at all possible, the prosecution and a victim advocate should conduct an interview together. The victim advocate will provide support as she goes through the trauma of recounting the violation.
- Prepare the victim for the interview by explaining the victim's role in the legal process. A victim is most likely to be unfamiliar with the legal system. By the time you meet with her, she may already be frustrated by how many individuals have asked very personal questions. It is therefore important to patiently explain why she has been called for the interview. Never blame or judge the victim.
- Explain the criminal justice process. Let her know that there may be a considerable period of time between the present statement and the court appearance. Explain how her statement will be used in the court process and that the defendant will get a copy of it.
- Explain defences and the role of the defence counsel. This prepares the victim for challenging cross examinations. Take time with the victim in advance to explain that the legal process allows the defendant to present a defence and often that process can be uncomfortable for a victim. Explain to the victim that she can help the prosecution prepare for the defence by sharing details of the crime in this interview.

⁴⁶ Where applicable.

⁴⁷ The pointers were inspired by the *Handbook for Prosecuting Sexual Violence in Liberia*, available at www.cartercentre.org

- Choose an appropriate place for the interview. Ideally the interview should take place in a neutral environment, where the victim feels safe and comfortable and should afford privacy. The interview location should not be in an interrogation room at the police station or where the perpetrator has access to the victim.
- Select, where required, an independent and competent interpreter. Interpreters that are independent and competent are crucial for prosecutors dealing with victims whose language differs. Flawed interpretations can easily lead to confusion, misunderstandings and unjustified concerns about witness credibility. Interpreters can also present challenges for rapport-building and a victim's willingness to proceed.
- When speaking to the victim, listen to her and give her time to tell you what happened. Victims might need to be reminded that the violence was not her fault. Always ask the victim about safety concerns.

Furthermore, prosecutors should 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 prosecutor of a specific gender.

Special considerations when dealing with 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 any contact they have with the girl victim allows her to be able to participate in a meaningful manner in the justice process as well as protect her from further harm, including being re-victimized by the criminal justice system.

Table 4. Guidance for talking with girl victims^a

Avoid	Use
Long sentences	Short sentences
Complicated sentences	Simple sentences (age-appropriate language)
The passive voice (i.e. "Were you hit by the man?")	The active voice (i.e. "Did the man hit you?")
Negative voice (i.e. "Didn't you tell somebody?")	Positive/leading sentences (i.e. "Did you tell somebody?")
Questions with more than one meaning	Questions with only one meaning
Double negatives (i.e. "Didn't your mother tell you not to go out?")	Single negatives (i.e. "Did your mother tell you not to go out?")

Table 4. (continued)

Avoid	Use
Hypothetical situations (i.e. "If you are tired, tell me")	Direct approach (i.e. "Are you tired?")
Frowning (as this can show negative judgment)	Interested and good eye contact
Tense body postures	Bring yourself down to the eye level of the child
Rushing her	Take your time and build a rapport before asking about the incident
Using your title or rank	Introduce yourself by name
Criticizing or judging a parent (even the abusive one)	Assurances that she will not get into trouble for talking about this
Looking shocked	Assurances that you've talked with lots of children about things like this

^aUNODC, *Handbook on Effective Police Responses to Violence against Women* (2010), available at www.unodc.org/documents/justice-and-prison-reform/Handbook_on_Effective_police_responses_to_violence_against_women_English.pdf

It is important for prosecutors to be respectful, attentive, sympathetic, calm and patient during the interview with the girl victim as well as to conduct the interview in a place where the girl feels comfortable and safe. Research indicates that children may remember central information well, but not peripheral information. Therefore the accounts that they give, given the development of memory and language, will often have key information missing. Being patient and aware of the girl's facial expression and body language to ensure she is not confused or tired will assist the girl in telling the prosecutor what happened.

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*⁴⁸ as well as the free online UNODC—UNICEF course for justice professionals dealing with child victims.⁴⁹

4. Protecting the victim throughout the criminal justice system

Prosecutors play a key role in ensuring that comprehensive protection measures are in place to provide safety, privacy and dignity for 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.

⁴⁸ UNODC-UNICEF, *Handbook for Professionals and Policymakers on Justice in Matters Involving Child Victims and Witnesses of Crime*, available at www.unodc.org/documents/justice-and-prison-reform/hb_justice_in_matters_professionals.pdf.

⁴⁹ Free online course for justice professionals dealing with child victims at www.unodc.org/justice-child-victims/login/login-form.jsp?lng=en.

Updated Model Strategies and Practical Measures, Provision 15(i) and (j) and Provision 16(f)

15. Member States are urged to ensure that ... (i) Comprehensive services and protection measures are taken when necessary to ensure the safety, privacy, dignity of victims and their families at all stages of the criminal justice process, without prejudice to the victim's ability or willingness to participate in investigation or prosecution, and to protect them from intimidation and retaliation, including establishing comprehensive witness-victim protection programmes; ... (j) Safety risks, including the vulnerability of victims are taken into account in decisions concerning non-custodial or quasi-custodial sentences, the granting of bail, conditional release, parole or probation, especially concerning repeat and dangerous offenders.

16. Member States are urged, within the framework of their national legal systems, as appropriate and taking into account all relevant international instruments: ... (f) to ensure that criminal justice officials and victim advocates conduct risk assessments that indicate the level or extent of harm victims may be subjected to, based on the vulnerability of victims, threats, the presence of weapons and other determining factors.

Threat assessment and risk analysis

Prosecutors need to know whether a systematic risk assessment has been done by the police or other agency, and if not, know how to do one themselves or who to refer the victim in order to have one done. Prosecutors can utilize danger or risk assessment standards when setting pretrial release (bail), charging decisions, reaching plea agreements, considering diversion and sentence recommendations. However, 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 that demonstrate the greatest risk to victims and their families. Remember, a victim who feels safe will be a more effective witness.

Research findings^a

Stalking and femicide. Research suggests a close association between stalking and femicide. One study found that 54 per cent of female intimate partner murder victims had reported stalking to police prior to their murders by stalkers. It is important for prosecutors to correctly identify stalking behaviour in order to use the laws to their most useful degree.

Fatal domestic violence. The domestic Violence Fatality Review in the United States between 1997 and 2004 found 313 domestic violence fatality cases in Washington State involving 416 homicides, including: 23 children; 32 friends/family members of primary intimate victim; one co-worker of primary victim; 19 new boyfriends of primary victim; 3 police officers responding to the call; 9 abusers killed by police; 10 abusers killed by friend or family member as well as 93 abusers who committed suicide. It is important for prosecutors to give priority to the protection of female intimates. This may help reduce female intimate homicides as well as collateral homicides.

Research findings (continued)

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 indicate additional, even more serious incidents of domestic violence being reported. Rarely in domestic violence situations does the reported abuse represent a single isolated, atypical act.^b

^a Klein, A., *Practical Implications of Current Domestic Violence Research, Part II: Prosecution*, National Institute of Justice, United States of America (2008).

^b *Ibid.*

While there are many risk assessment/lethality assessment tools available, it is important for prosecutors to use those 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 risk and dangers improves the information available to prosecutors, not just by learning the simple facts that certain events or behaviours took place, but by filling in 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 a 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 vulnerability to 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 the risk of lethality.

With that note in mind, a possible standard checklist should contain the elements below:

Table 5. Standard risk and danger assessment (assessment of the lethality risk and risk of repeated violence)

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
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Perpetrator's drug and alcohol problems	<ul style="list-style-type: none"> • Alcohol or drug use
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?
Perpetrator's mental health history (i.e. suicidal ideations, plans, threats and past attempts)	<ul style="list-style-type: none"> • Threats of homicide or suicide • Evidence of depression • Evidence of paranoid thinking • History of mental health or emotional problems
Perpetrator's threats to kill the victim or her children	<ul style="list-style-type: none"> • 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?
Perpetrator's use of violence in settings outside the home	<ul style="list-style-type: none"> • 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)
Evidence of escalating violence or intimidation	<ul style="list-style-type: none"> • 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
Perpetrator's possession of, access to, familiarity with and degree of fascination with guns	<ul style="list-style-type: none"> • Access to firearms/availability of weapons
Perpetrator's proclivity to respect court rules	<ul style="list-style-type: none"> • Record of violation of court orders • Record of failure to follow pretrial release or probation rules • Previous participation in batterer treatment programme
The status of the relationship	<ul style="list-style-type: none"> • 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	<p>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.</p> <ul style="list-style-type: none"> • 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

The checklist contains those factors that are most commonly present when the risk of serious harm or death exists. Additional factors assist in the 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 are the days and months after the alleged perpetrator discovers that the victim might attempt to separate from him or 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 is likely to improve the accuracy of the information and provide an opportunity to give information and resources to the victim.⁵⁰

NATIONAL EXAMPLE

CAADA-DASH Risk Identification Checklist (RIC) for MARAC Agencies—United Kingdom⁹

A British organization, Co-ordinated Action Against Domestic Abuse (CAADA), has developed a checklist for practitioners working with victims of domestic violence, stalking and “honour”-based violence to help them identify those who are at high risk of harm and whose cases should be referred to a multi-agency risk assessment conference and what other support might be required.

This is a common tool for agencies that are part of the Multi-agency Risk Assessment Conference (MARAC) process and provides a shared understanding of risk in relation to such violence. This tool enables agencies to make defensible decisions based on evidence from extensive research of cases, including domestic homicides and “near misses”, which underpins most recognized models of risk assessment. Cross agency management of high-risk cases establishes multi-agency risk assessment conferences that focus on the safety of high-risk domestic violence victims and jointly devises a risk management plan to reduce the harms faced by victims and their families. This can include preparing pre-sentence risk assessments for the court in relation to convicted sexual violence perpetrators.

⁹CAADA-DASH Risk Identification Checklist (RIC) for MARAC Agencies (CAADA, 2012), at www.caada.org.uk/marac/RIC_without_guidance.pdf

Developing a safety plan

Prosecutors should ensure that they, the police or a victim advocate/victim assistance group, have developed a safety plan with the victim to identify the options and

⁵⁰ Interestingly, studies have found that risk instruments might not be so accurate in predicting re-abuse. Given research that finds high base rates of re-abusing in domestic violence cases, the implication for prosecutors should be a default position that the perpetrator will reoffend until proven otherwise. Risk instruments do not significantly improve upon victim perception and basic actuarial data. Predicting lethality, which perpetrators are most likely to try to kill their victims is much more difficult than predicting re-abuse and recidivism because, fortunately, it is much rarer. Also the risk of lethality may increase due to situational circumstances, as opposed to static abuser characteristics. Nonetheless, researchers have found some key factors that increase the likelihood of homicide or significant injury. Lethality markers include access to firearms and other weapons; threats to kill; prior attempts to strangle; forced sex; escalating physical violence severity over time; and partner control over the victim’s daily activities. Other research shows that male abusers are more likely to kill if the children in the household are his partner’s by another man, and relationships with short courtships were much more likely to end in murder or attempted murder. Risk markers for severe injury including prior threats to kill, prior strangulation, stalking, and sexual assaults should be taken very seriously as well as drinking and drug histories and current use. See studies discussed in Roehl, J. et al., *Intimate Partner Violence Risk Assessment Validation Study, Final Report*, National Institute of Justice, United States of America (2005) and Klein, A., *Practical Implications of Current Domestic Violence Research, For Law Enforcement, Prosecutors and Judges*, National Institute of Justice, United States of America (2009).

resources available and to outline how she will protect herself and her family in a variety of settings and circumstances. In order to gather information about a victim's situation and concerns, the prosecutor should meet with victims as soon as possible, preferably while the abusers are still in custody. Safety plans should complement court orders, such as no-contact orders. They are practical plans for reducing the victim's risk, not predictive tools.

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 won't 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* It should cover every aspect of the victim's life—at home, at school, at work, in transit, online and in social situations.

For further information on developing personalized safety plans, see the UNODC *Handbook on Effective Police Responses to Violence against Women*.⁵¹

Restraining or protection orders

In many jurisdictions, under civil or family law, victims are able to apply for protection orders, restraining orders or no-contact orders. Many States have made breaches of civil protection orders a criminal offence. Criminal courts may also order criminal no-contact orders or have them as conditions of pretrial release. Some States have civil “go orders” which can mean that suspected perpetrators have to leave their houses.

The UN Women *Handbook for Legislation on Violence against Women* recommends that legislation should provide that:

- Such orders are available to victims without any requirement that the victim institute other legal proceedings;
- These orders have to be issued in addition and not in lieu of any other legal proceedings; and
- The issuance of these orders is allowed to be introduced as a material fact in subsequent legal proceedings.

⁵¹ UNODC, *Handbook on Effective Police Responses to Violence against Women* (2010), available at http://www.unodc.org/documents/justice-and-prison-reform/Handbook_on_Effective_police_responses_to_violence_against_women_English.pdf

The Council of Europe Convention contains a number of protection measures, including:

- **Emergency barring orders:** in situations of immediate danger, a perpetrator of domestic violence is ordered to vacate the residence of the victim and prohibited from entering the residence or contacting the victim.
- **Restraining or protection orders:** available to victims of all forms of violence without undue financial or administrative burdens placed on the victim.
- **Other protection measures** such as informing the victim when the perpetrator escapes or is released temporarily or definitively; providing victims with support services or ensuring their privacy is protected.
- **Special protection measures** for child victims that take into account the best interests of the child.

NATIONAL EXAMPLE

Organic Act on Integrated Protection Measures against Gender Violence (2004)—Spain

This Act, adopted in 2004, aims to provide victims of gender violence with full protection in many areas, including legal protection as well as labour and health protection, while giving them redress and relief. The law modified important aspects of the criminal proceeding to provide the victim better support and ensure their safety. Restraining orders are issued by the courts during the criminal investigation to protect women who are victims of domestic violence and who can prove that their lives or safety are at risk. These orders instruct the abuser to stay away from the victim, can force the abuser to wear an electronic bracelet, or in the most serious cases, provide police protection. If the abuser is convicted, the order will remain as a punishment.

In Spain there are also special police officers in charge of victim protection. Depending on the risk of the victim as illustrated by the police risk assessment (extreme, high, normal, low, no appreciative risk), the victim will have the right to different measures for protection.

Police protection

Some States provide police protection to victims of violence against women, usually in serious cases. Police have the primary responsibility for ensuring the safety and security of citizens. In cases where the victim feels insecure but the police do not determine an ascertainable risk of threat, the police will generally provide the victim with information on personal security, such as how to increase the security of their homes, ensure they have a mobile phone and emergency contact numbers.

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 a temporary change of residence.

Witness protection schemes

Some States have formal witness protection schemes or programmes which are designed to protect witnesses before, during and after a trial. The UNODC *Manual*

on *Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime* defines such schemes as “A formally established covert programme, subject to strict admission criteria that provides for the relocation and change of identity of witnesses whose lives are threatened by a criminal group because of their cooperation with law enforcement authorities.”⁵² Witnesses and their families typically get new identities with authentic documentation, money for relocation and housing, as well as job retraining. These measures are designed to protect victims/witnesses in cases of serious threats which cannot be addressed by other protection measures and, in cases of special importance, where the evidence to be provided by the witnesses (including victims) cannot be obtained by other means. The use of these schemes is usually seen as a last resort. While most witness protection programmes are commonly linked to organized crime, terrorism and corruption, such programmes have been available for other serious cases such as human rights violations.

5. Supporting and assisting the victim throughout the criminal justice system

Victims will have both immediate support needs as well as longer-term ones. Victims will need assistance in going through the criminal justice system, as well as accessing other services, which might include shelter, health care, child care, social services, counselling, education and job care. Support to victims should not only focus on the immediate physical and psychological consequences of the violence but should also aim to equip the victim with skills to assist them in their reintegration as productive members of society. In providing victims with support, the State should avoid or reduce the cost to the victim, whether this is fees, charges or taxes for these services.

Prosecutors can support the victims by:

- Ensuring timely resolution of cases;
- Keeping the victim informed of the criminal justice process and her rights as a victim, including her right to protection and her right to participate in the court sessions, to the extent that such a right exists. In systems that allow for plea bargaining, victims should be informed of the prosecutor’s decision to agree on a plea bargain, and where allowed, should also be consulted;
- Providing victims with a wide range of remedies, such as protection orders, restitution and compensation;
- Ensuring support is available to victims throughout the country (i.e. urban and rural areas);
- Coordinating extensively to ensure support services and making appropriate referrals to health, psychological and employment assistance;
- Ensuring that the victim is aware of her rights to legal aid in those jurisdictions that allow victims to have their own lawyers.

⁵² UNODC, *Manual on Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime* (2008), available at <http://www.unodc.org/documents/organized-crime/Witness-protection-manual-Feb08.pdf>

NATIONAL EXAMPLE

Crown Prosecution Service working with Independent Domestic Violence Advisers and Independent Sexual Violence Advisers—England and Wales

The Crown Prosecution Service cooperates with Independent Domestic Violence Advisers (IDVA) and Independent Sexual Violence Advisers (ISVA) who work alongside victims from the point of crisis through the criminal justice system and beyond.

Victim assistance units within prosecution services or working with victim/witness specialists

Some States have developed positions for victim/witness specialists within the prosecution office whereas other offices work with civil society organizations to have a support specialist work with the prosecutor handling a case of violence against women and girls. These “victim advocates” facilitate prosecution by preparing and supporting victims. These advocates can address victims’ crisis needs, provide information on the criminal justice system and community agencies that can assist with the full range of victim needs, and support and comfort victims by accompanying them to court. They can also assist the victim with safety planning and with applications for crime victim compensation and other financial aid.

A review of programmes in the United States of America indicated that prosecutors found their victim support programmes effective.⁵³ This has been shown to increase the victims’ willingness and ability to participate in the process. One study found that if the victim met with a victim/witness representative, victim cooperation increased threefold. Another study found the use of information from advocates is constrained in some States by laws governing admissibility of confidential communications between victims and advocates. Unless the advocates enjoy the testimonial privilege of certain licensed professionals, they can be forced to testify to their communications with a victim.

⁵³Ford, D. and Breall, S., *Violence Against Women: Synthesis of Research for Prosecutors*, National Institute of Justice, Department of Justice, United States (2000).

6. Preparing the victim for trial⁵³

Even under the best circumstances, testifying at trial can be an intimidating experience. Most victims will be unfamiliar with courts and trial proceedings and this unfamiliarity may raise feelings of anxiety and fear of the process. For victims of sexual and gender-based violence, feelings of vulnerability are especially traumatic. Victims who agree to testify need to be prepared in order to enable them to testify more effectively.

In jurisdictions that allow the preparation of witnesses, one goal is to help them testify with full comprehension of court proceedings. A lack of familiarity with the trial process can undermine their ability to testify to the best of their ability. By providing such information, prosecutors can make the victim feel more comfortable and therefore more confident. Another goal is to assist with the process of human

⁵³Where applicable.

recollection. The victim can refresh her memory of her statement which had been made some time ago and probably under stressful conditions.

It should be noted that practices that familiarize witnesses with the courtroom, court personnel and trial procedures are well-accepted and common practice in both common law and civil law countries. However, preparing witnesses with their substantive testimony is not as accepted in all jurisdictions and may be viewed by some States as witness coaching and strictly prohibited. Where the jurisdiction allows it, reviewing with witnesses their testimony can help them feel more confident.

In accordance with national criminal law, prosecutors could consider undertaking the following measures:

- Notify the victim as soon as the trial date is set and make an appointment to review her testimony. The victim should meet the prosecutor who will be examining her at trial.
- Explain the criminal justice process and prosecutor's role. Familiarize the victim with the courtroom, the court staff and all aspects of the court proceedings, and the roles of the various actors. Victim witnesses should be fully alerted to the harsh nature of cross-examination by defence counsels.
- Explain the role and rights of victims
- Review any safety concerns. If she is concerned, contact the police and contemplate a safety plan. Also consider if further charges should be filed against the defendant, if there has been conduct of a criminal nature. This is also the time to consider if applications for special measures are needed to protect her in court and facilitate her testimony.
- Allow the victim to review her statements. This helps her to refresh her memory and to identify any deficiencies and inconsistencies.
- Explain the importance of telling the truth. Explain that she should try to respond to questions with an answer that she knows to be true to the best of her knowledge and memory. There is no right or wrong answer. If she does not understand, she can ask for the question to be repeated. Tell her that the questioning may be upsetting. She should let you know if she is upset by the questions that the defence counsel is asking.
- Review the testimony. Begin with the oath. Explain what the oath means, and ask the witness to repeat after you for practice. Go through the direct examination. Then explain that the purpose of cross examination is to test the witness and she should ensure she understands the questions and answers truthfully.
- Explain basic logistics. Tell the witness what time they should arrive in court and where they should wait. Advise them that they are welcome to visit the courthouse before the trial if they would like to see what a trial is like. In some jurisdictions, prosecutors will take them to a courtroom to familiarize them, or use a drawing of the courtroom. Explain who the various players will be in the courtroom. Explain special measures that might be applied for to minimize re-victimization.

7. Dealing with uncooperative victims or recanting victims

Some studies indicate that a majority of domestic violence victims support the prosecution, even while they may express ambivalence about the prosecution publicly in court.⁵⁴ 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”. Prosecutors, therefore, should not allow victim opposition to automatically stop them from prosecuting cases. If prosecutors find the overwhelming percentage of victims consistently oppose prosecution, they must examine both their and law enforcement’s interaction with victims to increase victim support.

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.

Interestingly, studies show that the way victims are treated (i.e. with respect) is as important as eventual outcomes of the case.⁵⁵ So for example, in those 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. Prosecutors may take a variety of different approaches when dealing with unwilling or uncooperative victims including:

- 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 shelter, public assistance, victim advocate) and assistance to facilitate her contact with them. Research shows that meeting with the victim early in the criminal court process can result in more women participating in the process.
- Understand the victim’s reluctance and try to address it, if possible. For example, in domestic 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 it is the court holding him accountable and offering him court ordered programmes to provide him with the opportunity to change.
- 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.
- Depending on national legislation, consider subpoenaing 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

⁵⁴ Klein, A., *Practical Implications of Current Domestic Violence Research, Part II: Prosecution*, National Institute of Justice, United States of America (2008).

⁵⁵ *Ibid.*

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.

- Depending on national legislation, consider submitting the victim's testimony transcript taken by a preservative measure as evidence.
- Prepare to proceed with the case without victim testimony. Prosecutors and police should build their cases so that they can be proved without the testimony of the victim (i.e. prior statements, emergency communications such as emergency call records, photos of the victim, the defendant and the scene of the crime).

Document perpetrators' action of harassment

Any actions by dependents to harass, threaten or intimidate victims while cases are pending should be documented both to file additional charges and to be used to justify subsequent absences of victims who are too fearful to testify in court, thus allowing for substitute hearsay testimony.

Such documentation can also be used in response to potential arguments by the defendants of their right to confrontation and their attempts to bar admission of a victim's statement when it is their action that results in the victim's unavailability at trial.

Research also highlights what not to do.⁵⁶ The more prosecution-related burdens are placed on victims, the less likely they are to cooperate. For example, requiring the victim to sign a complaint in order to file charges, or attend a charging conference within days of the arrest of the abuser.

While victim perceptions of the dangerousness of suspects are well-founded and are a good predictor of subsequent re-abuse, research has found that victims' preferences of how cases should be prosecuted are not good predictors of re-abuse.⁵⁷ Victims who wanted charges dropped were just as likely as those who did not want them dropped to be re-abused (re-victimized). Victim cooperation with prosecutors did not prevent recidivism. In other words, if prosecutors proceeded with uncooperative victims, these victims were no more or 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 as well as to defendants that the decision to prosecute cannot be based solely on victim preferences.

Specialized prosecution programmes

A study found that the non-cooperation of victims was reduced in sites with specialized prosecution programmes, increased victim advocacy and specialized domestic violence courts.^a

These specialized response programmes generally include fast track scheduling, reducing victim vulnerability pending trial, increased victim contact pending trial, and victim-friendly proceedings that remove, as much as possible, victim involvement to proceed with prosecution.

^aKlein, A., *Practical Implications of Current Domestic Violence Research, Part II: Prosecution*, National Institute of Justice, United States of America (2008).

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

It should be highlighted that reluctant victims would need the following from a prosecutor:

- Availability of female professionals to talk to
- A culture of belief and support
- Private 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
- Continuity of the prosecutor and 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
- Prosecutor who 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 themselves 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. Subpoenas can alleviate the pressure on a victim from the abuser to drop charges. Subpoenas also provide the victim with documentation to justify absence from work. The prosecutor needs to inform the victim of the consequences of disobeying a subpoena. However, prosecutors should understand that a victim of violence may have important reasons for failing 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 the prosecutor is allowed by which the victim is interviewed subject to the 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.

NATIONAL EXAMPLE

Making effective use of prosecutorial/court powers—two case studies from India

Case 1: A victim of rape was so traumatized that she refused to testify at the criminal trial. The prosecutor therefore took statements from the victim's parents and filed a petition before the court seeking a psychological examination of the victim. Thereafter the medical board who examined the victim was able to present evidence in the criminal case.

Case 2: A victim of domestic violence suffered a severe fracture and could not move from her home. The prosecutor applied under the law which gives the court power to appoint a commissioner in criminal cases. The chief judge appointed a magistrate to travel to the victim's home to take her statement and document her immobility. The statement could be submitted in court in her absence.

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.

NATIONAL EXAMPLES

Legal provision that requires a woman to renounce her denunciation before a judge—Brazil

On the basis of article 16 of the Maria da Penha Law (2006), in the public penal lawsuits conditional to the representation of the victim provided for in this Law, the renunciation of the representation shall only be admitted before the judge, in a hearing especially assigned for such purpose, before receiving the denunciation and after hearing the Prosecutor's Office.

Crown Prosecution Service Policy: steps to take when victims withdraw support for the prosecution—England and Wales

The Crown Prosecution Service policy recognizes that when a victim withdraws her support or does not wish to give evidence, there could be a number of explanations and therefore this does not mean that the case will automatically be stopped.

The policy sets out steps to take, including:

- Ensuring that a prosecutor experienced in domestic violence matters supervises the case.
- If the information about the victim's decision has come from the defendant, ask the police to make further enquiries (particularly as it may reveal a breach of the defendant's bail).
- If the victim confirms that the information is true, ask the police to take a written statement from the victim. This statement should explain the reasons for withdrawing support, confirm whether the original statement was true, confirm whether the victim has been put under pressure to withdraw support, and provide any other relevant information.
- Asking the police to give their views (and to consult with Independent Domestic Violence Advocates, if they are available, for the most up-to-date information) about the evidence in the case and how they think the victim might react to being called to attend court against their wishes.
- Asking the police to make sure that the full risk assessment of the victim, any children and any other person's safety is up-to-date.

Organic Act on Integrated Protection Measures against Gender Violence (2004)—Spain

In Spain, this Law has raised some misdemeanors or summary offences to felonies or indictable offences, which means for prosecutors that gender violence is always a public crime regardless of severity and therefore the prosecutor is to proceed with or without the consent of the victim.

Therefore, if the victim does not want to cooperate at the time of trial, the investigating judge has gathered other evidence, such as photographs, forensic examination of the victim and alleged perpetrator.

The Law also established provisions for expedited trials which should be conducted within 15 days to reduce the risk of the victim changing her mind.

Special considerations when dealing with girl victims

Girl victims who have disclosed abuse by family members can sometimes face extraordinary pressure from the perpetrator as well as the non-offending family members to withdraw their complaint. The child feels pressure to recant in order to keep the family together. Prosecutors should be aware that such pressure can be overt (i.e. rejection, intimidation or forcing the child to write a recantation letter) or subtle (i.e. the continued relationship or contact by the family with the perpetrator). Even if the perpetrator is held in pretrial detention or is subject to a no contact order prior to the trial, prosecutors should be aware that pressure can be put on the victim by the non-offending caregivers who might continue to have contact with the perpetrator. In situations where the young female victim had been engaging in misconduct, such as underage drinking or illegal drug use, this can be used to pressure the victim to recant or withdraw the complaint.

Prosecutors need to ensure robust evidence collection as this can corroborate the victim's initial truthful disclosure as well as explain the context of the child's recantation. For instance, records of phone calls between detained abuser with the non-offending caregiver might provide evidence of intimidation or obstruction of justice. Furthermore, prosecutors need to review the relevant rules of evidence to determine whether the child's initial disclosure is admissible. Prosecutors, or with victim advocates, can seek to inform the victim about perpetrator intimidation tactics. Prosecutors should also consider whether the evidence of intimidation supports additional criminal charges against the perpetrator.

Girls that have been subject to “child grooming techniques” may exhibit reluctance to cooperate with the prosecutor and continue with the criminal process. In these cases, the perpetrator has psychologically manipulated the girl victim in the form of positive reinforcement to gain the girls trust as well as the trust of those responsible for her well-being. Prosecutors should become familiar with the grooming process and recognize the signs of grooming. Grooming is defined as a “process of identifying and engaging a child in sexual activity which involves an imbalance of power and elements of coercion and manipulation with the intent to sexually exploit a child”.⁵⁸ The perpetrator typically builds trust and breaks down the child's defences by giving

⁵⁸ Stewart, D., *Victim Grooming: Protect your child from sexual predators*, available at www.parenting.org

gifts, playing games, pretending to share common interests, flattering and making the child feel special, as well as reassuring the child's family. There is then a gradual erosion of boundaries, often with escalating physical contact and/or engaging the child in inappropriate behaviour such as drinking alcohol. The perpetrator works to construct secrecy with the girl and ensure her compliance.

NATIONAL EXAMPLE

M. v. S. (March 2013)—South Africa^a

M. appealed his conviction on several charges relating to the sexual abuse of his adopted minor daughter (i.e. rape, indecent assault and crimen injuria). He argued that the complainant consented to the acts and, in any event, he had subjectively believed that she had. He claimed further that she was in fact the one who had misled him and offered herself to him.

The complainant started to live with the appellant, who was a senior pastor of a church, when she was 7 years old and was formally adopted at the age of 15. The year before the adoption, the complainant discovered that M. had installed a hidden video camera that could record images of her when using the shower as well as checking her diary. The relationship grew more intimate, with them starting to share secrets and going to restaurants together. He regularly bought her gifts (expensive clothes, shoes, CDs) which were hidden from his wife. Eventually M. came to frequently touch her inappropriately. He always apologized after claiming it was an accident. This evolved into sexual acts, use of drugs and alcohol. At trial, the court dealt with the evidence holistically in finding that the complainant did not consent to the acts and that the appellant had the requisite mens rea to commit the same. The court rejected his defence as to consent by evaluating the complainant's behaviour in the context of the relationship that existed at the time of the commission of the offence, including the vulnerabilities of the complainant and the application of general logic. The court noted that, on the facts, the complainant had not displayed any particular conduct which indicated her lack of consent over and above her objectives. However, any perceived acquiescence could not be construed as consent, as the appellant had slowly groomed her to ensure that she ultimately submitted. The court of appeal dismissed his appeal.

The court noted that the consent is to be active, and therefore mere submission is not sufficient. All the circumstances must be taken into account to determine whether passivity is proof of implied consent or whether it is merely the abandonment of outward resistance which the women, while persisting in her objection to intercourse is afraid to display or realize is useless. In the context of sexual relations involving children, any appearance of consent to such conduct is deserving of elevated scrutiny, with particular attention to be paid to the fact that the person giving the consent is a child. The inequalities in the relationship is of great importance in understanding the construction, nature and scope of the child's apparent consent to any sexual relations. The court also noted that any behaviour that is designed to build up a relationship of trust with a child with the longer-term goal of involving the child in some sexually related act or acts could constitute grooming.

^a*M. v. S.* (657/12) [2013] ZASCA 43 (28 March 2013).

B. The role of the prosecutor in violence against women and girls investigation processes

1. Prosecutor's relationship with police and investigators

The investigation process represents the entry point to the criminal justice system. A comprehensive and sensitive investigation is vital for ensuring accountability for crimes against women and girls, eliminating impunity and providing protection to the victims. Investigative processes are largely conducted by police or other investigative agencies, however, prosecutors from different legal system 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 and girls.

In whatever legal system is in place, prosecutors perform an active role in scrutinizing the lawfulness and propriety of investigations and the gathering of evidence, and in monitoring the observance of human rights by investigators, at least in deciding if a prosecution should commence or continue. 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.

Prosecutors are to ensure that all available evidence has been collected, whether this is by the police, investigating body or by the prosecutors themselves. This includes witness statements and photographs of injuries and the scene of the crime. A full and comprehensive investigation can mean that the prosecutors will 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. The prosecutors can also collaborate with police to conduct training on issues of gender-based violence, investigative techniques, arrest and charging issues, evidence questions, weapon confiscation and victim protection.

NATIONAL EXAMPLE

Multidisciplinary training—Afghanistan and South Africa

The United Nations Development Programme (UNDP) and the European Union Police Mission in Afghanistan (EUPOL) developed a joint training package for police, prosecutors and members of the legal community in Afghanistan to equip the justice and law enforcement community with tools designed to curb violence against women.

South Africa's model of specialized police units, prosecutorial units and dedicated courts for sexual offences involve a component of joint training as well as enhancing the coordination between the police and prosecutors. Furthermore, UNODC has provided assistance in organizing joint training workshops with both police and prosecutors in several countries of Southern Africa.

2. Providing advice to investigators

In some jurisdictions, the prosecutors and investigators have independent roles in the criminal justice system, with the investigators being responsible for the investigation process. However, while recognizing this independence, there are usually some effective measures in place to ensure that there is functional cooperation between the investigator and the prosecutor. In these systems prosecutors do not instruct the investigators but rather they can advise them based on the investigators' results of the investigation and the prosecutors' objective review of those results based on the law and guidelines. For instance, police might seek advice from prosecutors when they come up against evidentiary difficulties. Or in other situations, the prosecutor might receive the police report or advice file for consultation because of a "weak" case or a comment with the investigator's opinion that there is no prospect of a conviction.

In violence against women and girls cases, prosecutors should keep in mind the following:

- Where the "weak" evidentiary issue relates 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.
- Where the case turns on evidentiary issues that are connected to the victim, such as where the victim's 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.

- 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 this type of cases, there is often a discriminatory response in comparison to 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. There is evidence from some jurisdictions that a focus on building cases, especially when applied to sexual assault cases where consent is the likely defence, can increase the level of prosecution and convictions.⁵⁹

Prosecutors should review the trends in police arrest to see whether police generally arrest for lesser offences, such as disorderly conduct or breach of the peace, more often than for assaults. This may indicate that local police are not correctly identifying the underlying criminal behaviour. Prosecutors should work with police to correctly determine the necessary elements of specific domestic violence crimes, including stalking or marital rape.

Prosecutors should understand what elements of the crime must be proven at trial and so can work with police to obtain the best evidence to establish each of these elements. Prosecutors can also work alongside police to educate them about the legal implications of their investigation and to ensure that the proper legal procedures are followed.

NATIONAL EXAMPLES

Inter-agency cooperation—England and Wales

In England and Wales, prosecutors work jointly with police colleagues in police stations to explore where weaknesses in a case might lie and what additional evidence might support victims.

Protocols between prosecutors and police—Spain

In Spain, several protocols have been developed regulating the relationship between police and prosecutors in violence against women cases. The Spanish public has had the opportunity to provide comments during the drafting of these protocols.

Joint Crown Prosecution Service and Association of Chief Police Officers Evidence Checklist—England and Wales

The Joint Crown Prosecution Service and Association of Chief Police Officers Evidence Checklist is for use by police forces and prosecutors in cases of domestic violence. It explicitly states that early and meaningful case building between the police and CPS in cases of domestic violence is crucial to ensure effective prosecutions. It further calls on prosecutors to prepare their case on the assumption that the victim may in the end not support the prosecution.

⁵⁹ Seelinger, K., Silverberg, H. and Meja, R. *The Investigation and Prosecution of Sexual Violence*, Human Rights Centre, University of California Berkeley (2011).

3. Playing a more active role in investigations

In some jurisdictions, prosecutors play a more active role in investigations and may participate in, conduct, direct or supervise investigations. Some States allow the prosecutor to give appropriate instructions and advice to the police to implement crime policy priorities, allocate cases and resources, prioritize cases and apply investigative methods. In some jurisdictions, prosecutors are contacted after the initial contact of the victim with police and might respond to the examination site so that they become familiar with the case and help guide the investigation. Prosecutors' actions should support enhanced evidence-gathering and support victims to remain in the criminal justice system.

Studies have shown that in certain types of violence against women cases (i.e. sexual assault) there is little evidence of attempts to build cases. Rather there is evidence of poor investigation and understanding of the law.⁶⁰ Prosecutors should be cooperating with the police in these cases to ensure that the efforts by police are focused on building a case rather than discrediting the victim.

Prosecutors who supervise investigations should:

- Ensure that police have: (a) used proper investigative and search techniques so that evidence is admissible in court; (b) conducted detailed, private and respectful interviews of victims and witnesses; (c) made sure that where possible, female officers were made available if the victim so chose; (d) fully completed a police report on the incident; (e) conducted follow-up interviews for additional information and evidence; (f) understood the relevant laws on violence against women (including the elements of the crime and special criminal procedures applicable to these offences); and (g) understood and applied the concept of self-defence and predominant aggressor policies, where relevant.
- Be aware that research shows that most reports of domestic violence are called in by victims. Therefore, law enforcement officers should catalogue and maintain emergency call tapes of domestic violence as they may contain possible excited utterance evidence.⁶¹ Any calls from third parties should be reviewed for identities as they may be possible witnesses.
- Be aware that in many jurisdictions, many victims report domestic violence incidents to the civil court rather than to the police, seeking civil protection orders. Prosecutors should review civil files as they can help them in assessing the victim's risk, and assist when determining appropriate charges and sentences. They could also indicate prior uncharged crimes that may be prosecuted along with more recent charges. These files could also be used as evidence for violations of probationary sentences.
- Ensure that the police have child-friendly procedures to reduce the child's secondary victimization. This could include using interview rooms designed for children and inter-disciplinary services for child victims integrated in the

⁶⁰ Du Mont, J. and White, D., *The uses and impacts of medico-legal evidence in sexual assault cases: a global review*, World Health Organization (2007).

⁶¹ Tjaden, P. and Thoennes, N., *Extent, Nature and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey*, National Institute of Justice, United States of America (2000).

same location (see provision 30 of the United Nations *Guidelines on Justice in Matters Involving Child Victims and Witnesses*).

Abiding by the standards for evidence collection

Whether prosecutors are advising investigators or supervising or conducting the investigation, they should ensure that the investigation and collection of evidence takes into account the unique needs and perspectives of victims of violence, respect their dignity and integrity while abiding by standards for the collection of evidence. Prosecutors must work with the 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. Family members, such as children may also prove to be potential witnesses. In many jurisdictions, the practice is to rely primarily on victim testimony.

Additional considerations for girl victims

Girls who have been victimized by violence often experience long-term consequences that can have an impact on their development, including psychologically, on the relationships with their family and others, on their ability to learn as well as on their increased vulnerability to exploitation and abuse later in life. Police and prosecutors should ensure that the girl victim does not experience further victimization during the detection, investigation and prosecution process.⁶² The victims should receive assistance from support persons, such as child specialists, starting from the initial report and continuing until the support is no longer needed.

For further discussion and examples of States' good practices in this regard, see UNODC-UNICEF *Handbook for Professionals and Policymakers on Justice in Matters Involving Child Victims and Witnesses of Crime*.⁶³

Table 6. 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

⁶² Chapter XI, The right to be protected from hardship during the justice process, United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses, Economic and Social Council resolution 2005/20.

⁶³ UNODC-UNICEF, *Handbook for Professionals and Policymakers on Justice in Matters Involving Child Victims and Witnesses of Crime*, available at www.unodc.org/documents/justice-and-prison-reform/hb_justice_in_matters_professionals.pdf

Table 6. (continued)

Statements	Photographs	Medical/forensic	Document	Other evidence
Witnesses as to how victim is behaving before or after the incident (i.e. whether she was capable of consenting)		Crime scene evidence forensic examination (fingerprints, body fluids, footprints)	Suspect's demeanour	Cell phone mapping
Teachers		Hospital/ emergency room records	Torn clothing	Voice message tapes
Colleagues at work		Toxicology (alcohol levels) including back calculation	Smeared make-up	Letter or e-mail 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

C. The decision to prosecute and the selection of charges

1. Exercising prosecutorial discretion

In many States prosecutors control the doors to the courthouse, deciding who will be charged and what charges will be filed. However, this is not the situation in all jurisdictions. In some States and for some crimes, it is the police who make the charge. However, it is generally the prosecutors' responsibility to approve the charge or decide whether the criminal case should be forwarded or not to the courts.

The extent to which prosecutorial discretion exists varies among criminal justice systems. In some States, in the civil law tradition, the prosecutors' 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 civil law States, the prosecutor has the discretion to drop a case completely if there is no public interest in a particular prosecution continuing. In other civil law States, prosecuting authorities not only have the discretion to prosecute or not, but also the ability to drop some categories of cases on condition and without convictions, provided the suspected offender agrees.

In common law States, prosecutors have a broad discretion to do what is fair and just under 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.⁶⁴

The exercise of discretion to prosecute depends on a range of factors. The prosecutor must assess the merits of a case relative to the elements of possible criminal offences, the adequacy and quality of the evidence, and perhaps the likelihood of conviction. In some States the prosecutorial test includes a consideration of the public interest. The exercise of the discretion to prosecute or not is onerous as the decision can have serious consequences for the suspect, the victim and the community. In many States there are no legislative or judicial guidelines about charging and a decision not to prosecute is not subject to review.

⁶⁴ For discretion on whether to make a plea offer to a lesser charge than the primary charge and whether to allow a person to be diverted to a particular programme, in some countries, this may require judicial approval.

NATIONAL EXAMPLE

National Prosecuting Authority, Policy Directive, Part 27: Sexual Offences—South Africa

In general, prosecutors should regard all complaints as credible and valid unless the contrary is clearly indicated. If the prosecutor is of the view that the prosecution should not be instituted (or should be withdrawn) the matter must be referred to the 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 a prosecution should not be instituted, the matter must be referred to the relevant Director of Public Prosecution for decision.

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.

To ensure the prosecutor has all available evidence, the following should be kept in mind:

- DNA testing and “rape kits” are useful in gathering evidence for sexual assault cases. However in some jurisdictions, it has been found that sometimes the DNA samples collected from rape kits do not get tested or there is a lengthy backlog to testing. Prosecutors should follow up on ensuring that such evidence is tested.
- Review law on intoxication and consent (i.e. can a person who is incapacitated, even by self-induced intoxication, give consent?). If the victim says she was intoxicated, check to see if there is a toxicology report available.
- Obtain all relevant background material, such as medical reports, the offender’s criminal history and evidence of other incidents.
- Obtain anthropological evidence or psychological evidence, where appropriate.
- In sexual violence cases, when reviewing whether all available evidence is available, prosecutors need to determine whether the case centres on the issue of consent versus identity.
- Utilize interpreter services, if necessary, at all phases of investigations.

NATIONAL EXAMPLE

National Prosecuting Authority, Policy Directive, Part 27: Sexual Offences—South Africa

Pretrial phase:

Special attention should be given to aspects which require immediate attention, such as crime scene inspection, forensic evidence collection, collection of any other possible corroborative evidence including securing of cameras and computers and the documentation of injuries of the complainant.

Prosecutors should determine whether any expert evidence will be required. This may include medical evidence, psychological evidence or evidence regarding the dynamics of violence or of grooming and the effect of the sexual offence. Care should, however, be taken to ensure that the complainant is not subjected to unnecessarily repetitive consultations or interventions.

Issues to consider when evaluating the adequacy of the evidence

Prosecutors usually decide to prosecute in cases where they assess the odds of conviction are good and decide not to prosecute in cases in which they assess that conviction is unlikely. Prosecutors' assessments of convictability are based primarily on legal factors such as the seriousness of the offence, the strength of evidence in the case and the culpability of the suspect. However, studies indicate that in cases involving violence against women and girls, prosecutors often include in their assessment irrelevant characteristics of the suspect and the victim.⁶⁵ 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, one at least as important as "objective" evidence about the crime or characteristic of the suspect.

Research shows that prosecutors were more likely to file charges when they believed the evidence is strong (i.e. if there was physical evidence to connect the suspect to the crime), the suspect is culpable (i.e. if the suspect had a prior criminal record), and the victim is blameless (i.e. if there were no questions about the victim's character or behaviour at the time of the incident).⁶⁶

It is not unusual that in cases involving violence against women and girls there may be little physical evidence to connect the suspect to the crime or no witnesses that can corroborate the victim's testimony. Often, the likelihood of conviction 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 their decision to prosecute or not rests on the prosecution's assessment of 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 assess 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 following:

The offender-victim relationship. Do they tend to perceive crimes between intimates as less serious than crimes between strangers? Do they consider the victim's characteristics more often when the violence involves intimates or acquaintances than when involving strangers? Research shows that in cases involving intimates and acquaintances, prosecutors were 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 were questioned.⁶⁷

⁶⁵ Spohn, C. and Holleran, D., *Prosecuting Sexual Assault: A Comparison of Charging Decisions in Sexual Assault Cases Involving Strangers, Acquaintances and Intimate Partners* (2004).

⁶⁶ Stanko (1988), as cited in Cassie Spohn and David Holleran, *ibid.*

⁶⁷ Spohn, C. and Holleran, D., *Prosecuting Sexual Assault: A Comparison of Charging Decisions in Sexual Assault Cases Involving Strangers, Acquaintances and Intimate Partners* (2004).

The victim's characteristics. 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. 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 any type of risk-taking activity at the time of the incident (i.e. such as commercial sex work, drug or alcohol use, at a bar alone, walking alone late at night, hitchhiking, or 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 out of wedlock pregnancy?

The suspect's characteristics. This includes the suspect's age, race, prior criminal record and relationship to the victim and/or standing in the community (i.e. principal of the school, biological father of the victim). Do prosecutors think the suspect is less likely to be culpable if he does not have a criminal record?

The case characteristics. This includes the seriousness of the offence or the strength of evidence in the case. 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?

Notwithstanding the fact that many prosecutors attribute lack of victim cooperation as the reason why gender-based violence prosecutions cannot proceed, studies suggest that either the lack of victim cooperation is exaggerated or that victims are not the key variable in successful prosecution programmes.⁶⁸ It was found that evidence (eyewitnesses, photos, admissions, exited utterances, medical evidence and physical evidence) was not uniformly the most powerful predictor of prosecutors' decisions to proceed without victims and was not significantly associated with the decision to prosecute at all.

Studies found out that the longer prosecutors spent with victims preparing the case, was positively associated with successful prosecutions and high prosecution caseloads were negatively associated with successful outcomes.⁶⁹ This supports the contention that prosecutorial determination is a powerful predictor of prosecutorial success. These studies also indicate that the availability of evidence, including emergency call tapes, photographs, medical records and police testimony were not associated with the likelihood of conviction. The implication here is that lack of evidence is more likely to deter prosecutors from going forward than judges from convicting perpetrators or perpetrators from pleading guilty.

Other factors to consider when exercising discretion

In some States prosecutors also consider whether a prosecution is required in the public interest. This consideration is done only when the evidential stage is passed. This is where the prosecutor will consider the particular circumstances of each case and the legitimate concerns of the community. It is generally in the public interest

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

to proceed with a prosecution where the allegations are serious in nature, considerable harm was caused to the victim and the alleged offender's degree of culpability is significant.

In some States which have the public interest test, prosecutorial guidelines include factors that are applicable to violence against women and girls. For example, the British Columbia (Canada) Crown Counsel Charge Assessment Guidelines⁷⁰ include consideration of factors such as: (a) the victim was a vulnerable person, including children, elders, spouses and common law partners; (b) the alleged offender was in a position of authority or trust; (c) the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor; (d) there is a significant difference between the actual or mental ages of the alleged offender and the victim; (e) there are grounds for believing that the offence is likely to be continued or repeated; and (f) the need to protect the integrity and security of the justice system and its personnel.

The potential for conflict between the interest of the victim and the State

In the decision whether or not to prosecute, it is important to involve the victim. Policies that promote prosecution, such as pro-prosecution or mandatory prosecution, want to remove 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. 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 deterring others. There is need 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 in response to the prosecutor's non-cooperation with her plan for securing herself from continuing violence.

NATIONAL EXAMPLE

Crown Prosecution Services Policy for Prosecuting Cases of Rape—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 also always 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 CPS prosecution.

⁷⁰ Criminal Justice Branch, Ministry of Attorney General Crown Counsel Policy Manual, Charge Assessment Guidelines (effective date: October 2, 2009), available at www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CHA1_ChargeAssessmentGuidelines.pdf

Pro-prosecution policies

Pro-prosecution policies in cases of violence against women and girls, where there is probable cause to believe that a crime has occurred, means that prosecution is likely but not mandatory. Pro-prosecution policies are in 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.

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 exercised too rigidly, these policies can sacrifice the safety and empowerment of individual women.

The UN Women *Handbook for Legislation on Violence against Women* explicitly recommends adopting pro-prosecution policies^a but discusses the potential problems if adopted in isolation. Such policies need to be part of a coordinated response to violence against women and girls. 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.

^aUN Women, *Handbook for Legislation on Violence against Women* (2010), page 137, available at www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf

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 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 or mental illness on the part of the perpetrator.
- Get an understanding of the victim’s concern for herself 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, the perpetrator’s criminal history.

Evidence based/absent-victim prosecution considerations

Given the dynamics and difficulties for victims of gender-based violence, many jurisdictions have adopted policies or protocols for dealing with evidence-based prosecutions or what are also called “absent-victim” prosecutions. Where national jurisdictions allow it, prosecutors should plan to instruct police during the investigation to collect corroborating evidence such as physical evidence, medical records, forensic reports, anthropological evidence, and the testimonies of psychologists 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.

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. All available sources of evidence that support 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; e-mail, voicemail or text communications; prior arrests and convictions; medical records; and family court files. In absent-victim prosecutions, the initial gathering of evidence is especially critical.

Always inform the victim of the decision to prosecute or not

Where charges are filed, inform the victim as to the status of formal charging and what offence(s) will be charged. Where no charges are to be filed, inform the victim of the decision not to charge and provide the victim with an opportunity to discuss the decision with the prosecutor. Inform the victim that she may have civil legal options regarding the suspect and she could consult an attorney to understand the specifics of what those options may be.

The issue of consent in 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 acknowledging that consent differs among national jurisdictions, and 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. 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.

2. Charge assessment

Often criminal law provides prosecutors with a choice of charges in these cases. Therefore, depending on the jurisdiction, the prosecutor may have discretion in determining what crime to charge and what level of seriousness. The charges in gender-based violence cases should 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. In considering the appropriate charges, the prosecutor needs to 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.

The perpetrator might have committed more than one offence. Prosecutors should consider all charges that could result from a patterned use of intimidation, coercion and violence. Consideration should be given to what other crimes may be charged along with the main offence. In some States, prosecutors may charge the offender with another offence so long as each offence has at least one element that the other offence does not have.

Prosecutors should consider whether the circumstances or law permit to:

- Add 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. 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 domestic violence or non-stranger sexual assault;
- Consider whether stalking charges are available if there is a history of patterned use of intimidation;
- Consider whether other charges should be included that stem from a defendant's action after police arrival on the scene, such as obstruction of justice, disorderly conduct, or assault of a police officer.

The Minnesota Blueprint—United States of America^a

The Minnesota Blueprint states that prosecutors can deter future abuse by consistently “issuing the highest level charge possible within the framework of ethical practice and the goals of victim safety and offender accountability and rehabilitation”.

^aThe Blueprint for Safety, Praxis International (2010).

Charge enhancement

In some States prosecutors have discretion to exercise options for charging defendants with a more serious crime than usual, given their prior convictions or aggravating circumstances.

Pursue 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 pretrial release conditions or no contact orders. The prosecutor might ask about intimidation tactics when obtaining a victim's input regarding the no contact order and the charges. The prosecutor could also 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 putting the abuser in pretrial detention, as well as the appropriate sentence for the crime of violating a court order.

NATIONAL EXAMPLE

Domestic Violence Unit, Office of the Los Angeles City Attorney—United States of America^a

When the Domestic Violence Unit was created in 1977 in the Office of the Los Angeles City Attorney, the Office established a policy to ensure early intervention and effective misdemeanor prosecutions. This included a preference for filing criminal charges rather than rejecting lower-levels of violence or threats and legislative activism which resulted in a minimum sentencing statute for all domestic violence convictions, along with enhanced funding for domestic violence services, a statewide restraining order registry, the abolition of domestic violence diversion programmes and the decision to incorporate community-based initiatives against violence into its policy development. The Office files approximately 20,000 cases each year.

^aOffice of the Los Angeles City Attorney, Los Angeles, California, "Aggressive Prosecution of Misdemeanor Domestic Violence Cases".

3. The issue of diversion

In cases involving violence against women and girls, prosecutors should be extremely cautious when considering diverting cases away from the formal criminal courts, such as waiving prosecution, or discontinuing proceedings conditionally or unconditionally.

Given the seriousness of violence against women and girls and the traditionally weak response by the criminal justice system to this violence, the starting position is that diversion is not appropriate in any case involving such violence, except in extraordinary circumstances. Any diversion should, at the very least, be premised on an acknowledgement of responsibility for the offence and an agreement to make amends for the crime, such as compensating the victim or attending a diversion programme. This could be a course or programme to deal with a specific problem (i.e. drug addiction, sexual offences, anger management, or self-esteem issues). If diversion programmes exist, then prosecutors should only refer them 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 with regular, formal reviews and immediate reports to probation offices and police if violence reoccurs.

For diversion considerations, the following implications from various studies should be considered:

- Research indicates that arrest deters repeat re-abuse.⁷¹ The implication of this for prosecutors is that one of the best ways prosecutors can encourage law

⁷¹ Klein, A., *Practical Implications of Current Domestic Violence Research, Part II: Prosecution*, National Institute of Justice, United States of America (2008).

enforcement to arrest abuser suspects is to follow through where possible by filing charges against those arrested.

- Prosecutors need to 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 more serious punishment in the future.
- Research indicates that the absence of a prior domestic violence arrest is not as powerful a predictor of no re-abuse as the absence of a prior arrest for anything.⁷² On the other hand, 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.

Prosecutorial diversion must be grounded in an understanding of the context and complexities of violence against women and girls and pay particular attention to the safety and needs of the victim.

Diversion and restorative justice

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^a are related to the formal court process and do not operate within a different way of thinking about the crime. A restorative justice framework^b is a way of thinking outside 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 that some restorative justice programmes use, the two are not the same.

^a “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.

^b “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.

4. Cases where victims of violence against women and girls are charged with crimes

Given the complex nature of violence against women cases, particularly those occurring in the family, prosecutors might come across cases where they believe female victims of violence are the ones to be arrested or charged with a crime. This might be in circumstances where female victims of human trafficking are charged with prostitution-related crimes or where female victims of domestic violence are charged with assault or murder as a result of hitting back in retaliation or in self-defence

⁷² *Ibid.*

causing injury to the abuser. It is very challenging to deal with cases where the victim is charged with a crime against the abuser, especially if the jurisdiction has mandatory or no drop policies or pro-prosecution policies curtailing the prosecutor's discretion. Treating victims of gender-based violence as offenders often has devastating consequences for the victims. Prosecutors are uniquely situated to prevent or at least minimize these negative consequences.

Scenario I: victims of domestic violence charged with crimes

Research shows that a substantial number of victims will not self-disclose their victimization.⁷³ This can imply that determining the primary or predominant aggressor may not be self-evident or easy. Prosecutors that are presented with a dual arrest case should make an independent analysis to determine the predominant aggressor and proceed against that suspect alone. If prosecutors are presented with a police/case file where they suspect that the victim of abuse is presented as the defendant, a contextualized analysis should be conducted.

A contextual analysis includes:^a

Determining whether the defendant is a victim of domestic violence. Look beyond the current case and obtain information about the complainant's and defendant's entire relationship. Examine the defendant's motive and intent in using violence. Was the violence out of fear, anger, controlled? Ask other allied professionals, such as coordinated community response committees, if there is one, to obtain additional information. Check the criminal history of both, including the charged and the uncharged.

Evaluating evidence of self-defence and dismissing 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. Review the complainant's and defendant's statements, the emergency call, witness' statements, pictures of physical injuries or other evidence collected at the scene as this may establish that 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. Were her actions necessary to prevent imminent harm? 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.

Conducting an informed predominant aggressor analysis. Even in States that do not have legislation that includes 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. Consider the history between the parties, and not just an inventory of aggressive physical acts. Remember that 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.

^aResearch cited in Greipp, J. P., Meisner, T. G. and Miles, D. J., *Intimate Partner Violence Victims Charged with Crimes: Justice and Accountability for Victims of Battering Who Use Violence Against their Batterers*, Aequitas (2010).

⁷³ Research cited in Greipp, J. P., Meisner, T. G. and Miles, D. J., *Intimate Partner Violence Victims Charged with Crimes: Justice and Accountability for Victims of Battering Who Use Violence Against their Batterers*, Aequitas (2010).

Prosecutors need to balance the accused victim's ongoing safety concerns with appropriate levels of accountability for her conduct, which remains illegal. Prosecutors need to use their discretion to ensure appropriate and just dispositions in these cases.

Prosecutorial discretion is used throughout the process to explore appropriate and just dispositions, including alternatives to prosecution and withdrawal or dismissal of charges. Cases in which it was determined that the accused acted in self-defence should be dismissed. The difficult cases are where neither self-defence nor any other legal justification exists. The conduct is illegal yet it is not clear how prosecuting the case 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 complainant; 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.

Updated Model Strategies and Practical Measures, Provision 15(k)

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 ... (k) claims of self-defence by women who have been victims of violence, particularly in cases of battered women syndrome,^a are taken into account in investigation, prosecution and sentencing against them.

^a "Battered women syndrome" is a syndrome suffered by women who, because of repeated violent acts by an intimate partner, may suffer depression and be unable to take any independent action that would allow her to escape the abuse, including refusing to press charges or offers of support. See provision 15 (b) of the updated Model Strategies and Practical Measures.

Scenario II: victims of human trafficking charged with crimes

Identifying trafficking of women and girls is not a simple process. Women and girls may come to the attention of prosecutors as defendants charged with crimes such as prostitution-related offences or pickpocketing, shoplifting or other petty crimes. Below are a number of indicators for prosecutors to look out for. Of course, these indicators are not proof that the accused is a victim of trafficking, however, they should be considered a starting point to investigate further and ensure that such victims are not treated as criminals.

Table 7. Indicators of trafficking in persons^a

Women and children trafficked for the purpose of sexual exploitation may	Women and children trafficked for the purpose of committing petty crimes may
<ul style="list-style-type: none"> • Be moved from one brothel to the next or work in various locations 	<ul style="list-style-type: none"> • Tend to beg in public places and on public transport
<ul style="list-style-type: none"> • Be escorted whenever they go to and return from work and other outside activities 	<ul style="list-style-type: none"> • Be carrying and/or selling illicit drugs

• Have tattoos or other marks indicating “ownership” by their exploiters	• Be of the same nationality or ethnicity and move in large groups with only a few adults
• Work long hours or have few if any days off	• Unaccompanied minors who have been ‘found’ by an adult of the same nationality or ethnicity
• Sleep where they work	• Participate in the activities of organized criminal gangs
• Live or travel in a group, sometimes with other women who do not speak the same language	• Be part of large groups of children who have the same guardian
• Only know how to say sex-related words in local language or in the language of the client group	• Be punished if they do not collect or steal enough
• Have no cash of their own	• Live with members of their gang
• Be unable to show identity documents	• Travel with members of their gang to the country of destination
• Evidence that suspected victims have had unprotected and/or violent sex	• Live, as gang members, with adults who are not their parents
• Evidence that suspected victims cannot refuse unprotected and/or violence sex	• Be moved daily in large groups and over considerable distances
• Evidence that a person has been bought and sold	
• Reported by clients that sex workers do not smile	

^aUNODC, *Anti-Human Trafficking Manual for Criminal Justice Practitioners* (2008), available at www.unodc.org/undoc/en/human-trafficking/publications.html?ref=menuaside

5. Resolution discussions or plea bargaining⁷⁴

Resolution discussions or plea bargaining provides the possibility for the perpetrator of entering into an agreement to plead to a specific charge or charges, usually in exchange for the prosecutor’s agreement to drop one or more charges and/or support a specific sentencing recommendation. Plea bargaining is a well-established alternative to trial in common law jurisdictions and procedures resembling plea bargaining have developed in some civil law States as well.

In cases involving violence against women and girls, before offering a plea agreement, the prosecutor should confer with the victim to get the victim’s views concerning the potential disposition of the case. The prosecutor should explain the advantages and disadvantages of plea agreements. There may be greater certainty of conviction in plea agreement and the victim is no longer required to testify. However, the acceptance of the plea agreement is at the discretion of the judge. A trial can be traumatizing for women victims of violence. Often victims can feel as if they are reliving the experience of being violated. The disadvantage could be that the defendant is likely to receive a lesser sentence. Victim input into any plea agreement can both empower the victim and result in a more just outcome, since the prosecutor is less likely to accept a guilty plea based on a misleading or untrue set of facts.

⁷⁴Where applicable.

Prosecutors should consider the following when considering entering into plea agreements:

- In domestic violence cases, plea bargaining has been controversial. On the one hand, refusal to enter plea bargains demonstrates no tolerance for such violence. However plea bargaining may be a means to avoid case attrition by victim non-participation and ensure the criminal charge gets on record. If the plea agreement focuses on non-punitive sentences such as counselling, it can be attractive to the perpetrators who want to show their intimate partner that they are willing to reform and may be acceptable to victims who want to remain in the relationship.
- Plea bargaining in rape cases may be desirable as it prevents the rape victim from having to testify and often expedites the prosecution process.
- Research indicates that victims of sexual violence were most satisfied with plea negotiations when their level of actual participation most closely fit the level of involvement desired.⁷⁵ So, if the victim wanted to testify, she was dissatisfied where the prosecutor went forward with a plea agreement anyway. Where the victim did not want to testify, the victims expressed appreciation of the prosecutor's efforts. Researchers examining the difficulties of rape victims throughout the criminal justice process emphasize that a "win" for a prosecutor (i.e. a guilty plea to any charge) may not be the justice sought by a victim who needs, for example, the truth of her experiences to be publicly acknowledged or wants to prevent the offender from sexual assaulting others.⁷⁶

NATIONAL EXAMPLES

Plea bargaining guidelines^a

In countries such as Australia, Bosnia and Herzegovina and the United States of America, national guidelines have been developed to ensure consistency and limit prosecutor's discretion to negotiate with the defendant. These guidelines can establish criteria for evaluating which charges may legitimately be subject to bargaining. The criteria include looking at the adequacy and admissibility of the relevant evidence; the reasonable prospects of conviction on the charge and the representativeness of the charge with respect to the totality of the defendant's conduct. The guidelines also include a mandatory review process. At some point prior to the presentation of the agreement to the court, the head of the prosecutor's office must approve the plea agreement. Some guidelines require prosecutors to meet with the victims to explain the plea agreement and to answer any questions. Other guidelines go further in providing that by law, and not just at the prosecutor's discretion, victims can comment on the proposed plea during the plea negotiations between the prosecutor and defendant and during the court hearing when the defendant enters his plea. Another practice is to include a detailed recitation of facts supporting both the charges to which the accused pleaded guilty as well as those the prosecutor agreed to drop. This supplies the background facts that provide the context in which to understand the defendant's admissions.

⁷⁵ United Kingdom Centre for Research on Violence Against Women "Question 7. What percentage of rape gets prosecuted? What are the rates of conviction?", Research to Practice Brief (December 2011).

⁷⁶ *Ibid.*

Criminal Procedure Code (Amendment) Bill 2008 to make provisions for plea agreements—Kenya

This Bill states that plea bargaining shall not apply to offences under the Sexual Offences Act of 2006.

Plea bargaining law—India

Plea bargaining has been allowed in India since 2005 but is restricted in certain cases. It cannot be used in cases involving offences against women, or a child below the age of fourteen years or when the crime carries a punishment of seven years or more.

^aSeelinger, K. T., Silverberg, H. and Meja, R., *The Investigation and Prosecution of Sexual Violence*, Sexual Violence and Accountability Project Working Paper Series.

D. Pretrial release considerations

The safety of victims must always be the prosecutors' primary concern in any decisions taken by them. Particularly regarding decisions relating to arrest, pretrial detention and bail, the prosecutors' role is crucial in ensuring the protection of victims. 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. Prosecutors should be knowledgeable about the various risks certain victims might face, whether from abusive partners or from organized criminal groups. Protective measures should take into account the physical and emotional needs of the victim. While such 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. For instance, Spain's Organic Act on Integral Protection Measures against Gender Violence (2004) provides that protective measures can be extended as long as they remain necessary.

1. Urgent protective measures

In some jurisdictions, the law provides for female victims of violence to access urgent protective measures. For example in Brazil, the Maria da Penha Law of 2006 provides that within 48 hours the court can grant immediately:

Urgent protective measures related to the aggressor:

- Suspension of the aggressor's licence 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.

Urgent protective measures for the victim:

- Referring the victim to programmes of protection or assistance (shelters, counselling, etc.).
- Allowing the victim and her dependents to return to their home, after removal of the aggressor.
- Restitution of property unduly taken from the victim by the aggressor.
- Temporary prohibition to sell their common property.

The prosecutor's office plays an important role in this protection hearing. In some States, prosecutors can seek protection measures such as ordering the defendant to use an electronic bracelet, providing the victim with cell phones, or even providing personal protection by the police. At any time, the prosecutor can request the preventative custody of the perpetrator.

Additional considerations for girl victims

Ensuring the safety of young female victims should always be given careful consideration. In situations where the perpetrator is a family member, care should be taken when deciding how to protect the child. Removing the perpetrator from the family home rather than the child might be less traumatic for the child. Taking the child away from her familiar environment and placing her in a childcare institution should be considered as a last resort. The girl victim might perceive her separation from her family as a punishment. However, if the girl remains at risk in the family home and there is no other option but to remove her for her safety, placing her in a family-based setting is preferred over an institutionalized location.

2. Issues to consider at bail/pretrial hearings

Prosecutors generally have a role at pretrial hearings (initial appearance, bail hearings, arraignment) to represent the government's and victim's views concerning conditions of release of the suspect. Prosecutors should carefully review all their options, including whether to seek pretrial detention or if released, under what conditions. In reviewing the options, prosecutors should confer with the victim to seek her input and to assess the risk of future violence. Prosecutors should also gather information as to whether the suspect has violated any previously ordered conditions of release or other court orders concerning the victim (i.e. protection orders). If there is a pattern of reoffending, then the prosecutor might consider requesting pretrial detention. 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.

Under the legislation of several States the defendant has the right to bail. While this right should be protected it also must be balanced against the victim's right to safety. Prosecutors should have guidelines as to when to oppose bail in cases of violence against women. Particularly, bail should be opposed in cases in which there is a risk of further violence. Prosecutors should utilize danger or risk assessment standards as well as available research on the risks to victims of further violence. 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.

Prosecutors have the obligation to provide the court with all relevant information in order for the court to make decisions that protect the victims. Prosecutors should emphasize that the victim's rights must be considered and the victim's concerns must be heard.

Table 8. Information prosecutors should provide to the courts during pretrial release hearing

Key information in domestic 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, particular 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 domestic violence charges and convictions • Evidence that the accused possesses firearms, weapons (such as licence, registration)
Key information in sexual violence cases	<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
Key information in trafficking in persons cases	<ul style="list-style-type: none"> • Review the case to identify if there is a need for anonymity of victim (in jurisdictions where this is permitted) • Explain risk to the victim if suspect is released • Whether the accused has an organized criminal group affiliation • Explain fear of victim and protection measures already in place for victim affiliation, i.e. if victim is being considered or being processed for witness protection programmes
Key information in harassment cases	<ul style="list-style-type: none"> • Present the history of the harassment, as well as any past incident of abuse or criminal conviction • Advise the court of any indicators of high risk as reflected in the circumstance of the allegations, the relationship between victim and accused (a risk assessment should be done and presented to court) • Present any available psychological assessment of the accused (i.e. is there a history of sexual deviancy, obsessive behaviour?) • Whether the victim fears further violence if the accused should be released and, if so, the basis for that fear • The victim's opinion on the likelihood that the accused will obey a term of release, particular 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 (consider calling police officer) • Evidence that the accused possesses firearms, weapons (such as licence, registration)

Depending on their national legislation, prosecutors can request a range of conditions for pretrial release including the following:

- 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.
- Refraining from committing any criminal offences.
- Travel restrictions (i.e. not allowed to leave the jurisdiction of the court without prior court order or required to relinquish passport to court).
- Not in possession of firearms, ammunition, explosives or weapons.
- For sexual assault charges, request DNA and/or HIV/STD testing of the defendant.
- House arrest.
- Reporting condition (i.e. regularly reporting to probation or a pretrial service).
- Maintaining full employment.
- Refraining from the use of alcohol or illegal substances, attending alcohol treatment programme.
- Wearing of a Global Positioning System (GPS) monitoring ankle bracelet.
- Compliance with any civil protection orders.
- Abstain from driving a car (if one has been used in committing the offence of criminal harassment)
- If harassment involved the use of a computer or other electronic device, consider imposing a condition limiting or prohibiting use or possession.

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 as to who to contact if the defendant breaches any condition.

One of the most important steps to prevent lethal violence is to disarm the perpetrators and keep them disarmed. Researchers in the United States of America found out that States laws disqualifying individuals under restraining orders from gun possession were associated with a 19 per cent reduction in the risk of intimate partner homicides and a 25 per cent reduction in the risk of intimate homicides with a gun.⁷⁷ Prosecutors should take all steps possible to have firearms removed by the court as soon as perpetrators are arrested.

⁷⁷ Zoel, A. and Webster, D., “Effects of domestic violence policies, alcohol taxes and police staffing levels on intimate partner homicide in large US cities (2009)”, *Injury Prevention*, vol. 16(2), p. 90. States statutes restricting those under Domestic Violence Restraining Orders (DVRO) from possessing firearms and laws allowing warrantless arrest of DVRO violators are associated with reduction in total and firearm intimate partner homicides.

NATIONAL EXAMPLE

Jackson District court policy on adopting a no-contact provision on all domestic violence pretrial release agreements—United States of America^a

This policy has the goal of the safety of victims paramount. If the victim wants to remove or modify the no-contact provision, the victims must attend a three hour “Alternative to Violence” class taught by civil society organizations. The class gives victims an overview of the power and control wheel, talks briefly about each participant’s experience and discusses the effects of domestic violence on children as well as safety planning. The prosecutor also recommends this class for victims who wish to recant or drop charges.

Electronic monitoring to increase victim safety and offender accountability—United States of America^b

In Oregon there is a pretrial release programme conditioned upon wearing an electronic ankle bracelet. Officers meet weekly with the monitored defendants and use surprise home visits to ensure compliance. Officials note only 7 out of 332 monitored defendants failed to appear in court during a two-year period. Defendants are able to return to work, and monitoring makes victims feel safe. Pretrial release officers use a danger assessment in making decisions about conditional release, and defendants can appeal the decision to a court. This programme was introduced due to lack of cells for pre-trial detainees.

^aA Report from the 2003 Domestic Violence Safety and Accountability Audit: Prosecution Response to Misdemeanor Domestic Violence Cases Jackson County, Oregon, Praxis International and Battered Women’s Justice Project (2003).

^bMcGowan 2010, Pre-trial Program Scrutinized, quoted in Justice Sector Module, page 160, United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), the Virtual Knowledge Centre on the Elimination of Violence against Women, available at www.endvawnow.org

3. Criminal no-contact orders

In some jurisdictions the criminal court has the authority to issue a no-contact order pending trial. This is different from a civil order for protection.

A no-contact order directs the defendant not to contact the victim in any way, by telephone, email, in person, at the victim’s place of employment, home, school, or in the community during the pendency of the criminal proceedings. The no-contact order should remain in effect at least until the criminal case is concluded. A violation of the no-contact order should also be a criminal offence. Commonly, the courts can impose no-contact orders at a defendant’s initial appearance or arraignment, much like release conditions, although some jurisdictions may require the prosecutor to ask the court to issue a criminal no contact order. Criminal no-contact orders are not generally victim-initiated unlike civil no-contact orders. Therefore victims cannot make a direct request to the court to obtain, modify or terminate criminal no-contact orders, except through the prosecutor.

No-contact orders: victims requesting terminating or modifying

Some victims of domestic violence want the violence to end but not the relationship or contact with the perpetrator. There are a number of reasons for the victim to request dropping a no-contact order:

- She wants the relationship to continue and has focused on stopping the violence.
- 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. One study shows offenders subject to no-contact orders were more likely to commit further abuse than offenders whose conditions of release permitted some contact with the victim.⁷⁸ Therefore 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 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.

The most significant step that prosecutors can take to improve victim safety 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 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. For instance, contact can be limited to public places, or prohibit specific behaviour such as stalking or threats. 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.

⁷⁸ Long, J., Mallios, C. and Murphy, S., "Model Policy for Prosecutors and Judges on Imposing, Modifying and Lifting Criminal No Contact Orders", The Battered Women's Justice Project (2010).

Table 9. Guidelines for the modification of no-contact orders^a

Consider shortening the duration of order to provide for victim safety while reducing other burdens on the victim	This may allow victim to: <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
If a victim requests contact, keep in mind that in some cases a prolonged no-contact order may result in hardship for the victim.	Prosecutor needs to: <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 the victim's reliance on the defendant for child care, transport or income and collaborate closely with advocates/agencies to fill gaps created by restrictions on contact with the defendant in order to provide the victim with the necessary resources and assistance.
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.	Consider the following options: <ul style="list-style-type: none"> • The limited contact (i.e. public places or only e-mails, letters or phone calls) should be monitored. • Topics of communication could be limited (i.e. 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 (i.e. alcohol treatment). • Allow contact but exclude the defendant from the victim's residence.
Any modification should only be considered when a victim is present in court and requests modification.	

^aLong, J., Mallios, C. and Murphy, S., "Model Policy for Prosecutors and Judges on Imposing, Modifying and Lifting Criminal No Contact Orders", The Battered Women's Justice Project (2010).

Violation of the no-contact order

If the defendant violates a no-contact order or breaches pretrial release conditions, the prosecutor should consider whether any new offences, in addition to the conditions being breached, have been committed. Remember that 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. Violation of criminal no-contact orders, or conditions of release, can be prosecuted as contempt or as additional crimes. The prosecutor should also seek pretrial detention or argue for greater restriction upon release.

4. Disclosure considerations

Prosecutors have a duty of disclosure of evidence to the defence to ensure a fair trial. In many States this extends to evidential material that they have no intention of relying on. In cases involving violence against women and girls, particularly sexual violence, there is a 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 information that contains personal information for which there is a reasonable expectation of privacy, including medical, psychiatric, therapeutic, counselling, personal journals and diaries.

NATIONAL EXAMPLE

Defence's right to disclosure and victim's expectation to privacy—Canada^a

In Canada in the early 1990s, therapists began receiving subpoenas in sexual violence cases for complainants' therapy records. The intent in seeking such records was often to find a basis for claiming that the victim was in some way unreliable. In a controversial 1995 Supreme Court of Canada case, the court found that the accused did have the right to such records as part of his right to a fair trial and full defence. The Canadian Parliament responded with Bill C-46 which amended the Canadian Criminal Code to restrict the defendant's access to a sexual violence victim's therapy record. It places the obligation on the defendant to convince a judge in a private hearing that access to the record is so relevant in a particular case that it warrants violating the complainant's right to confidentiality. The Supreme Court of Canada case had to determine whether Bill C-46 was constitutional. The Court upheld Bill C-46 and its more restrictive access to therapy records.

The Supreme Court of Canada noted that the Canadian Parliament, in adopting Bill C-46, sought to recognize the prevalence of sexual violence against women and children and its disadvantageous impact on their rights, to encourage the reporting of incidents of sexual violence, to recognize the impact of the production of personal information on the efficiency of treatment, and to reconcile fairness to complainants with the rights of the accused.

^aCanadian Criminal Code, sections 278.2–278.9, as interpreted by *R. v. M.* [1999] 3 S.C.R. 668.

E. Evidentiary issues

1. Evidentiary considerations for trial

Recognizing that the trial period⁷⁹ is somewhat different depending on which legal system a prosecutor works in, this section covers broad evidentiary issues that might arise in one or more legal systems. Prosecutors should be familiar with a range of evidentiary rules that are applicable to cases involving gender-based violence in their jurisdiction, including but not limited to the use of expert witnesses, forensic testimony and 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 psychologists or other such experts. Prosecutors should also become conversant with strategies to deal with complex cases such as strangulation of victims by perpetrators, allegations of an assault committed by the victim or victim-absent prosecutions.

Testimony of the victim

The testimony of the victim in cases of violence against women and girls remains the central piece of evidence put forth by prosecutors. For more details as to how assist victims to provide testimony in court, see part two, chapter A on dealing with victims.

NATIONAL EXAMPLE

Forensic assessment teams—Spain

In Spain, where the only evidence of the violence is from the statement of the victim, the court may order the victim and the accused to undergo a review by a team of experts (usually comprising of a forensic specialist, a social worker and a psychologist) who will prepare a report for the court and can then be called as expert witnesses in the criminal case. This is particularly used in cases where the victim is a young girl.

⁷⁹ In the common law context, the case goes to trial, with presentation of evidence and legal argument relating to the guilt or innocence of the defendant. In civil law systems, the “trial period” is slightly different in that the record has already been established in the earlier “examination stage”. The trial thus serves as an occasion to present the full case to the trial judge and to deliver oral argument.

Considerations in situations of girl victims

Regarding the testimony of a young female victim, prosecutors need to review the relevant criminal procedures as to whether the victim will be considered competent to be a child witness at the criminal trial. Generally, the judge will decide whether the child knows the difference between the truth and a lie, the consequences of taking an oath and whether the witness can accurately recount the details of the event. Prosecutors could consider whether the child's guardian, school teacher, babysitter or grandparent should be called as witnesses for the competency hearing. The prosecutor could ask these witnesses about whether the child knows the difference between the truth and a lie, the importance of telling the truth and a past event that the child experienced (i.e. a birthday). This then could be asked to the child to show the judge that the child can recall past events. Prosecutors need to be ready to object to any defence questions that are not developmentally appropriate.

Also in situations where the girl does not want to testify or it is considered too traumatic for the victim, consider whether the jurisdiction allows prosecutors to submit the victim's out-of-court statements. Many girls make the initial disclosure of abuse to family members or friends. In some jurisdictions, statements made by a girl victim concerning sexual or physical violence are admissible in the criminal case under certain conditions. If the violence is disclosed to the police, or to a forensic child interview specialist, the child's statement might be admissible as substantive evidence without having the child give oral testimony. In these cases, the prosecutor usually needs to call as a witness the person to whom the disclosure was made.

However, some jurisdictions will not allow testimonial statements of an unavailable witness unless the defendant has had a prior opportunity to cross-examine that witness. Prosecutors need to determine whether it was the defendant who caused the victim to be "unavailable" and be able to introduce evidence of this, such as: (a) the history of abuse between the defendant and the victim; (b) prior charges filed, even if they were withdrawn; (c) testimony from prior cases, evidence from police, prosecutor, family or friends about the victim's fear of the defendant and (d) anything else that shows the defendant did something to prevent the victim from testifying.

Sexual history of the victim

Many jurisdictions prohibit 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 is also 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 rape shield laws,⁸⁰ 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 this evidence as being irrelevant and prejudicial. This type of evidence is 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. The defence tactic is to remove the focus from the perpetrator's

⁸⁰ Typical rape shield laws provide that in a prosecution of rape, reputation or opinion evidence of the alleged victim's prior sexual conduct is not admissible.

conduct and shift it to the victim. Prosecutors need to be aware of this and object to the relevance. 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

As previously discussed, 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 from drawing any adverse inference from the delay and holding it against the victim and her credibility. In some jurisdictions legislation specifically prohibits drawing adverse inferences from delays in reporting.

Removing the cautionary warning or corroboration rule

Traditionally, in some jurisdictions there existed a rule of procedure requiring a judicial direction 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 practise using the cautionary warning which a court warns itself or the jury that it is dangerous to convict on the uncorroborated evidence of the victim. Prosecutors should object to this cautionary warning arguing that this means that the testimony of a rape victim is met with special caution not applicable in any other type of criminal case.

Updated Model Strategies and Practical Measures: Provision 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.

2. Forensic, scientific and medical evidence

The fact that some forms of violence against women and girls usually leave physical evidence can be both a benefit and a challenge. 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 the use of force or resistance or indicate an inability to consent due to the influence of alcohol and drugs or an otherwise diminished mental capacity. However, forensic evidence is not always available, collected or analysed. The State might lack capacity to collect and analyse. The victim might compromise the evidence with washing or delay in reporting, or the form of violence, such as psychological violence, may not produce forensic evidence. Collection can be inconsistent, limited in quality and scope. Over-reliance on forensic and medical evidence might cause the investigation to stop if it is not available. 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 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 not done in a manner that causes secondary victimization to the victim. However, prosecutors should not rely on such evidence to move forward with the prosecution.

Situations where the victim has undergone a medico-legal exam

In order for prosecutors to use forensic evidence and experts effectively, it is useful to have a basic understanding of some of the terminology contained in the forensic report.

The forensic examiner

Before the prosecutor reviews the contents of the report, they should know who has conducted the examination and who has analysed the findings, as this may result in different outcomes. In sexual assault cases, due to the invasive nature, medical personnel rather than a crime scene technician are the appropriate professionals to collect this type of evidence. The medical personnel should be trained to do so. If not there can be difficulties in quality of evidence. Research finds that many doctors are reluctant to perform rape exams, and most lack training in forensic evidence collection procedures. As a result, the collection of evidence can be done incorrectly or incompletely. In addition to the problems of evidence quality, research indicates that many victims are often re-traumatized by these examinations, which leave them feeling more depressed, anxious, blamed and reluctant to seek further help.⁸¹ This can have the unintended effect of decreasing victims' willingness to participate in the criminal justice process.

Many national jurisdictions have a standardized package such as rape examination kits or sexual assault evidence collection kits which are then forwarded to forensic evaluation labs. In a number of countries the practice is to conduct both the medical and forensic examination at the same time so as to address therapeutic care as well as

⁸¹ Campbell, R., Patterson, D. and Bybee, D., "Prosecution of Adult Sexual Assault Cases: A Longitudinal Analysis of the Impact of a Sexual Assault Nurse Examiner Program", in *Violence Against Women* 18(2), page 224.

evidentiary matters. Stabilizing, treating and engaging victims contributes to a more victim-centered 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 “blind report” until the victim makes her decision.

Prosecutors working with Sexual Assault Nurse Examiner (SANE) or Sexual Assault Forensic Examiners (SAFE) programmes^a

Studies indicate that Sexual Assault Nurse Examiners (SANE) or Sexual Assault Forensic Examiners (SAFE) programmes lead to improved psychological outcomes for victims and better collection of forensic evidence and expert testimony. Examiners provide extensive psychological, medical and forensic services for victims of sexual violence. While SANEs collaborate with prosecutors, they are independent with priorities for the individual patient rather than the investigation. SANEs have specialized knowledge about the legal system, evidence and ethical parameters, pathophysiology and injury, reproductive health, epidemiology and technology and psychology associated with sexual violence. SANEs will be responsible for presenting evidence in court. SANEs streamline medico-legal examinations and the provision of health services by only subjecting the victim to one examination for both clinical as well as forensic purposes.

Studies^b have evaluated the effectiveness of multidisciplinary response interventions as to whether they do indeed improve post-assault care for victims and increase reporting and prosecution rates. One study found that the SANE programme, whereby specially trained nurses provide comprehensive psychological, medical and forensic services for sexual assault victims, there were more cases that reached the final stages of prosecution i.e. conviction at trial and/or guilty plea bargains. Many SANE programmes are often part of multidisciplinary response teams, such as Sexual Assault Response Teams (SARTs) or coordinated community response initiatives. Evaluation of SANE programmes have found that sexual assault forensic evidence kits collected by SANEs are more complete and accurate than those collected by non-SANE medical personnel and that police are pleased with the quality and reliability of SANE collected kits. Research suggests that prosecution rates increase in jurisdictions after the implementation of SANE programmes.

^a “The Prosecutors’ Resources on Violence Against Women: A Prosecutor’s Reference: Medical Evidence and the Role of Sexual Assault Nurse Examiner in Cases Involving Adult Victims”, *AEquitas* (2010).

^b Campbell, R., Patterson, D. and Bybee, D. “Prosecution of Adult Sexual Assault Cases: A Longitudinal Analysis of the Impact of a Sexual Assault Nurse Examiner Program”, in *Violence Against Women* 18(2) 224.

NATIONAL EXAMPLE

National Protocol for Sexual Assault Medical Forensic Examinations^a—United States of America

This protocol provides detailed guidelines for criminal justice and health-care practitioners in responding to the immediate needs of sexual assault victims. The protocol appreciates that a positive experience with the criminal justice and health-care systems can contribute to the victim’s overall healing. It stresses that forensic exams must be done in a sensitive, dignified and victim-centered manner as well as coordinated community effort. The objective is to promote a better and more victim-centered evidence collection in order to provide better assistance in court proceedings and hold more offenders accountable.

^a United States Department of Justice Office on Violence against Women, “National Protocol for Sexual Assault Medical Forensic Examination Adult/Adolescent Presidents Initiative” (2004).

The terminology

If prosecutors are introducing forensic evidence, being familiar with some of the biological evidence and how it is tested might assist in understanding the implications of the presence or absence of evidence.

Table 10. Some forensic technology

Equipment includes:	
Anoscope (also called proctoscope)	A small lighted optical instrument (speculum) that is inserted into the anus for examination and photography of the anal canal and lower rectum
Colposcope	A non-invasive, lighted magnifying instrument (speculum) used for examining the ano-genital area for the detection of micro-lacerations, bruises and other injuries. A camera is attached to document the injuries (tissues within the cervix and vagina, as well as the external genitalia).
Toluidine blue	A nuclear staining solution (dye) used to detect genital and peri-anal injuries.
Wood's lamp	An instrument that shines ultraviolet light from a black light source for purposes of illuminating trace materials (i.e. blood, semen) on skin by causing visible fluorescence.
Other relevant terms	
DNA analysis	Could come from samples of hair, traces of blood, semen or saliva, oral and anogenital swabs and smears. The most common form of DNA analysis used for identification is called polymerase chain reaction (PCR). PCR allows the analysis of evidence samples of limited quality and quantity by making millions of copies of very small amounts of DNA. Using PCR can generate a DNA profile.
Urinalysis evidence	Evidence of victim sedation or other poisoning.

How forensic evidence is used at trial

To reconstruct the events in a sexual violence case, the evidence collected is used in two potential ways:

- (a) Transfer or associative evidence can provide information about contact between the victim and suspect, the victim and crime scene, and suspect and crime scene. The type of evidence recovered and its location can provide details about the nature of the contact.
- (b) Identification evidence can give scientific data about the source of a specific piece of evidence. The examination will also document on a body diagram the physical injuries sustained. The report should describe injuries according to their type, size, shape, colour, borders and age. Sometimes the report includes the opinion of the examiner as to the cause of injury (i.e. sharp object, cloth or rope) and includes the emotional state of the victim (i.e. distressed, agitated, shocked, hopeless or controlled).

It is important for prosecutors to know the forensic facilities' policies on prevention of contamination as this could be an argument raised by the defence to suggest that the forensic evidence is compromised.

Table 11. Chart on using medico-legal evidence^a

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

^aDu Mont, J., and White, D., *The uses and impacts of medico-legal evidence in sexual assault cases: a global review*, World Health Organization (2007).

Understanding medical forensic evidence

A forensic report may contain a number of different scenarios as follows:⁸²

Table 12. Interpreting medical forensic evidence

Sometimes no injury is noted	<ul style="list-style-type: none"> • This can be a common finding and does not in itself disprove sexual assault • Check to see if the examination was limited by what could be assessed by the naked eye due to lack of specialized tools and techniques • Prosecutors may still consider calling a medical expert to help the fact finder understand an exam without injury findings (without an expert medical explanation, fact finders might assume that lack of injury means no sexual assault happened)
Limitations to the significance of genital injury	<ul style="list-style-type: none"> • A finding of limited genital injury or non-specific injuries does not in itself prove sexual assault • These types of injuries could be from non-consensual sexual contact, either with or without force, as well as consensual sexual contact • Prosecutors must describe a more expansive clinical picture in trial than just the injury findings. Such evidence could include external body injury, patient statement, patient appearance and demeanour, as appropriate

⁸² “The Prosecutors’ Resources on Violence Against Women: A Prosecutor’s Reference: Medical Evidence and the Role of Sexual Assault Nurse Examiner in Cases Involving Adult Victims”, *Aequitas* (2010).

Table 12. (continued)

Most (but not all) genital injury is external	<ul style="list-style-type: none"> • The vast majority of genital injury noted following sexual assault is external. • These injuries are seen by speculum examinations that can fully visualize the vaginal vault and cervix • The evidence collected from the cervix may yield the best DNA evidence, even in cases where the victim delayed reporting
Most (but not all) genital injury is internal	<ul style="list-style-type: none"> • Internal injury is more likely in cases with digital or foreign object penetration

Understanding the examination report in the light of the defence of “consent”

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. However the absence of physical trauma does not mean that coercion or force was not used or proof 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, i.e. defence of consent to “rough sex”.

Understanding the importance of semen evidence

This evidence can be useful because it is positive identification that ejaculation occurred and can be used to positively identify suspects. But note that 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. Perpetrators might have used condoms, ejaculated somewhere else or not ejaculated at all. Other factors might suppress semen production, including alcohol or drug abuse, chemotherapy, congenital abnormalities, frequent ejaculation prior to the assault. Moreover, other factors may contribute to the absence of detectable amounts of semen evidence. If there was time delay between the assault and collection of evidence, if victim bathed, if evidence was improperly collected or if an object other than a penis was used for penetration.

Drug-facilitated sexual assaults

Drugs such as Rohypol and gamma-Hydroxybutyric acid (GHB) are widely publicized as substances used in drug-facilitated sexual assaults. There are other drugs that can be used. If there is a suspicion about drug-related sexual assault, a toxicology sample needs to be collected in a timely manner. Victims may have taken drugs or alcohol voluntarily. If this is suspected, this should not diminish the seriousness of the assault. Ask the timing of the ingestion of alcohol or drugs as victims might be self-medicating to cope with post-trauma.

For further information, see UNODC’s *Guidelines for the Forensic Analysis of Drugs Facilitating Sexual Assault and Other Criminal Acts*.⁸³

⁸³ UNODC, *Guidelines for the Forensic Analysis of Drugs Facilitating Sexual Assault and Other Criminal Acts* (2011), available at http://www.unodc.org/documents/scientific/forensic_analys_of_drugs_facilitating_sexual_assault_and_other_criminal_acts.pdf

The limitations of medico-legal evidence

The examination can corroborate the history of the incident provided by the victim. However, if the victim does not have the ability to provide a history of events, for instance where she voluntarily or involuntarily ingested drugs or alcohol and has limited to no memory of the incident, the forensic examination does not explain what has happened. If the defence is consent to “rough sex”, the findings in the examination are unlikely to be able to refute this claim in its entirety, since much of the injury noted is non-specific.

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.

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 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 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 (i.e. comments that the victim is experienced, old enough or promiscuous enough to consent to the sexual act).

There have been concerns raised over the effectiveness of some of the common tools used in forensic examinations, such as the Wood Lamp, the colposcopy technology. The 2003 World Health Organization’s Guidelines for medico-legal care for victims of sexual violence⁸⁴ do not recommend the use of the Wood Lamp and note that colposcopies are not an essential component of medical forensic examinations. The research indicates that documentation of gross visible genital trauma is not associated with positive legal outcomes. The question is then one of asking what value there is in documenting micro-injuries?

In domestic violence cases, forensic reports do not consider the impact of repeated injuries over a period of time and do not measure the psychological injury.

Prosecutors calling forensic-medical examiners as expert witnesses at trial

Prior to trial, prosecutors should consult with medical examiners to understand the specifics of the medical-forensic record and the context of the findings. The preparatory meeting will:

⁸⁴ Guidelines for medico-legal care for victims of sexual violence, World Health Organization (2003).

- Allow the examiner to understand the prosecutor's case and the specific points he or she hopes to make by calling the examiner;
- Provide the prosecutor with a better understanding of the examiner's clinical background, allowing for more effective use of the examiner's expertise;
- Allow both the prosecutor and the examiner the opportunity to discuss the examination findings and ensure that there are no areas of disagreement or misunderstanding;
- Help the examiner be a more confident witness;
- Help the prosecutor decide whether to call the examiner as an expert who could educate fact finders on common victim behaviour or limit testimony to fact (prosecutors need to remember that not all examiners will have the same background).

Where the victim has not undergone forensic examination but received medical care

In many cases the victim might seek medical attention for the purposes of clinical care but not undergo a forensic examination. Victims probably 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 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.

Other reasons for failing to have a forensic examination done include:

- *Difficulties in access.* In some jurisdictions, the victim must first be referred by the police or another government body, while in other jurisdictions the victim must first go to a police station to have the assault documented, complete a report or to get the appropriate medical form or sexual assault kit and then go to the facility where the evidence is collected. The location of the police station and the forensic facility can make it difficult for the victims to travel and pay for the travel. Furthermore, many victims might not be able to afford the costs of obtaining a medical forensic examination.
- *Problems with seeking consent.* Victims might be required to sign written consent to the release of evidence to the police and prosecutor prior to the examination. The victim may have yet to decide whether she wants to proceed with a criminal investigation and prosecution.
- *Cases of delayed reporting.* The victim might not have sought medical assistance immediately after the assault. It is not uncommon for victims to wait till they feel safe or supported to report sexual violence. Where there is delay, forensic evidence is likely to be compromised.
- *The police might not refer the victim for forensic examination.* The police might only refer the victim for such examinations in cases where there is severe physical injury. The police might view the violence through the lens of gender bias and

take into account what they see as mitigating circumstances. For example, in domestic violence situations, the police might believe that the victim provoked her husband and therefore view her injuries at a lower level, which then might preclude a referral for a forensic examination.

The position of the prosecutor

Some jurisdictions require a medical legal certificate to be filed in certain cases, therefore making forensic examinations mandatory for proceeding with a criminal prosecution. However, in a number of jurisdictions, where there is no mandatory requirement, the practice is that if the victims do not have a medical legal certificate the prosecution will not proceed. 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 the automatic dismissal of the case. The concern is that in some countries, the absence of forensic evidence has been interpreted as the victim not being assaulted. In jurisdictions where there is an overreliance 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. However, the prosecutor needs to consider the following:

- In most jurisdictions a patient's medical records constitute privileged information. This means that a doctor or health facilities legally cannot provide any information or written documents to anyone, including police or prosecutors, without the patient's written consent.
- If the prosecutor has obtained the victim's consent, the prosecutor should meet with the medical professional to determine what evidence is available from the clinical examination and clinical history (especially in domestic violence cases).
- Prosecutors need to remember that health professionals are not forensic specialists. Their role is primarily to examine and treat the victim. Based on the examination, a health professional may not be able to determine whether or not a sexual assault took place. The basic medical form allows medical professionals to document injuries they saw and the treatment they provided.

It should be stressed that the absence of a medico-legal examination or the absence of injuries or physical evidence such as semen should never preclude a prosecution.

Research to rebut overreliance on forensic evidence in violence against women cases⁹

If the defence relies on the lack of forensic evidence to argue that no assault has occurred, prosecutors could argue that research suggest that a lack of evidence be carefully weighed. A few studies, have evaluated the relationship between medico-legal evidence and legal outcomes (i.e. charge filing and guilty verdicts). Attrition of cases was high, with fewer than half of sexual assaults reported to the police having resulted in a charge being laid or filed (15 to 47 per cent) and less than one third ending in conviction (7 to 32 per cent). In just under half (44 per cent)

of those that examined the presence of general physical injury, a significant positive association with legal outcome was found. Less than a third of studies reported that the occurrence of ano-genital trauma (29 per cent) or collection of biological and/or non-biological samples (31 per cent) was related to a positive outcome. No study demonstrated a positive relationship between legal outcome and the detection of sperm or semen specifically, nor the documentation of the emotional state of the victim.

Mixed conclusions. One conclusion is that medico-legal evidence appears to be of minimal importance to the courts and not always necessary for a case to progress. Strong physical evidence may not matter as much if police and prosecutors have strong doubts about the victim's perceived credibility. However, other studies conclude that, in general, cases with corroborating physical evidence, such as physical and/or ano-genital injuries, are more likely to move forward through the legal system. However, if victims delay reporting, there may be a doubly negative impact, namely, with the passage of time, physical evidence may be less available and injury less detectable, and hesitancy by victims to engage with the criminal justice system may damage their credibility with legal system personnel.

^aDu Mont, J., and White, D., *The uses and impacts of medico-legal evidence in sexual assault cases: a global review*, World Health Organization (2007).

Where the victim has not undergone a forensic exam nor has medical records

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.

However, in general it is considered a good and 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 properly and testify to it in court, and who are sensitized to the negative impacts of erroneous beliefs and attitudes regarding sexual assault and sexually assaulted women. These facilities should be located across jurisdictions and available 24 hours, 7 days a week. It is important to ensure collaborative networks, with well-constructed standardized protocols.

NATIONAL EXAMPLES

Integrated response—inter-agency and inter-sectorial coordination^a

One-stop centres: Thuthuzela Care Centre—South Africa

These one-stop centres can bring together medical, law enforcement and legal professionals in one location. A good example is the Thuthuzela Care Centre in South Africa. This Centre is designed to house together the full range of professionals who traditionally care for victims and gather and process the related medico-legal evidence in an independent manner. Staff includes health workers, mental health workers, investigative and prosecutorial professionals who are specially trained to work on sexual violence. The Centre, which is located at a hospital, is linked to several police stations as well as a specialized sexual offences court. The Centre has reported that it reduces waiting times for medical forensic examinations and has improved the process of reporting and prosecuting rape and other sexual offences.

Sexual Assault Care and Treatment Centers—Canada

The Sexual Assault Care and Treatment Centers foster extensive community networks of agencies working with victims of sexual violence, such as police, prosecutors, hospitals, child protection services, boards of education, shelters, rape crisis centres, multicultural agencies, sexual health clinics, military bases and other services. An evaluation of these Centers has found a more integrated, coordinated and efficient system of dealing with sexual violence and has led to better success in investigations and in court proceedings.

^a*M. v. S.* (657/12) [2013] ZASCA43 (28 March, 2013).

3. Using expert witnesses⁸⁵

Prosecutors should consider calling expert witnesses when such experts can raise 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. Prosecutors may seek to have the victim assessed by a forensic psychologist who can assist the courts with the understanding and prediction of human behaviour. Generally speaking, issues that give rise to the need for expert testimony in cases involving violence against women and girls include⁸⁶ the following:

- Issues relating to popular myths regarding violence against women
- Issues relating to the victim's perplexing behaviour (i.e. 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, criminalist work (serology, fingerprints), sexual assault nurse examiners, physicians, etc.

Judges and jurors may have their preconceptions and assumptions of violence against women. They may expect victims and perpetrators to fit certain stereotypes and behave a certain way. For cases that fall outside these expectations, they might conclude that the abuse did not occur or, at the very least, that the victim does not consider the abuse serious enough to warrant intervention by the criminal justice system. Research shows that the effects of gender-based violence upon victims are often beyond a jury's 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 use of expert testimony in the prosecution of violence against women cases aims at "leveling the playing field" so that the judges or jurors can properly evaluate the evidence and credibility of the victim, rather than on the basis of erroneous assumptions. Expert witnesses can explain common victim behaviour, the effects of violence

⁸⁵ Where applicable.

⁸⁶ Dempsey, M., "The Use of Expert Witness Testimony in the Prosecution of Domestic Violence" in England and Wales Crown Prosecution Service, 2004 (London, United Kingdom).

on victims and assist fact finders in evaluating their credibility when the victims' actions might not be what judges or jurors expect. In absent-victim prosecutions, expert witnesses can explain why the victim is hostile or reluctant to participate. Only by understanding the reasons *why* victims frequently retract their statements, can the jurors then set aside any negative feelings they have developed towards the victim and examine the facts without the interference of bias or emotion. The expert witness can also explain patterns of typical behaviour consistent with battered women's syndrome.⁸⁷

The following considerations need to be taken into consideration by prosecutors when calling expert witnesses:

- Inform judge or jurors of commonly-known 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 in evaluating 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.

Furthermore, an expert in child abuse cases could provide professional explanations on the following:

- Continuing to "love" the perpetrator despite the abuse.
- Common features of grooming behaviour by perpetrators and their effects on children.

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, consider whether other witnesses can provide testimony regarding common behaviours exhibited by child victims (such as doctors, police officers, counsellors).

⁸⁷ In the Lavallee decision the Supreme Court of Canada stated that expert testimony may be admitted to address "...[t]he obvious question..., 'if the violence was so intolerable, why did the [victim] not leave [the defendant] long ago?' This question...plays on the popular myth...that a woman who says she was battered yet stayed with her abuser was either not as badly beaten as she claimed or else she liked it." Although Lavallee involved an alleged "battered" woman's claim of *defence* to the charge of murder, the court's reasoning is entirely relevant to the use of myth-dispelling expert testimony in the prosecution of domestic violence. *R. v. Lavallee* [1990] 1 S.C.R. 852 (Supreme Court of Canada).

Table 13. Checklist: types of evidence that might be available when dealing with different forms and categories of violence against women and girls

Sexual violence	
Consent is the issue	Identity is the issue
<ul style="list-style-type: none"> Victim's statement (print or recorded) Confirmed viewed/comment on quality, admissibility Consent issues Capacity issues 	<ul style="list-style-type: none"> Victim's statement (print or recorded) Confirmed viewed/comment on quality, admissibility Capacity issues
<ul style="list-style-type: none"> Witnesses As to how victim is behaving before or after the incident (as to capacity to consent, etc.) 	<ul style="list-style-type: none"> Witnesses
<ul style="list-style-type: none"> Crime scene documentation by police Including recording any utterance by suspect 	<ul style="list-style-type: none"> Crime scene documentation by police
<ul style="list-style-type: none"> Forensic evidence Body exam of victim Body exam of suspect Victim's spontaneous utterances made to forensic staff 	<ul style="list-style-type: none"> Forensic evidence Body exam of victim Body exam of suspect DNA and other forensic evidence linking accused to victim or crime scene (fingerprints)
<ul style="list-style-type: none"> CCTV 	<ul style="list-style-type: none"> CCTV
<ul style="list-style-type: none"> Phone analysis/records/texts/images/cell site/computer records 	
<ul style="list-style-type: none"> Bad character evidence 	<ul style="list-style-type: none"> Bad character evidence
<ul style="list-style-type: none"> Experts Medical Anthropological Psychologist 	<ul style="list-style-type: none"> Experts
<ul style="list-style-type: none"> Suspect's statement 	<ul style="list-style-type: none"> Suspect's statement
<ul style="list-style-type: none"> Toxicology exam of victim (goes to capacity to consent) 	
<ul style="list-style-type: none"> History of gifts, intimidation, etc. 	
Domestic violence	
<ul style="list-style-type: none"> Victim's statement Include reference to previous domestic violence if relevant Include risk assessment questions 	
<ul style="list-style-type: none"> Emergency call/report (recording) 	
<ul style="list-style-type: none"> Photographs Crime scene (any overturn or damaged furniture, blood stains, etc.) Injuries of victim (taken over time as injuries develop) Injuries, if any of suspect (offensive injuries or injuries inflicted in self-defence by victim) 	

Domestic violence (continued)

- Witnesses
 - Neighbours
 - Family members (including children)
 - Friends
 - Colleagues at work, at school

- Hospital/emergency records

- Police documentation at scene
 - Utterance of suspect
 - Victim's demeanor
 - Suspect's demeanor
 - Torn clothing

- Phone analysis/records/texts/images/cell site/computer records

- Previous suspects police records
 - Bail history
 - Previous DV incidents
 - Previous risk analysis
 - Any civil protection order

Trafficking in persons

- Victim's statement
 - Cover details of abduction, unlawful imprisonment, physical or sexual assault
 - Establish age of victim

 - Psychological assessment of victim

 - First responder's statement

 - Crime scene examination, including forensic examination of the crime scene
 - Could be various locations
 - Could involve number of vehicles

 - Examining the victim (trying to identify links between victim, suspect, locations, vehicles, documents, etc.)
 - Biological material
 - Fingermarks and other body part marks
 - Fibres and other micro traces

 - Examining the suspects (trying to identify links between victim, suspect, locations, vehicles, documents, etc.)
 - Biological material
 - Fingermarks and other body part marks
 - Fibres and other micro traces

 - Examining documents
 - Forged passports, etc.

 - Examining IT and communication equipment at scene, on victims, suspects, in vehicles
-

F. Trial considerations

To be effective in presenting the case of gender-based violence cases in court, prosecutors should be familiar with the current research and thinking regarding this violence. This can assist them in educating judges and juries about the dynamics of this violence, victims' behaviour and common misperceptions and myths. While this research might not be generally admissible in a criminal case, prosecutors can benefit from a thorough understanding of the dynamics of violence against women and girls as this will aid them when devising trial strategies, anticipating defences, preparing victims and developing effective cross-examination and arguments.

1. Expedited hearings⁸⁸

These cases should proceed on a timely basis. Prosecutors should be aware of how delays and protracted criminal proceedings impact victims. For instance, delays may increase the risk to the victim of retaliation, especially if the defendant is not held in pretrial detention. Delays can contribute to long-term mental suffering as well as make the victim feel disconnected with the criminal justice system and thus might contribute to their reluctance to continue with the criminal case. The UN Women *Handbook for Legislation on Violence Against Women* promotes timely and expeditious legal proceedings and encourages fast tracking of cases of violence against women, where appropriate.⁸⁹

In Spain, the Organic Act on Important Reviews of the Code of Criminal Procedure (2002) introduced fast track trials for specific offences and enables cases of domestic violence to be judged within 15 days of the offence. This contributes to the safety of victims, promotes public confidence in the criminal justice system, and ensures that the sentence of the offender starts promptly. However, prosecutors should be aware of the fact that if proceedings are expedited too quickly, a victim may withdraw if she feels that it is out of her control. Another concern with legislated timeframes is if prosecutors are not prepared to go to trial within that timeframe, this might allow the accused time to be able to apply for dismissal or stay of proceedings. This could have negative implications for the victim's access to justice.

⁸⁸ In common law context, the case goes to trial, with presentation of evidence and legal argument relating to the guilt or innocence of the defendant. In civil law systems, the "trial" period is slightly different in that the record has already been established in the earlier "examination" stage. The trial thus serves as an occasion to present the full case to the trial judge and to deliver oral arguments.

⁸⁹ UN Women, *Handbook for Legislation on Violence Against Women* (2010), page 37, available at www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf

In regards to girl victims, the 2005 United Nations *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime* provide that prosecutors are to ensure that trials take place as soon as practicable, unless delays are in the child's best interest. Investigation of crimes involving child victims and witnesses should also be expedited and there should be procedures, laws or court rules that provide for this.

NATIONAL EXAMPLES

Criminal Justice Act (2003)—United Kingdom

The Criminal Justice Act introduced a procedure whereby the Director of Public Prosecutions may refer a matter involving a child witness directly to the Crown Court without a prior formal committal stage for the purpose of avoiding any prejudice to the welfare of the child.

Code collection, Title 18, chapter 223, section 3509, child victims' and child witnesses' rights—United States of America

(j) Speedy trial: In cases so designated, the court shall ... expedite the proceeding and ensure that it takes precedence over any other. The court shall ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement with the criminal process. When deciding whether to grant a continuance, the court shall take into consideration the age of the child and the potential adverse impact the delay may have on the child's well-being. The court shall make written findings of fact and conclusions of law when granting a continuance in a case involving a child.

Protection of Children from Sexual offences Act 2012—India

Article 35: (1) The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court; and (2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.

Case continuances

Before a prosecutor agrees with the defence request for a continuance, in those jurisdictions where this is allowed, the prosecutor should consider how this request for delay impacts the victim. The longer the delay, the longer the victim will be at risk or under pressure. The prosecutor should not contribute to any undue delay. If the prosecutor feels that the defence is requesting continuances in the hope that sooner or later a victim will get tired of coming to court, the prosecutor should oppose them.

However, sometimes prosecutors require continuances where the victim fails to show up to trial. This will give prosecutors more time to speak to the victims who may have decided not to participate in order to get a better sense of why she is reluctant.

2. Eliminating fact-finders' (judge/jury) bias

Prosecutors will face tremendous barriers to achieving justice for victims and holding perpetrators accountable for their crimes if 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 as well as how to improve jury selection, in those jurisdictions that have juries.

Jury selection⁹⁰

In jurisdictions that use selected juries, the goal is to select a jury that can be fair to both sides and render a verdict based on an application of the facts as the jury finds them and the law as the judge instructs them. Fairness includes ensuring freedom from gender stereotyping which underpin myths of violence against women and girls. Prosecutors want to select jurors who have a realistic understanding of the dynamics of violence against women as these jurors are more likely to be fair and perhaps even educate other jurors during deliberation.

During the process of selecting a jury, prosecutors should argue that they have a right to question jurors about the mistaken beliefs about violence against women they possess that would interfere with their ability to follow the law. Specific questioning is the only way to determine the prevalence of rape or domestic violence myths in the jury panel. The prosecutor can also use this as an opportunity to start to educate potential jurors in the terminology of violence against women.

Research indicates that jurors are commonly reluctant to convict attractive and socially sexual assault defendants who are known to their victims.⁹¹ The defendants commonly appear in court well groomed and well dressed. They might also be married and have children. In jurisdictions where prosecutors are permitted to ask questions of potential jurors during *voir dire*,⁹² it might be appropriate to ask whether:

- A potential juror would be less likely to convict a defendant of rape if that defendant were a partner, friend, or acquaintance of the victim. The answer to this question provides insight into whether the juror knows that the majority of rapists are non-strangers and whether they view non-stranger rapes as seriously as those committed by strangers. A juror who understands the prevalence of non-stranger sexual assaults can also educate ill-informed jurors on the panel.
- A potential juror has the ability to follow the judge's instructions regarding the definition of rape regardless of their personal beliefs. If the victim and defendant were in a relationship prior to or during the rape, tell prospective jurors that they will hear evidence about that relationship and ask whether the existence of a prior relationship would concern them when deciding the case. Follow-up questions could include whether the juror expects rapists to be strangers and whether they can follow the law in this area.

Jurors 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

⁹⁰ Where applicable.

⁹¹ For more detailed questions, "Educating Juries in Sexual Assault Cases—Part I: Using Voir Dire to Eliminate Jury Bias", AEquitas, Strategies Issue (2 July 2010).

⁹² In old French "*voir dire*" means "to speak the truth" and refers to the process by which prospective jurors are questioned about their backgrounds and potential biases before being chosen to sit on a jury. In some jurisdictions the term "*voir dire*" more broadly refers to any "trial within a trial" where the jury is removed during the hearing. Such sharing can be to determine the admissibility of evidence or the competency of a witness or juror".

think she has either enjoyed it or wanted it, or she asked for it or brought in on herself or she lied or exaggerated. Jurors may buy into victim blaming in an attempt to distance themselves from the victim and the crime thereby preserving the perception that they are safe if they do not make the same choices as the victim.

It might be appropriate to ask:

- Questions to determine whether potential jurors understand the importance of holding the offender and not the victim accountable for crimes of sexual violence. For example, prosecutors could ask jurors whether they believe that a victim can be raped even if that victim consented to some other measure of intimate contact before the rape occurred.
- In some cases it may be important to gauge whether jurors will still follow the law when the facts do not present the most sympathetic victim. Consider asking questions to determine whether jurors believe that a defendant can commit the crime of rape even if the victim was drinking, using drugs, dressed in a way that the jurors perceive as provocative, being prostituted, or engaged in any other behaviour that may inappropriately cause victim blaming.
- Whether certain behaviours would cause the jurors unease and interfere with their ability to follow the court's instructions and render a fair verdict.

Prosecutors should look out for any answers that indicate that a potential juror might confuse sex with sexual violence and aggression.

If a juror harbours attitudes that excuse sexual violence as something that men “simply cannot control”, they will not be able to deliberate fairly. Therefore, it might be appropriate to ask:

- Whether the jurors would be able to follow the law even if the victim does not fit their idea of what a “typical” rape victim should be.
- In cases involving sexual assault with minor or no injuries, whether they would not believe that a victim had been raped if the rapists did not use a deadly weapon or inflict serious injuries or whether they believe that a certain level of resistance is necessary for a crime of rape to occur.

3. Applying for special measures: creating an enabling court room environment

Updated Model Strategies and Practical Measures—Provision 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.

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 for them as well as putting them at further risk of violence. Prosecutors should be aware that the victim may experience significant apprehension. This could relate to her 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 testify as to intimate details in a public forum, her fear of being in close proximity to the perpetrator and his family or her fear of being harassed by the defendant in abusive cross examination. In addition to preparing the victim for trial, prosecutors need to consider whether they can apply for special measures that can create an enabling court room environment for the victim. Prosecutors in trial should also be vigilant to protect the victim witness when the defense' question is inappropriate or provocative.

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 in giving 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.

Different jurisdictions have developed a range 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.

Table 14. Protective measures to ease victims' experience of the trial and facilitate their testimony

Confidentiality measures	Privacy measures	Victim support measures
Measures designed to protect the identity of the victim from the press and public	Special evidentiary rules designed to limit the questions that can be posed to a victim during her trial	Measures designed to ease victim's experience during their testimony
<ul style="list-style-type: none"> • 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 <i>in camera</i> proceedings or closed sessions during all or part of the trial, i.e. during victim's testimony (excluding public) 	<ul style="list-style-type: none"> • Prohibiting questions about the victim's prior or subsequent sexual conduct • Not requiring corroboration of the victims testimony (according to national laws) 	<ul style="list-style-type: none"> • Permitting victims to testify in a manner that allows her to avoid seeing the accused (i.e. 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

Prosecutors should consider making an application for special measures and be ready to respond to arguments by the defence regarding how these measures affect the defendant's right to a fair trial. The special measures are decided upon by the judge's discretion. 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 is likely to want to hear from the prosecutor about the views and wishes of the victim, so the prosecutors should be prepared to have sufficient information when making the application for special measures.

Special considerations for girl victims

In many States, there is a presumption that a child witness will need support to give her evidence during the criminal trial. Many States require the child's evidence in chief to be given via a video recorded interview and any further evidence by live link unless the court is satisfied that this will not improve the quality of the child's evidence. If the child opts out of this arrangement, then the child will usually be protected by a screen.

Prosecutors should be aware of any applications they need to make in order to modify the courtroom environment to reduce the intimidating nature of formal court proceedings. This could range from the removal of robes and wigs to using a robot, as they do in Mexico, to act as an intermediary during the questioning of the child or the use of anatomically-correct dolls to assist in their testimony. Furthermore, prosecutors should ensure frequent breaks during the child's testimony and that the trial hearings are appropriate for the age and maturity of the child.

*For further detail on child-friendly special measures, see UNODC-UNICEF Handbook for Professionals and Policymakers on Justice in Matters Involving Child Victims and Witnesses of Crime.*⁹³

⁹³ UNODC-UNICEF, *Handbook for Professionals and Policymakers on Justice in Matters Involving Child Victims and Witnesses of Crime*, available at www.unodc.org/documents/justice-and-prison-reform/hb_justice_in_matters_professionals.pdf

G. The role of the prosecutor in sentencing and post-conviction

1. Differing roles played by prosecutors in different jurisdictions

The prosecutors' role in sentencing and post-conviction decisions varies from jurisdiction to jurisdiction. While sentencing is a decision for the court, generally prosecutors have a duty to offer assistance to the sentencing court in reaching its decision as to the appropriate sentence. In some jurisdictions, the prosecutor draws the court's attention to the relevant factors, such as aggravating or mitigating factors disclosed by the prosecution case. In certain jurisdictions, the prosecutors assist the court by providing details of the offence and the impact of the offending on society (including a victim personal statement). In some jurisdictions, prosecutors also supply the court with relevant authorities, precedent cases, or draw attention to sentencing guidelines. The prosecutors must ensure that they apply for appropriate ancillary orders which should take into account the victim's needs, including their future protection.

2. Seeking appropriate sentences

In jurisdictions where prosecutors can make recommendations regarding the appropriate sentence, they should ensure that sentences are commensurate with the gravity of the crimes committed. They also should keep in mind that their recommendation contributes to consistencies in sentencing. As part of the recommendation, they can alert the court to relevant factors such as aggravating disclosures made by the prosecution case and the impact of the crime on the victim and society. They should also ensure that all appropriate information is before the court in order for the court to make an informed sentencing decision.

Updated Model Strategies and Practical Measures, Provision 17(a)

17. Recognizing the serious nature of violence against women and the need for commensurate crime prevention and criminal justice responses, Member States are urged, as appropriate: (a) To review, evaluate and update sentencing policies and procedures in order to ensure that they:

- (i) Hold offenders accountable for their acts related to violence against women;
- (ii) Denounce and deter violence against women;

- (iii) Stop violent behaviour;
- (iv) Promote victim and community safety including by separating the offender from the victim, as well as from society where necessary;
- (v) Take into account the impact on victims and their family members of sentences imposed on perpetrators;
- (vi) Provide sanctions that ensure that the perpetrators of violence against women are sentenced in a manner commensurate with the severity of the offence;
- (vii) Provide reparations for harm caused as a result of the violence; and
- (viii) Promote the rehabilitation of the perpetrator, including a sense of responsibility in offenders and, where appropriate, reintegration of the perpetrator into the community.

Developing sentencing strategies

In cases involving violence against women and girls, prosecutors should consider:

- Requesting a sentencing hearing and ensuring that the court has all the information it needs to sentence appropriately;
- Ensuring the court considers a risk-assessment of offender dangerousness at the time of sentencing;
- Ensuring the court hears from the victim at the time of sentencing;
- Recommending a sentence that consider the nature and gravity of the offence, the history of sexual and physical abuse, previous efforts at rehabilitation, the defendant's character and current rehabilitative needs and 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 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 on the 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 (i.e. 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: some considerations

Favour more intrusive dispositions. Research shows that specific dispositions in violence against women cases can reduce re-abuse.⁹⁴ The more intrusive sentences, such as incarceration, work release, electronic monitoring and conditioned probation, significantly reduced re-arrest for domestic violence over less intrusive sentences of fines or suspended sentences without probation.

Take into account the whole prior criminal record. Some of the disposition studies reflect that domestic violence dispositions differ from standard sentencing patterns in that they often only focus on whether there is 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.⁹⁵

Take into account "failure to appear". Studies show that perpetrators who do not show up for court appearance are more liable to re-abuse than those who do show.⁹⁶ Prosecutors should consider them a higher risk of re-abuse and this should be reflected in the recommended sentence.

Exercise caution in recommending conditional discharges for "first" offenders. There are some studies that show that a minimum of 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.⁹⁷ Prosecutors should consider requesting suspended sentences.

Register sex offenders, where available registry meet human rights standards and provide for individualized assessments. Where the perpetrator has been convicted of sexual violence, prosecutors should always request that the defendant be assessed for registration as a sex-offender, in those jurisdictions which have such registries that meet international human rights standards.

⁹⁴ The specific disposition, however, mattered. The difference was statistically significant with rearrests at 23.3 per cent for defendants with more intrusive dispositions compared to 66 per cent for those with less. Another study of 683 defendants in Hamilton County (Cincinnati, Ohio) arrested for misdemeanor domestic violence also confirmed that sentence severity was significantly associated with reduced recidivism, especially for unmarried defendants, although in this study the actual sentence length (number of days in jail) was not found to be significant. Similar research looking at the cumulative effects of arrest followed by prosecution and court dispositions, including those with batterer treatment, has found modest reductions in re-abuse to be associated with greater post-arrest criminal justice involvement.

⁹⁵ Klein, A., *Practical Implications of Current Domestic Violence Research, Part II: Prosecution*, National Institute of Justice, United States of America (2008).

⁹⁶ *Ibid.*

⁹⁷ Ford, D. and Breall, S., *Violence Against Women: Synthesis of Research for Prosecutors*, National Institute of Justice, Department of Justice, United States of America (2000).

Consider whether fines may negatively impact on 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, 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; 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.

AGGRAVATING CIRCUMSTANCES

Updated Model Strategies and Practical Measures—Provision 17(b)

17. Member States are urged, as appropriate, ... (b) to ensure that their national laws take into account specific circumstances as 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 with the perpetrator and perpetration of violence against a person under 18 years of age.

Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Article 46

Parties shall take the necessary legislative or other measures to ensure that the following circumstances, insofar as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration as aggravating circumstances in the determination of the sentence in relation to the offences established in accordance with this Convention:

- a. the offence was committed against a former or current spouse or partner recognized by internal law, by a member of the family, a person cohabitating with the victim or a person having abused her or his authority.
- b. the offence, or related offences, were committed repeatedly.
- c. the offence was committed against a person vulnerable by particular circumstances.
- d. the offence was committed against or in the presence of a child.
- e. the offence was committed by two or more people acting together.
- f. the offence was preceded or accompanied by extreme levels of violence.
- g. the offence was committed with the use or threat of a weapon.
- h. the offence resulted in severe physical or psychological harm for the victim.
- i. the perpetrator had previously been convicted of offences of a similar nature.

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 incarceration. Offenders ordered to treatment should be subject to court supervision and court sanctions if they do not satisfactorily complete treatment programmes. These programmes therefore need to 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.

NATIONAL EXAMPLES

Mandatory rehabilitation programmes—Brazil and Spain

In Brazil, the Maria da Penha Law alters the law of penal executions to allow the judge to determine the obligatory attendance of the aggressor in recovery and re-education programmes.

In Spain, all offenders have to go through rehabilitation programmes. For those sentenced to conditional release, the offender must attend and pass the programme. Where the offender has been sentenced to a term of imprisonment, the programme will be offered in jail. A condition of release will be passing the rehabilitation programme.

Consider the effectiveness of offender treatment/rehabilitation programmes. Research indicates that programmes that incorporate alcohol and/or drug treatment add to the likelihood of reduction in re-abuse as many perpetrators abuse alcohol and drugs.⁹⁸ According to some studies, there is no evidence that anger management or couples counselling programmes effectively prevent court mandated offenders from re-abusing or committing new offences after treatment. Longer batterer 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 from 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.

NATIONAL EXAMPLE

California Penal Code (§ 1203.097)—United States of America

Californian batterers must be sentenced to three years' probation; criminal protective orders must be incorporated to protect victims from further violence, threats, stalking, sexual abuse and harassment; the defendant must complete a batterer programme of no less than a year, make a minimum \$200 payment, perform a specified amount of community service, as well as attend as needed substance abuse treatment, pay restitution and, in lieu of a fine, pay up to \$5,000 to a battered women's shelter.

⁹⁸ Klein, A., *Practical Implications of Current Domestic Violence Research, Part II: Prosecution*, National Institute of Justice, United States of America (2008).

UN Women Handbook for National Action Plans on Violence against Women^a

In order to ensure accountability and the safety of women and children, minimum standards for perpetrator programmes that are monitored are critical. These standards need to include:

- Undertaking an appropriate suitability assessment of perpetrators prior to their acceptance on the programme, with ongoing risk assessment;
- A programme commitment to work within a gendered structural analysis of violence against women, as opposed to a simplistic or individualized anger management paradigm;
- A commitment to not engage in any relationship counselling or mediation;
- The prioritization of the safety of women and children, including limiting the perpetrator's confidentiality rights (i.e., by requiring that participants provide addresses of current and former partners so that they can be contacted if necessary);
- Formal agreements and information sharing protocols with victim/survivor service providers, that are located separately from the perpetrator programmes; and
- Delivery by appropriately trained staff.

^aAvailable at <http://www.un.org/womenwatch/daw/vaw/handbook-for-nap-on-vaw.htm>

3. Issues 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 other sentence. While restitution may be an element in penalizing perpetrators, it should not be a substitute for other penalties. Restitution is meant 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.

In those jurisdictions that allow for victims' application for reparations, prosecutors in charge of the investigation and prosecution, in anticipation of such an application, should collect and submit sufficient information and material in advance, which can be helpful for a judge to decide the appropriate amount of reparation. The prosecutor in charge of the trial should be cooperative to the victim applicant through the trial procedure once such an application is filed.

In jurisdictions where States have compensation programmes to provide financial support to victims of crime, prosecutors should assist victims in obtaining compensation. Prosecutors should provide victims with information about compensation in a language and manner that is easily understood by the victim. In jurisdictions where the victim must file an application to the victim compensation fund, prosecutors

should do what they can to support her application. In other jurisdictions, the prosecutor has the duty to file an application before the court for State compensation.

It should be stressed that restitution and compensation are separate from civil damages, which may be sought by the victims in civil proceedings.

4. Post-conviction considerations

Prosecutors should explain to the victims the perpetrator's post-conviction rights including the availability of appeals. Where the perpetrator appeals the conviction, it is important to notify the victim of the appeal and any other post-conviction matters. Victims, who may initially have felt a sense of closure upon the conviction and sentencing of the perpetrator, can become unnerved when an appeal is filed. Prosecutors should meet with the victim to discuss the legal issues on appeal. If practical and possible, the prosecutor who conducted the actual prosecution of the case could remain involved in the appeal, either as part of the appellant team handling the appeal or as a focal point or a go-between for the appellant team and victim. In all post-conviction matters, including probation and alternative measures, the victim should be kept informed at all stages.

In some jurisdictions, victims can apply to the Attorney General for a reference to the court of appeal against a sentence that is considered to be unduly lenient. In those jurisdictions the prosecutor should inform the victim of this avenue of appeal.

H. Restorative justice and violence against women and girls

Restorative justice practices are used in both informal and formal justice sectors around the world.⁹⁹ International standards and norms suggest that negotiation, conciliation, mediation and restorative justice mechanisms can be detrimental in cases of violence against women because of the power imbalance and safety risks for women interacting with perpetrators during face-to-face meetings.¹⁰⁰

Agreed Conclusions adopted by the Commission on the Status of Women at its 57th session (4–15 March 2013)^a

Paragraph (g): The Commission urges governments to take the necessary legislative and/or other measures to prohibit compulsory and forced alternative dispute resolution processes, including forced mediation and conciliation, in relation to all forms of violence against women and girls.

Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, article 48

Article 48 prohibits mandatory alternative dispute resolution process, including mediation and conciliation in relation to all forms of violence covered by the Convention.

^aReport of the Commission on the Status of Women at its 57th session (4–15 March 2013), E/2013/27–E/CN.6/2013/11.

There are significant concerns related to using restorative practices in cases of violence against women and girls in view of the following considerations:

- These processes can minimize the effect that violence has had on women and girls' lives.
- These processes can perpetuate discrimination against women and girls. Informal justice mechanisms often reflect customary or prevailing attitudes of the community towards women and girl victims and consequently often present gaps in accountability of perpetrators.

⁹⁹ Formal and informal justice mechanisms interplay. For instance, some informal mechanisms come into play after a sentence by the formal system.

¹⁰⁰ UN Women, *Handbook for Legislation on Violence against Women* (2010), available at www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf

- 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 then 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. See the box below for an example.

The Canadian Working Group Recommendations for Restorative Justice in Violence against Women Cases⁹

Restorative justice (RJ) should not be used in spousal abuse cases except in the following circumstances:

- The RJ process offers the same or greater measures of protection of the survivor's safety as the criminal justice process;
- Referral to the RJ process is made after the perpetrator has been charged with a crime and with the approval of the prosecutor;
- 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 survivors' safety, as well as that of her children and other dependents, both throughout and after the process); and
- The survivor is fully informed of the proposed RJ process and her wishes are taken into consideration.

In addition, the following conditions and requirements apply:

- Survivor consent is required and survivor support must be provided where the survivor will be asked to participate in the alternative justice process;
- The offender fully accepts responsibility for his actions;
- The RJ process is part of a programme approved and overseen by government for the purpose of providing RJ responses to spousal abuse;
- The RJ 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 RJ 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; and
- The possibility of criminal conviction and sentence remains if the process fails.

The Working Group found that the use of RJ processes in violence against women cases should also be supported by the following activities: development and delivery of ongoing training for those involved in conducting risk assessment and the delivery and supervision of the alternative justice processes and programmes, including criminal justice personnel; development and application of validated risk assessment tools for spousal abuse cases; and ongoing monitoring and evaluation of alternative justice responses, including those used in spousal abuse cases, against new evidence-based research on the effectiveness of these processes, their ability to ensure the safety of the survivor and her children, and their ability to reduce the likelihood of re-offending.

^aDepartment of Justice, Canada, "Final Report of the Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation" (2001), available at www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/pol/spo_e-con_a.pdf

Part Three

Effective institutional practices
to address violence against
women and girls: approaches of
the prosecution agency

A. Developing policies and protocols

The prosecution agency, as one of the key institutions of the criminal justice system, has a leading role to play in ensuring a comprehensive and coordinated criminal justice response to violence against women and girls. The prosecutorial service needs to build its internal capacity to respond to violence against women and girls by developing policies governing their responses to these crimes, training all personnel, committing financial and personnel resources, working with other criminal justice agencies, intersectorial agencies and civil society and mainstreaming gender in the prosecutorial institution. Developing policies and protocols can be a critical part of efforts to change the way and manner in which the prosecution agency responds to the various forms of violence against women and girls, including new emerging forms such as cyberstalking.

The overarching strategy in any prosecutorial policy and protocol should prioritize the victim's safety while holding the perpetrator accountable. It is also important to incorporate knowledge of violence against women as a gender-based crime into policies and protocols.

1. Policies

In developing policies regarding violence against women and girls, prosecution agencies set the direction and aspirations of their agency and can promote changes in the practice of individual prosecutors, who may reflect traditional prosecutorial cultures and gender stereotypes. In developing such policies, prosecution agencies need to set out clearly the following:¹⁰¹

- What is the objective of prosecution?
- Is the prosecutorial policy consistent with objectives?
- Will prosecutorial actions harm the victim?
- Is the policy supported by or consistent with research findings?

¹⁰¹ Ford, D. and Breall, S., *Violence Against Women: Synthesis of Research for Prosecutors*, National Institute of Justice, Department of Justice, United States of America (2000).

With the widespread recognition of the problem of gender-based violence and an increased understanding of the unique problems confronting women and girls as victims of these crimes, prosecutorial policies should articulate goals beyond focusing on achieving a conviction but rather emphasizing the safety needs of the victim. Policies should promote the broadest interpretations of the criminal definitions in the State regarding the different forms of violence against women and girls. It might also have to clearly state the need for shifting the approach from an exercise in scepticism focusing on discrediting victims to enhanced evidence-gathering and case-building. Prosecution policies need to be evaluated carefully to discover whether they help prevent and sanction violence and to ensure that they do not result in greater harm to the victims.

Evaluation studies on prosecutorial policies on gender-based violence have been fairly limited to date; however, the research suggests consideration of the following as components to an overall policy:¹⁰²

Pro-prosecution policies versus mandatory or no-drop policies. A pro-prosecution policy means that prosecution is likely but not mandatory.¹⁰³ It ensures that the prosecution staff will give the issue serious attention. Mandatory prosecution, or no-drop prosecution policies, restricts the prosecutor's discretion in gender-based cases and the prosecution is to proceed even without the agreement of the victim. Both of these policies have been introduced in various countries to combat long-standing and globally prevalent prosecutorial attitudes towards this violence and high attrition rates. Mandatory policies can cause conflict between a victim's interest in protection and the State's interest in dealing with crime and deterring others. Some argue that mandatory policies authorize excessive government intervention which might be independent of the victim's wishes or request. It takes away the victim's capacity to exert her own power in deciding what is best for her or her children. From a victim's perspective, non-participation with the criminal justice system may be chosen in response to the prosecutor's non-cooperation with her plan for securing herself from continuing violence. Pro-prosecutorial policies allow for the use of prosecutorial discretion but with an oversight mechanism, such as requiring written explanation detailing when and why the prosecution was dropped or requiring approval from the chief prosecutor.

Other policies expressly acknowledge the varied interests of victims and prosecutors and allow for broad prosecutorial discretion in responding to violence against women cases which are grounded in an understanding of violence against women and embody values including victim safety and confidentiality, respecting the autonomy of victims, holding offenders accountable and ensuring the community is aware of the seriousness of these crimes.

¹⁰² *Ibid.*

¹⁰³ Pro-prosecution policies are explicitly recommended in the UN Women *Handbook for Legislation on Violence against Women* (2010), page 37, available at www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf. In the report of the United Nations Expert Group Meeting on Good Practices in Combating and Eliminating Violence against Women Expert Group Meeting, held in Vienna in 2005, it is noted that it is vital that police and prosecutors should not inappropriately drop or dismiss cases, however does note that mandatory arrest and/or charge policies remain controversial. It should also be noted that the 2010 updated Model Strategies and Practical Measures do not include a specific reference to either mandatory or pro-prosecution policies, as the research highlighted that evaluations of these policies continues to be debated and indecisive.

NATIONAL EXAMPLE

The National District Attorneys Association's policy on prosecuting domestic violence—United States of America^a

The National District Attorneys Association acknowledges the tension between the victim's objectives and needs and the interest of the State in robust prosecution of the offender. The policy states that "...As a result of the philosophical difference between a victim of domestic violence and prosecutor handling such cases, it is imperative that prosecutors devise methods to most practicably address the goals of all parties involved in cases of domestic violence and to eliminate as many of the conflicts as possible...". The policy advises against written official policies to cover all domestic violence cases, and states: "...Prosecutorial discretion and specialized training as applied to the facts of individual cases are the best tools to address domestic violence.... Prosecutors are encouraged to use prosecutorial discretion to resolve cases of domestic violence and to provide for both victims' safety and abusers' accountability...".

^aNational District Attorneys Association Policy Positions on Domestic Violence (2004).

Vertical prosecutions or prosecutor continuity. Vertical prosecution means assigning one prosecutor, where practical, to work on a case from the initial screening through to case disposition. This responds to the traditional complaint from victims of inconsistency in treatment and insensitive interactions. This means that the victim sees one prosecutor, who usually has specialized training, from one encounter to the next. This increases the victim's trust and confidence in the criminal justice process and fosters stability in the prosecution. In larger jurisdictions, vertical prosecution may be part of specialized prosecution units.

Early intervention and vertical prosecution^a

The use of vertical prosecution allows prosecutors to gain a thorough understanding of the facts and circumstances of a particular case, and to develop a strategy that is followed throughout the entire process. Vertical prosecution also increases the amount of contact the victim has with the prosecutor, facilitating a good rapport. Establishing a good rapport and comfortable working relationship with stalking victims is an essential element of a successful case outcome. A good rapport encourages victims to discuss issues, raise questions and participate more fully in the process. Victims experience less stress than if they were to have to repeat the same facts and details about their cases to different criminal justice personnel. Since physical evidence rarely exists in stalking cases and the victim is often the sole witness, victim participation and testimony is crucial to achieving a conviction.

^aProsecuting Attorney's Office, City of Dover Police Department, New Hampshire, "Aggressive Prosecution of Stalkers by Prosecutor Based Police Department", adapted from the American Prosecutors Research Institute's (APRI) 1997 publication *Stalking: Prosecutors Convict and Restrict*.

Furthermore, there are other components to a prosecution policy which are unlikely to have negative consequences for the victim:

- Specialized prosecutorial units; designated prosecutor
- Prosecutor's relationship with victim advocates/victim advocacy

In recognizing the absence of relevant research, it is crucial that policies be assessed critically for potentially negative impacts on victims. The focus should be on which policies work best for the victims rather than making the law work better.

NATIONAL EXAMPLE

National Prosecuting Authority, Policy Directive Part 27: Sexual Offences—South Africa

Policy Directive 27 sets out the manner in which sexual offence cases are to be dealt with, to afford the maximum and least traumatizing protection to victims and recognition of their needs through timely, effective and non-discriminatory investigation and prosecution. It covers: pretrial phase (i.e. specialist dedicated prosecutors selected on the basis of their experience, interest, skills and levels of sensitization; preferably the same prosecutor should prosecute a matter from beginning to end; a thorough and comprehensive consultation to be had with the complainant as soon as possible, preferably within twenty-one days following receipt of the docket); decision to prosecute; trial; personal records of the complainant; withdrawal or stopping of proceedings; witness competency to testify; applications for use of CCTV; applications for in camera hearing; instituting prosecutions where both parties are under the age of 16; instituting prosecution regarding HIV status; sentencing; national register for sex offenders; confidentiality in dealing with HIV/AIDS results; and trafficking.

Gender mainstreaming within the prosecution agency

Vital to any prosecutorial response to violence against women and girls is for an active and visible mainstreaming of a gender perspective into all of the prosecution agency's practices, policies and operations. Gender mainstreaming is a strategy for making women's and men's concerns and experiences an integral dimension in the design, implementation, monitoring and evaluation of policies and programmes in all spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.

With regards to the treatment of victims and suspects in other types of crime, understanding the interrelationship between gender and crime can contribute to the overall effectiveness of any response. Women and men are impacted differently by crime and have different experiences going through the criminal justice system. They can have different priorities, responsibilities and needs relating to the reduction of crime and the achievement of security and justice. Women and men often have different levels of access to participation, information or justice and face different constraints in their efforts to improve their security or social conditions.

It is also important to gender mainstream into the institutional structure of the prosecution agency. For an effective operationalizing of policies on violence against women and girls, gender mainstreaming must also be done throughout the institutional environment as this is where policies and programmes are developed and implemented. The procedures of prosecution services, as well as the attitudes and behaviours of prosecutors, while enforcing the criminal law, can contribute to the prevention of violence against women and girls.¹⁰⁴ Thus any formal policy or action

¹⁰⁴ Report of the Secretary-General on Prevention of violence against women and girls, E/CN.6/2013/4, page 12.

plan should include a component that ensures the working environment is gender-sensitive, guaranteeing equal opportunities and treatment to both men and women. Sufficient technical capacity and human resources are needed to successfully implement policies on violence against women. Useful tools for conducting gender audits have been developed by the International Labour Organization (ILO).¹⁰⁵

NATIONAL EXAMPLES

Crown Prosecution Service Equality and Diversity: Expectations Statement for the Bar (reviewed in 2012)—England and Wales

The purpose of this statement is to provide for the Bar a clear concise statement of expectation on equality and diversity when seeking to work and when working for the Crown Prosecution Service (CPS).

According to the statement, CPS expects Chambers whose members prosecute or seek to prosecute on behalf of the CPS to have a written policy statement of its commitments to equality and diversity. This policy statement should specifically address recruitment of staff, pupils and members; retention and career development; training; equal access to work and opportunities within Chambers; reasonable adjustments; maternity, paternity and parental leave; flexible working; complaint handling for discrimination and harassment.

Developing a manual for public services advising on gender mainstreaming—Sweden^a

The Swedish Gender Mainstreaming Support Committee in 2007 produced a book entitled “Gender equality in public services: some useful advice on gender mainstreaming”. The Committee has also produced a Gender Mainstreaming Manual which contains practical approaches for government agencies.

^a Available at www.regeringen.se

Communicating the policy to the public

There are a number of ways to build stakeholder confidence in the prosecution agency’s response to violence against women and girls in their community including:

- Public consultations during the preparation of the policy
- Ensuring that the policy is written, targeted for the public audience and drafted in user-friendly formats and non-legal language
- Policy is readily available to the public (i.e. on the Internet or at prosecution offices)

¹⁰⁵ ILO Participatory Gender Audits: relevance and use for the United Nations and its agencies (2011).

NATIONAL EXAMPLE

Crown Prosecution Service Policies—England and Wales

The Crown Prosecution Service have developed two policies, one on prosecuting cases of domestic violence (March 2009) and one on prosecuting cases of rape (revised in 2012). Both policies are available to the public. The policies have been written for the public, particularly those people who support victims, in such a way to explain how these cases are handled. It welcomes any comments and observations from the public which will help the Crown Prosecution Service when policy statements are reviewed. The policies are also published in other languages and alternative formats.

2. Protocols

While a policy is a general description of what the organization wants to accomplish in a particular area, protocols provide more details, setting out a step-by-step description of how something is accomplished. The value of having a standardized protocol for handling violence against women and girls cases is multifold. First, it establishes expectations for sensitivity and professionalism around the issue of gender-based violence and can provide an opportunity to address entrenched myths or gender biases. Secondly, it helps provide victims with a sensitive and supportive experience as they go through the criminal justice system. Thirdly, it increases the likelihood of successful prosecutions.

By enacting effective victim-centered protocols, prosecutors can increase the likelihood of victim cooperation through the criminal justice process. Protocols can serve as a guide for ensuring that the highest standards for prosecution are followed by laying out a written set of procedures to be followed throughout the various stages of the criminal justice process. Protocols allow for objective measures to assess the work of prosecutors and promote accountability. Furthermore, the protocols can be used as a training tool for new prosecutors.

Prosecution agencies should develop a system to monitor prosecution compliance with protocols and revise policies and practices as necessary.

B. Improving service delivery

Prosecution agencies should consider reviewing the work of prosecution services to ensure that they are responsive to women and girls who are victims of violence. This would include examining the management of human and physical resources, the allocation of resources, the operational support to prosecution personnel, how to improve case screening and caseload management, how to enhance service delivery for victims and improve their access to justice as well as examining accountability and public understanding of the prosecution services.

1. Service delivery structures

Prosecution agencies can be constrained by limited staff and other resources. Prosecutors have heavy caseloads and often lack the time needed to provide the support that they should offer to victims to ensure their safety and continued cooperation with the prosecution. There are a number of ways to increase prosecutorial capacity.

Establishing victim advocate/victim support staff positions within the prosecution service staff

Victim advocates are trained to assess victim needs and to provide advocacy, information, referrals and support. They can also serve as a link between the police and the prosecutor as cases are processed by the criminal justice process. The victim advocate can carry out some of the essential tasks of supporting victims and keeping them informed of the prosecution case and explaining their rights, permitting prosecutors to concentrate on the legal elements of the case. They can also assist in conducting risk assessments and developing victim safety plans. Victim advocates are not required to be lawyers and they can be less expensive than a prosecutor position.

NATIONAL EXAMPLE

Court Preparation Officers—South Africa

The National Prosecuting Authority Court Preparation Programme, “Bona Lesedi”, was developed to help prepare witnesses testify in court. The programme established Court Preparation Officers (CPOs) who embrace the principles of “Batho Pele” and “Ubuntu”, which place people first and reflect a pervasive spirit of caring. CPOs prepare abused, neglected or victimized victims, including child victims, to testify in court, whether in open court or through the assistance of a CCTV room with an intermediary. Their aim is to reduce the secondary trauma that witnesses experience when they have to testify in front of strangers or in the presence of the accused. It familiarizes witnesses with the court process and the court’s role players.

This programme was evaluated and the impact on all relevant parties (witnesses, role players, CPOs) and the legal system itself was found to be uniformly beneficial.³ Witnesses benefited in having less stress and an increase in confidence that comes from understanding both how the legal system works and what part they are expected to play in it. Court preparation helped minimize secondary victimization, responses were more accurate and complete and witnesses were perceived more credible. Prosecutors benefited in that they were given more time in which to prepare the case for trial, concentrating on legal issues and concerns.

³Coetzee, S., Dunn, M., Kreston, S. and Painter, M. J., “Final Report: Review, Research and Evaluation of the ‘Bona Lesedi’ Draft Court Preparation Programme of the National Prosecution Authority” (30 September 2008).

Establishing close cooperation with civil society victim advocacy groups

These groups can collaborate with prosecutors in preparing and supporting the victim through the criminal justice process. These groups can provide the emotional support for victims throughout the prosecution. An issue raised in some jurisdictions is the confidentiality status of communications between the victim and advocate and whether this is applied differently where the victim advocate is part of the prosecution staff or part of a collaborative approach with a civil society organization independent of the prosecutor. There is a need to review the State’s laws to determine whether the advocates enjoy testimonial privilege similar to the prosecutor or whether they can be forced to testify to their communications with a victim.

Joining an “all-in-one resource centre” for victims

In some States, prosecutors can enhance their capacity and service delivery in ensuring a victim-centered approach. This is discussed in more detail in chapter E on inter-agency collaboration and coordination.

Updated Model Strategies and Practical Measures, Provision 16(k) and (l)

16. Member States are urged, within the framework of their national legal systems, as appropriate and taking into account all relevant international legal instruments... (k) To ensure gender-equitable representation in the police force and other agencies of the justice system, particularly at the decision-making and managerial levels, ... (l) To provide victims of violence, where possible, with the right to speak to a female officer, whether it be the police or any other criminal justice official.

2. Case management issues

The slow progress of prosecution can cause fear and frustration among victims. Prosecution agencies should look at ways to expedite cases involving violence against women. The agencies could consider the following:

- Establishing specialized prosecutorial unit which might be attached to specialized courts.
- Developing expedited tracking system protocols, with the agreement of the police, prosecution agency, court administration and judiciary. One example is the use of marking certain types of file for fast track procedures, such as the “K” file cases for domestic violence in British Columbia, Canada. Another example is allowing prosecutors to request “out-of-turn” priority for violence against women cases as in India.
- Creating a database to expedite docketing, caseload management and timely victim notification. This may include automating the database to include information on each case, the nature of the charges and the ongoing status of the case up to and after sentencing, and integrating the data system to include both criminal and civil histories.

A crucial part of case management is to ensure an effective administrative and case data collection and record keeping system across the jurisdiction. This should also be harmonized with the police and court data collection and should support relevant national mechanisms such as national observatories, commissions or research institutes that monitor and analyse the State’s obligation to respond to violence against women and girls. This could also include establishing systems to measure support, safety and satisfaction of victims with the prosecution agency and its service, as this is crucial for monitoring and evaluation.

Prosecution agencies should look at ways to use technology to improve the delivery of information to the victim about the progress of the case through the criminal justice system. Some jurisdictions are using mobile phones to provide information about the criminal case and the victim merely has to input the court case file number and will have an update on the case progress.

Updated Model Strategies and Practical Measures, Provision 16(i)

16. Member States are urged, within the framework of their national legal systems, as appropriate and taking into account all relevant international legal instruments ... (i) To empower and equip police, prosecutors and other criminal justice officials to respond promptly to incidents of violence against women, including by drawing on a rapid court order, where appropriate, and by taking measures to ensure the fast and efficient management of cases.

3. Issues of resources

Securing resources and budgets is crucial to ensuring that laws, policies and protocols are effectively implemented. In some States, such as the United States of

America,¹⁰⁶ the legislation on violence against women includes specific provisions on the amount of government funds that are to be administered to implement the act. In some jurisdictions, when new laws are enacted, a judicial impact report is produced to look at the consequences of the changes at the operations level. For example, if special courts or specialized prosecutorial units are to be created and if there are provisions for fast tracking cases involving violence against women, this will have financial and human resources implications. The prosecution agency needs to review the impact of new law, as well as policies and protocols, in terms of resources required for effective compliance.

It should be highlighted that UN Women promotes gender-responsive budgeting for government agencies. For a list of resources on how to develop gender-responsive budgets, see the list of resources from the UN Women Virtual Knowledge Centre to End Violence against Women and Girls.¹⁰⁷

4. Prosecutorial services in remote areas

Rural communities often experience a lack of criminal justice and support services, such as shelters, counselling, legal aid, and victim advocacy services. Prosecutor staffing is often also limited in rural and remote regions. The community may be geographically isolated and economically challenged with sparsely populated areas making it more difficult for women victims of violence to report in a confidential and safe manner. Travelling to a larger centre might be challenging for victims due to cost or available transport.

Prosecution agencies need to consider how to provide services to these communities. Some jurisdictions have small rural offices which require sustainable and adequate funding, however these often lack specialized prosecutors as they have to deal with all types of crime. In these cases, there needs to be a focus on collaborative efforts with local civil society groups that can provide victim advocacy and support services. Other jurisdictions have developed outreach mobile prosecutorial services, usually attached to mobile court structures.

Rural and remote areas

Some of the good practices to increase access to justice for victims living in rural and remote areas include mobile courts in the Democratic Republic of the Congo, flying courts in northern Canada, flying squads based in Argentina, where trained specialized personal assist the criminal justice system in responding to violence against women in remote areas, and using video conferencing technology in Spain.

¹⁰⁶ Violence Against Women Act, United States of America.

¹⁰⁷ For a list of resources on how to develop gender responsive budgets, see the list of resources from the UN Women Virtual Knowledge Centre to End Violence against Women and Girls at www.endvawnow.org/en/articles/317-securing-resources-gender-responsive-budgeting-.html

C. Establishing specialized expertise

Over the last two decades, the United Nations and regional organizations have recognized that using specialized expertise at various stages of the criminal justice system to respond to violence against women is a good practice. Specialized prosecution units or dedicated prosecutors have become the trend in many States.

1. Specialized units

Specialized units can take on a number of different forms such as:

- Specialized prosecution units, complementing specialized courts, which have a team of specialized criminal justice professionals. For example, the South Africa Sexual Offence Courts are staffed by prosecutors as well as police, investigators, social workers and health-care professionals, all of whom collaborate through all phases of the criminal process.
- Specialized prosecution units which are in the form of a multidisciplinary team. These units can consist of not only prosecutors but also victim assistance workers/advocates, paralegals, investigators and/or medical personnel. These units might be located within the prosecution agency office or have a separate centre or clinic. For example, in Brazil, prosecutors are part of a multidisciplinary team along with social assistant workers and psychologists.
- Specialized prosecution units made up of specially trained prosecutors. For example, the Afghanistan prosecution unit.

Whatever structure the specialized unit takes, the main purpose is to improve general efficiency in the prosecution of such cases and improve the experience of the victim. Generally these units can fast track cases, thereby shortening any delays, and improve coordination with other criminal justice officials. Some of the structures ensure gender balance within prosecution personnel while others increase the team with women prosecutors.

Evaluations of specialized prosecution programmes have shown that these specialized programmes appear to work well on a number of levels.¹⁰⁸ However the evaluations

¹⁰⁸ Criminal Domestic Violence Case Processing—A Case Study of the Five Boroughs of New York City.

note that results vary as structures and resources vary. Generally, specialized prosecution units, if adequately funded, and particularly those associated with specialized courts and police units, increase prosecutions and convictions, victim cooperation, satisfaction and safety. Specialized prosecution units are more likely to use innovation practices, such as vertical prosecutions for misdemeanours.

Other benefits include the following:

- Increased efficiency of case management¹⁰⁹
- Increased expertise of prosecutors as not only do they receive specific training but they also develop expertise with practice
- Increased quality of services to victims which has resulted more generally in higher victim participation in the criminal justice process as well as higher levels of satisfaction from the victims¹¹⁰
- Increased prosecution and conviction rates¹¹¹
- Better continuity of prosecutors thus ensuring that the victim is not required to repeat her statement unnecessarily and thus reducing the chances of secondary victimization
- Increased likelihood that prosecutors take part in case building and take on more complex cases
- Better coordination with others in the criminal justice system, usually facilitated with inter-agency protocols/policies for information sharing and communication. Usually such units are more likely to be part of a task force or community coordinated response team¹¹²
- Earlier and faster prosecutions can increase victim safety, for example, faster prosecutions can reduce re-abuse in domestic violence situation

¹⁰⁹ The specialized units in upstate New York, unlike other prosecutors' offices, for example, were more likely to track cases for specialized prosecution, track data to inform charging for recidivists, track data to inform sentencing recommendations, routinely receive police incident reports as well as police arrest reports. See Klein, A., *Practical Implications of Current Domestic Violence Research, Part II: Prosecution*, National Institute of Justice, United States of America (2008).

¹¹⁰ Research has found that victims generally report satisfaction with domestic violence prosecutions conducted by specialized prosecution teams. Increased satisfaction may translate into increased victim cooperation. For example, in Alexandria, Virginia, a study found 90.2 per cent of victims found prosecutors either very or somewhat helpful, a higher rating than given to police or a victim support service agency. The 90.2 per cent satisfaction reported by Alexandria victims compares to only 67.3 per cent for victims in Virginia Beach, a comparison jurisdiction that did not have a specialized domestic violence response programme by police, prosecutors and victim advocates. Chicago study found that specialized Unit victims were also more likely to appear in court, 75 per cent compared to just 25 per cent in non-Unit domestic violence cases. See Klein, A., *Practical Implications of Current Domestic Violence Research, Part II: Prosecution*, National Institute of Justice, United States of America (2008).

¹¹¹ Specialized prosecution programmes have significantly increased prosecution and conviction rates. The specialized prosecution unit in Cook County, for example, obtained a conviction rate of 71 per cent compared to 50 per cent obtained by the rest of the office for domestic violence cases. In Milwaukee, the specialized domestic violence prosecution unit increased felony convictions five times over what occurred before the unit was established. Implementation of a specialized domestic violence prosecution unit in Champagne County, Illinois increased prosecutions by 18 per cent and overall domestic violence case dismissals decreased by 54 per cent. Convictions increased by 22 per cent. See Klein, A., *Practical Implications of Current Domestic Violence Research, Part II: Prosecution*, National Institute of Justice, United States of America (2008).

¹¹² Specialized units were more likely to participate in task forces or coalitions involving other criminal justice and/or community agencies involved in responding to domestic violence. See Klein, A., *Practical Implications of Current Domestic Violence Research, Part II: Prosecution*, National Institute of Justice, United States of America (2008).

- Better coordination with victim services and support
- Better offender compliance, due to monitoring and follow-up by prosecution unit¹¹³

However, it should also be noted that in some countries specialized units experience marginalization within the prosecution agency. Another challenge is that often these specialized prosecution units are only found in urban areas or regions where many cases of violence against women have been documented. Furthermore, such units require a reasonably high caseload to justify the allocated resources. Therefore such services are often lacking in victims in rural or remote areas. Some specialized units only deal with certain forms of violence against women, such as domestic violence, or sexual violence. The effectiveness of specialized prosecution units is reliant on continued and sustainable funding, which can be lacking or restricted in some situations.

NATIONAL EXAMPLES

Public Prosecutor for Cases of Gender-based Violence—Spain

The Public Prosecutor for gender-based violence cases supervises, coordinates and reports on matters and prosecutions in the Violence Against Women Court. The prosecutor also notifies victims of the release of the perpetrator from jail.

Specialized Prosecutor Units—Afghanistan^a

A specialized prosecution unit was established in Afghanistan in 2010 with a mandate to focus on crimes of violence against women and girls as defined under the 2009 Elimination of Violence Law. The Unit consists of eleven prosecutors who formed a network of victim support services with shelters, health and educational resources. The prosecutors received special training on gender justice. In the first year, nearly 300 cases were prosecuted, usually of assault or rape, and prosecutions doubled from the first to last month of the initial year. A second specialized unit was opened in Herat in 2011.

^aInternational Development Law Organization (2011) “Le Bureau du Procureur General et L’OIDD Lancet Une Unite De Lutte Contre la Violence a L’Encontre des Femmes dans la Province de Herat, Aghanistan”, as quoted in the United Nations Virtual Knowledge Centre to End Violence Against Women, Legislation Module.

2. Specially designated prosecutors

When establishing specialized units is not feasible, using specially designated prosecutors is a good alternative. These specially designated individual prosecutors are trained on the dynamics of violence against women, and are to be assigned to a

¹¹³ Specialized prosecution programmes appear to be associated with more robust dispositions that also appear to be better monitored and enforced. A study of three domestic violence courts with specialized prosecutors in three different states found augmented probation conditions over comparison jurisdictions without domestic violence specialization. These included drug and alcohol abstinence and testing, batterer intervention programmes that lasted longer and were more expensive, more no contact orders, attendance at fatherhood programmes or women’s groups for female offenders, more mental health evaluations, mandatory employment, and restrictions on weapons. See Klein, A., *Practical Implications of Current Domestic Violence Research, Part II: Prosecution*, National Institute of Justice, United States of America (2008).

gender-based violence case from the beginning and will be the prosecutor until disposition (vertical prosecution). Some of the same benefits from a specialized unit are found with using a specially designated prosecutor such as ensuring continuity and familiarity for the victim and prosecutor; lessening the trauma of having to repeat her statement more than necessary; providing an opportunity to build rapport and trust and lessening the chances of falling through the gaps.

In rural areas, some smaller prosecution offices have organized the equivalent of a specialized prosecutor by contracting to share a single prosecutor who can travel to different locales on different days to deal with specific cases of violence against women. Another way to build expertise among prosecutors is through the use of in-service gender advisors who can advise prosecutors on cases involving violence against women (see for example the case of the International Criminal Court prosecution office which has a gender adviser).

Updated Model Strategies and Practical Measures, Provision 16(c)

16. Member States are urged, within the framework of their national legal systems, as appropriate and taking into account all relevant international legal instruments: ... (c) To promote the use of specialized expertise in the police, among prosecution authorities and in other criminal justice agencies, including through the establishment, where possible, of specialized units or personnel and specialized courts or dedicated court time, and to ensure that all police officers, prosecutors and other criminal justice officials receive regular and institutionalized training to sensitize them to gender and child-related issues and to build their capacity with regard to violence against women.

As indicated in the updated Model Strategies and Practical Measures, the strategy calling for specialized expertise in prosecutions should complement gender sensitivity training and capacity-building on violence against women for all prosecutors. Furthermore, in view of the consideration that specialized prosecutors themselves might suffer from vicarious traumatization from repeatedly listening to accounts of sexual violence and other forms of violence against women, the updated Model Strategies and Practical Measures indicate that prosecutors, police and other criminal justice officials should be provided with adequate psychological support to prevent their vicarious victimization (Provision 16 (n)).

NATIONAL EXAMPLE

Employee Wellness Programme—South Africa

The Employee Wellness Programme is available to all prosecutors who want to use it. The programme includes counselling services for prosecutors experiencing burn-out.

D. Training and capacity development

All prosecutors should have the capacity to apply the criminal laws of their State in an appropriate and gender-sensitive manner. The capacity of the prosecution service should be able to effectively address the needs of women and girl victims of violence. Capacity development includes developing specialized services and the capacity for victims to have the choice of speaking to a female prosecutor, as discussed in the previous sections. However every prosecutor's capacities should be developed to ensure that they are non-judgmental and respectful towards victims.

Training for all prosecutors on violence against women and girls should be regular, updated and institutionalized. It is also recommended that training be mandatory for all prosecutors in order to send the message that violence against women cases are part of core prosecution work, not something extraneous or special.

Training should include:

- Basic knowledge on the forms of violence against women and the harmful impact and consequences to victims, families and society.
- All relevant laws, policies and programmes. When new legislation is enacted or policies developed, a specific training session should be organized on the new legislation and/or new policies.
- Effective investigation and prosecution strategies and approaches that support victim safety, such as how to conduct standardized safety assessments and risk management tools, the use of and enforcement of protection orders, and issues of confidentiality.
- How to identify and respond appropriately to the specific needs of women victims of violence such as trafficked victims.
- Effective prosecution strategies to avoid secondary victimization of victims during all stages of the criminal justice case.
- Gender sensitivity training, including cross-culture gender and child sensitivity training.

- Challenging myths and stereotypes.
- How to address the media, both with case-specific questions and when addressing forms of violence to educate the public.
- Issues such as professional ethics, respect for human rights and anti-corruption principles.

It should be emphasized that training which is mandated by law and developed in close cooperation with women rights groups, civil society organizations and service providers for victims is more effective. Furthermore, training that is supported by comprehensive protocols and guides promote a consistent and uniform approach to victim safety and offender accountability.

NATIONAL EXAMPLES

Training needs analysis—India

In India, the prosecution agency conducts a training needs analysis when developing training for its prosecutors. Part of this analysis is seeking inputs from all stakeholders, including consultations with the public.

Cross-training—Kenya and South Africa

In Kenya, after the passage of the Sexual Offences Act, the Attorney General's Office and UNODC developed a training manual for prosecutors. The training programmes include other sectors such as the police.

In South Africa, the National Prosecuting Authority (NPA) has developed training strategies wherein (a) the NPA prosecutors are trainees with in-service training provided by NPA along with other criminal justice professionals conducting the training; and (b) prosecutors are trainers in other training courses given to other criminal justice professionals (i.e. the police force).

Coordination with non-governmental organizations (NGOs)—Mexico

In Mexico, the prosecution service coordinates with non-governmental organizations to provide training to prosecutors.

Organic Act on Integrated Protection Measures against Gender Violence (2004)—Spain

Article 47 requires the Government and the General Council of the judiciary to ensure training courses for various criminal justice officials, including prosecutors. These include specific training on sexual equality, non-discrimination for reasons of sex and issues of violence against women.

Anti-Violence against Women and their Children Act (2004)—The Philippines

Article 42 requires all agencies responding to violence against women and their children, including prosecutors, to undergo education and training on the nature and causes of violence against women and their children; legal rights and remedies of victims; services available; legal duties of police officers to make arrests and offer protection and assistance; and techniques for handling incidents of violence against women and their children.

For States that have established specialized prosecution units or dedicated prosecutors for handling cases involving violence against women and girls, in addition to the training that all prosecutors receive, the specialized prosecutors usually receive more in-depth training. For example, they may receive training from a psychologist to discuss the common behaviours of victims who have suffered psychological trauma or from a forensic expert to review medico-legal issues.

Some States have established national centres for training on violence against women and girls for prosecutors and other professionals who work together to respond to gender-based violence. These centres may provide curriculum at prosecutorial colleges for new recruits, or deliver specific courses for experienced prosecutors. These may include longer courses on trial advocacy in sexual violence, domestic violence or stalking cases, or multi-day courses on specific topics such as using forensic evidence or evidence-based prosecutions in domestic violence cases. Training may be delivered at a formal training centre or through the Internet (i.e. webinar trainings). Training can also involve publishing articles and papers on relevant topics and their dissemination (i.e. prosecution service newsletter). It may also involve mentoring programmes wherein senior experienced prosecutors are paired with junior prosecutors to provide advice.

Training courses should be evaluated for their effectiveness and impact. States should develop impact indicators in order to monitor and evaluate the training and measure its successes or failures.

Updated Model Strategies and Practical Measures, Provision 20 (a)–(d)

20. Member States, in cooperation with relevant non-government organizations and professional associations, are urged, as appropriate: (a) To provide for or to encourage mandatory cross-cultural gender and child-sensitivity training modules for police, criminal justice officials and professionals involved in the criminal justice system on the unacceptability of all forms of violence against women and on their harmful impact and consequences on all those who experience such violence; (b) To ensure that police, criminal justice officials and other professionals involved in the criminal justice system receive adequate training and continued education on all relevant national laws, policies and programmes, as well as international legal instruments; (c) To ensure that police, criminal justice officials and other relevant authorities are adequately trained to identify and respond appropriately to the specific needs of women victims of violence, including victims of trafficking; to receive and treat all victims respectfully with a view to avoiding secondary victimization; to handle complaints confidentially; to conduct safety assessments and risk management; and to use and enforce protection orders; and (d) To encourage relevant professional associations to develop enforceable standards of practice and behaviour and codes of conduct that promote justice and gender equality.

See annex 3 for a selection of relevant training manual for prosecutors on violence against women and girls.

E. Inter-agency collaboration and coordination

The updated Model Strategies and Practical Measures call for the development of mechanisms to ensure a comprehensive, multidisciplinary, coordinated, systematic and sustained response to violence against women in order to increase the likelihood of successful apprehension, prosecution and conviction of the offender, to contribute to the well-being and safety of the victim and prevent secondary victimization.

Criminal justice interventions on behalf of victims are most successful when they are integrated with other legal interventions (i.e. civil protection orders) as well as with non-legal, community resources (shelter, health care, counselling, education and employment assistance, etc.). This calls for coordination among criminal justice agencies as well as with outside agencies and civil society. Given their crucial role in bringing cases to court, and being in contact with all the different stakeholders involved in violence against women cases, the prosecution agency has a leading role to play in inter-agency coordination.

In many States it is the prosecution agency that takes the lead in organizing coordination with the other stakeholders. Each of these stakeholders has a mandated role in their response to violence against women. Part of that role is to ensure the effectiveness of the others, to share information, within their privacy and confidentiality requirements, and to share and coordinate resources in the best interests of all. States are encouraged to establish appropriate mechanisms that foster effective cooperation among relevant agencies with a view to promoting the effective investigation and prosecution of violent crimes against women and to better protect, support and assist victims.

Coordination can take many forms. Some might be highly structured, formal and involve representatives from all relevant agencies and groups. Others may have specifically defined goals, be more informal and involve fewer agency representatives. However, whatever the form, at the core of any effort is a commitment of the participants to develop:¹¹⁴ (a) a shared philosophical framework on violence against women and girls; (b) an understanding of each other's roles; and (c) a plan

¹¹⁴ Littel, K., Malefyt, M., Walker, A. and Kuriansky, J., "Assessing the Justice System Response to Violence against Women: A Tool for Communities to Develop Coordinated Responses" (1998), Battered Women's Justice Project, Criminal Justice Centre.

to improve the response of different institutions and agencies to violence against women and girls.

Coordination mechanisms can range from setting up an official body or institution to developing agreed protocols or to setting up round table meetings that enable the stakeholders to cooperate in a standardized manner. For example, some States have established criminal justice administration committees, made up of members of the police, prosecution and the judiciary, that meet regularly to discuss common issues and challenges, and seek solutions. Other coordination mechanisms might be memorandums of understanding (MOU) with various agencies and civil society organizations. In Thailand, for example, the prosecution agency has signed a memorandum of understanding with the Association of the Promotion of the Status of Women to designate a prosecutor to attend case conferences where the victim and social workers meet to discuss their cases. The prosecutor is there to provide legal advice. More integrated coordination mechanisms are those which have multidisciplinary teams in one location, such as the Women Justice Centres in Mexico and the one-stop shops in South Africa.

NATIONAL EXAMPLES

Women Justice Centres—Mexico

The Women Justice Centres provide services to victims in one location. The Women Justice Centre model is the co-location of a multidisciplinary team of professionals who work together under one roof to provide coordinated services to the victims of domestic violence. Different centres may house different partners. The basic ones include police, prosecutors, civil legal service providers and community-based advocates. The core concept is to provide one place where victims can go and talk to an advocate, plan for their safety, interview with the police, meet with a prosecutor, receive medical assistance, receive information on shelters and get help with transport. It is meant to be one location where all the needs of the victims are met. The overarching goal is to empower the victim.

San Diego Family Justice Center—United States of America

The victims who go to the Family Justice Center have access to the following services: access to therapy/counselling for victims of domestic violence; conduct risk assessments; provide transport to clients; court accompaniment; access to legal, financial, medical resources; access to emergency shelter and long-term housing; education on victim rights; planning for long-term goals; coordination with other providers; referrals to lawyers; support to victims in criminal cases; conduct criminal Stay Away Order assessments and make recommendations to the court; and assistance in accessing the Crime Victims Fund which can provide for short-term emergency financial assistance to low and fixed income crime victims.

One-stop centres, “Thuthuzela Care Centre”—South Africa

These one-stop centres can bring together medical, law enforcement and legal professionals in one location. A good example is the Thuthuzela Care Centres in South Africa. This Centre is designed to house together the full range of professionals who traditionally care for victims and gather and process the related medico-legal evidence in an independent manner. Staff include health workers, investigative and prosecutorial professionals who are specially trained to work on sexual violence. The Centre is linked to several police stations as well as to a specialized sexual offences court. It has been reported that the Centre reduces waiting times for medical forensic examination and has improved the process of reporting and prosecuting rape and other sexual offences.

Benefits of inter-agency and multi-agency collaboration and coordination include:

- Increasing victim reporting of gender-based violence.
- Increasing victim cooperation with the criminal justice system, including with prosecutors.
- Increasing levels of victim satisfaction with services and the criminal justice response.
- Improving victim access to medical care and other support services.
- Allowing opportunities for prosecution agency to build positive, collaborative relationships with other criminal justice, advocacy, social services and medical professionals.
- Enhancing public safety by facilitating investigation and prosecution, which increases the likelihood that offenders will be held accountable for their actions.
- Raising public awareness about responses to violence against women, which in turn may lead more victims to disclose, report and seek help.

NATIONAL EXAMPLE—United States of America

Community-wide sexual assault coordinating councils

These multidisciplinary groups typically work to facilitate a community-wide response to violence against women and girls that is appropriate, coordinated and comprehensive. The councils' goals are to improve overall services, interventions and prevention efforts, but are not usually involved in direct services.

Coordinated community response teams

Coordinated community response teams involve coordination among involved responders. The idea is that while each responder provides services and/or interventions according to agency specific policies, they also work with responders from other agencies and disciplines to ensure that they coordinate responses. The desired result is a collective response to victims and offenders that is appropriate, streamlined and as comprehensive as possible. Basically these teams were developed out of the need to reduce the historically fragmented approach to these cases and the negative impact of fragmentation on victim well-being, offender accountability and prevention of future violence.

Sexual assault response team (SART)

A SART is a multidisciplinary team that provides specialized immediate response to victims of recent sexual assault. The team typically includes health-care personnel, law enforcement representatives, victim advocates, prosecutors (usually available on-call to consult with first responders, although some may be more actively involved at this stage), and forensic lab personnel (typically available to consult with examiners, law enforcement or prosecutors, but not actively involved at this stage). SART components vary by jurisdiction.

In communities with a SART, a victim of sexual assault is transported immediately to an examination site (normally a hospital) accompanied by a victim assistance worker, where she is examined by the forensic nurse, evidence is collected, and a statement is taken by the police or a prosecutor trained in sensitive interview techniques. The team approach allows for vertical prosecution and minimizes the need for the victim to repeatedly describe the assault. SARTs should increase victim participation in the prosecution process. Victims are treated with sensitivity, receive needed support, and can be confident that the prosecutor is bringing to court the best evidence possible to make a case against an attacker. SARTs have not been evaluated to determine their impacts on either case attrition or convictions, although there is little reason to believe that SARTs might somehow harm victims.

Targeted Abuser Call (TAC) Team^a

The TAC programme was implemented specifically to increase domestic violence victim safety and offender accountability. The TAC Team targets high-risk abusers, specifically repeat offenders, and seeks to hold them criminally responsible for their violent acts. The TAC programme consists of a multi-agency coordinated response team that offers victims of domestic violence a variety of services, protections, and alternatives for the future. The TAC Team is a specially trained prosecution-based collaborative unit comprised of two felony level prosecutors, one victim-witness specialist, two investigators, an administrative assistant, one private advocate from the Hull House Domestic Violence Court Advocacy Project, and a civil legal service attorney from Lifespan. Assuring victim safety and providing direct services and appropriate referrals is the TAC Team's highest priority. The TAC Team of professionals provides enhanced accessibility, consistency and reliability for victims of domestic violence.

^aCook County State's Attorney's Office, Domestic Violence Division, Chicago, Illinois, Targeted Abuser Call (TAC) Team.

F. Accountability and oversight

1. Oversight to ensure accountability

Prosecutors, like any criminal justice professional, should be monitored and held accountable for their conduct and response to violence against women. Oversight can take a number of forms, both formal and informal structures, as well as internal and external mechanisms. Oversight is often equated with supervision in the sense of being a general review of institutional performance with particular attention to failures to carry out mandates, to preserve the institution's integrity and credibility and counter inefficiency and poor productivity. It can be done by way of audits, evaluations, monitoring, inspection and investigations.

Some of the existing forms of oversight include:

- Oversight carried out by the professional society. For example, bar associations can impose disciplinary sanctions for unprofessional conduct or professional misconduct.
- Oversight carried out by government review mechanisms. For example, domestic homicide or fatality review committees are established by local government to review cases of violence against women which result in death. These committees review carefully what went wrong or what supports were inadequate that resulted in the victim's death and make recommendations for reforming the State's response. The reports are usually published and available to the public.
- Oversight carried out by civil society. For example, volunteers conduct a court watch project which observes legal proceedings in these cases and makes a public report.
- Oversight carried out by a combination of the above, such as task forces to review the criminal justice response to violence against women. Such task forces are usually funded by the State but include members that represent both State agencies (police, prosecutors, judiciary), as well as civil society (victim support groups, academics). Task forces make recommendations for law reform.
- Oversight carried out by the media. The media can uncover and disseminate information and incidences of poor handling of violence against women cases by prosecution.

Domestic Violence Safety and Accountability Audit^a

A Domestic Violence Safety and Accountability Audit is a systematic observation and analysis of the intra and inter-agency routines and documents used and produced when institutions process “cases” of domestic abuse. A central activity is the assembling of an audit team, made up of practitioners from agencies that intervene in cases of domestic violence, to look at their collective response to those cases.

^aA Report from the 2003 Domestic Violence Safety and Accountability Audit: Prosecution Response to Misdemeanor Domestic Violence Cases Jackson County, Oregon, (Praxis International and Battered Women’s Justice Project, 2003).

Victim complaint mechanisms

When victims believe that prosecutors are mishandling their case or treating them in a discriminatory manner, victims should be able to initiate a complaint against a prosecutor, both internally and externally. The prosecution agency should have a complaints policy that is accessible and transparent.

Monitoring by independent body

Independent monitoring of the prosecution agency’s performance can be undertaken by an independent body, arms-length from the government or another government body but independent of the prosecution agency. Some States have a system of inspectorates who are independent from the prosecution agency that carry out regular inspections and produce public reports on the activities of the prosecution agency.

NATIONAL EXAMPLE

Her Majesty’s Crown Prosecution Service Inspectorate—England and Wales

The Inspectorate is independent of the Crown Prosecution Service. The purpose of this position is to enhance the quality of justice through independent inspection and assessment of the prosecution services, and in so doing improve their effectiveness and efficiency.

Monitoring by civil society

Monitoring is most effective when the government mechanism is supported by the involvement of civil society as well as inputs of the victims. A mechanism for monitoring and evaluating courtroom prosecution advocacy can be established to assist lessons learned from convictions and acquittals, and guilty pleas. Such a mechanism could encourage civil society to regularly monitor prosecutorial offices through accounting records and case reviews.

Prosecutors’ relationships with others

Prosecutors should cultivate working relations with the media, medical professionals and non-government victim service groups, as these groups can provide crucial feedback to prosecutors as to how the system is working for victims.

Updated Model Strategies and Practical Measures, Provisions 13(d) and 16(d), (j)

13. Member States are urged ... (d) to commit adequate and sustained resources and develop monitoring mechanisms to ensure their effective implementation and oversight.

16. Member States are urged, within the framework of their national legal systems, as appropriate and taking into account all relevant international legal instruments ... (d) to promote the development and implementation of appropriate policies among different criminal justice agencies to ensure coordinated, consistent and effective responses to violence perpetrated against women by personnel within such agencies and to ensure that attitudes of criminal justice officials that foster, justify or tolerate violence against women are held up to public scrutiny and sanction; ... (j) to ensure that the exercise of powers by police, prosecutors and other criminal justice officials is undertaken according to the rule of law and codes of conduct and that such officials are held accountable for any infringement thereof through appropriate oversight and accountability mechanisms.

G. Monitoring and evaluation

1. The importance of data collection

In order to ensure that laws, prosecution policies and protocols are effective in responding to violence against women and girls, their implementation must be monitored and evaluated. This begins with the collection of baseline data and continues with regular monitoring. Reliable, systematic and regular data collection is crucial for developing and maintaining effective prosecutorial policies and practices.

Data on violence against women and girls can be collected in many ways, i.e. administrative data; data based on surveys; data from national statistic agencies; and qualitative data. Generally the prosecution agency has a role in the collection of administrative data. Some prosecution agencies are involved in direct generation of data from surveys and qualitative studies, while others might be more indirectly involved as one of the targeted audience being surveyed or interviewed.

Criminal administrative data

Prosecution agencies have a duty to collect statistical data as well as to share this data with others. The criminal administration data being generated by the prosecution agency should be disaggregated by sex and age, as well as other factors such as ethnicity. Sex-disaggregated data can bring to the surface gender concerns that had previously been invisible. The data should also be disaggregated by type of violence as well as by the relationship of the perpetrator to the victim in all fields. The criminal groupings should allow for analysis of prevalence of the various criminal forms of violence against women and girls. The groupings and approaches should be compatible to the collection methodology used by the police, judiciary, courts and others in order to further ease of analysis.

The statistical data collection should be carried out by the prosecution agency or in cooperation with the national statistics office or other bodies, such as national observatories on violence against women and girls. Prosecution agencies should consider collecting and disseminating good practices in this field. It would be useful if States develop and use a methodology that allows for gender analysis and comparison with

other member States. The Council of Europe studied the collection of administrative data on domestic violence and made recommendations as to model approaches to the collection of administrative data.¹¹⁵

Drawing from the Council of Europe Report, the minimum data that should be collected by the public prosecutor on domestic violence include the following:

- Distinguishing domestic violence cases from other cases.
- Sex of victim and perpetrator.
- Age of victim and perpetrator.
- Relationship between victim and perpetrator.
- Type of violence (according to criminal codes).
- Outcome of cases: are charges dropped or withdrawn, does the case go to court, etc?

NATIONAL EXAMPLES

Crown Prosecution Service (CPS)—England and Wales^a

The Crown Prosecution Service (CPS) monitors violence against women by a *Violence Against Women Indicator*. Several different issues may be monitored with this indicator: the outcomes of violence against women and girls cases, the number of cases that are discontinued and the reasons for unsuccessful completion (i.e. key witness/victim does not support the case, victim fails to attend unexpectedly, victim refuses to give evidence or retracts, essential legal element missing, etc.). Equality and diversity information for defendants, victims and witnesses—including gender, age, religion or belief, ethnicity, and disability—is also recorded. The CPS also gathers information about what happens to cases after a victim has retracted her statement. For example, does the case proceed with other evidence, using victim statements only or through victims summons? Does the defendant plead guilty or is the case unsuccessful? CPS also monitors relationship information (spouse/civil partner, ex-spouse/civil partner, family or extended family) as well as data on whether support was provided to victims by specialist agencies.

System of indicators and variables on gender-based violence—Spain

The system, which was developed by the State Observatory on Violence against Women, contains a section on judicial data which includes proposals for what kinds of data on domestic violence against women judicial authorities, including public prosecutors, should be recording. This includes the victim and suspect's socio-demographic characteristics, the relationship between them and the type of violence.

^aRuuskanen, E. and Aromaa, K., *The Administrative data collection on domestic violence in Council of Europe member states* (2008), Council of Europe, Directorate General of Human Rights and Legal Affairs.

¹¹⁵ Ruuskanen, E. and Aromaa, K., *The Administrative data collection on domestic violence in Council of Europe member states* (2008), Council of Europe, Directorate General of Human Rights and Legal Affairs.

Dedicated surveys on violence against women

Dedicated surveys are designed to gather detailed information on the extent of different forms of violence against women. The International Violence against Women Survey (IVAWS) was conducted in nine countries provides a usable template.¹¹⁶

Qualitative and quantitative research

While prosecution agencies may not conduct dedicated surveys or specific research on violence against women, they should cooperate with those agencies, academics or civil society organizations that carry out such surveys and research. They should participate in baseline studies which could include gathering and sharing data on the proportion of violence against women cases that were prosecuted by law and the proportion of prosecuted cases that resulted in a conviction. Prosecutors could participate in other research into the criminal justice response to violence against women. The regular collection and analysis of prosecutorial data can contribute to an understanding of the prevalence and incidences of criminal cases of violence against women and attrition rates.

Research topics could include how prosecutors use risk assessments, deal with non-cooperative or recanting victims, the issue of consent in rape cases or the use and enforcement of no-contact orders.

Data collection should also include perceptions of the victims. This could cover their satisfaction with the criminal justice system response to their case as well as their perceptions of safety. Furthermore, research on current trends in its own jurisdiction as well as on new emerging forms of violence against women and girls in other jurisdictions could assist in taking preemptive social measures to prevent such new crimes and develop practical skills required to investigate and prosecute those crimes.

NATIONAL EXAMPLE

Research of prosecutorial work—South Africa

The Tracking Justice Project of Tshwaranang Legal Advocacy Centre in South Africa studied factors associated with case withdrawals, convictions and acquittals, and reviewed the use of the rules of evidence and procedure in sexual assault cases.

2. Monitoring mechanisms

Careful and regular monitoring is critical to ensuring an effective criminal justice response to violence against women. The prosecution agency should support the creation of a State-run monitoring mechanism, which would gather relevant informational data and analyse the data for any gaps in the response.

¹¹⁶ For the results and conclusions of the survey, see Johnson, H., Ollus, N. and Nevala, S., *Violence against Women: An International Perspective*, HEUNI (2008).

Updated Model Strategies and Practical Measures, Provision 21

21. Member States are urged, as appropriate:

(a) To set up mechanisms for systematic and coordinated data collection on violence against women;

(b) To develop both modules and dedicated population-based surveys, including crime surveys, for assessing the nature and extent of violence against women;

(c) To collect, analyse and publish data and information, including data and information disaggregated by gender, for use in carrying out needs assessments, taking decisions and developing policy in the field of crime prevention and criminal justice, in particular concerning:

(i) The different forms of violence against women; the causes, risk factors and levels of severity of such violence; and the consequences and impacts of such violence, including on different population subgroups;

(ii) The extent to which economic deprivation and exploitation are linked to violence against women;

(iii) The patterns, trends and indicators of violence against women, women's feelings of insecurity in the public and private spheres and factors that can reduce such feelings of insecurity;

(iv) The relationship between the victim and the offender;

(v) The effect of various types of interventions on the individual offender and on the reduction and elimination of violence against women as a whole;

(vi) The use of weapons and of drugs, alcohol and other substances in cases of violence against women;

(vii) The relationship between victimization or exposure to violence and subsequent violent activity;

(viii) The relationship between the violence experienced by women and women's vulnerability to other types of abuse;

(ix) The consequences of violence on those who witness it, particularly within the family;

(d) To monitor, and publish annual reports on, the number of cases of violence against women reported to the police as well as other criminal justice agencies, including arrest and clearance rates, prosecution and case disposition of the offenders and the prevalence of violence against women; in doing so, use should be made of data derived from population-based surveys. Such reports should disaggregate data by type of violence and include, for example, information on the sex of the perpetrator and his or her relationship to the victim;

(e) To evaluate the efficiency and effectiveness of the criminal justice system in meeting the needs of women subjected to violence, including with regard to the way in which the criminal justice system treats victims and witnesses of acts of violence, the use it makes of different intervention models and the degree to which it cooperates with providers of services to victims and witnesses, as well as to evaluate and assess the impact of current legislation, rules and procedures relating to violence against women.

NATIONAL EXAMPLES

[Organic Act on Integrated Protection Measures against Gender Violence \(2004\)—Spain](#)

This Act created two institutions: the Special Government Delegation on Violence against Women and the State Observatory on Violence against Women. The Special Government Delegation on Violence against Women's mandate is to develop policies to address gender-based violence, promote public awareness through national plans and campaigns, coordinate the efforts of different stakeholders, gather data and conduct studies. The Observatory's mandate is to provide annual reports and ongoing advice to the Government. These monitoring mechanisms are broad ones that are not specific to, but can include, the prosecution agency's activities.

[National Archive of Criminal Justice Data \(NACJD\)—United States of America](#)

The Violence Against Women Resource Guide provides access to data collection on the topic of violence against women, such as quick links to certain types of violence against women studies and links to studies available online data analysis. Many of the data collections are sponsored by the National Institute of Justice. Types of data found on this site include mortality detail files; multiple causes of death; national crime victimization surveys; national incident-based reporting systems; and uniform crime reporting programme data.

H. The role of the prosecution agency in preventing crimes of violence against women and girls

Prosecution agencies can play an important role in the development and implementation of their State's crime prevention strategies. Given their experience in prosecuting cases involving violence against women and girls, prosecutors can contribute their understanding of the gendered or risk factors associated with crime and victimization and how and whether different crime prevention strategies actually promote the safety of women and girls. They also are involved in participating in public awareness endeavours and training directed at school and college populations.

1. Prosecution agencies involved in public legal information and education

In a number of States prosecution agencies play a role in raising public awareness on issues regarding violence against women and girls with a view to preventing such crimes as well as demystifying common misperceptions of the public related thereto. Prosecutors speak at primary and secondary schools, community events, churches, etc. Prosecution agencies can use various methods to disseminate information to the public, including newspapers, mass media, etc., as well as social networking.

The prosecution agency can consider the idea of organizing a public campaign initiative in cooperation with civil society to promote the safety of women and girls against violence, by way of providing lectures at schools and companies, publication of cases, press interviews, and organizing community forums.

NATIONAL EXAMPLE

Crown Prosecution Service schools' project—England and Wales

The Crown Prosecution Service has developed interactive lessons for 11–16 year-olds in schools to help them understand more about the prosecution service and the criminal justice system.

2. Community prosecutors

In some jurisdictions, such as England and Wales, prosecution agencies have created community prosecutor positions. The three main aims of the community prosecutor approach are:

- More community-aware casework decisions, by taking into account the concerns of local communities when considering the public interest test.
- Greater involvement of the prosecution agency in problem solving of local crime and disorder priorities.
- Increased visibility to communities and other agencies responding to local crime and disorder concerns.

The community prosecutor regularly attends community meetings, forums and events across the jurisdiction to talk about the work of the prosecution agency and to address any specific issues people in the community might have.

3. Prosecution agencies and the media

When necessary, prosecution agencies provide media releases on specific cases of violence against women and girls which can serve a number of purposes. These media releases can (a) raise public awareness on the situation of violence against women; (b) enhance the understanding of the public on gender-based violence; and (c) send a clear message to the community that such violence will not be tolerated. When issuing media releases, prosecution agencies could also take the opportunity to provide information on hotlines and other services available.

During the communication process, the prosecution agency should be careful not to disclose confidential or private information about victims. Furthermore, prosecution agencies need to ensure that any communication does not contribute to gender stereotyping or myths. Some prosecution agencies have communication officers or press officers as part of their staff.

For further information on crime prevention strategies, see the United Nations Crime Prevention Guidelines¹¹⁷ and the *UNODC Handbook on the Crime Prevention Guidelines: Making Them Work*.¹¹⁸

¹¹⁷ Economic and Social Council resolution 2002/13, annex.

¹¹⁸ UNODC, *Handbook on the Crime Prevention Guidelines: Making Them Work* (2010), available at www.unodc.org/documents/justice-and-prison-reform/crimeprevention/10-52410_Guidelines_eBook.pdf

I. The role of the prosecution agency in law reform

The laws on violence against women have evolved considerably over the last decade and prosecutors should be aware of recent national law reforms as well as champion continued law reform efforts. Given that prosecutors are the ones who seek to prove the criminal offences of the various forms of violence against women, they have essential knowledge and experience of any challenges they face in enforcing criminal laws. This might be related to how the crimes are defined and the articulated elements of the crimes, or the law, policy or practice in implementing criminal procedural and evidentiary rules in violence against women prosecutions. They are well positioned to play a leadership role in promoting legal reform in this area.

Prosecution agencies should advocate and remind their government of their international obligations. There are a number of innovative and promising practices that countries have been implementing to combat violence against women. In 2010, the United Nations General Assembly updated the Model Strategies and Practical Measures to Eliminate Violence against Women in the Field of Crime Prevention and Criminal Justice, originally adopted in 1997, which provide a comprehensive set of criminal justice strategies.

Some recent legislative strategies to improve the prevention of and the response to violence against women and girls include the following:¹¹⁹

- Defining sexual violence. Some States have redefined rape and replaced the single crime of rape with a series of graded offence defined by the presence or absence of aggravating conditions. Other laws on sexual violence have changed the consent standard by eliminating the requirement that the victim physically resist her attacker.
- Criminalizing other forms of violence against women and girls. Recently more States have criminalized stalking, sexual harassment, harmful traditional practices, including female genital mutilation, and trafficking persons, especially women and girls.
- Eliminating the requirement that the victim's testimony be corroborated.

¹¹⁹ Additional resources are listed in the UN Women Virtual Knowledge Centre on the Elimination of Violence against Women, available at www.endvawnow.org

- Placing restrictions on the introduction of the victim's prior sexual conduct.
- Reforming laws, policies and practices that promote the removal of the perpetrators from the home in domestic violence situations. For example some jurisdictions have granted power to the police to issue temporary eviction or barring orders.
- Establishing legal provisions or the application of special measures for vulnerable and intimidated witnesses.
- Removing mitigating factors such as passion or honour.

Overall, any legal reforms should contribute to the creation of a legal framework that respects the human rights of women and girls as a critical step in the criminal justice response, manages risk and promotes victim safety and empowerment while ensuring offender accountability.

NATIONAL EXAMPLES

Maria da Penha Law (2006)—Brazil

This Law creates mechanisms to restrain and prevent domestic and family violence against women. For the first time in Brazil, domestic violence against women was codified and specifically defined. Article 5 defines domestic and family violence against women as any action or omission based on gender that causes a woman's death, injury, physical, sexual or psychological suffering and moral or patrimonial damage whether in the domestic unit (understood as the permanent space shared by people, with or without family ties, including people sporadically aggregated), within a family understood as the community formed by individuals that are or consider themselves related, joined by natural ties, by affinity or by express will), or in any intimate relationship of affection, in which the aggressor lives or has lived with the abused women, regardless of cohabitation. The Law also provides for the creation of the Courts of Domestic and Family Violence Against Women with civil and criminal competence, and establishes measures for assistance and protection of women in these situations through multidisciplinary networks (including legal aid for victims, specialized police assistance, psychological support, social services, health, education, work and housing).

Holistic legal reform—Spain

In Spain, in conjunction with the Organic Act on Integral Protection Measures against Gender Violence, a number of other laws were amended in order to ensure consistency, such as the Worker's Statute, Social Offences and Sanctions Act, General Social Security, additional provisions of the National Budget Act, Civil Code, Criminal Code, Code of Civil Procedure, Code of Criminal Procedure, Act on Free Legal Aid, Organic Act regulating the Right to Education and General Advertising Act.

Victims of gender violence therefore have a wide range of measures at their disposal in addition to penal and criminal measures. Victims are given priority when choosing shifts at work, or permitting them to change their place of work in the case of public servants. They have the right to a social wage, postponement of deportation orders for victims who are illegal aliens, provision of public assistance to help the victim with housing, to name just a few.

Annex 1. List of selected international and regional instruments

A. International Treaties

International Covenant on Civil and Political Rights (General Assembly resolution 2200A (XXI) annex)

International Covenant on Economic, Social and Cultural Rights (General Assembly resolution 2200A (XXI) annex)

Convention on the Elimination of All Forms of Discrimination Against Women (General Assembly resolution 34/180)

Convention on the Rights of the Child (General Assembly resolution 44/25, United Nations, *Treaty Series*, vol. 1577, No. 27531)

Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (United Nations, *Treaty Series*, vol. 2171, No. 27531)

United Nations Convention against Transnational Organized Crime (United Nations, *Treaty Series*, vol. 2225, No. 39574)

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations against Transnational Organized Crime (United Nations, *Treaty Series*, vol. 2237, No. 39574)

B. United Nations resolutions and instruments

Universal Declaration of Human Rights (General Assembly resolution 217 A (III))

Declaration on the Elimination of Violence Against Women (General Assembly resolution 48/104)

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex)

Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex)

Updated Model Strategies and Practical Measures for the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (General Assembly resolution 65/228, annex)

Guidelines on the Role of Prosecutors (8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2))

C. Regional instruments

African Charter on Human and Peoples' Rights (adopted 27 June 1981, OAU Doc. CAB/LEG/67/3rev.5)

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted by the 2nd Ordinary Session of the Assembly of the African Union, Maputo, CAB/LEG/66.6, 13 Sept 2000)

African Charter on the Rights and Welfare of the Child (OAU Doc. CAB/LEG/24.9/49, 1990)

Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe, European Treaty Series, No. 5)

Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210)

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201)

Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197)

European Convention on the Compensation of Victims of Violent Crime (Council of Europe, European Treaty Series, No.116)

American Declaration of the Rights and Duties of Man (Adopted by the 9th International Conference of American States, Bogota, Columbia, 1948)

American Convention on Human Rights (Pact of San Jose, Costa Rica, 22 November 1969)

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention, Adopted in Belém do Pará, Brazil, on 9 June 1994 at the 24th session of the General Assembly)

Inter-America Convention on International Traffic in Minors (adopted at Mexico on 18 March 1994 at the Fifth Inter-American Specialized Conference on Private International Law)

South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (adopted 5 January 2002)

Declaration on Elimination of Violence against Women in the ASEAN Region (signed at the 37th Meeting of ASEAN Foreign Ministers in Jakarta on 13 June 2004)

Annex 2. List of online sources and references

A. United Nations resources

Special Rapporteur on Violence against Women, including Its Causes and Consequences—various reports available at www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx

Secretary-General's In-depth Study on Violence against Women (2006), United Nations document A/61/122/Add.1, available at www.un.org/womenwatch/daw/vaw/SGstudyvaw.htm

UNODC *Handbook on Effective Police Responses to Violence against Women* (UNODC Criminal Justice Series, 2010), available at www.unodc.org/documents/justice-and-prison-reform/hb_eff_police_responses.pdf

UNODC and UNICEF *Handbook for Professionals and Policymakers on Justice in Matters Involving Child Victims and Witnesses of Crime*, available at www.unodc.org/documents/justice-and-prison-reform/hb_justice_in_matters_professionals.pdf

UNODC *Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime*, available at www.unodc.org/documents/organized-crime/Witness-protection-manual-Feb08.pdf

UN Women *Progress of the World's Women: In Pursuit of Justice: 2011-2012*, available at www.progress.unwomen.org/pdfs/EN-Report-Progress.pdf

UN Women *Handbook for Legislation on Violence against Women* (2010), available at www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf

UN Women *Handbook for National Action Plans on Violence against Women* (2012), available at www.un.org/womenwatch/daw/vaw/handbook-for-nap-on-vaw.pdf

UN Women, Virtual Knowledge Centre on the Elimination of Violence Against Women, available at www.endvawnow.org

SAY NO UNITE TO END VIOLENCE AGAINST WOMEN, at www.saynotoviolence.org/issue/facts-and-figures

B. Books, articles and reports

A Report from the 2003 Domestic Violence Safety and Accountability Audit: Prosecution Response to Misdemeanor Domestic Violence Cases Jackson County, Oregon (Praxis International and Battered Women's Justice Project, 2003).

AEquitas "The Prosecutors' Resources on Violence Against Women: A Prosecutor's Reference: Medical Evidence and the Role of Sexual Assault Nurse Examiner in Cases Involving Adult Victims (Aequitas, 2010).

AEquitas Strategies, Issue 2 (July 2010), Educating Juries in Sexual Assault Cases—Part I: Using Voir Dire to Eliminate Jury Bias.

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Campbell, R., Patterson, D. and Bybee, D., "Prosecution of Adult Sexual Assault Cases: A Longitudinal Analysis of the Impact of a Sexual Assault Nurse Examiner Program" 224 *Violence Against Women* 18(2).

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Dempsey, M., "Use of Expert Witness Testimony in the Prosecution of Domestic Violence" (Crown Prosecution Service: 2004).

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Ellison, Louise and Munro, Vanessa, "Special Measures in Rape trial—Exploring the Impact of Screens, Live Links and Video-Recorded Evidence on Mock Juror Deliberations" (2012).

Ford, David and Breall, Susan, "Violence Against Women: Synthesis of Research for Prosecutors" (NIJ, 2000).

Greipp, J. P., Meisner, T. G. and Miles, D. J., "Intimate Partner Violence Victims Charged with Crimes: Justice and Accountability for Victims of Battering Who Use Violence Against their Batterers" (AEquitas, 2010).

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Kelly, L. and Cox, M., “Building Blocks: A Strategy and Action Plan for Addressing Violence Against Women and Girls in Thurrock” (March 2012), retrieved at www.thurrock-community.org.uk/sericc/pdf/thurrock_vawg_201203.pdf

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Polaris Project, “Myths and Misconceptions: Human Trafficking”, found at www.polarisproject.org

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South African Violence Prevention Model and Action Plan (National Prosecution Authority, UNICEF) found at www.unicef.org/southafrica/SAF_resources_violence-prevmmodel.pdf.

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U.S. Department of Justice, Violence Against American Indian and Alaska Native Women and the Criminal Justice Response: What is Known (2008).

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Annex 3. Selection of relevant training material for prosecutors

A. United Nations

International Labour Organization, *Training Manual to Fight Trafficking in Children for Labour, Sexual and Other Forms of Exploitation, Textbook 1: Understanding Child Trafficking* (2009), www.unicef.org/protection/Textbook_1.pdf

UNODC Free online course for justice professionals dealing with child victims at www.unodc.org/unodc/en/frontpage/2011/December/free-online-course-for-justice-professionals-dealing-with-child-victims.html

UNODC *Anti-Human Trafficking Manual for Criminal Justice Practitioners*, available at www.unodc.org/unodc/en/human-trafficking/2009/anti-human-trafficking-manual.html

UNODC-UNICEF *Handbook for Professionals and Policymakers on Justice in matters involving child victims and witnesses of crime*, available at www.unicef.org/spanish/protection/files/UNODC_Handbook_on_Justice.pdf

UNODC and Government of India Training Manual for Prosecutors on Confronting Human Trafficking, available at www.unodc.org/pdf/india/training_manual_prosecutors1.pdf

B. National resources

The American National Judicial Education Program to Promote Equality for Women and Men in the Courts, a non-governmental organization, provides model training curricula for prosecutors on rape and sexual assault.

American Bar Association Rule of Law Initiative (ABA ROLI) training programmes for prosecutors in the Democratic Republic of the Congo focusing on law and legal issues related to gender-based violence, http://www.americanbar.org/advocacy/rule_of_law/where_we_work/africa/democratic_republic_congo/programs.html

Government of Viet Nam and UNODC “Preventing and Responding to Domestic Violence: Trainee’s Manual for Law Enforcement and Justice Sectors in Viet Nam, 2nd Edition” (UNODC and Government of Viet Nam, Hanoi 2011), <https://www.unodc.org/pdf/vietnam/2011/11/vietnam-manual.pdf>

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Ministry of Justice, Republic of Liberia, Handbook for Prosecuting Sexual Violence in Liberia, http://www.cartercenter.org/resources/pdfs/peace/conflict_resolution/liberia/sgbv-prosecutionhandbook-v1.pdf

UNODC-sponsored Kenyan Training Manual for Prosecutors on Sexual and Gender-Based Violence.

C. Other resources

The Geneva Centre for Democratic Control of Armed Forces (DCAF), The Gender and Security Sector Reform Training Resource Package, found at www.dcaf.ch/Series-Collection/Gender-Tools-and-Resources





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