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United Nations Office on Drugs and Crime



Training Tool on Legal Aid for Women in Criminal Justice Systems in Liberia, Senegal, and Sierra Leone



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Target Audience, Goal, and Learning Objectives

The right to a fair trial and access to justice is an internationally recognized and fundamental right that entitles anyone who is charged with a criminal offence, or is victim to a crime, or lays a civil claim to legal advice, assistance and representation. As such, the right to access to justice should be guaranteed without discrimination, particularly for those who are not able to access or afford legal advice, assistance, and representation for reasons of vulnerability or lack of sufficient means. Equal access to legal aid requires that legal aid be provided without discrimination of any kind, including gender.

Target audience: This Training Tool is intended for legal aid providers and legal aid service providers, including: public defenders, legal practitioners, paralegals, NGOs and community-based organization staff, legal aid clinic staff, community leaders and community members providing legal aid in the countries of Liberia, Senegal, and Sierra Leone.

Goal: The goal of the Training Tool is to increase the capacity of legal aid providers and service providers in delivering gender-sensitive legal aid to women and men, but with a special focus on women offenders, women claimants, victims and witnesses.

Women and men are impacted differently by crime, both as offenders and victims or witnesses, and have different experiences going through the criminal justice system. They can have different priorities and needs as well as different levels of access to the criminal justice system. The purpose of this Training Tool is to assist legal aid providers and service providers to effectively integrate a gender perspective into all aspects of legal aid delivery, particularly in the delivery of legal aid to women offenders, victims and witnesses, but also in the delivery of legal aid to men, when women are involved as victims or witnesses.

Applying a gender perspective to the work of legal aid providers and service providers involves being aware of the gendered dimensions of access to justice and addressing them appropriately. It means making women's concerns an integral dimension in the provision of legal aid so that women and men benefit equally from justice and inequality is not perpetuated. Integrating a gender perspective into the provision of legal aid will ultimately result in a more balanced delivery of justice to women. The ultimate goal is to achieve gender equality.¹

This Training Tool will present appropriate measures for legal aid providers and service providers to narrow gender disparities and cater to the distinctive needs of women to accomplish substantial gender equality in access to justice.

Learning objectives: At the end of the training sessions, participants should be able to:

1. Define and explain the concepts of gender equality and non-discrimination;

¹ UNODC, Gender Mainstreaming in the Work of UNODC, New York (2013), pag. 1.

2. Identify gender-based stereotypes;
3. Recognize rules, practices and situations that directly or indirectly discriminate against women offenders, victims or witnesses;
4. Define and explain the concepts of gender-based violence against women;
5. Identify and appraise the legal aid services women need during all stages of the criminal justice process;
6. Deliver gender-sensitive legal aid to women offenders, claimants, defendants, victims and witnesses, with special attention to victims/survivors of gender-based violence against women;
7. Demonstrate a range of skills that are consistent with a gender-sensitive approach to the delivery of legal aid to women and men.

Module 1. Introducing a Gender Perspective in the Provision of Legal Aid

Purpose of Module 1

The purpose of Module 1 is to introduce the concepts of gender, gender equality, and non-discrimination, and illustrate the following obstacles that contribute to impede women from accessing justice on a basis of equality: gender stereotyping; direct, indirect, and intersecting or compounded discrimination; discriminatory laws, procedures, and evidentiary requirements and practices.

Learning Objectives

At the end of this Module, participants will have learned to:

1. Define and explain the concepts of gender equality and non-discrimination;
2. Identify gender-based stereotypes;
3. Recognize rules, practices and situations that directly or indirectly discriminate against women offenders, victims or witnesses.

Understanding concepts and terminology: sex, gender, and gender equality

Adopting a gender perspective means looking at any social phenomenon, policy or process while taking into account gender-based differences.²

Introducing a gender perspective in the provision of legal aid services means that legal aid providers and service providers need to consider the potential discriminatory effect or impact of laws and procedures related to legal aid on women including when seemingly gender neutral.

Introducing a gender perspective in the provision of legal aid requires first and foremost understanding the difference between the two concepts of “sex” and “gender,” as discrimination may be directed at women based on their sex and gender. Legal aid providers and service providers need to understand and consider the differences between men and women, and when these differences are merely biological or socially and culturally constructed.

Sex identifies the biological characteristics (anatomical sex, reproductive organs, hormonal and/or chromosomal patterns). These characteristics are generally permanent. “Sex” is often understood as a simple binary: i.e. an individual is male or female. For example, men can

² European Institute for Gender Equality, Gender Perspective, at <https://eige.europa.eu/rdc/thesaurus/terms/1197>

impregnate; women get pregnant, give birth and breastfeed. However, advancements in the study of genetics reveal the natural occurrence of considerable variability in sex characteristics. For example, some women have naturally high testosterone levels.

Gender refers to socially constructed identities, attributes, behaviours and roles for women and men and the cultural meaning imposed by society on to biological differences. At the same time, it refers to the relationship between men and women and the way it is socially constructed and are learned through socialization processes. Gender is not a “women’s issue” but determines what is expected of women and men in a given context. In most societies there are differences and inequalities between women and men in terms of responsibilities assigned, activities undertaken, and access to and control over resources.³ The social and cultural meaning attributed to biological differences results in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women.⁴ Gender attributes differ from society to society and change over time. They are shaped by the economy, by religion, by culture and by traditional values.

The following points should be borne in mind:

- “Socially constructed” means referring to the social interpretations and values assigned to being a woman or a man. The identity of men and women in any given society is socially and psychologically determined. Where people live together, a culture will arise, and they will develop common values and rules to internalize these.
- “Gender relations” is sometimes used to define the social relationship between men and women, and how responsibilities and claims are allocated between the sexes.
- “Gender roles” refer to roles that men and women are expected to play in society. Socialization teaches and reinforces these roles. These gender roles are not determined at birth and are not unchangeable but shaped by family, school, society, friends and the surrounding environment.⁵

Gender is a basis on which people are labelled and judged, just like class, race and religion.⁶ The family is a good example to explain gender-based differences between men and women. The prevailing gender ideology is patriarchy in many societies, a system that positions the male above the female in all respects. In patriarchal societies, men assume leadership roles and women assume domestic roles within the household. Men are viewed to be breadwinners, work outside the house and have decision-making power; women are viewed to work inside the house, caring

³ UN Women Training Centre, Gender Equality Glossary, at <https://trainingcentre.unwomen.org/mod/glossary/view.php?id=36&mode=letter&hook=G&sortkey=&sortorder=>

⁴ United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee), General Recommendation No. 28, on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 19 October 2010, CEDAW/C/2010/47/GC.2, par 5.

⁵ UNODC, Resource book for trainers on effective prosecution responses on violence against women, Criminal Justice Handbook Series, Vienna (2017), pag. 30.

⁶ Id.

for children and elderly, cooking and keeping the house clean. However, these are examples of gender roles, not sex roles, as all these activities can be performed by both males and females. It is society that ascribes these roles. Because these roles are socially constructed, they can and do change over time and vary across cultures.

Gender equality means an equal empowerment and participation of both sexes in all spheres of public and private life. Promoting gender equality means taking into account the differences between women and men and the diverse roles they play in society to promote the full participation of women and men in society. Achieving gender equality requires changing the societal structures which contribute to maintaining the unequal power relationships between women and men and reaching a better balance in the various female and male values and priorities.”⁷

Gender inequality refers to unequal treatment or perceptions of individuals based on their gender, not on physical differences but on social norms and values that determine unequal conditions and produce unequal power relationships.⁸

Examples of how sex, gender and gender (in)equality influence women’s access to legal aid include the following:

- These attributes, identities and roles are consistently reflected within the justice system and its institutions, including legal aid service providers.⁹
- The criminalization of certain acts that can be performed only by women, such as abortion, is an example of sex-based discrimination against women.
- Discrimination can occur because of prevalent harmful social norms that constitute a barrier in the access to justice. For example, domestic violence is widely accepted and normalised, which often results in violence suffered at the police stations. Moreover, allegations of economic and emotional abuse rarely reach court, as police are not willing to take such allegations seriously.
- Providing for separate detention units for men and women is an example of a good practice that takes into account the biological differences of men and women.
- The criminal defences honour or provocation constitute an example of gender-based discrimination against women, as they are based on the traditional and socially constructed idea that women should be chaste.

⁷ Council of Europe Gender Equality Commission, Gender Equality Glossary, March 2016.

⁸ UNODC, Resource book for trainers on effective prosecution responses to violence against women and girls, *supra*, note 5, pag. 32.

⁹ United Nations CEDAW Committee, General Recommendation No. 33 on Women’s Access to Justice, 23 July 2015, CEDAW/C/GC/33., Par. 7

- Conducting interviews of victims of gender-based violence in a manner that respects their needs and vulnerability is an example of a good practice that takes into account gender differences between men and women.



Exercise 1: Gender v. sex

Part 1. Ask the participants to explain their understanding of the differences between sex and gender. Summarize the responses of the participants on the board and use them as a starting point for a discussion. By the end of the discussion, delete the wrong differences and keep the right ones on the board as notes for the second part of the exercise.

Part 2. Distribute cards with the following statements to the participants. Ask them to read these aloud, one by one. Without going into the truth or falseness of the statements below, participants should decide which ones denotes characteristics/behaviours based on biological sex and which are socially constructed. Request them to explain why they think so.

1. Women earn less money than men do
2. Women give birth, men do not
3. Girls drop out of school more than boys do
4. A man is the head of the household
5. In some countries, women do not own land
6. Fathers do not have to change diapers
7. A man cannot get pregnant
8. Men make good doctors, women make good nurses
9. Women breastfeed, men do not
10. Men are the breadwinner, women are homemakers

Gender stereotyping

Recognizing the common stereotypes about women in conflict with the law and women victims of gender-based violence is crucial for effective delivery of gender-sensitive legal aid.

Discrimination against women has an adverse impact on the ability of women to gain access to justice on an equal basis with men.¹⁰ It is also a violation of human rights.

¹⁰ United Nations CEDAW Committee, General Recommendation No. 33 on women's access to justice, *supra*, note 7 Par. 8.

A *gender stereotype* is a generalized view or preconception about attributes or characteristics, or the roles that are or ought to be possessed by - or performed by women and men. Gender stereotypes are therefore social and cultural constructions of men and women, based on their different physical and social functions. Gender stereotypes are “harmful” when they affect an individual’s agency.

Harmful gender stereotypes

*A harmful gender stereotype is a generalized view or preconception about attributes or characteristics that are or ought to be possessed by, or the roles that are or should be performed by, women and men, which, inter alia, limits their capacity to develop their personal abilities, pursue their professional careers and make choices about their lives and life plans. Harmful stereotypes can be both hostile/negative (e.g., women are irrational) or seemingly benign (e.g., women are nurturing). It is therefore important that human rights mechanisms focus on harmful gender stereotypes, rather than negative gender stereotypes.*¹¹

Gender stereotyping refers to the practice of ascribing to an individual woman or man specific attributes, characteristics, or roles by reason only of her or his membership in the social group of women or men. Gender stereotyping is harmful when it results in a violation or violations of human rights and fundamental freedoms. The harm is caused when laws and policies that embody a stereotype negatively affect the recognition, exercise or enjoyment of an individual’s rights and freedoms.¹² In particular, in judicial processes, inferences may be drawn about individuals based on gender and other stereotypes.

Harmful gender stereotyping

Harmful gender stereotyping is the practice of ascribing to an individual woman or man specific attributes, characteristics, or roles by reason only of her or his membership in the social group of women or men, which results in a violation or violations of human rights and fundamental freedoms. The harm is caused by the application of a stereotypical belief to an individual (e.g., through a state enforcing a gender stereotype into a law) in such a way as to negatively affect the recognition, exercise or enjoyment of their rights and freedoms.

Therefore, while a gender stereotype is a belief, a view, a preconception, gender stereotyping is a practice of applying that belief and drawing inferences and assumptions about women and men.¹³

Gender stereotypes come in varied and overlapping forms, including “sex stereotypes,” “sexual stereotypes,” “sex-role stereotypes” and “compounded stereotypes.”

¹¹ Simone Cusack, Eliminating Judicial Stereotyping: Equal Access to Justice for Women in Gender-based Violence Cases. Prepared for the UN Office of the High Commissioner for Human Rights (2014). <http://www.ohchr.org/Documents/Issues/Women/WRGS/StudyGenderStereotyping.doc>; OHCHR, Gender Stereotyping as a Human Rights Violation: Commissioned Report (2013), pag. 18.

¹² OHCHR, *supra*, note 11, pag. 19.

¹³ *Id.* Pag. 9.

Sex stereotypes are based on perceived, not actual, differences between men and women. For example:

- Women are weak
- Women are empathetic
- Men are aggressive
- Men are competitive

A *sexual stereotype* is a preconception about women and men's sexuality and the sexual characteristics or behaviours that women and men are believed or expected to possess. For example:

- Women are sexually passive
- Men have strong libidos
- Women are chaste
- Men are promiscuous

A *Sex-role stereotype* is a preconception about the roles that women and men do or are expected to play. For example:

- Women are caregivers
- Men are breadwinners
- Women are homemakers
- Men are decision-makers

A *compounded stereotype* is a preconception about attributes, characteristics or roles based on more than one trait, such as sex/gender and disability. For example:

- Older women are warm
- Women with disabilities are asexual
- Rural women are uneducated¹⁴

¹⁴ Id., at 10-15.



Exercise 2: Group discussion - Icebreaker on gender stereotypes

Participants are asked to listen to a story and solve the riddle.

Abdul and his son Foday live in a big city. One day, Foday is driving him to a medical appointment. He fails to stop at a red light and they crash into another car. Abdul is killed instantly and the woman driving the other car and her 3 year old child later die in the hospital. Abdul's son is arrested and charged with manslaughter. When the legal aid lawyer on duty sees Foday, it is immediately clear that something is terribly wrong. The lawyer becomes very upset and rushes from the room saying: "I cannot defend this client. He is my son!" How is this possible?

Once participants figure out that the lawyer is the boy's mother, the discussion will focus on the assumptions people make concerning the professional roles of women and men. Would this story still be a riddle if the lawyer had been described as a paralegal? What are the effects of these stereotyped assumptions on the way people act towards women and men?

Gender stereotyping in the justice system

Gender stereotyping in the justice system impedes women's access to justice in all areas of law. It affects women in contact and in conflict with the law, as offenders, victims, witnesses, and claimants, and can permeate all phases of the criminal justice process, including the investigation and trial phases, and shape the final judgement

Prosecutors, law enforcement officials and other actors in the criminal justice system often allow stereotypes to influence investigations and trials, especially in cases of gender-based violence. Stereotypes may undermine the victims' and survivors' claims and lead to support the defence advanced by the alleged perpetrator. Stereotyping distorts perceptions and results in judicial decisions based on preconceived beliefs and myths rather than relevant facts.¹⁵

Often, judges adopt rigid standards about what they consider to be appropriate behaviour for women and penalize those who do not conform to those stereotypes. Stereotyping also affects the credibility given to women's voices, arguments and testimony as parties and witnesses. Such stereotyping can cause judges to misinterpret or misapply laws. This has far-reaching consequences, as it can result in perpetrators not being held legally accountable for violations of women's rights and the revictimization of complainants.¹⁶

¹⁵ United Nations CEDAW Committee, General Recommendation No. 33 on women's access to justice, *supra*, note 7 Par. 26.

¹⁶ Id. Par. 26-27; Simone Cusak, Eliminating Judicial Stereotyping: Equal Access to Justice for Women in Gender-based Violence Cases, *supra*, note 11, pag. 16.

In some regions, there are social norms that dictate appropriate conduct of women in court. For example, lawyers may advise women to behave in a deferential way in court, for if they are assertive (acting more like men) they may be less likely to get a favourable outcome.

Legal practitioners, including legal aid providers must also be aware of the dangers of gender stereotypes to provide effective assistance and legal representation to offenders, victims and witnesses, and be prepared to challenge procedures and decisions based on gender stereotypes. Eliminating Harmful gender stereotyping in the justice system is a crucial step in ensuring equality and justice.

There are several common myths or discredited assumptions that have a negative impact on women dealing with the criminal justice system. Criminal justice practitioners may contribute to perpetuate these stereotypes and biases against women offenders, witnesses and victims.

Examples of harmful gender stereotyping in the area of justice include:

- The imposition of harsher treatment or punishment on women compared to men for certain offences, such as child abandonment, prostitution or assault, that violate what is perceived as the “proper” role of women;
- In homicide cases, the granting of more lenient sentences to men who kill in response to “provocation” compared to the application of aggravated penalties for women who kill in response to abuse and violence may.
- The failure to effectively investigate, prosecute and sentence sexual violence against women based on, e.g.:
 - the stereotype that women should protect themselves from sexual violence by dressing and behaving modestly;
 - the stereotype that women are considered deserving of rape on account of their conduct, dress and demeanour;
 - the stereotype that women fantasize about rape and therefore fabricate reports of sexual activity even though nothing happened.
 - the belief that women are less reliable and credible as witnesses if they have previous sexual relations.¹⁷

Gender stereotypes may not always lead to negative outcomes for women offenders. For example, it may also happen that judges may award lower sentences to women based on paternalistic attitudes, rather than an understanding of the actual situation of women offenders, as again, women are perceived as inherently more submissive and prone to manipulation than men and thus less responsible for their crimes. While this may be a desirable result, it is important that judges, prosecutors, lawyers or public defenders are aware of existing stereotypes,

¹⁷ UNODC, Handbook for the Judiciary on Effective Criminal Justice Responses to Gender-Based Violence against Women and Girls, (forthcoming);

OHCHR, Gender Stereotyping, at <https://www.ohchr.org/en/issues/women/wrgs/pages/genderstereotypes.aspx>

perceptions and attitudes that can influence their behaviour. They should be sensitive to gender-specific needs and circumstances and take actions not based on stereotypes but on facts, applicable law and standards of conduct.¹⁸ Indeed, both negative or seemingly benign stereotypes can be harmful. It is for example based on the stereotype that women are more nurturing that child rearing responsibilities often fall exclusively on them.¹⁹



Exercise 3: Gender stereotypes

Summarize the definition of gender stereotypes: “We have seen how a gender stereotype is a generalized view or preconception about attributes or characteristics, or the roles that are or ought to be possessed by, or performed by women and men.”

Part 1. Ask the participants to come up with the main roles and qualities that are socially associated with men and women/or suggest the following examples.

Attributes/characteristics	Roles
Strong	Lawyer
Rational	Judge
Intelligent	Policeman
Chaste	Chef
Shy	Tailor
Gentle	Farmer
Promiscuous	Housemaker
Sensitive	Breadwinner
Jealous	Nurse
Caring	Driver
Credible	Barber

¹⁸ UNODC Information Note for Criminal Justice Practitioners on Non-Custodial Measures for Women Offenders, at https://www.unodc.org/documents/justice-and-prison-reform/information_note_BKK_Rules.pdf, pag. 7.

¹⁹ OHCHR, Gender stereotypes and Stereotyping and women’s rights, 2014 at https://www.ohchr.org/Documents/Issues/Women/WRGS/OnePaggers/Gender_stereotyping.pdf; OHCHR, Background paper on the role of the judiciary in addressing the harmful gender stereotypes related to sexual and reproductive health and rights, A review of case law, at https://www.ohchr.org/Documents/Issues/Women/WRGS/JudiciaryRoleCounterStereotypes_EN.pdf, pag. 21.

Forgiving	Politician
Emotional	Head of the family
	Doctor
	Decision-maker

Some questions for discussion:

- What comments do people make to indicate how you are supposed to “Act-like-a-lady”/“Be a man”?
- What 'names' or 'comments' were made if you stepped out of these ascribed roles/images?
- What are some of the repercussions- both social and physical against girls/boys who step out of their socially desirable roles?
- Are the consequences of these stereotypes fair?

Part 2. Ask the participants how any of the characteristics/attributes listed on the board could impair the enjoyment of rights in the area of justice.

Follow-up question for brainstorming: Ask the participants what stereotypes they have witnessed when providing legal aid. Ask what impact this had on the other parties and on their own behaviour.

Discrimination against women and its different forms

Direct and indirect discrimination

Discrimination against women means “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”²⁰

Laws, policies, programmes, public authorities, the judiciary, organizations, enterprises or private individuals, may directly or indirectly discriminate against women.²¹

²⁰ UN General Assembly, Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, A/RES/34/180, article 1.

²¹ United Nations CEDAW Committee, General Recommendation n. 25 on Article 4, paragraph 1, of the Convention (Temporary Special Measures), Thirtieth session, 2004, par. 7.

Indirect discrimination against women is discrimination that may occur when laws, policies and programmes are based on seemingly gender-neutral criteria which in their actual effect have a detrimental impact on women. Gender-neutral laws, policies and programmes unintentionally may perpetuate the consequences of past discrimination. They may be inadvertently modelled on male lifestyles and thus fail to take into account aspects of women's life experiences which may differ from those of men. These differences may exist because of stereotypical expectations, attitudes and behaviour directed towards women which are based on the biological differences between women and men. They may also exist because of the generally existing subordination of women by men.²²

Any distinction, exclusion or restriction which has the purpose or effect of denying women the exercise of human rights and freedoms is therefore discrimination even where discrimination was not intended. This would mean that an identical or neutral treatment of women and men might constitute discrimination against women if such treatment resulted in or had the effect of women being denied the exercise of a right because there was no recognition of the pre-existing gender-based disadvantage and inequality that women face.²³

Therefore, direct discrimination against women constitutes different treatment explicitly based on grounds of sex and gender differences. Indirect discrimination against women occurs when a law, policy, program or practice appears to be neutral as it relates to men and women, but has a discriminatory effect in practice on women, because pre-existing inequalities are not addressed by the apparently neutral measure. Moreover, indirect discrimination can exacerbate existing inequalities owing to a failure to recognize structural and historical patterns of discrimination and unequal power relationships between women and men.²⁴

For example:

- Legal aid cuts could be a seemingly gender-neutral measure adopted by a state, however, this measure might have a disproportionate effect on women, ethnic minorities, people with disabilities and all the categories that are overrepresented among recipients of publicly funded legal aid.
- Shortening court opening hours or keeping court facilities only in urban areas may have a greater impact on women's ability to access justice in contrast to their male counterparts, as women with childbearing responsibilities may have less flexible schedules and women living in remote areas may find it more difficult to travel long distances.

²² Id.

²³ United Nations CEDAW Committee, General Recommendation No. 28, *supra*, note 4, Par 5.

²⁴ Id., Par. 16.

Intersectional discrimination

Intersectional discrimination occurs when certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from additional forms of discrimination based on further grounds such as race, ethnic or religious identity, age, disability, caste or other factors. Intersectional discrimination has a compounded negative effect.

The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways than men. Such intersecting forms of discrimination may be addressed by adopting temporary special measures.²⁵

With more specific regard to women's access to justice, discrimination based on gender stereotypes, stigma, harmful and patriarchal cultural norms and gender-based violence against women has an adverse impact on their ability of women to gain access to justice on an equal basis with men. When discrimination against women is then compounded by intersecting factors, which may include ethnicity/race, indigenous or minority status, colour, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, marital and/or maternal status, age, urban/rural location, health status, disability, property ownership and identity as a lesbian, bisexual or transgender woman or intersex person, it is more difficult for women from those groups to gain access to justice.²⁶

For example, women are disproportionately criminalized owing to their situation or status, such as being involved in prostitution, being a migrant, having been accused of adultery, identity as a lesbian, bisexual or transgender woman or intersex person, having undergone an abortion or belonging to other groups that face discrimination.²⁷

For example:

- Based on different forms of economic and social discrimination, many women are less likely to be educated and therefore less likely to be aware of their legal rights and less able to navigate the justice system. Many migrant women and women who do not read or speak the language of the courts have difficulties in understanding court proceedings, unless they have access to translation and legal representation in which a lawyer provides the respective explanation.

²⁵ Id., Par. 18. "Temporary special measures" are meant to accelerate the improvement of the position of women to achieve their de facto or substantive equality with men, and to effect the structural, social and cultural changes necessary to correct past and current forms and effects of discrimination against women, as well as to provide them with compensation. These measures are of a temporary nature. United Nations CEDAW Committee, General Recommendation No. 25, Article 4, paragraph 1, of the Convention (temporary special measures), Thirtieth session, (2004), par. 15.

²⁶ United Nations CEDAW Committee, General Recommendation No. 33, supra, note 7, Par. 8.

²⁷ Id., Par. 49.

- Women with a different sexual orientation or gender identity face harassment, violence, hate crimes, discrimination in employment, health care and education on this basis. These women are often victims of abuse and mistreatment by health service providers and law enforcement officials.
- A number of countries criminalize prostitution, which often means that women in prostitution are accused of a crime while the male beneficiaries do not. Women sex workers are often victims of violence and particularly vulnerable to torture and ill-treatment by the police. The exploitation of underage girls in prostitution is even more concerning. Moreover, commercial sex workers are routinely arrested for the offence of “loitering” - a vaguely defined offence, giving police broad arrest powers: in some cases, women are demanded to pay a bribe or have a sex with a police officer in return for their release.
- Access to services for women refugees and internally displaced is more difficult for women than for men, as they more often lack the documentation necessary to access services or the means to get these documents. Their vulnerable status makes them more exposed to violence, mistreatment, and abuse.

The compounded effect of intersecting forms of discrimination is also manifest in the fact that women belonging to specific groups often do not report violations of their rights to the authorities for fear that they will be humiliated, stigmatized, arrested, deported, tortured or have other forms of violence inflicted upon them, including by law enforcement officials. The Committee on the Elimination of Discrimination against Women (CEDAW Committee) has also noted that, when women from those groups lodge complaints, the authorities frequently fail to act with due diligence to investigate, prosecute and punish perpetrators and/or provide remedies.²⁸



Exercise 4: Discrimination against women

Provide participants with the applicable constitutional provisions on non-discrimination in their country:

Constitution of Liberia, article 8

²⁸ Id., par 9. See, for example, the concluding observations on the Bahamas (CEDAW/C/BHS/CO/1-5, para. 25 (d)), Costa Rica (CEDAW/C/CRI/CO/5-6, paras. 40-41), Fiji (CEDAW/C/FJI/CO/4, paras. 24-25), Kyrgyzstan (A/54/38/Rev.1, part one, paras. 127-128), the Republic of Korea (CEDAW/C/KOR/CO/6, paras. 19-20, and CEDAW/C/KOR/CO/7, para. 23 (d)) and Uganda (CEDAW/C/UGA/CO/7, paras. 43-44).

The Republic shall direct its policy towards ensuring for all citizens, without discrimination, opportunities for employment and livelihood under just and humane conditions, and towards promoting safety, health and welfare facilities in employment.

Constitution of Liberia, article 11

All persons, irrespective of ethnic background, race, sex, creed, place of origin or political opinion, are entitled to the fundamental rights and freedoms of the individual, subject to such qualifications as provided for in this Constitution.

Constitution of Senegal, art. 1

The Republic of Senegal [...] shall ensure equality before the law for all citizens, without distinction as to origin, race, sex or religion.

Constitution of Sierra Leone, article 6(2)

[T]he State shall promote national integration and unity and discourage discrimination on the grounds of place of origin, circumstance of birth, sex, religion, status, ethnic or linguistic association or ties.²⁹

Constitution of Sierra Leone, article 27

(1) [...] no law shall make provision which is discriminatory either of itself or in its effect.

(2) [...] no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.

(3) In this section the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description.³⁰

Ask the participants to make a comparison between the provisions of the respective legal aid laws and the constitutional provisions. The trainees could be asked the extent to which the laws, practices and procedures are compliant with the constitution, also considering the definition of discrimination provided in article 1 of CEDAW.

Furthermore, ask the participants if they can think of any other article – of the Constitution or a specific law that protects people from being discriminated in the context of legal aid.

Discriminatory rules and procedures as barriers to accessing justice

Discriminatory laws, rules and procedures may prevent women from accessing and obtaining justice in the same way as men.

²⁹ Constitution of Sierra Leone, 1991, as amended to 2013, art. 6(2).

³⁰ Id., art. 27(1-3).

Frequently, States may have constitutional provisions, laws, regulations, procedures, customs and practices that are based on traditional gender stereotypes and discriminate against women by denying them full enjoyment of their rights. Discrimination may not only be due to the content and impact of laws, regulations, procedures, customs and practices, but also to the lack of capacity and awareness on the part of judicial and quasi-judicial institutions to adequately address violations of women's human rights.³¹

The family domain is among others, a space in which women's rights are violated. In the field of civil law, it is possible to observe how unequal power relations between men and women have been translated into formal laws.

In practice, laws relating to marriage, family and property rights are reflected in domestic frameworks, which are shaped by the legal system in question. They include frameworks such as family codes, civil codes and personal status laws in civil law systems, as well as matrimonial causes, marital property laws and inheritance legislation in common law systems. The courts have also been influential in interpreting both formal and informal laws in relation to women's rights in this field where discrimination in law is common.

Examples of discriminatory provisions and practices affecting women seeking civil and family law remedies.³²

- Male guardianship over women: women are accorded guardianship status in a number of legal systems on the assumption and harmful stereotype that they are subordinate to and will be cared for by a man.
- Citizenship and nationality: women do not always have the legal right to pass on their nationality to their spouses and children in legislation. Stateless women and girls face heightened risks of abuse in times of conflict because they do not enjoy the protection that flows from citizenship, including consular assistance, access to social services and participation in political processes.
- Impact of male authority on marriage and divorce: male authority assumes that husbands are the heads of households, or legal representatives of households, and possess the authority to make decisions on behalf of the family or to exclusively administer property without consulting or seeking spousal consent. The exercise of male authority in domestic settings can be sanctioned by law. Discriminatory divorce laws can leave women impoverished and at risk of violence and exploitation and fault-

³¹ United Nations CEDAW Committee, General Recommendation No. 33, *supra*, note 7, Par. 8.

³² UN Women, UNDP, UNODC and OHCHR. (2018). A Practitioner's Toolkit on Women's Access to Justice, Pag. 164 and 165.

based divorce regimes draw a direct link between grounds for divorce and the financial consequences of divorce. As a result, women deemed at fault in divorce are generally not provided alimony or other forms of financial support.

- Management of marital property: some countries do not acknowledge a woman's right to own an equal share of property with her husband during a marriage or when that marriage ends. Even when that right is recognized, legal precedent or custom may limit a woman's right in practice. Sometimes, property that is owned by a woman or jointly owned with her husband can be managed by him. To determine a woman's share in marital property, some countries overlook the unpaid contributions that women make in, for example in raising children, caring for other family members and household duties, contributing to women's poverty.
- Child custody and maintenance: parental rights in the context of divorce may depend on lineage rules governing status and family relations. Due to the tracing of lineage membership through the female line, matrilineal societies tend to provide women with greater rights over children compared to patrilineal, which limit such rights to fathers, based on male lineage.
- Inheritance: While discriminatory practices relating to inheritance are often rooted in informal or customary law, legislation can also limit women's rights to inheritance through preference for male family members over females. Furthermore, lack of knowledge of property rights and inheritance rights are often major obstacles to protecting the property rights of widows. This is compounded by the high costs of legal proceedings, long distances to courts and cumbersome court procedures, all of which place widows in vulnerable situations.

Discriminatory laws and regulations may be substantive and procedural.

Substantive rules consist of statutory rules that govern how people behave such as the rules, or laws, that define crimes and set forth punishment.

An example of substantive discriminatory laws are laws that criminalize actions that can only be committed by women, such as abortion, or that do not criminalize acts that target specifically women, such as marital rape.

Procedural rules govern the steps that a complainant and respondent must fulfil to be fully heard and conclude a dispute, particularly in a formal or informal judicial forum. Examples of procedural and evidentiary discriminatory rules include:

- Rules that do not allow women to file claims without the permission of a male guardian;

- Rules that establish different standards of proof for men and women for certain crimes or in civil and family cases, by requiring women to discharge a higher burden of proof than men to establish an offence or seek a remedy, or excluding or according inferior status to the testimony of women.

Even where procedural and evidentiary rules are gender-neutral, discriminatory approaches to their interpretation and enforcement can translate into the exclusion, discrediting or devaluation of women's testimony by law enforcement officials. The stigmatization of women, systematic failures in the collection of evidence for crimes committed against women and onerous probative requirements can destroy the evidentiary foundations of cases even before women are heard.³³

Examples of discriminatory provisions and practices affecting women who seek criminal law remedies:

- The obligation for women to seek permission from a guardian or community members before beginning legal action.
- The criminalization of forms of behaviour that can be performed only by women, such as abortion.
- The criminalizing forms of behaviour that are not criminalized or punished as harshly if they are performed by men.
- Failing to criminalize or to act with due diligence to prevent and provide redress for crimes that disproportionately or solely affect women.
- Corroboration rules that discriminate against women as witnesses, complainants and defendants by requiring them to discharge a higher burden of proof than men in order to establish an offence or seek a remedy.
- Procedures that exclude or accord inferior status to the testimony of women.
- Lack of measures to ensure equal conditions between women and men during the preparation, conduct and aftermath of cases.
- Imprisoning women for petty offences and/or inability to pay bail in such cases.
- Inadequate case management and evidence collection in cases brought by women, resulting in systematic failures in the investigation of cases.³⁴

³³ UN Women, UNDP, UNODC, and OHCHR, A Practitioner's Toolkit on Women's Access to Justice Programming, 2018, Pag. 70.

- Lacking gender-sensitive, non-custodial alternatives to detention.
- Failing to meet the specific needs of women in detention.
- Failing to protect women from the secondary victimization by different actors within the criminal justice system, including mental and physical abuse and threats during arrest, questioning and detention.

Women victims/survivors of gender-based violence face even additional barriers in accessing justice,³⁵ as certain discriminatory evidentiary rules, procedures, and practices contribute to encourage, facilitate, justify or tolerate gender-based violence (see, *infra*, Module 3).³⁶

Examples of discriminatory provisions and practices affecting victims/survivors of gender-based violence

- Procedures allowing for the deprivation of women's liberty to protect them from violence.
- Legal defences or mitigating factors based on culture, religion or male privilege, such as the defence of so-called "honour", or the use of past sexual behaviour.
- Practices such as traditional apologies, pardons from the families of victims/survivors, or subsequent marriage of the victim/survivor of sexual assault to the perpetrator.
- Laws allowing the perpetrator to avoid prosecution if he marries a victim of rape.
- Non-criminalization of marital rape, or not allowing the wife to file a complaint for sexual assault if marital rape is not expressly criminalized.
- Procedures that result in the harshest penalties, including stoning, lashing and death, often being reserved for women and judicial practices that disregard a history of gender-based violence to the detriment of women defendants

³⁵ The UNODC Resource book for trainers on effective prosecution responses to violence against women and girls presents a list of barriers to justice for victims of gender-based violence against women, that are grouped by: 1) Barriers due to women's economic position; 2) Barriers due to the perpetrators' behaviour; 3) Barriers due to discriminatory legal provisions; 4) Barriers due to lack of capacity of women to seek justice; 5) Barriers due to lack of capacity of criminal justice institutions and actors. See, Resource book for trainers on effective prosecution responses to violence against women and girls, *supra*, note 5, at 102-103.

³⁶ United Nations CEDAW Committee, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, 26 July, 2017, Par. 29(c) (i)-(ii).

- Laws that do not provide adequate mitigating circumstances when a woman is accused of violent crimes and she acted out of self-defence (for example, in cases of ‘battered women syndrome’).
- All laws that prevent or deter women from reporting gender-based violence, such as guardianship laws that deprive women of legal capacity or restrict the ability of women with disabilities to testify in court, the practice of so-called “protective custody,” restrictive immigration laws that discourage women, including migrant domestic workers, from reporting such violence, and laws allowing for dual arrests in cases of domestic violence or for the prosecution of women when the perpetrator is acquitted.
- Judiciary that do not take into consideration the economic inequality that affect women and girls, hindering their access to alternatives to incarceration. For example, where the court offers a fine as an alternative to detention, women and girls are less likely to be able to afford to pay this.



Exercise 5: Discriminatory rules and procedures

Distribute some examples from the lists of discriminatory provisions and practices included above. Ask the participants to read them out loud, one by one. For each one, ask the participants:

Does this apply in your country?

What are the consequences for women in terms of accessing and obtaining justice?

What can legal aid providers do to avoid or mitigate negative consequences for women?

Module 2. Delivering Gender-Sensitive Legal Aid

Purpose of Module 2

The purpose of this Module is to provide effective tools for the delivery of gender-sensitive legal aid throughout all stages of the criminal justice process. The Module will illustrate the main skills and guiding principles in legal aid provision, as well as challenges women in contact and conflict with the law face in accessing justice. The Module is intended to guide legal aid providers on how to assist legal aid beneficiaries during the pre-trial, trial and post-trial phases in a way that takes into account and addresses the needs, vulnerabilities and challenges of women offenders – as suspects and accused – victims, witnesses and claimants.

Learning Objectives

At the end of this Module, participants will have learned to:

1. Identify and explain essential skills in legal aid provision;
2. Address the beneficiaries' right of information and early access to legal aid;
3. Prepare a course of action;
4. Act to mitigate the adverse effects of pre-trial detention;
5. Develop a trial plan;
6. Conduct gender-sensitive interviews of women;
7. Examine and impeach witnesses;
8. Draft victim's impact statements;
9. Identify the types of services that can be provided post-trial.

Essential skills in legal aid provision

Just as an understanding of the relevant law is crucial to deliver legal aid, certain skills are necessary to effectively further the interests of legal aid beneficiaries, especially when dealing with women. The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems³⁷ provide that:

“States should put in place mechanisms to ensure that all legal aid providers possess education, training, skills and experience that are commensurate with the nature of their work, including the

³⁷ United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, A/Res/68/187, annex. Adopted by the General Assembly on 20 December 2012.

gravity of the offences dealt with, and the rights and needs of women, children and groups with special needs.”³⁸

These skills primarily include:

- Information-gathering
- Privacy and confidentiality
- Legal advice and representation
- Ability to negotiate
- Effective communication
- Gender and culture sensitiveness
- Ideally also: Perceptiveness

Perceptiveness: Being perceptive means that the legal aid provider needs to reach a deep understanding of the different aspects of the situation that the client is facing. This comprehensive of several qualities, like being insightful discerning, responsive, sensitive and observants.

Information-gathering: Legal aid providers must be able to collect as much information as possible about the case in order to prepare an effective defence. It is important that a legal aid provider be able to develop different and appropriate techniques to gather information from his or her beneficiary, from the police, witnesses or other third parties. This process should be done in a thoughtful manner in accordance with national laws (in some countries, lawyers regularly hire private detectives or researchers, while in other countries, this is forbidden by law and lawyers need to obtain information by filing requests to the police and prosecution), confidentially with a view to protect the privacy of all actors involved, so as not to harm the client in any way.

Privacy and confidentiality: A legal aid provider should always respect and protect the beneficiary’s privacy and ensure confidentiality of communications. This duty is even more imperative when the beneficiaries are vulnerable persons, as they may not be aware of such right, lack the legal authority or the developmental capacity to make decisions on their own, or not be able to demand that their privacy be respected.

The right to privacy is guaranteed in the constitutions of Liberia³⁹ and Sierra Leone.⁴⁰

Legal aid providers:

- Should not disclose the beneficiary’s identity by publishing or making otherwise available his or her name, images, audio, video or detailed descriptions.

³⁸ Ibid, principle 13, para. 37.

³⁹ Constitution of Liberia, 1986, article 16.

⁴⁰ Constitution of Sierra Leone, 1991, article 22.

- Should not publish or make otherwise available any contact information or personal data of their beneficiary, particularly in the media, including family members' personal information and addresses.
- Should always inform the beneficiary, in any way that is appropriate to the beneficiary's age, literacy, and cognitive faculties, that their conversation will remain confidential.

Legal advice and representation: A legal aid provider in theory must be prepared to deliver all types of legal aid services, unless some activities are not allowed by law, for example providers who are paralegals will not be able to represent their client in court. Types of services range from simply giving advice and making the beneficiary able to deal with authorities, fill out forms, or make decisions, to legally represent them in court.

Ability to negotiate: Ability to negotiate is necessary every time a legal aid provider needs to argue in favour of her beneficiary or persuade a police officer or prosecutor to take some action that would benefit the beneficiary.

Effective communication: A legal aid provider must learn how to approach the judicial authorities but also how to communicate with beneficiaries, in a way that is clear and understandable, and always taking into account any vulnerability.

Sound communication between the legal aid provider and a vulnerable beneficiary is key to establish the level of trust, ease and confidence that is necessary for effective legal aid provision to vulnerable persons. The importance of communication is two-fold. The legal aid provider must effectively convey the message that he or she is there to help and that the beneficiary is entitled to certain rights. The beneficiary must feel comfortable in telling the truth and every meaningful detail of his or her story. Indeed, without full disclosure of information from the beneficiary, there is a risk that the legal aid services provided will be incomplete or will miss the mark entirely.

Step-by-step guide on how to communicate with a beneficiary at first meeting

- Always introduce yourself and explain in clear and simple words what your role is and that you are there to help. Also highlight that anything the beneficiary as your client tells you is shared in confidence. Information she provides will only be shared with her consent, and if relevant to his or her case.
- If the beneficiary does not speak the local language, seek to ensure that an interpreter assist you.
- Establish trust and try to make the client feel comfortable and at ease when spending time with you. This could include asking the beneficiary if she prefers to communicate with you on a first name basis.

- Make clear that you are not the police and then reassure the beneficiary that she can trust you and should not be afraid. Keep in mind that the beneficiary can be largely unfamiliar with the criminal justice system and afraid of judicial and investigative authorities, especially if she has never had problems with the law before.
- Tell the beneficiary you will just ask a few questions, and that you will use the interview's information to protect the beneficiary's interests. Remind the beneficiary that if you ask a question he or she does not understand, he or she can stop you and ask you to explain or repeat the question in simpler words.
- If the beneficiary is detained, make sure you check if she is physically and mentally well, and carefully inquire whether any occasion of ill-treatment has occurred that would need to be addressed immediately with medical care and legal action against the detention facility management/responsible officers.
- If the beneficiary is detained, and you are allowed to apply for bail, inform the beneficiary immediately and reassure him or her that a process is ongoing that can lead to her being released soon.
- If the beneficiary is a child, provide any information that might comfort or reassure her, such as information about her family. Approach her in a friendly and relaxed manner, showing interest in the child, not just the case, and asking questions about school or sports or friends to break the ice. Use any means necessary to make communication easier, including drawings and pictures.
- Women might feel more comfortable speaking to another woman. If your office or organization has a female legal aid provider available, seek to ensure that she is the one to communicate with the beneficiary.
- Keep the interview short and simple. Try to tailor the interview to the beneficiary's ability to understand legal concepts, but in general it is always best to avoid technical terms. If the beneficiary was reluctant to speak at first, but then, with your help, started telling you her story, it is better not to interrupt. Take notes, and ask follow-up questions at the end, if you need to.
- Take breaks. Keep in mind your beneficiary's vulnerability and that an interview is always stressful. Your beneficiary has endured a traumatic experience at best. If the beneficiary looks distracted or tired, it might be time for a break.

Cultural sensitivity: Being sensitive to different cultures means to operate with an awareness that cultural differences exist, without assigning them a value. In finding out about the facts of a case, legal aid providers should ask honest questions, seek understanding, and demonstrate empathy rather than judging. Being sensitive to culture means understanding the feeling of shame, guilt, and fear of stigma often experienced by women victims of violence, while at the same time being able to assist them to obtain justice.

Gender sensitivity: Being gender sensitive means understanding and taking account of the societal and cultural factors involved in gender-based exclusion and discrimination in the most diverse spheres of public and private life⁴¹. For example, by taking into consideration the existence of social norms which discourage women from taking action against those who violate their rights.

Legal aid providers and service providers working with women beneficiaries need to develop the right skills to be able to respect women's dignity and hear women's needs, priorities and perspectives without relying on assumptions. In addition to poverty and hardship, women face oppression, superstition, and die-hard stereotypes, especially when dealing with the justice system. Gender sensitivity helps determine which assumptions in matters of gender are valid and which are stereotyped generalizations. Gender awareness requires not only intellectual effort but also sensitivity and open-mindedness.



Exercise 1: Essential skills in legal aid provision

The United Nations Principles and Guidelines provide that:

“States should put in place mechanisms to ensure that all legal aid providers possess education, training, skills and experience that are commensurate with the nature of their work, including the gravity of the offences dealt with, and the rights and needs of women, children and groups with special needs.”

1. What skills assure quality of legal aid?
2. What skills are necessary to provide legal aid to women, both as offenders and as victims, witnesses, claimants?
3. Do you value the co-operation of other professionals, if so, how do you obtain it?
4. What are the most important points to keep in mind when effectively communicate with a legal aid beneficiary, particularly at the first meeting?

⁴¹ Šribar, R. (2015), 'Glossary of common terms in gender equality and feminist theory', in M. Ule, R. Šribar and A. U. Venturini, eds.

Guide the participants while they try to answer this last question. Write the correct answers down and keep them as notes for practicing interviewing a legal aid beneficiary later on. Participants should also reflect on what to bring to a meeting, which questions to ask, and how to behave themselves.

Challenges for women in conflict with the law

Women's contact with criminal justice systems is often as victims of crime, but can also occur as suspects, accused and prisoners. Legal aid providers need to develop appropriate skills to assist both women victims and alleged offenders.

For legal aid providers, this requires being aware of the main challenges that women in conflict with the law face at all stages of the criminal justice process. For example, women are at risk of sexual violence and other forms of violence, intimidation and harassment as suspects, during arrest, interviews, pre-trial and post-trial detention. Prison infrastructures often do not cater to women's specific needs.⁴² Criminal laws and procedures can be discriminatory. Sentencing policies may fail to take into consideration the needs of pregnant women or women as primary childcare providers. Risks that are disproportionally affecting women in detention are often not addressed, including health care needs, the risk of self-harm and suicide. Post-trial detention often fails to assist in the rehabilitation of offenders and specific social reintegration needs after detention are not addressed (see Table 1).

Table 1. Challenges for women in conflict with the law throughout all stages of the criminal justice system

STAGE IN THE CRIMINAL JUSTICE PROCESS	MAIN CHALLENGES FACED BY WOMEN IN CONFLICT WITH THE LAW
BEFORE CONTACT	<ul style="list-style-type: none"> • Criminal laws discriminate against women by criminalizing acts that can be committed by women only, or providing harsher penalties for women perpetrators
INITIAL CONTACT	<ul style="list-style-type: none"> • Women, especially, may suffer from illiteracy and lack the necessary knowledge about their legal rights, including the right to appropriate remedies and legal assistance and representation, and experience to understand and navigate the criminal justice system. • Women with childcare responsibilities are disproportionately affected by a decision to arrest. • Legal aid or legal advice are not available in most cases at this stage and

⁴² The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders provide guidance on how to address the specific characteristics and needs of women offenders and prisoners.

	<p>women may be unable to afford commercially obtained legal services.</p> <ul style="list-style-type: none"> . Women may have limited financial or other resources to meet bail and financial requirements of sureties. . Women who have been arrested or detained may be at risk of sexual and other forms of violence from State officials.
INVESTIGATION	<ul style="list-style-type: none"> . Most police officers are not trained in gender-sensitive interviewing techniques. . Suspects and accused persons are at greatest risk of torture or other forms of ill-treatment, ranging from neglect and demands for bribes to coerced confessions and unlawful detention. . Illiterate women are more susceptible to coercion and under such situations, the risk of signing statements that have serious legal implications.
PRE-TRIAL	<ul style="list-style-type: none"> . Before trial, accused persons may not have access to legal advice or representation, thereby missing out on the opportunity to prepare an effective defence strategy; . Women in pre-trial detention are at risk of sexual violence and other forms of abuse. . Women are disproportionately affected by excessive use of pre-trial detention and by unnecessary long periods of pre-trial detention: <ul style="list-style-type: none"> -by being unable to hold their caretaking responsibilities; -by losing their jobs
TRIAL	<ul style="list-style-type: none"> . Backlogged judicial systems can lead to slow trials and lengthy pre-trial detention, with disproportionately negative consequences for women; . Judges are often not aware of women's relevant history and background, such as a history of abuse or violence, and do not sufficiently rely on social services reports to identify the pathways leading to crime; . As a result, judges fail to apply appropriate mitigating circumstances for women offenders. . Judges fail to address women's caretaking responsibilities and do not provide for alternatives to imprisonment even when appropriate.
POST-TRIAL	<ul style="list-style-type: none"> . Imprisonment creates unique challenges for women, as gender-specific

hygiene and health-care needs are overlooked, including:

- The specific needs of pregnant women and women with children;
 - Women's mental health needs, with risk of self-harm and suicide being particularly acute among prisoners
- . Women are stigmatized and may suffer rejection by their families and communities;
 - . Just as in pre-trial detention, women prisoners are at a heightened risk of sexual violence and other forms of abuse;
 - . Social reintegration is hard, as women who have been imprisoned experience difficulties in finding housing and jobs, reuniting with family members and in particular with their children.
 - . Lack of access to post-release care and follow-up to address women's mental health and other complex needs.

Source: UN Women, UNDP, UNODC, OHCHR, A Practitioner's Toolkit on Women's Access to Justice Programming, 2018.

Right to information

Women may disproportionately suffer from illiteracy, and often lack the necessary knowledge of their legal rights, including the right to appropriate remedies and legal assistance and representation. Therefore, awareness raising and dissemination of information about availability of legal aid services before trial becomes crucial. Even in the absence of a national legal aid scheme during this stage, other service providers such as a paralegal programme, a civil society organizations or law clinics should provide and disseminate to the community and the general public information about legal aid, what it entails and how to access it.

Effective methods to disseminate information about women's right to access justice, to appropriate remedies and legal aid include:

- flyers or pamphlets about women's rights, including, for example, letters of rights and about how to contact a legal aid provider posted at police stations, detention centres, courts, local government offices, educational and religious institutions;
- public service announcements;
- radio programmes;
- community meetings;
- megaphone advertisements in marketplaces or other places which women frequent on a daily basis;
- social media, short message service (SMS) and other types of messaging applications.

This information should be provided in a manner that takes into account the needs of illiterate women. One option would be the use of visual aids.

The United Nations Principles and Guidelines call on States to guarantee the rights of persons to be informed of their right to legal aid.

Guideline 2. Right to be informed on legal aid

42. In order to guarantee the right of persons to be informed of their right to legal aid, States should ensure that:

(a) Information on the right to legal aid and what such aid consists of, including the availability of legal aid services and how to access such services and other relevant information, is made available to the community and to the general public in local government offices and educational and religious institutions and through the media, including the Internet, or other appropriate means;

(b) Information is made available to isolated groups and marginalized groups. Use should be made of radio and television programmes, regional and local newspapers, the Internet and other means, in particular, following changes to the law or specific issues affecting a community, targeted community meetings;

(c) Police officers, prosecutors, judicial officers and officials in any facility where persons are imprisoned or detained inform unrepresented persons of their right to legal aid and of other procedural safeguards;

(d) Information on the rights of a person suspected of or charged with a criminal offence in a criminal justice process and on the availability of legal aid services is provided in police stations, detention centres, courts and prisons, for example, through the provision of a letter of rights or in any other official form submitted to the accused. Such information should be provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children; and such information should be in a language that those persons understand. Information provided to children must be provided in a manner appropriate to their age and maturity;

(e) Effective remedies are available to persons who have not been adequately informed of their right to legal aid. Such remedies may include a prohibition on conducting procedural actions, release from detention, exclusion of evidence, judicial review and compensation;

(f) Means of verification that a person has actually been informed are put in place.⁴³

Legal aid providers may further publicize that they can be called-in by phone, contacted by social media applications or, whenever appropriate within the framework of the national legal system,

⁴³ United Nations Principles and Guidelines, Guideline 2.

may implement a visiting scheme to periodically visit police stations or detention centres or even an embedded scheme and establish mobile units at courts, police stations or detention centres.

Early access and rapid response

Women suspects and accused are at greatest risk of torture, sexual abuse or other forms of ill-treatment, ranging from neglect and demands for bribes to coerced confessions and unlawful detention. It would therefore be essential that legal aid be provided as early as possible at the first stages of the criminal justice process.

Principle 3 of the United Nations Principles and Guidelines provides:

“Legal aid for persons suspected of or charged with a criminal offence

20. States should ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offence punishable by a term of imprisonment or the death penalty is entitled to legal aid at all stages of the criminal justice process.”

Early access to legal aid means access to legal aid at the very first stages of the criminal justice process, and essentially before trial, during police interviews, preliminary investigation and pre-trial detention. The expression “early stages” of the criminal justice process generally refers to the period up to and including the first appearance before a judge for the purpose of determining whether the person is to be detained while waiting for trial or released pending trial.⁴⁴

Relevant international law provides that suspects or accused persons have the right to have access to a lawyer without undue delay.⁴⁵ Identifying the moment in time when this right arises, which can be of crucial importance in terms of effectiveness of criminal defence. The Basic Principles on the Role of Lawyers state that all persons are entitled to the assistance of a lawyer to protect and establish their rights and to defend them *at all stages* of the criminal proceedings.⁴⁶ More specifically, the Basic Principles provide that:

“Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.”⁴⁷

⁴⁴ UNODC/UNDP, Early Access to Legal Aid in Criminal Justice Processes, a handbook for policymakers and practitioners, Vienna (2014), pag. 1-3.

⁴⁵ United Nations, General Assembly, Resolution 2200A(XXI), International Covenant on Civil and Political Rights, Annex, Art. 2(1), 3, 14 and 26, 16 December 1966, A/RES/21/2200, article 14(3)(c).

⁴⁶ United Nations, Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Principle 1.

⁴⁷ Id., Principle 7.

At regional level, the importance of early access to legal aid is highlighted in the African Commission on Human and People's Rights' Principles and Guidelines on the Right to a Fair Trial and Access to Justice, which provide, in clause M.2.f, that:

*“any person arrested or detained shall have prompt access to a lawyer and, unless the person has waived this right in writing, shall not be obliged to answer any questions or participate in any interrogation without his or her lawyer being present.”*⁴⁸

The purpose of early access to legal aid is threefold:

1. Legal aid may serve as a fundamental safeguard against any unlawful treatment by the investigative authorities or at detention facilities. Women, in particular, are vulnerable to violence and mistreatment, including sexual abuse, both during police interviews and pre-trial detention. Sometimes, a confession obtained by the police may be the result of beating or threats. If a legal aid provider is present during questioning, however, the ill-treatment can be avoided.⁴⁹
2. When women have been tortured, abused or mistreated legal aid providers may assist in filing complaints for torture or mistreatment;
3. Legal aid providers may assist in requesting that any confession rendered under duress should be excluded from trial, or nullified.⁵⁰

Preparing a course of action

At the early stages of the criminal justice process crucial decisions are made that affect the right to effective defence and fair trial. In particular, the first few hours after arrest are crucial. If suspects do not have access to the essential components of effective criminal defence, they are left in a vulnerable position—without legal assistance, without information about the case against them, and without the ability to apply for pre-trial release. The impact of a person's life can be catastrophic.⁵¹

⁴⁸ African Commission on Human and People's Rights, Principles and Guidelines on the Right to a Fair Trial and Access to Justice, 2003.

⁴⁹ UNODC, Criminal Legal Aid Manual for Law Practitioners in Somaliland, Criminal Justice Compendium for Somaliland, 2015, pag. 88.

⁵⁰ The Criminal Procedure Law of Liberia, for example, provides: §21.4. *Admissions, statements, and confessions made by defendant to government officers; prerequisites for admission in evidence.* “Any admission or statement, including a confession of guilt, made by a defendant during an interrogation, interview, examination, or other inquiry by a peace officer or other employee or representative of the Republic shall not be admissible in evidence in a criminal prosecution against him until it is established by the prosecution that it was made voluntarily, and that the rights to be accorded an accused [...] have been complied with and that either legal counsel was made available to the defendant if such right was requested by him or that such right was understandingly waived by him.” Criminal Procedure Law of Liberia, 1 January 1969, Sec. 21.4.

⁵¹ Marion Isobel, Legal Tools: An Arrest Rights Toolkit for Lawyers, Open Society Foundations, 2013.

Providing legal aid during this phase is essential to allow suspects and accused persons to exercise their rights of defence practically and effectively. The legal aid provider's response must therefore be quick and appropriate. To ensure that accused persons have prompt access to legal aid in conformity with the law, Guideline 4 "Legal aid at the pre-trial stage" provides that States should take, inter alia, the following measures:

"(a) To ensure that police and judicial authorities do not arbitrarily restrict the right or access to legal aid for persons detained, arrested, suspected or accused of, or charged with a criminal offence, in particular in police stations;

(b) To facilitate access for legal aid providers assigned to provide assistance to detained persons in police stations and other places of detention for the purpose of providing that assistance;

(c) To ensure legal representation at all pre-trial proceedings and hearings; [...]

(g) To ensure that every person charged with a criminal offence has adequate time, facilities and technical and financial support, in case he or she does not have sufficient means, to prepare his or her defence and is able to consult with his or her lawyer in full confidentiality."

Mitigating the adverse effects of excessive use of pre-trial detention for women

Pre-trial detention is any form of custody by law enforcement, from the time of arrest through police custody, during transfers, before and after judicial review of the decision to detain, and until a person has been formally tried by a court and convicted or acquitted and released.⁵²

Pre-trial detention, including detention on remand, has a significantly adverse impact on a detainee's physical and emotional well-being as well as on a detainee's right to a fair trial. This is increasingly true in the case of women.⁵³ The conditions people are subjected to in pre-trial detention are often significantly worse than post-trial captivity. Pre-trial detention facilities are not designed to accommodate detainees long-term, though in reality pre-trial detention may be very long and excessive, and therefore they do not offer educational, recreational and vocational opportunities.⁵⁴

Due to social and gender norms, women are most likely to have caring responsibilities. The majority of incarcerated women have children and are primary carers. There should be gender-sensitive alternatives to incarceration, including fines for minor offence (though this is often not realistic for women living in poverty) or detention facilities that offer counselling for women,

⁵² Open Society Justice Initiative, *Pre-trial Detention and Torture: Why Pre-trial Detainees Face the Greatest Risk*, 2011, at 17.

⁵³ *Id.*, at 28.

⁵⁴ Josh Raisler Cohn, *Fighting Pre-trial Detention*, National Lawyers Guild, Massachusetts Chapter, 2013.

training and vocational opportunities for women and child-care facilities, so women can continue to care for their children in a child-friendly environment.

Frequent recourse to pre-trial detention leads to overcrowding, which increases the risks of violence, contracting diseases, and worse access to food. In countries with developing and transitional economies, pre-trial detainees are often forced to live in filthy, over-crowded conditions, where they lack adequate health services. Many pre-trial detainees are locked away in detention centres where tuberculosis, hepatitis C, and HIV are easily contracted.⁵⁵ Children who are locked up with mothers in extended detention may be subjected to physical abuse and deprived of education, cognitive stimulation, play, and appropriate medical care.⁵⁶

Legal aid providers must be aware that torture and other ill-treatment may occur in pre-trial detention. Actually, torture is most likely to occur at the initial stage of detention, usually in the first days of police custody when it is applied to extract a confession. Legal aid providers should be aware of the fact that pre-trial detainees are also abused not only to extract information, but also as a means of punishment, intimidation to establish order, or to extort money.⁵⁷

Excessive use of pre-trial detention and unnecessary long periods of pre-trial detention affect women disproportionately, as women who are held in pre-trial detention suffer trauma because they are exposed to abuse and ill-treatment, including sexual abuse, are separated from their family, and are likely to lose their job.⁵⁸

Before trial, detention can occur:

- Upon arrest – usually in police stations. It is an important safeguard that arrested persons must be brought before a court within a specified period of time, usually 24-48 hours.⁵⁹
- Upon remand – usually in pre-trial detention centres: this is based on a judicial decision that assumes that there is some reason why the offender cannot be released into the community awaiting trial, for example on bail or dependent on other conditions. Although they are no longer under the control of authorities interested in a confession, remand detainees are still subject to a high risk of abuse. For example, detainees are at risk of being subject to “welcome treatments” either by prison guards as a means of intimidation and subordination, or by other detainees as a way of establishing power structures among inmates. These may include beatings, rape and other forms of sexual

⁵⁵ Open Society Justice Initiative, Pre-trial Detention and Health: Unintended Consequences, Deadly Results, 2011, at 12.

⁵⁶ V. Chirwa, Special Rapporteur on Prisons, African Commission on Human and Peoples’ Rights, Report on prisons and conditions of detention in the Federal Democratic Republic of Ethiopia, 15–29 March 2004.

⁵⁷ Id.

⁵⁸ UN Women, UNDP, UNODC, OHCHR, A Practitioner’s Toolkit on Women’s Access to Justice Programming, *supra* note 30, at 272.

⁵⁹ For example, the Constitution of Liberia provides: “Every person arrested or detained shall be formally charged and presented before a court of competent jurisdiction within forty-eight hours. Should the court determine the existence of a *prima facie* case against the accused, it shall issue a formal writ of arrest setting out the charge or charges and shall provide for a speedy trial. There shall be no preventive detention.” Constitution of Liberia, *supra*, note 35, art. 21(f).

abuse.⁶⁰

Those in pre-trial detention are less likely to be acquitted than those who remain at liberty before their trial, which “deepens further the disadvantages that the poor and marginalized face in the enjoyment of the right to a fair trial on an equal footing.”⁶¹

As women are traditionally caregivers, custody impacts not only them but their dependents as well. Legal aid providers should ensure that, whenever possible, women are offered non-custodial alternatives to pre-trial detention that respond to their needs as mothers and caregivers and protect them from exposure to risk of abuse. ‘Alternatives to detention’ refers to measures that do not involve deprivation of liberty.

The United Nations Principles and Guidelines recommend, in Guideline 4, “Legal aid at the pre-trial stage:”

(d) To monitor and enforce custody time limits in police holding cells or other detention centres, for example, by instructing judicial authorities to screen the remand caseload in detention centres on a regular basis to make sure that people are remanded lawfully, that their cases are dealt with in a timely manner and that the conditions in which they are held meet the relevant legal standards, including international ones;

Alternatives to pre-trial detention would provide an alternative means of supervising the accused woman pending her trial rather than placement in police station cells and pre-trial detention centres or remand.

Alternatives to pre-trial detention may include:

- Release on bail
- Release on parole
- Compliance with a curfew
- Agreement not to contact the victims/survivor.

Diversion measures

When alleged women offenders do not pose a risk to the public, the police, prosecutors and courts have different options to divert those women from prosecution, depending on the domestic regulatory framework.⁶²

⁶⁰ Open Society Justice Initiative, Pre-trial Detention and Torture: Why Pre-trial Detainees Face the Greatest Risk, 2011, at 36.

⁶¹ Working Group on Arbitrary Detention, Report of the Working Group on Arbitrary Detention (Geneva: UN Commission on Human Rights, E/CN.4/2006/7, 2006), para. 66.

⁶² UNODC, Information Note for Criminal Justice Practitioners on Non-Custodial Measures for Women Offenders, Vienna, at 6.

Diversion means the conditional channelling of women in conflict with the law away from judicial proceedings thereby avoiding the negative effects of formal judicial proceedings, including stigma, police custody and pre-trial detention, and a criminal record, particularly for minor offenses.⁶³

Such options may include:

- an absolute or conditional discharge;
- verbal sanctions;
- an arbitrated settlement;
- restitution to the victim or a compensation order;
- a community service order;
- victim offender mediation;
- family group conferences;
- community work or a life skills or competency development program;
- sentencing circles or another restorative process.

Diversion measures require the offender's consent, particularly when they entail an obligation on her. Women with substance abuse problems should be diverted to and supported in accessing gender-sensitive, trauma-informed, women-only substance abuse treatment programmes in the community.⁶⁴ The consent to diversion must be an 'informed decision', made of their own free will, without pressure or undue influence. Those who maintain their innocence have the right to a full and fair trial.

Mitigating circumstances and measures alternative to detention

In preparing the defence, a legal aid provider should keep in mind which mitigating or extenuating factors may contribute to a lighter sentence in the particular case. Even if none of the statutory mitigating circumstances apply to the specific case, a legal aid provider may always lever on the extent of his or her beneficiary involvement in the actual commission of the crime, if she played only a limited role.

In arguing in favour of mitigating circumstances legal aid providers must take into account the "pathways" that often lead women to conflict with the law, including:

- correlation between the committed crime and past experience of abuse and violence;
- coercion into crime by an abuser or person of influence;
- running away to escape violence.

⁶³ UNICEF, Diversion and Alternative Measures, at https://www.unicef.org/tdad/index_56037.html

⁶⁴ United Nations, General Assembly, Resolution 65/229, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Annex, 21 December 2010, A/RES/65/229, Rule 62.

Rule 61 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (“the Bangkok Rules”) requires that courts have the power “to consider mitigating factors such as lack of criminal history and relative non-severity and nature of the criminal conduct, in the light of women’s caretaking responsibilities and typical backgrounds”, which includes the high proportion who have experienced violence.⁶⁵

As judges often fail to take into account women’s caretaking responsibilities when imposing penalties, legal aid providers should bring these issues to the attention of the court and request, whenever applicable, measures alternative to detention.

For example, in case of women offenders who are victims of domestic violence or sexual abuse, or have mental health-care needs, diversion to a suitable gender appropriate treatment program would address their needs much more effectively than the harsh environment of prisons, which often hinder their social reintegration.

Measures alternative to detention may include:

- judicial caution;
- probation;
- community supervision;
- community service; or
- attendance at a treatment programmes.

Phase 1. Legal aid at the police station and at pre-trial hearings

The essential role of a legal aid provider is to protect and advance the rights and legitimate interests of his or her beneficiaries. This is true of any phase of the criminal justice process. However, a legal aid provider might be unsure of what exactly he or she might do to defend the rights of his or her beneficiaries before trial, for example at the police station, particularly in a context where there is no law or regulation governing early access to legal aid.⁶⁶ This means that there are no clear rules about what information can be accessed by a legal aid provider, whether he or she may be present during interviews, and what actions he or she can take.

The Lilongwe Plan of Action for Accessing Legal Aid in the Criminal Justice System in Africa provides some indication in this regard, and recommends the following services to be provided during the pre-trial phase:

⁶⁵ Id., Rule 61.

⁶⁶ UNODC, Early Access to Legal Aid in Criminal Justice Processes, *supra*, note 39, pag. 90.

- Providing general advice and assistance at the police station to victims of crime as well as accused persons;
- Visiting police cells or lock-ups;
- Monitoring custody time limits in the police station after which a person must be produced before the court;
- Attending a police interview;
- Screening juveniles for possible diversion programmes;
- Contacting / tracing parents / guardians / sureties;
- Assisting with bail from the police station;
- Require the police to cooperate with service providers and advertise these services and how to access them in each police station.⁶⁷

As mentioned before, this is a stage where private lawyers, paralegals, and supervised students can effectively help. And in this phase, a paralegal trained with relatively basic skills can do many of the tasks that lawyers might do. For example, at the time of arrest, a paralegal may assist in the identification of children, particularly in verifying the identities and locations of family members. The value offered by paralegals at this point is to help overcome a detainee lack of maturity, literacy or familiarity with the obligation of the police to record certain information that needs to be presented in court.⁶⁸ Identification of children is also of crucial importance in terms of diverting juvenile offenders, who might otherwise be classified and processed as adults.

Legal aid providers can also be of great assistance at pre-trial hearings with the following tasks:

- advise a detainee about the right to apply for bail;
- gather any information relevant to such application, such as the names of relatives who might be act as sureties;
- contact sureties; and
- assist the detainee in filling out a bail application.

A legal aid provider may speak for a bail applicant or train a detainee on how to apply for bail, or how to present any information to support the granting of a bail. This role can often be played by paralegals as well. Even if they are not allowed to act on behalf of a beneficiary, sometimes pragmatic magistrates or judges may allow a paralegal to speak for an indigent defendant on administrative matters, such as bail.

Legal aid providers may assist detainees in between adjournments before trial. They may visit detention facilities and discuss defence strategies with their beneficiary. They may also educate the beneficiary about basic court procedures and court etiquette.

⁶⁷ Lilongwe Declaration and Plan of Action on Accessing Legal Aid in the Criminal Justice System in Africa, 2004.

⁶⁸ Barry Walsh, In Search of Success: Case Studies in Justice Sector Development in Sub-Saharan Africa, pag. 20-21

The assistance of a legal aid provider is even more crucial at the time of entering a plea: it would certainly be desirable to have a lawyer available to give advice about the consequences of pleading guilty or making a formal admission. When the extent of court delays is as long as years, it could happen that women held for minor offences could remain in detention awaiting trial for longer than the likely prison sentence if convicted for the offence. In these circumstances, a guilty plea or admission of guilt and contrition by an innocent detainee could result in her being released earlier than she actually awaited trial.⁶⁹

A step-by-step guide to the role of legal aid providers during the pre-trial stage

The following is a summary guide of all the steps legal aid providers may take during the pre-trial stage:

- Determining vulnerabilities and special needs;
- Gathering relevant information from the police or any other investigative authority and from the beneficiary;
- Checking the legality of the actions of the police and other authorities;
- Providing advice before, during and after an interview;
- Taking appropriate actions on behalf of the beneficiary;
- Liaising with family members;
- Representing the beneficiary at pre-trial hearings;
- Recording any relevant information.

1. Determining vulnerabilities and special needs⁷⁰

The first duty of a legal aid provider who first comes into contact with a legal aid beneficiary is to ascertain any vulnerability or possible special needs of the beneficiary. In this regard, a legal aid provider should:

Verify the age of the beneficiary: the legal aid provider should ascertain whether the beneficiary is a minor, and therefore entitled to age-appropriate assistance, tailored to meet the special needs of a child. The first obvious step is to try to obtain a birth certificate, as the official document proving the age of a child. The inability to prove a child's age may cause children accused of a crime to be prosecuted as adults. When necessary, the legal aid provider should liaise with social and other professionals. Medical records from the hospital where the child was born, or baptismal records may be useful documents to prove a beneficiary's age. It would be appropriate, until the age determination is made, to persuade the police or other relevant authority to treat the beneficiary as a child. If the beneficiary is a minor, the case

⁶⁹ Id.

⁷⁰ UNODC, Early Access to Legal Aid in Criminal Justice Processes, *supra*, note 39, pag. 91-100.

should be diverted to juvenile courts and, when appropriate, even diverted from the formal criminal justice system.

Ascertain whether the beneficiary speaks the language of the proceedings and is able to read: it is essential for the beneficiary to understand and speak the language of the proceedings, in order to be informed of her rights, comprehend what the applicable law to the alleged offence is and communicate with her legal aid provider. It is the responsibility of the legal aid provider to ensure that an interpreter is made available.

Determine whether the beneficiary has any vulnerability or special need: The UN Principles and Guidelines call for ensuring equity in access to legal aid for women, children and groups with special needs and mention the elderly, minorities, persons with disabilities or mental illnesses, persons living with HIV/AIDS and other serious contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons. The legal aid provider should ascertain whether the beneficiary is affected by intersectional discrimination in order to provide effective assistance.

2. Gathering relevant information from the police or any other investigative authority and from the beneficiary

At this stage a legal aid provider must gather as much information as possible about the case, in order to be able to effectively protect the rights and advance the interests of his or her beneficiary. Relevant information can be collected from the police, the beneficiary or any other authority.

From the police, the legal aid provider should try to gather information about the reasons and circumstances of the arrest. Information about the legal ground for arrest and the facts of the case are useful to question the validity of the arrest or file a motion for pre-trial release. If the provider is allowed access to case file, he or she should gather as much information as possible about the evidence that is in the hands of the police or other authorities. This would allow the provider to advise the beneficiary about the likely course of the investigation and effectively prepare a defence strategy.

It is important to cross-check the information obtained from the police with the beneficiary's version of the facts and circumstances of the arrest. This is important for two reasons: first, the legal aid provider must establish whether the beneficiary has been mistreated and act to protect her; and second, to prepare an effective defence strategy, the provider must know how strong the prosecution case is. Here, communication skills are essential to ensure that the beneficiary feels comfortable in telling the truth to the provider. The beneficiary must disclose all information and the provider must take note of any evidence that is supportive of innocence or mitigating circumstances.

3. Checking the legality of the actions of the police and other authorities

As mentioned above, the legal aid provider is responsible for ascertaining whether the power of arrest was exercised legitimately, how the beneficiary is being treated while detained, and whether any investigative action taken by police or prosecutors, such as interviews, were performed in compliance with the law. If the legal aid provider becomes aware of any unlawful actions by the police or prosecutors, he or she must bring it to the attention of the relevant authorities and consider whether there is legal ground for litigation.

4. Finding out whether ill-treatment occurred and taking relevant action

As mentioned above, for beneficiaries held in police custody or prison, it is important to make inquiries about potential ill-treatment the beneficiary may have suffered during arrest or imprisonment, such as threats or physical harm that may amount to torture. If there are indications, it is important to collect necessary evidence from the beneficiary such as information about time, place, duration and type of ill-treatment, and the identity of the person mistreating them, if known to them. Immediate action should be taken where medical or psychological support is needed, and timely legal action is required, including applications for immediate release on bail or other alternatives to imprisonment.

If the right to confidential consultations between legal aid provider and client is not respected and cannot be enforced, it is advisable to be careful in discussing certain questions openly that may put the beneficiary in harm's way or continue the situation of risk of victimization. It may be less of a risk to write down questions and information or take other safety measures.

5. Providing advice before, during and after an interview⁷¹

Liberian and Senegalese law does not specify whether a legal aid provider can be present and provide advice and assistance during police interview. The Legal Aid Act of Sierra Leone, on the other hand, provides for legal aid from the moment of arrest. The United Nations Principles and Guidelines call on States to guarantee legal aid at all stages of the criminal justice process and to introduce measures to inform every person detained, arrested, suspected or accused of, or charged with a criminal offence:

- of his or her right to consult, if eligible, with a legal aid provider at any stage of the proceedings, *especially before being interviewed by the authorities;*
- of his or her right to be assisted by a legal aid provider *while being interviewed and during other procedural actions;*

⁷¹ Ed Cape, *Defending Suspects at Police Stations: Practitioner's Guide to Advice and Representation*, 6th ed. (London, Legal Action Group, 2011).

Guideline 3 also provides that States should introduce measures to prohibit, in the absence of any compelling circumstance, any interviewing of a person by the police in the absence of a lawyer. An interview should not start until the legal aid provider arrives.

Before the first interview takes place, the legal aid provider should give *information* about:

- the law governing the alleged offence;
- the applicable penalty;
- any investigative act the police might carry, such as searches, the taking of fingerprints or blood tests;
- the beneficiary's right to silence during the interview, including any consequences of exercising this right;
- what questions the police are likely to ask during the interview.

The legal aid provider should also give *advice* as to whether to answer questions or release statements; and how to behave during the interview.

During the interview, the legal aid provider, if allowed to be present, should:

- ensure that the interview is conducted in a gender-sensitive way;
- intervene in case of improper questioning;
- remind the beneficiary of his or her right to remain silent and advice about when to exercise this right;
- ask to record the interview.

Most police officers are not trained in gender-sensitive interviewing techniques and may take advantage of the fact that social norms see women as weak and easy to coerce into confession. Legal aid providers should intervene in these cases and prevent their beneficiary from signing any statement that could have serious implications.⁷²

⁷² UN Women, UNDP, UNODC, OHCHR, A Practitioner's Toolkit on Women's Access to Justice Programming, *supra* note 30, pag. 271. In this regard, the Criminal Procedure Law of Liberia provides: "Cautions to be given to the accused on interrogations - No peace officer or other employee of the Republic shall interrogate, interview, examine, or otherwise make inquiries of a person accused or suspected of an offense, or request any statement from him, including a confession of guilt, without first informing him of the following:

(a) The nature of the offense of which he is accused or suspected;

(b) That he has the right to have legal counsel present at all times while he is being questioned or is making any statement or admission;

(c) That he does not have to make any statement or admission regarding the offense of which he is accused or suspected;

(d) That any statement or admission made by him may be used as evidence against him in a criminal prosecution." Criminal Procedure Law of Liberia, *supra*, note 45, Sec. 2.3.

After an interview has taken place, the legal aid provider should ask for a consultation with the beneficiary to decide and advice on the possible course of action, based on what actions the police intend to take, such as further investigation or the bringing of charges before a court.

Legal aid providers should keep in mind that any advice or information should always be given in a way that the beneficiary is able to understand and that caters to the needs of women.

6. Taking appropriate actions on behalf of the beneficiary

The pre-trial phase is also a stage when the legal aid provider may take certain appropriate actions on behalf of the beneficiary, such as applying for bail or seeking to divert the case from the formal criminal justice system

7. Liaising with family members

If authorized by the beneficiary, a legal aid provider should seek to contact the beneficiary family or any other relevant people. The United Nations Principles and Guidelines recognize the right of detainees to promptly notify family members or any other appropriate person of their choosing, of their detention and location.⁷³ Relatives, friends, work colleagues might be useful to the case, as they might be of help in collecting evidence (they might serve as witnesses) or act as sureties.

8. Representing the beneficiary at pre-trial hearings

A legal aid provider should represent a beneficiary at any pre-trial hearing, particularly when detention pending trial is discussed. At pre-trial hearings, a legal aid provider must also ensure that any action is taken in accordance with the law. Any unlawful activity should be objected and reported. Women with childcare responsibilities or pregnant women will be most affected by a decision to arrest. It is the job of the legal aid provider to make sure pre-trial detention is imposed as a last resort measure. Bring up the difficulties for these women during pre-trial detention at the hearing.

9. Recording any relevant information

The legal aid provider should keep a file to record of all relevant information about the case, starting from the first meeting with the beneficiary. Such information includes:

- Information about the beneficiary, the charges and any relevant circumstance of the case;
- All relevant times of actions taken by the authorities, such as arrest, interviews, meetings with the authorities;
- Any actions taken on behalf of the beneficiary;

⁷³ United Nations Principles and Guidelines, *supra* note 8, Guideline 3, para. 43(e).

- The recording or transcription of interviews;
- Any other investigative actions taken by the authorities, such as searches, the taking of fingerprints, blood tests, etc.

First meeting with a legal aid beneficiary: general considerations for interviewing women beneficiaries

The first meeting interview is critical because it is the first interaction the legal aid provider has with the legal aid beneficiary. It sets the tone for the relationship, helps build trust and enables the legal aid provider to understand the facts and develop a theory of the case.⁷⁴

Legal aid providers may consider the following steps in preparation for a first meeting with the beneficiary:

1. *Greet and make client feel comfortable.* If the first meeting is at a place of detention, inquire immediately about the beneficiary's well-being and the facilities' conditions. When necessary, report any irregularities or unlawful treatment. If the first meeting is at your office, offer the beneficiary a seat and some water. For her to feel comfortable, the meeting should not be rushed. Make sure to have enough time for this meeting.
2. *Introductions.* If you are a court-appointed public defender, introduce yourself and explain your role. Make clear to the beneficiary that you are there to help and that you can provide legal aid at no cost for her. If, on the other hand, it is the beneficiary who has contacted you, introduce yourself, explain your role, and say briefly what your organization does and what services you can provide. Take the beneficiary's contact details, including name, date of birth, address, occupation. Ask, whenever this is possible, if the beneficiary prefers to deal with a female provider.
3. *The interview.* Explain how the interview process will proceed, i.e. that you will take notes during the course of the interview and ask a number of direct questions. Then, ask the beneficiary to tell you the facts of the case.
 - a. Start with a simple, non-intimidating question, such as: *"So, how can I help you?"* or *"Would you like to tell me what happened?"* Reassure the beneficiary at this point that she can talk without fear: *"You don't have to be afraid, I am here to help, as much as I can."*
 - b. Remind the beneficiary about your duty of confidentiality: *"You can feel free to*

⁷⁴ Open Society Justice Initiative and Timap for Justice, *Improving Pre-trial Justice in Sierra Leone*, 2012, pag.7-10; The Legal Aid Forum – Rwanda, *The Paralegal Practice Manual, A Guide to Paralegal Roles and Techniques*, 2009, pag. 11-22.

talk to me. I will not tell anyone what you are going to tell me. I have an obligation to keep our conversation secret, including your name and any information I have about you.” For this purpose, whenever possible, the conversation should be private.

- c. When the beneficiary starts talking it is important not to interrupt her. Be patient: the beneficiary might be embarrassed or ashamed, so give her time to talk. Do not show signs of irritation; listen attentively, while being respectful and non-judgmental.
- d. When the beneficiary has told the facts of the case, you may ask questions to clarify important points. It is always advisable to ask open-ended questions to provide the beneficiary with an opportunity to add more details that could be important for the case. Leading questions should be avoided as they may elicit only a “yes” or “no” response.
- e. You want to make sure to have as much information as possible about the case and as many details as possible:
 - i. Ask questions about any parties involved: *“Who...?” “How many...?” “Was anybody else present? Can you tell me who it was?” “Could you describe them?”*
 - ii. Ask questions about the place of the crime: *“Where did it happened?” “Can you tell me the address?” “Did you see anything nearby that can help us understand where you were? A restaurant? A gas station? A school?”*;
 - iii. Ask questions about the date and time of the events: *“When? At what time?”* If the beneficiary does not remember the time, ask questions to try to tie chronological or temporal events to things that might be important to the beneficiary, for example a beneficiary might be able to say if the events took place before/during/after work, before/during/after school, before/during/after lunch or dinner, before/after/during a TV program.⁷⁵
 - iv. Ask questions about the way something happened: this information is crucial to understand whether your beneficiary acted in self-defence, or out of fear. *“How did he threaten you? Was he carrying a weapon?” “How did he assault you?” “How did you hit him? Can you show me?”*
 - v. Ask questions about things that were said: people’s statements, such as

⁷⁵ John, E.B. Myers, *The Child Witness: Techniques for Direct Examination, Cross-Examination, and Impeachment*, 18 Pac. L. J. 801., pag. 827.

threats, may offer a defence;

- vi. Ask questions about feelings: “How did you feel (scared, angry?)?” “How was your aggressor? (angry, scared, violent)” “What was the tone of his voice? (frightening, threatening).”
 - f. Overall, make sure to understand the nature of the case, and that the information is clear and non-contradictory. Always follow-up with more specific questions to clarify any facts or fill any gaps in the beneficiary’s statement.
4. *The course of action.* The interview will have helped you to identify the relevant issues of the case. Try to identify the theory of the case you may develop and explain to the beneficiary the various options available. Be reasonable at this point and do not raise the beneficiary’s expectations beyond what you can realistically achieve. Agree on the next steps together. Remember that you can guide your beneficiary throughout the decision-making process, but she has the right to make the final decision.
 5. *Follow-up.* Say good-bye and tell the beneficiary when you will visit next or show the beneficiary the way out.

At any time during the meeting you may realize the beneficiary is particularly vulnerable and in need of specialized assistance, food, medicines or shelter.

It is useful to develop certain skills in order to effectively interview a beneficiary, meaning respecting her dignity while at the same time obtaining all relevant information. Legal aid providers may consider the following:

1. Ensure that your body language makes the beneficiary feel at ease and feel that you are listening to her and are interested in the conversation;
2. Be attentive and focused, maintain eye contact, whenever possible while taking notes;
3. Be neutral: do not be too moved or shocked by the beneficiary’s statement. You want to be sympathetic without being biased, and non-judgmental;
4. Remove any distractions, such as music in the background. Make clear the beneficiary has your undivided attention;
5. Use a friendly, non-intimidating tone of voice, and ask one question at the time. If the beneficiary does not understand the question, try to repeat it using simpler words;
6. Show confidence and command of the subject matter, while at the same time avoiding technical language so that the beneficiary can understand.



Exercise 2: Pre-trial detention

Tell the participants the following story and then ask them the questions below for discussion.

Fatima, a housewife and mother of two small children, is accused of pickpocketing wallets. It is the first time that she has been accused of any crime. She was only seen at the market in the area where three people got their wallet stolen. However, after experiencing a beating from the Police she confessed that she was the one who stole them. The court issued an order for pre-trial detention and Fatima is now being detained in prison. Fatima has not consulted with a lawyer and has not been examined by a prosecutor. Her case has been under investigation for the last 6 months.

- Does the case allow for the release of the client Fatima from detention during the period of investigation?
- If yes, what elements support this position?
- Do you see any principle (s) violated in this case?
- If you were Fatima's legal aid provider, what first step would you take to assist her? How would you argue for it?

The box below can be used for handouts:

Alternatives to Pre-Trial Detention in Liberia, Senegal, and Sierra Leone

Liberia

In Liberia accused persons can be released on bail or upon their personal recognizance or by sufficient sureties, depending upon the gravity of the charge. A person in custody for the commission of a capital offense is entitled to be admitted to bail unless the proof is evident or the presumption great that she is guilty of the offense. A person charged with the commission of a non-capital offense is entitled to be admitted to bail.

(Constitution of Liberia, art. 21(d); Criminal Procedure Law of Liberia, Chapter 13)

Senegal

In Senegal, a temporary release from pre-trial detention can be granted by the investigative judge upon advice of the prosecutor, on recognizance, meaning as long as the accused commits to be present at any procedural act and informs the investigating judge of her whereabouts (Code de Procedure Penale du Senegal, art. 128). However, the accused herself, or her counsel can also request a temporary release from pre-trial detention, under the same conditions. If after release the accused does not appear, or if new circumstances will make pre-trial

detention necessary, the investigating judge will issue a new order for pre-trial detention. Temporary release may be subordinated to the payment of a sum of money that covers:

- (a) Costs advanced by the civil party;
- (b) Costs made by the party public;
- (c) Fines;
- (d) Restitution and damages.

(Code de Procedure Penal du Senegal, Arts. 128-129 and 133.)

Sierra Leone

The Court may admit to bail a person charged with any felony, except for murder or treason, unless it sees good reason to the contrary. The accused who is to be admitted to bail must procure sureties as the Court considers sufficient to ensure her appearance as and when required. The Court may also dispense with sureties if, in its opinion, this will not defeat the ends of justice.⁷⁶

In Sierra Leone, the police also has power to admit to bail on recognizance, when an accused person is arrested without warrant for any offence other than murder or treason; or when the accused is arrested under a warrant issued by the Court and the Court has authorized release on recognizance with sufficient sureties.⁷⁷

(The Criminal Procedure Acts of Sierra Leone, 1965, arts. 29 and 79-80)



Exercise 3: Conducting gender-sensitive interviews

Tell the participants the following story:

Marie, a fruit and vegetable vendor, has been married for 5 years and has two children. When she comes home from the market, Marie takes care of the house and prepares dinner, while her husband goes to a bar and comes home drunk every night and beats Marie. If Marie refuses to have sex with him, he forces her to. She is constantly covered in bruises and often complains about her husband with her neighbour, Anna, and with a husband and wife vendors at the market. One night, Marie's husband comes home with his friends from the bar to have dinner, he offers Marie up to them, and watches as they gang-rape her, only to beat her afterward for "allowing" the rape to happen. While he chases her around the house with a bat, threatening to kill her, Marie manages to run to their bedroom, takes her husband's gun and kills him. Anna and her husband

⁷⁶ The Criminal Procedure Acts of Sierra Leone, 1965, art. 79

⁷⁷ Id. Art. 80 and 29

had heard Marie screaming and rush to their window to see Marie run to the bedroom and shooting her husband.

Tell the participants you will play Marie, who is meeting for the first time with her legal aid lawyer and ask for volunteers to practice interviewing her. The class is divided into groups of 3-6 persons. Each group is to work together to produce written questions in the form of a list, then one volunteer per group will practice interviewing the trainer, based on the prepared questions.

You can play with different scenarios: for example, she can be in police custody, or in pre-trial detention, or she has gone to an NGO that offers free legal aid.



Exercise 4: A step-by-step guide to the role of legal aid providers during the pre-trial stage

Ask the participants to write down the main steps legal aid providers should take during the pre-trial stage. Go over them together and then distribute the step-by-step guide to the role of legal aid providers during the pre-trial stage as handouts to the participants.

Phase 2. Legal Aid at trial

Defence strategies: developing a trial plan

In preparation for trial, a legal aid provider should develop a defence strategy. Developing a defence strategy varies considerably from case to case and is typically designed as the criminal defence attorney uncovers more information about the case, both from the police and prosecutors and from the beneficiary. A legal aid provider should always make the beneficiary comfortable to tell the truth and explain that she will only benefit from telling her counsel the truth. For example, if a woman is charged with killing her husband, the “truth” may be that the woman was acting in self-defence or that she had been a victim of physical and emotional abuse in the months before the murder.

A legal aid provider should keep in mind the information received from police and prosecution as to any evidence they have at their hand against her beneficiary and incorporate this information into the defence strategy. For example, a defence strategy should be based on the following elements:

Consistency with verifiable evidence – If the beneficiary’s fingerprints were found at the crime scene, the defence’s version of the facts should explain why they were there.

Potential to win sympathy in a courtroom – Your version of the facts might explain that you tried to prevent the crime from occurring.

Explaining the reason for events relevant to the defendant’s version – For example, if you claim you were not in town when the crime occurred, your version of the story should explain why.

A competent defence attorney will make use of the most favourable version of events to develop a defence strategy that will produce an agreeable outcome in the criminal case such as a not guilty verdict, a guilty verdict of a less serious charge, or a satisfactory plea bargain, in those jurisdictions where this applies.

The first step in developing a defence strategy entails a decision about whether to plead innocent or guilty. It is the provider’s responsibility to advise the beneficiary in this matter, but the views, concern and ultimate decision of the beneficiary must be respected. If a “not guilty” plea is entered, the defendant’s version of the facts may be a:

“Complete denial” story: in this instance, a defendant’s version of events completely denies the prosecution’s claims. An “alibi” is an example of a complete denial story.

An alibi is a defence that places the defendant in a different place than the crime scene, so that it would be impossible to commit the crime.

Or, alternatively, an:

“Admit and explain” story: in this case, the defendant admits that some of the prosecution’s claims are correct but declares some reservations or critical differences.

If the defence opts for a “guilty plea,” the defendant shall make a:

“Confession”: in this case, the defendant’s version of events is in accordance with the prosecution’s claims.

In formulating a defence strategy, a skilled defence attorney must develop a “theory of the case” that is agreeable with the evidence and favours the defence. The theory of the case is the legal theory by which the beneficiary is not guilty of the crime of which she is accused. The legal theory may be based on a criminal defence, which is evidence offered by the defendant to defeat a criminal charge. A legal aid provider must be familiar with available criminal defences, both when representing a woman accused of a crime and when assisting a victim of a crime, to dismantle a possible defence of the alleged perpetrator.

Some examples of common criminal defences are explained in more detail below, including *alibi*,

self-defence, insanity, coercion and duress, consent, necessity and mistake.

An *alibi* is a defence that places the defendant in a different place than where the crime occurred.

Self-defence is an excuse for the use of force in resisting an attack. The reaction must be immediate and commensurate to the attack received in order to be treated as self-defence.

Claims of self-defence by women who have been victims of violence, particularly in cases of battered woman syndrome,⁷⁸ should be raised by legal aid providers to obtain an acquittal or the application of mitigating circumstances.

Abuse is a specific defence in which the defendant argues that a prior history of abuse caused a violent retaliation. Women victim of domestic violence or repeated sexual abuse, for example, may resort to the use of force to defend themselves because of the abusive and sometimes life-threatening situation in which they find themselves. When abuse is not a defence in its own right, defence lawyers may generally use a history of abuse to establish a connection to an existing defence. For example, if the defence lawyer is able to successfully prove a pattern of abuse, the court or jury may conclude that the defendant's actions were reasonable when acting in self-defence.⁷⁹

Insanity is a defence available to mentally ill defendants who can prove that they did not know the difference between right or wrong or did not appreciate the criminality of their conduct.⁸⁰

Coercion and duress is a criminal defence that claims that the defendant was forced to commit a crime because he or she was threatened with unlawful force. Duress or coercion can also be raised in an allegation of rape or other sexual assault to negate a defence of consent on the part of the person making the allegation.

Necessity is a defence that can be used if a crime was committed in order to prevent a greater crime from taking place. For example, someone who stole a car may claim that she took the car to escape being kidnapped.

Mistake: Legal aid providers should be able to distinguish between mistake of law and mistake of fact. A generally accepted principle is that ignorance of the law is no excuse.

However, mistake of fact may be a defence where: (a) the mistake is such that, had the

⁷⁸ Battered woman syndrome is suffered by women who, because of repeated violent acts by an intimate partner, may suffer depression and are unable to take any independent action that would allow them to escape the abuse, including refusing to press charges or to accept offers of support. Campbell, J.C., Battered Woman Syndrome: a Critical Review, Violence Update 1990; 1(4): 1, 4, 10-1.

⁷⁹ Women who kill in response to domestic violence, How do criminal justice systems respond? A multi-jurisdictional study by Linklaters LLP for Penal Reform International, 2016, pag. 5.

⁸⁰ Gordon Brown, Legal Terminology, 5th Edition, 2008, pag. 87.

circumstances been how the defendant believed them, it would have prevented the alleged offence being imputed on him, (b) it negates the criminal intention of the offence or (c) if it is an honest mistake.

The legal theory guides the investigation and preparation of the case and directs the presentation of the case at trial. For example, if the theory is that the defendant had an alibi, then the attorney's efforts should focus on finding evidence to demonstrate that the beneficiary was, in fact, in a different place at the time of the commission of the crime. However, the attorney must be ready to re-evaluate and change the theory of the case during trial if it is weakened by undisputed evidence presented by the prosecution. Clearly, the final theory can only be determined once the advocate has thoroughly researched the law and investigated the facts.⁸¹

In preparing the case for defence, the attorney may take two main paths: 1) striking down the prosecution evidence, as flawed or erroneous; and 2) an affirmative defence, to collect and introduce exculpatory evidence. The attorney may prompt the official authorities, such as the judge, police and prosecutor to investigate potentially exculpatory evidence, or undertake his or her own investigative work. The first approach is more common in civil law jurisdictions, which adopt an "inquisitorial" system, one that aims to get to the truth of the matter through extensive investigation and examination of all evidence controlled by the judge. The second approach is more typical of common law jurisdictions, (although it is being adopted in civil law countries as well) which adopt an "adversarial" system, one that aims at getting to the truth through the open competition between the prosecution and the defence to make the most compelling argument for their case.

The attorney might seek, for example:

- to demonstrate that the police investigation was flawed with errors, for example because the technique used to analyze fingerprints was wrong;
- to discover and prove that a witness for the prosecution is lying, or untrustworthy;
- to introduce facts that were omitted from the police investigation, for example that the beneficiary acted in self-defence, or acted as a result of a history of abuse, or was forced to commit the crime by necessity.

In conducting investigation, the attorney may work alone or in cooperation with professional investigators and may undertake specific tasks, such as obtaining documents; producing crime scenes and pictures; searching for witnesses; conducting victims and prosecution witnesses background checks.⁸²

A legal aid lawyer should keep in mind that the theory of the case must not necessarily reflect his or her opinion about the beneficiary or the crime. Legal aid providers just have a duty to

⁸¹ UNODC, Criminal Legal Aid Manual for Law Practitioners in Somaliland, *supra*, note 44, pag. 95-96.

⁸² *Id.*, pag. 90-91.

professionally provide the most effective defence available to the beneficiary, regardless of their personal opinion of the beneficiary's guilt or innocence. It is also perfectly acceptable to have a theory of the case that does not portray the beneficiary in a positive light, as long as the theory is convincing, and it leads to conclusions in your beneficiary's legal interest.



Exercise 5: Developing a trial plan

Based on the story of Marie, ask the participants the following questions:

- What defence strategy would you use in this case?
- What kind of evidence would you collect for this case?
- Who would you call to testify as a witness for the defence?
- Would the testimony of Anna and her husband, and of the husband and wife market vendors bear the same weight, according to normative and judicial practices in your country/region/district?
- Could Anna and her husband's testimony as eyewitnesses be attacked?
- Would you call an expert witness to testify? Which one?

Note: In Liberia, Senegal and Sierra Leone there is no legislative basis for a history of abuse to be considered as a mitigating factor. In jurisdictions where abuse is not contemplated as a defence by law, women accused of a violent crime which they have committed in retaliation for domestic or sexual abuse need to usually rely on self-defence, temporary insanity and provocation where available.

Examining witnesses

As legal aid providers and service providers, information on witness examination is crucial both when assisting a woman accused of a crime and when assisting a victim of gender-based violence against women. In cases of violence against women the testimony of the victim is a central piece of evidence, especially in cases of domestic violence, perpetrated in the private sphere, where there is usually no other witness than the victim herself.

This section explains how to examine these witnesses with special care and consideration for their status.

The ability to effectively question witnesses is one of the most important skills for an attorney and therefore for a legal aid provider. A legal aid lawyer must develop the ability to examine witnesses based on the rules of criminal procedure. In criminal cases involving women, either

accused, or victim or witness, a legal aid provider or service provider has the crucial task of ensuring that myths and gender stereotyping do not corrupt the examination process both when assisting women and men.

The examination of one's own witness is called "examination in chief" or "direct examination." During this phase, the attorney must only ask questions related to the facts of the case of which the witness has direct knowledge and in such a way as to draw the information from the witness in the witness's own words without asking *leading questions*, which are questions that suggest to the witness the desired answer. For example, it is better to ask: "*Where were you on the night of October 22, 2018?*" rather than: "*Isn't it true that you were at a restaurant with the defendant on the night of October 22, 2018?*" This second question may seem like you are reminding your witness what to say.

It is better, during the examination in chief, to try to get a narrative response, and utilize questions also to establish the credibility of the witness. For example, it is better to ask: "*Tell us what happened on the night of October 22, 2018*" rather than "*Did something happen on the night of October 22, 2018?*" The first question is more likely to produce a detailed answer, while the second may just get a "yes" or "no" response.⁸³

It is also good practice to prompt the witness to give more detail with follow-up questions, to try to get the maximum benefit from the testimony. For example, the attorney may ask: "*You said the defendant looked very frightened, what signs of fear did you notice?*" If the witness gives details that can make a good case for the defence, it is useful to repeat the witness's words, as to reinforce the testimony and draw the judge's attention on those words.⁸⁴

When the defence attorney does not have further questions, the prosecutor has the right to question the defence witness in cross-examination. It is likely that the prosecutor will undermine the defence witness's testimony. It is wise to keep in mind any bad facts that the prosecutor will likely bring up and prevent this by trying to explain them or putting them in a positive light during the examination in chief. It is also useful to prepare the witness on the type of questions he or she may receive from the prosecutor in cross-examination and warn him/her that she should never engage in an argument with the prosecutor and never answer a question he/she does not understand. It is also helpful to instruct the witness not to make general statements like "*I never lie*" or "*I never lose my temper*" because a skilled prosecutor may easily raise examples against those claims and weaken the witness's testimony altogether.

When cross-examining the prosecution's witnesses, a legal aid provider should keep in mind that he/she is now allowed to ask leading questions, and that the style of questioning should be the opposite of the style adopted during the examination in chief. The witness for the prosecutor will likely be hostile to the defence and it is better to ask leading questions to basically allow the

⁸³ Id., pag. 106.

⁸⁴ Id., pag. 107.

attorney to testify and the witness to ratify. For example: *“Isn’t it true that you had asked the defendant/name to marry you?” “And she refused, is that correct?” “Isn’t it true that you then decided to abduct her?”*

When the case is open for defence, the accused may make a statement and he or she may not be cross-examined by the prosecutor on that statement, but the court may ask him or her questions to clarify any doubtful points of the statement.

Some simple rules may contribute to a successful witness examination:⁸⁵

- *Always prepare:* the attorney must prepare in order to know what topics to cover. If the attorney appears vague on the detail, the judge will think those details are not important. Preparation involves discovering background facts, such as character, employment history, medical history, prior statements and every other important detail. It is useful to prepare a trial notebook, with separate pages for each witness, so that all points for the examination can be listed for each witness.
- *Have your objective in mind:* decide what points you want to make with the witness and tailor the examination to making that point. It is not a good sign if the judge is unsure about where the examination is headed. The overriding objective should be to advance your trial plan, or theory of the case by getting favourable materials to be used in your closing argument. Having your objective firmly in mind, you must choose the appropriate instrument for the specific situation. For example: your objective might be to demonstrate that a prosecution witness’s eyesight is not sharp; or that a prosecution witness is not reliable because a prior statement contradicts what he or she has testified in the examination in chief.
- *Use simple, plain words:* the witness examination should be a step-by-step journey made of small questions about one new fact per question. In asking questions, use simple, plain words. If you are trying to make a point that requires some technical knowledge, reduce the technical to the simple and reinforce points that are made by the witness, so that the judge notices the advantage. For example: *“Mr. Koroma, you just said that...is that correct?”* This cements the testimony in the mind of the judge.
- *Lead the witness in cross-examination:* as mentioned before, asking leading questions will put you in charge of the cross-examination and will not leave the witness free to give out information that might be dangerous. Ask nothing which provides an excuse to “explain.”
- *Know your audience:* Not all judges are equal. And it is wise to find out as much information as possible about an unfamiliar judge. Information about the judge’s

⁸⁵ Timothy A. Pratt, The Ten Commandments of Cross-Examination, Federation and Defence and Corporate Counsel Quarterly; Winter2011, Vol. 61 Issue 2, pag. 178; John, E.B. Myers, The Child Witness: Techniques for Direct Examination, Cross-Examination, and Impeachment, 18 Pac. L. J. 801.

education, regional, ethnic and religious identity, political affiliation, personal beliefs and prior judgments might be useful.

- *Do not ask a question without knowing the answer:* Sometimes a lawyer will ask questions in the vague hope that they will produce something beneficial. This is a gamble that might produce disastrous results, especially in cross-examination. It is better to ask questions with a purpose, so that the judge will hear an answer you already know.
- *Do not argue with a witness:* Do not get angry, loud, tough, judgmental, or confrontational with the witness. Do not allow yourself to move from questioning into quarrelling or arguing with the witness.



Exercise 6: Examining witnesses

In the story of Marie, the prosecutor calls for witnesses and expert witnesses to testify:

- on Marie's sexual history prior to her marriage;
- on Marie's character, as too "friendly, chatty, and provoking" with customers at the market;
- on how the night she killed her husband she was dressed and behaved in a way that led the husband friends to believe she consented to sex;
- on how Marie's bruises are not compatible with beatings.

Ask the participants: What strategy would you adopt in cross-examining these witnesses?

Impeaching a witness

When examining a witness, a party may try to obtain favourable information from the witness or opt to discredit him or her through impeachment. Impeaching a witness's testimony means to challenge it for truthfulness by cross-examining the witness about facts that reflect poorly on the witness's credibility or by introducing evidence that contradict the witness's statements or reflect negatively on his or her truthfulness. Impeaching is more frequent in cross-examination, although it is possible to impeach one's own witness when examining an adverse party or a hostile witness.⁸⁶

⁸⁶ Mason Ladd, Some Observations on Credibility: Impeachment of Witnesses, 52 Cornell L. Rev. 239, 1967.

There are different ways to impeach a witness:

A lawyer may demonstrate a witness's *bias*, such as a blood relationship to a party or a specific interest in the outcome of the trial, or a bias against certain groups, such as women, persons of certain faith, or ethnic groups.

It is also possible to impeach a witness by introducing evidence of “bad character” such as prior convictions or truthfulness, through reputation or opinion testimony. Specific attention needs to be paid to avoid methods that rely on harmful gender stereotypes and result in gender-based discrimination, thus violating the rights of the witness. For example, when questioning victims or complainants in sexual violence cases, it is not permissible to introduce evidence of their unrelated sexual history.⁸⁷ The stereotype that women with more sexual experience are of “bad character” and more likely to make a false allegation has been refuted by research.

A very effective way of impeaching a witness is using a witness's own statement that is inconsistent to what he or she is testifying in court.⁸⁸ For example, it is possible to use a statement taken by the police or by the prosecutor. This method is used to challenge the witness's truthfulness and weaken his testimony. The same effect can be achieved by using any documentary evidence that contradicts a witness's statement, such as employment records; by introducing a subsequent impeaching witness to complete the impeachment; or by inducing the witness to contradict himself or herself during the course of the examination or cross-examination.

Expert witnesses

Expert witnesses are professionals who have expertise and specialized knowledge in a certain field by virtue of education, training, skill or experience, so that their opinion is more reliable than that of the average individual. Expert evidence can assist in providing context for the judge to understand the challenges courts face in dealing with certain types of cases. For example, in domestic violence cases, complainants commonly recant. Depending on national legislation, an expert witness could be called to explain the reason why the victim is uncooperative at court, recants her statement or fails to appear. Legal aid providers could consider the following when developing questions for the expert:

- Power and control exerted on the victim.
- Recantation, denial and minimization as typical of many, but not all, victims.
- Confusion, love and fear experienced by victims involved with the courts, as the abuser apologizes and promises the abuse will not recur.

⁸⁷ See United Nations General Assembly, Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, A/RES/65/228, annex, para. 15(e).

⁸⁸ William Hale, Impeachment of Witnesses by Prior Inconsistent Statements, 10 S. Cal. L. Rev. 135, 1935.

- Focus on the impact of the accused's abuse on the victim.⁸⁹

It is good practice, when calling an expert to testify, to immediately establish his or her expertise by asking questions designed to offer the following information:⁹⁰

- Details of the expert's education, training, or experience that form the basis of his expertise
- Actions taken by the expert in this case that form the basis of the expert's opinion
- The expert's opinion, that relates to the case.

Just as any other witness, an expert witness may be challenged for reasons such as bias, mistake, or prejudice. In addition, an expert witness may be challenged on issues related to his or her expertise. A defence attorney may successfully attack the following matters:⁹¹

- Whether the area of the expert's education, training, or experience is one that has a generally accepted scientific basis.

Example: The expert has a Ph.D. in Philosophy and claims to be able to tell if someone is lying by observing a glowing light surrounding their body, which he can see by looking inside his hat.

- Whether the expert's, education, training, or experience is sufficient to make him an expert in the area where he claims his expertise.

Example: The expert claims to have conducted an autopsy on the victim and determined that the time of death was at 2:30 a.m. on Tuesday. However, the expert's medical school diploma is from a school that is not recognized by any government or academic institution and for many years his only work has been with sheep.

- Whether the expert employed methods recognized within the field of his or her expertise.

Example: The expert has a degree in medicine from a well-respected and accredited university. However, he claims that by examining the victim's facial expression after death he can say that the victim died of poisoning.

- Whether the expert correctly employed his methods.

Example: The expert used a special kit designed to determine that the substance seized from the accused was heroin, however, the instructions on the kit say: "Do not expose to temperatures

⁸⁹ UNODC, Handbook for Legal Aid Providers at Local Level to Provide Legal Aid in Domestic Violence Cases, 2011, pag. 42

⁹⁰ UNODC, Criminal Legal Aid Manual for Law Practitioners in Somaliland, *supra* note 44, pag. 117.

⁹¹ The following examples are taken from: UNODC, Criminal Legal Aid Manual for Law Practitioners in Somaliland, *supra* note 44, pag. 117.

exceeding 25 C° and the testing was done during the middle of the day in the hottest month of the year a laboratory that is not air conditioned.

Problems with eyewitness testimony

Eyewitness testimony can make a deep impact on a judge. Indeed, many people are convicted of a crime based on true eyewitness testimony. For this reason, it is particularly important for a defence lawyer to recognize the fallibility of witness memories.

The testimony of an eyewitness is always the tale of a perception and the process of interpretation occurs at the very formation of memory. Details may be altered because our memory is designed to filter the world – in other words, it does not operate like a camera – and because it can be modified by outside influences. We neither record events exactly as we see them, nor recall them like a tape that has been rewound. When we tell a story, we inevitably tell it with a purpose, and often tailor it to a particular listener. For example, an eyewitness to a crime is more inclined to recount, and thus remember incriminating details, when speaking to a police officer intent on solving the crime.⁹² For example, there have been cases in which a witness made an identification in a “show-up” procedure (a procedure in which witnesses are shown only the suspect at the scene of the crime or in another incriminating context) from the back of a police car hundreds of feet away from the suspect in a poorly lit parking lot in the middle of the night. A witness in a rape case was shown a photo array where only the photo of the person that the police suspected was marked with an “R”, while the rest were unmarked, and she identified the marked suspect as the rapist.⁹³

A defence lawyer should keep in mind that people are normally unable to calculate with accuracy dimensions, such as speed, time, distance, shapes, height and age. Research shows that people's ability to decipher details degrades rapidly as a person or object moves further away. At 3 meters, one might not be able to see individual eyelashes on a person's face, at 60 meters, one would not even be able to see a person's eyes. At 150 meters, one could see the person's head but just one big blur. There is equivalence between size and blurriness: by making something smaller one loses the fine details.⁹⁴

It is therefore good practice to keep in mind that there are objective factors and subjective factors that may contribute to form a memory.

⁹² Laura Engelhardt, The Problem with Eyewitness Testimony, Commentary on a talk by Barbara Tversky and George Fisher, Stanford Journal of Legal Studies, Vol. 1:1, pag. 25.

⁹³ Nancy Mehrkins Steblay, Social Influence in Eyewitness Recall: A Meta-Analytic Review of Lineup Instruction Effects, Law and Human Behaviour; and Eyewitness Misidentification, The Innocence Project, at www.innocenceproject.org

⁹⁴ Geoffrey Loftus and Erin Harley, Why is it Easier to Identify Someone Close Than Far Away?, Psychonomic Bulletin and Review, 2004.

Objective factors may be the proper functioning of the witness's senses, such as sight or hearing; the amount of light at the crime scene, whether the subject was moving and how fast.

Subjective factors may be the witness's personal background, such as character, experience, knowledge; the witness's professional background; any personal bias, toward women, or disable persons, or person of different religion or ethnicity.⁹⁵

Also, in the event of trauma, victims of crime may not be able to remember or recount traumatic events. Forgetting in the form of repression, denial, and dissociation is a common phenomenon in the aftermath of traumatic instances.⁹⁶ Therefore, the testimony of a victim of trauma might be distorted and unreliable.

The need for and use of interpreters

Accused persons who do not speak or understand the language of the proceedings must be given the opportunity to understand and actively participate in them. The International Covenant on Civil and Political Rights specifically provides that the accused shall have access to "*free assistance of an interpreter if he cannot understand or speak the language used in court*".⁹⁷ Additionally, the United Nations Principles and Guidelines call on States "*provide the services of an independent interpreter, whenever necessary, and the translation of documents where appropriate*" for all persons suspected, arrested, detained, accused and charged with a criminal offence.⁹⁸

In these cases, an interpreter might be needed also for the legal aid provider to communicate with his or her beneficiary. Because the interpreter will inevitably learn confidential information, he or she must be willing to honour the obligation to protect the beneficiary's secrets. Legal aid providers should resort to a skilled interpreter, who is not only fluent in the beneficiary's language but also familiar with legal terminology and basic law, free from conflicts of interest, and able to protect the beneficiary's confidences. For example, an interpreter may be sympathetic to the beneficiary and hide the symptoms of a mental disorder or avoid translating nonsense and try to make the beneficiary sound coherent, when in fact he or she might be hiding a mental health problem that could be used as a defence. Finally, it is particularly important to avoid using an interpreter who is in any way connected to offenders in cases where your beneficiary is a victim.

When an interpreter is used in court, a legal aid provider must ensure that speakers speak slowly and clearly, so to give the interpreter time to translate. It is also important that the interpreter translate everything *verbatim*, and not just convey the general idea of what is being said. The

⁹⁵ UNODC, Criminal Legal Aid Manual for Law Practitioners in Somaliland, *supra* note 44, pag. 103.

⁹⁶ Onno Van Der Hart and Danny Brom, When the Victim Forgets, Arie Y. Shalev, Rachel Yehuda, & Alexander C. McFarlane (Eds.), International Handbook of Human Response to Trauma, pag. 233-248.

⁹⁷ International Covenant on Civil and Political Rights, *supra* note 40, article 14.

⁹⁸ United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Guideline 3, para. 43(f).

interpreter is in no position to filter information and decide what details are important. Legal aid providers should pay attention to whether the translation is significantly shorter to the speaker's statement and notice any inconsistencies between translation and original statements.⁹⁹



Exercise 7: Group discussion: The need and use of interpreters

- Have you faced any obstacles in obtaining interpreters for your clients?
- Is funding available for interpreters?
- What are the qualifications of interpreters you have encountered in court?
- What can advocates do to ensure that their clients have qualified interpreters provided to them at no cost?

The following can be used as handouts:

The use of interpreters in Liberia and Senegal

Employment of interpreter.

An interpreter shall be used in any criminal proceeding when the defendant is present and does not speak or understand English or when a witness is examined who does not speak or understand English. Before undertaking his duties, the interpreter shall swear or affirm that he will faithfully perform them. (Criminal Procedure Code of Liberia, Section 1.12)

In Senegal, the president of the Cour d'Assise must use an interpreter if the accused does not understand the French language. When hearing witnesses, the investigating judge may use an interpreter who, if not sworn in, will swear an oath to faithfully translate the witnesses' statements.

Code de Procedure Penal du Senegal, Arts. 97 and 260

Closing argument and victim's impact statements

During this phase, a defence lawyer typically argues how the facts emerged during the presentation of evidence and cross-examination support the theory of the case. A successful closing argument combines the facts of the case with the applicable law and explains how the theory of the case makes the defendant not guilty. When the guilt of the defendant cannot be disputed, the closing argument can bring the attention of the judge to any mitigating circumstance, as supported by the presented evidence.

⁹⁹ UNODC, Criminal Legal Aid Manual for Law Practitioners in Somaliland, *supra* note 44, pag. 99-101.

For example, in a self-defence case: *“The testimony of the witnesses and the medical records of the injuries suffered by the defendant show that the victim had beat up and raped the defendant and was abducting her at gunpoint when she shot him. She feared for her life and acted in self-defence. Section 5.3 of the Criminal Code of Liberia provides that an act committed in self-defence should not be punishable. Justice demands a verdict of Not Guilty. Do not punish this young woman for something she did to defend herself from a violent rapist.”*

In this case, the defence lawyer can still make a positive contribution to the outcome of the case by seeking to reduce the penalty. The lawyer can also point to additional issues, including:

- the impact of imprisonment upon the defendant’s family;
- the defendant’s criminal records; or the defendant’s limited role in the commission of the crime.

Several bar associations promote to “know your closing argument before the beginning of the trial”, meaning to review the evidence presented at trial, to practice with other lawyers, and know the case inside-out.

Some questions to answer before a closing argument:

- What happened from your client’s point of view?
- What is your theory of this case?
- What are the key elements that require proof (by you or the prosecutor)?
- What do you expect the evidence will show?
- What are the important facts that witnesses will testify to?
- What do you want to emphasize? Do you want to use gestures, a specific type of language? Are you to convince a jury and/or a judge?
- How much time will you have?

When making a final argument, the lawyer should:

- Speak in a confident manner;
- Be serious and credible;
- Be brief and concise;
- Avoid expressions like “we believe...”, “we think...” and rather always state the legal basis for the argument.
- In jurisdictions that involve jurors: make eye contact and “engage” them by using language that non-lawyers can understand, also to help them understand the evidence.

When assisting victims, legal aid providers may introduce victim’s statements at this stage, if this applies to the jurisdiction, including a victim’s impact statement, relative to the impact that the crime had on the victim or the victim’s family (See, *infra*, Module 3).



Exercise 8: Closing argument

Based on the story of Marie, ask the participants to prepare a closing argument for this case. Several participants will then be selected to deliver their closing arguments, which will then be commented upon by the trainer and other participants.

Appeals proceedings

An appeal is a mechanism to remedy any errors that might have been committed by a lower court and it is one of the rights of an accused person. A legal aid provider must inform the beneficiary of this right; provide information as to the options available and possible outcome of an appeal; and advise the beneficiary about the decision to file for appeal.

While a legal aid provider should essentially guide the beneficiary through this decision-making process, the final resolution as to whether to appeal the court's judgment rests with the beneficiary. However, if the beneficiary is not held in custody and hard to locate, it is appropriate for the legal aid provider to lodge the appeal within any statutory deadline, when an appeal is in the beneficiary's best interest.¹⁰⁰

A step-by-step guide to the role of legal aid providers during the trial stage

1. *Know the applicable law and regulations:* Familiarize yourself with the most common crimes, diversion techniques, criminal justice principles and court procedures, including police and court bail guidelines, mandatory remand period, evidence, principles of sentencing, court social reports, rights of children under arrest or detention, the role of parents and guardians, and witness procedures.
2. *Develop case forms.* These should be confidential and organized and contain important information about a case, for example info about the beneficiary, the charge, procedural steps, collected evidence, records from an intake interview, notes about meetings, so that if a colleague needs to pick up the case, he or she will know exactly what the case is about, what progress has been made and how to follow up.¹⁰¹
3. *Always inform your beneficiary:* inform the beneficiary about available options, what your defence strategy is, explain court procedures, and empower them to make their own decisions.

¹⁰⁰ Id., pag. 125-126.

¹⁰¹ A Handbook for the Justice and Peace Commission, Best Practices of Community Legal Advice Programs, Program Assessment and Recommendations, Walter Leitner International Human Rights Clinic, Fordham Law School, 2008, pag. 5.

4. *Prepare a trial plan.* Determine a coherent, consistent defence position prior to trial. Once you have done so, you can tailor each individual part of the trial – opening statement, examination, cross-examination, to advance this plan.
5. *Prepare witnesses to testify in court*
6. *Keep a centralized database of the cases you work on.* As funds allow, it would be a good practice to record all the cases you work on.
7. *Encourage feedback and communication between legal aid providers.* Call each other frequently to discuss cases. This is an effective way to increase communication, teamwork, and feedback and to learn from each other about defence strategies, or mistakes.
8. *Respect the duty of confidentiality.* Keep all documents in case files and carefully guard the files to ensure that other parties cannot access confidential information. Always stress to the beneficiary that your services are confidential. In case of conviction and imprisonment sentence, seek to ensure that prison conditions comply with international standards.
9. *If women prisoners are victims of violence or abuse during detention,* seek medical attention, counselling, and report the instance to the appropriate authorities.
10. *If appropriate in consideration of the best interest of the child, you may file a request on behalf of the beneficiary to allow children to stay with their mother in prison.* If the request is granted, regularly monitor the condition of children.¹⁰² If children are separated from their mothers, seek to ensure that they have the maximum possible opportunity to meet with them, when it is in the best interest of the child.¹⁰³



Exercise 9: A step-by-step guide to the role of legal aid providers during the trial stage

Ask the participants to write down the main steps legal aid providers should take during the pre-trial stage. Go over them together, correcting, and adding what is missing, and then distribute the step-by-step guide to the role of legal aid providers during the trial stage as handouts to the participants.

¹⁰² The Bangkok Rules, *supra* note 59, Rule 49.

¹⁰³ *Id.*, Rule 52.

Phase 3. Legal aid during the post-trial stage

The United Nations Principles and Guidelines call on States to provide legal aid for persons suspected or charged with a criminal offence at all stages of the criminal justice process¹⁰⁴ and devote Guideline 6 to the implementation of the right to legal aid at the post-trial stage.

Guideline 6. Legal aid at the post-trial stage

46. States should ensure that imprisoned persons and children deprived of their liberty have access to legal aid. Where legal aid is not available, States shall ensure that such persons are held in prison in conformity with the law.

47. For this purpose, States should introduce measures:

(a) To provide all persons, on admission to the place of imprisonment and during their detention, with information on the rules of the place of imprisonment and their rights under the law, including the right to confidential legal aid, advice and assistance; the possibilities for further review of their case; their rights during disciplinary proceedings; and procedures for complaint, appeal, early release, pardon or clemency. Such information should be provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children and should be in a language that the person in need of legal aid understands. Information provided to children should be provided in a manner appropriate for their age and maturity. The information material should be supported by visual aids prominently located in those parts of the facilities to which prisoners have regular access;

(b) To encourage bar and legal associations and other legal aid providers to draw up rosters of lawyers, and paralegals, where appropriate, to visit prisons to provide legal advice and assistance at no cost to prisoners;

(c) To ensure that prisoners have access to legal aid for the purpose of submitting appeals and filing requests related to their treatment and the conditions of their imprisonment, including when facing serious disciplinary charges, and for requests for pardon, in particular for those prisoners facing the death penalty, as well as for applications for parole and representation at parole hearings;

(d) To inform foreign prisoners of the possibility, where available, of seeking transfer to serve their sentence in their country of nationality, subject to the consent of the States involved.

The United Nations Principles and Guidelines essentially identify four elements related to the right to legal aid at the post-trial stage:

- the provision of information on admission to a place of detention about the rules of the place;

¹⁰⁴ United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, principle 3, para. 20.

- the right to legal aid and case review, including procedures to appeal or file for pardon or sentence commutation;
- the right of providers to visit prisons to provide free legal advice and assistance;
- the right to legal aid for the purpose of filing for appeal or for requests related to treatment in prison, pardon and parole.

The post-trial stage is a phase in the criminal justice process where paralegals and legal aid service providers can play an important role. Already in 2004, the Lilongwe Plan of Action called for the establishment of paralegal programmes in prisons, for the provision of the following services:

- Legal education of prisoners so as to allow them to understand the law, and process and apply this learning in their own case
- Assistance with bail and the identification of potential sureties
- Assistance with appeals
- Special assistance to vulnerable groups, especially to women, women with babies, young persons, refugees and foreign nationals, the aged, terminally and mentally ill etc.¹⁰⁵

Types of legal aid services post trial

Legal aid providers can deliver useful services post trial. For example, legal aid providers can assist in the implementation of prisoners' basic rights, as recognized in international standards.

First, legal aid providers should seek to ensure that the right to information of prisoners and detained persons is implemented.

The United Nations Principles and Guidelines provide:

Guideline 2. Right to be informed on legal aid

(c) Police officers, prosecutors, judicial officers and officials in any facility where persons are imprisoned or detained inform unrepresented persons of their right to legal aid and of other procedural safeguards;

(d) Information on the rights of a person suspected of or charged with a criminal offence in a criminal justice process and on the availability of legal aid services is provided in police stations, detention centres, courts and prisons, for example, through the provision of a letter of rights or in any other official form submitted to the accused. Such information should be provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children; and such information should be in a language that those persons understand.

¹⁰⁵ Lilongwe Declaration, *supra*, note 62.

Information provided to children must be provided in a manner appropriate to their age and maturity [...]

The Revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) provide that:

“[u]pon admission, every prisoner shall be promptly provided with written information about:
(a) The prison law and applicable prison regulations;
(b) His or her rights, including authorized methods of seeking information, access to legal advice, including through legal aid schemes, and procedures for making requests or complaints;
(c) His or her obligations, including applicable disciplinary sanctions; and
(d) All other matters necessary to enable the prisoner to adapt himself or herself to the life of the prison.”¹⁰⁶

Second, legal aid providers can assist prisoners in communicating with the outside world. Imprisoned persons should also be able to communicate with family members or other persons of their choice. The UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment provides for the right of detained or imprisoned people to communicate with the outside world¹⁰⁷ and to promptly notify family members or other persons of their choice of their arrest, imprisonment or transfer to a new place of detention.¹⁰⁸

Foreign detained or imprisoned persons have the right to contact a consular post or the diplomatic mission of the State of which they are nationals and refugees have the right to contact a competent international organization.¹⁰⁹ In addition, the Nelson Mandela Rules recognize the right of prisoners to communicate with family and friends at regular intervals by receiving visits and by corresponding in writing or via telecommunications, where possible.¹¹⁰

Paralegals and legal aid service providers such as NGOs are particularly well suited to provide assistance in liaising with family members or contact persons, especially when shortage of lawyers makes it really difficult for public defenders and private lawyers to provide this kind of assistance to detained or imprisoned beneficiaries.

¹⁰⁶ United Nations, General Assembly, Resolution 70/175, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Annex, Rules 111-120, 17 December 2015, A/RES/70/175, Rule 54.

¹⁰⁷ United Nations General Assembly Resolution 43/173, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, (1988), Principle 15.

¹⁰⁸ Id., Principle 16(1).

¹⁰⁹ Id., Principle 16(2).

¹¹⁰ Nelson Mandela Rules, *supra*, note 98, Rule 58.

Legal aid for prisoners and detainees

Just as providing legal aid at the early stages of the criminal justice process can serve as a safeguard and deterrent against ill treatment, legal aid providers and service providers can assist beneficiaries in prisons or detention facilities by way of monitoring prison conditions and the general well-being of prisoners and detainees. Legal aid providers could assist prisoners in making requests or complaints to the prison administration about treatment in prison, including sexual abuse, intimidation and harassment, or prison conditions. In particular, legal aid providers may liaise with service providers to ensure that the special needs of women, particularly of women as primary childcare providers, are cared for.

In this regard, the Bangkok Rules recommend the following standards for the treatment of women in prisons:

Prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.¹¹¹

Women prisoners shall be allocated, to the extent possible, to prisons close to their home or place of social rehabilitation, taking account of their caretaking responsibilities, as well as the individual woman's preference and the availability of appropriate programmes and services.¹¹²

Gender-specific health-care services at least equivalent to those available in the community should be provided to women prisoners. If a woman prisoner requests to be examined or treated by a woman physician or nurse, her request should be granted, to the extent possible, except for situations requiring urgent medical intervention. If a male medical practitioner undertakes the examination contrary to the wishes of the woman prisoner, a woman staff member should be present during the examination.¹¹³ If it is necessary for non-medical prison staff to be present during medical examinations, such staff should be women and examinations shall be carried out in a manner that safeguards privacy, dignity and confidentiality.¹¹⁴

Personal searches, must only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures.¹¹⁵

¹¹¹ Bangkok Rules, *supra*, note 59, Rule 2.2.

¹¹² *Id.*, Rule 4.

¹¹³ *Id.*, Rule 10.

¹¹⁴ *Id.*, Rule 11(2).

¹¹⁵ *Id.*, Rule 19.

Legal aid providers should assist women prisoners in making sure they receive adequate levels of physical and mental care, including gender-specific health care and suicide and self-harm prevention.¹¹⁶

The Nelson Mandela Rules provide that:

“1. Every prisoner shall have the opportunity each day to make requests or complaints to the prison director or the prison staff member authorized to represent him or her.

2. It shall be possible to make requests or complaints to the inspector of prisons during his or her inspections. The prisoner shall have the opportunity to talk to the inspector or any other inspecting officer freely and in full confidentiality, without the director or other members of the staff being present.

3. Every prisoner shall be allowed to make a request or complaint regarding his or her treatment, without censorship as to substance, to the central prison administration and to the judicial or other competent authorities, including those vested with reviewing or remedial power.

4. The rights under paragraphs 1 to 3 of this rule shall extend to the legal adviser of the prisoner. In those cases where neither the prisoner nor his or her legal adviser has the possibility to exercise such rights, a member of the prisoner’s family or any other person who has knowledge of the case may do so.”¹¹⁷

In addition, international standards emphasize how imprisonment as a penalty is an afflictive measure and should be seen not just as a punishment, but rather as an opportunity for a prisoner to be rehabilitated and reinserted into society. The purposes of a sentence of imprisonment are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.¹¹⁸

As the Nelson Mandela Rules furthermore provide:

Rule 87.

Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same prison or in another appropriate institution, or by release on trial under some kind of supervision, which must not be entrusted to the police but should be combined with effective social aid.

¹¹⁶ Id., Rules 10-16

¹¹⁷ Nelson Mandela Rules, *supra*, note 98, Rule 56.

¹¹⁸ Id., Rule 4.

Rule 88.

- 1. The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the prison staff in the task of social rehabilitation of the prisoners.*
- 2. There should be in connection with every prison social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his or her family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.*

Legal aid providers and service providers could therefore work in cooperation with prisons staff and social workers to assist prisoners in their rehabilitation and transition to life in society. Assistance with the reintegration of beneficiaries that have served their punishment is an area in which legal aid organizations and paralegals can be particularly effective. It would be appropriate for these providers to carry out an assessment to evaluate whether or not the community is willing to accept the individual and on what terms.¹¹⁹

Legal representation post-trial

The right of detained or imprisoned persons to consult with a lawyer is widely recognized in international rules and guidelines.¹²⁰ Therefore, indigent prisoners should be guaranteed access to a legal aid lawyer, including for the purpose of legal representation, when submitting appeals, or requests for pardon as well as applications for parole and representation at appeal and parole hearings.

To that end, the Nelson Mandela Rules, which apply to prisoners untried and convicted,¹²¹ provide:

Rule 61

- 1. Prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal*

¹¹⁹ Timap for Justice, Paralegal Manual, 2012, pag. 33.

¹²⁰ The United Nations Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment recognizes the right of prisoners and detainees to consult with a lawyer as follows: “*Principle 18 - 1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel. 2. A detained or imprisoned person shall be allowed adequate time and facilities for consultations with his legal counsel. 3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order. 4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.*” United Nations General Assembly, Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, General Assembly Resolution 43/173 (9 December 1988), Principle 18.

¹²¹ Nelson Mandela Rules, *supra*, note 98, Preliminary observation 3.

matter, in conformity with applicable domestic law. Consultations may be within sight, but not within hearing, of prison staff.

2. In cases in which prisoners do not speak the local language, the prison administration shall facilitate access to the services of an independent competent interpreter.

3. Prisoners should have access to effective legal aid.

It would therefore be essential that legal aid providers be allowed to visit prisons and consult with prisoners in full confidentiality. In reality, any possibility of a public defender or a *pro bono* lawyer assisting an indigent person often ceases to exist after that person is convicted. In these circumstances, paralegals can be really useful in prisons as they could either screen convicts for referral to a *pro bono* lawyer or guide them directly on the procedure for lodging an appeal. In some cases, particularly at regional court levels, judges may allow paralegals to at least answer questions relevant to the convict's appeal, especially when no lawyer attends.¹²²

Paralegal programmes have been established in several countries for the purpose of providing assistance in prisons. For example, paralegals in Kenya convene “legal aid days” in prison, during which lawyers provide *pro bono* assistance to groups of remanded prisoners identified by paralegals.



Exercise 10: Barriers to access to justice

Ask the audience to identify the challenges and obstacles women face in accessing the criminal justice system. Write them on the board and then ask the audience to discuss how these obstacles impact on victims of violence or women accused of a crime. Also, ask them to discuss how legal aid providers should address these obstacles.

For example:

Obstacle: Victims may refuse to press charges or cooperate for fear of gender bias by criminal justice actors. These professionals may believe that women bring on violence by their actions, such as arguing with an intimate partner, dressing provocatively to go out, or walking alone at night.

¹²² Barry Walsh, In Search of Success: Case Studies in Justice Sector Development in Sub-Saharan Africa, *supra* note 63, page 22.

Legal aid providers' response should be:

Objecting to any defence related to a victim's bad character or past sexual behaviour, since these aspects cannot be directly related to the incident being prosecuted. A woman's character and sexual history/behaviour should never be judged, nor used in relation to the incident.

Calling expert witnesses to provide evidence on the dynamics of violence against women as a way to counter any stereotyping in court.

(Source: UNODC, Resource book for trainers on effective prosecution responses on violence against women, Criminal Justice Handbook Series, Vienna, 2017)



Exercise 11: Group discussion: gender-sensitive legal aid post-trial

The class is asked to think about and regroup the problems related to access to legal aid for women inside the detention facilities, as well as the types of legal needs of women prisoners.

Afterwards, work out possible solutions.

Module 3. Legal aid for Victims/Survivors of Gender-Based Violence against Women

Purpose of Module 3

The purpose of Module 3 is to provide effective tools for legal aid providers and service providers assisting victims/survivors of gender-based violence against women. The Module starts with an overview of gender-based violence against women, its different forms and main issues, including trauma, safety and how to provide a coordinated response. The Module offers guidelines on how to interview victims/survivors of gender-based violence and how address discriminatory procedures and defences at trial.

Learning Objectives

By the end of Module 3 participants will have learned to:

1. Define gender-based violence against women and identify its main forms and issues;
2. Prepare a coordinated response to cases of gender-based violence against women, including through effective referral systems;
3. Conduct gender-sensitive interviews of victims/survivors of gender-based violence
4. Facilitate victims/survivors' participation at trial;
5. Identify and address discriminatory procedures and defences in cases of gender-based violence.

Legal aid for victims of crime

A fair and effective criminal justice system should respect the fundamental rights of all the parties involved in the criminal justice process, including victims, witnesses, suspects and offenders. It should strive to prevent victimization, to protect and assist victims and witnesses of crime and to treat them with compassion and respect for their dignity. For this reason, victims should have access to specialized assistance in dealing with physical and emotional trauma. A fair and effective criminal justice system should also ensure that victims have appropriate mechanisms to obtain redress and seek remedy for the harm they have suffered.¹²³

When the criminal justice system does not recognize the right to safety, dignity, and protection from intimidation and access to justice for victims of crime, they are re-victimized by the very system that is supposed to protect them. In addition, justice cannot be achieved, and the rule of

¹²³ UNODC, Criminal Justice Assessment Toolkit, New York, 2006, pag. 13.

law cannot be established, if victims are successfully threatened not to provide essential information to the judicial authorities, and are not able to seek compensation, restitution and protection.¹²⁴

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which calls for measures to improve access to justice and fair treatment, restitution, compensation, protection and assistance, defines victims of crime as follows:¹²⁵

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

The Declaration further provides that victims are entitled to access the necessary mechanisms of justice to obtain prompt redress for the harm that they have suffered. Such mechanisms may include formal or informal procedures as long as they are expeditious, fair, inexpensive and accessible.

To make such justice mechanisms inexpensive and accessible to victims, many legal systems extend the right to obtain legal aid to victims of crime, especially to those victims who lack the necessary means to afford legal services.

The United Nations Principles and Guidelines recommend this approach in defining legal aid to include advice, assistance and representation to victims. Principle 4 provides that *"Without prejudice to or inconsistency with the rights of the accused, States should, where appropriate, provide legal aid to victims of crime."*

In addition, Guideline 7, "Legal Aid for Victims" provides:

48. Without prejudice to or inconsistency with the rights of the accused and consistent with the relevant national legislation, States should take adequate measures, where appropriate, to ensure that:

¹²⁴ UNODC, Handbook on Early Access to Legal Aid, *supra*, note 39, pag. 30-33.

¹²⁵ United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34, 1985, para. 1-3.

- (a) Appropriate advice, assistance, care, facilities and support are provided to victims of crime, throughout the criminal justice process, in a manner that prevents repeat victimization and secondary victimization;*
- (b) Child victims receive legal assistance as required, in line with the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime;*
- (c) Victims receive legal advice on any aspect of their involvement in the criminal justice process, including the possibility of taking civil action or making a claim for compensation in separate legal proceedings, whichever is consistent with the relevant national legislation;*
- (d) Victims are promptly informed by the police and other front-line responders (i.e., health, social and child welfare providers) of their right to information and their entitlement to legal aid, assistance and protection and of how to access such rights;*
- (e) The views and concerns of victims are presented and considered at appropriate stages of the criminal justice process where their personal interests are affected or where the interests of justice so require;*
- (f) Victim services agencies and non-governmental organizations can provide legal aid to victims;*
- (g) Mechanisms and procedures are established to ensure close cooperation and appropriate referral systems between legal aid providers and other professionals (i.e., health, social and child welfare providers) to obtain a comprehensive understanding of the victim, as well as an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation and needs.*

Domestic laws vary with regard to legal aid for victims. For example, legal aid legislation in Liberia and Senegal does not specifically include legal aid for victims and therefore, advice, assistance and legal representation to these persons falls outside the scope of work of public defenders or legal aid lawyers. The Legal Aid Act of Sierra Leone allows the provision of legal advice, assistance and representation to victims of crime who want to make a claim for compensation.¹²⁶

When the legal framework for the provision of legal aid does not specifically include legal assistance and representation for victims, *pro bono* lawyers, legal aid programmes run by NGOs, paralegals, and law clinics working outside the scope of the law may still effectively cater to the needs of victims.

The following sections will focus on the provision of legal aid to victims/survivors of gender-based violence against women. An understanding of this issue is essential for legal aid providers, both when assisting victims/survivors of this crime and when assisting women accused of a crime, as women victims of violence may resort to crime to escape an abusive situation or use violence in self-defence.

¹²⁶ Legal Aid Act of Sierra Leone, 2012, Art. 20(2).

The term ‘victim/survivor’ is used to indicate women and girls who have experienced or are experiencing gender-based violence, to reflect both the terminology used in the legal process and the agency of these women and girls in seeking essential services.¹²⁷ While both women and men experience gender-based violence, studies show that the majority of victims/survivors are women and girls. This is one of the reasons why international legal definitions and frameworks focus on violence against women and girls.

Gender-based violence against women: definitions and international legal framework

The United Nations Declaration on the Elimination of Violence against Women defines ‘violence against women’ as:

“any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”¹²⁸

The Declaration recognized that violence against women violates the rights and fundamental freedoms of women and impairs their enjoyment of those rights and freedoms, and that it is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men.

The Committee on the Elimination of Discrimination against Women affirmed that violence against women is a form of discrimination against women within the meaning of article 1 of the Convention on the Elimination of all Forms of Discrimination against Women. It defined gender-based violence as “violence that is directed against a woman because she is a woman or that affects women disproportionately.”¹²⁹ The Committee uses “gender-based violence against women,” as a more precise term that makes it explicit that the causes and impacts of such form of violence are gender-based. This means that this form of violence is not only based on ‘sex’, but also on ‘gender,’ and is, therefore, a social - rather than an individual- problem,

¹²⁷ UN Women, UNFPA, WHO, UNDP and UNODC, Essential Services Package for Women and Girls Subject to Violence Core Elements and Quality Guidelines, 2015, pag. 11.

¹²⁸ UN Declaration on the Elimination of Violence against Women, General Assembly resolution 48/104, article 1. Regional legal instruments containing definitions of violence against women include the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (“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”, see article 1.b. paragraph. 8), the Council of Europe Convention on preventing and combating violence against women and domestic violence (“a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”, see article 3.a.) or the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (“any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere”, see article 1).

¹²⁹ United Nations CEDAW Committee, General Recommendation No. 19 on violence against women, Eleventh Session (1992), par. 6.

requiring comprehensive responses, beyond specific acts, and individual perpetrators and victims/survivors.¹³⁰

International standards and norms that are applicable to every legal tradition, include:

i) The *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*.¹³¹

This instrument sets out the following basic rights for all victims of crime and abuse of power:

- Victims should be treated with 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 appropriate 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

ii) The *updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice*¹³²

This instrument provides detailed strategies and measures to implement the fundamental guiding principles of criminal justice responses to violence against women:

- Human rights-based approach,
- Managing risk and promote victim safety and empowerment
- Ensuring offender accountability

¹³⁰ CEDAW General Recommendation No. 35 on Gender-based Violence against Women, updating general recommendation no. 19, CEDAW/C/GC/35, 14 July 2017, par. 9.

¹³¹ United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, *supra* note 117.

¹³² United Nations General Assembly, Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, A/RES/65/228, annex.

- Comprehensive, coordinated and multidisciplinary approach

It calls for States to prioritize the safety for victims throughout all stages of the criminal process, and contains specific strategies and measures for victim support and assistance.

iii) The *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*.¹³³

This instrument sets out the following basic rights and specific measures that States should take to ensure these rights:

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

Forms of gender-based violence against women

Gender-based violence against women contributes to perpetuate the subordinate position of women with respect to men and their stereotyped roles, and is a critical obstacle to the achievement of substantive equality between women and men and the enjoyment by women of human rights and fundamental freedoms.¹³⁴ Indeed, all forms of violence against women encompass a range of behaviours designed to exert power and control over women, and are disproportionately perpetuated against women by men, in a social context of gendered hierarchy.¹³⁵

¹³³ Economic and Social Council resolution 2005/20, annex., *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*.

¹³⁴ CEDAW General Recommendation No. 35 on Gender-based Violence against Women, updating general recommendation no. 19, CEDAW/C/GC/35, 14 July 2017, par. 10.

¹³⁵ Handbook for the Judiciary on Effective Criminal Justice Responses to Gender-Based Violence against Women and Girls, (forthcoming) pag 11; Elaine Craig, *The Inhospitable Court* (2015) University of Toronto Law Journal 10.3138.

Gender-based violence against women takes multiple forms, including acts or omissions intended or likely to cause or result in death or physical, sexual psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty.¹³⁶ Such violence includes:

- *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 sex work;
- *Physical, sexual and psychological violence perpetrated or condoned by the State*, wherever it occurs.¹³⁷

Acts of gender-based violence against women include, but are not limited to:

- *Physical violence*, such as: hitting, slapping, kicking, or the use of weapons;
- *Emotional abuse*, such as: systematic humiliation, controlling behaviour, degrading treatment, insults, and threats;
- *Sexual violence*, which includes rape, the sexual abuse of children in the household, and any other form of non-consensual sexual contact;
- *Early/forced marriage*, which is the marriage of an individual against her or his will often occurring before the age of 18;
- *Economic abuse* and the denial of resources, services, and opportunities, such as: restricting access to financial, health, educational, or other resources with the purpose of controlling or subjugating a person;
- *Trafficking and abduction for exploitation*;
- *Forced prostitution*, including any form of violence related to exploitation;
- *Femicide*;
- *Female genital mutilation* and other traditional practices harmful to women;
- *Intimate Partner Violence* perpetrated by a former or current partner, which includes a range of acts of physical, psychological, sexual and economic violence, including marital rape;
- *Sexual harassment and intimidation* at work, in educational institutions and other public places.

¹³⁶ United Nations CEDAW Committee, General Recommendation No. 35, supra note 122, par. 14.

¹³⁷ United Nations Declaration on the Elimination of Violence against Women, General Assembly resolution 48/104, article 2.

The types of violence women experience, and the evolution of these types, have become increasingly complex as seen by growing rates of violence committed using information and communications technology, such as online harassment, cyber-bullying, stalking and distribution of denigrating images. In many societies, different forms of violence against women are some of the most prevalent crimes.¹³⁸

Sexual violence against women and consent

Consent is a key consideration in sexual violence against women. Sexual violence against women occurs when consent is not voluntarily and freely given.

Consent must be informed, which means that it must be based upon a clear appreciation and understanding of the facts, implications and future consequences of an action. More specifically, a woman must be aware of all the facts and be able to evaluate and understand the consequences of an action.

A woman must also be aware that she has the right to refuse to engage in any act and not be coerced by force, threat or intimidation.

Legal aid providers and service providers must be aware that there are instances where consent might not be possible due to cognitive impairments and/or physical, sensory, or developmental disabilities.¹³⁹ For example, children are considered unable to provide informed consent because they do not have the ability and/or experience to appreciate the danger, criminality and consequences of an action, and they may not understand or be aware of their right to refuse.



Exercise 1: Group discussion: Gender-based violence against women

Ask the participants the following questions for discussion:

1. Why is violence against women referred to as gender-based?
2. Can you make a list of the forms of gender-based violence against women?
3. What are the most common acts of gender-based violence against women in your country?

¹³⁸ UNODC, Handbook for the Judiciary on Effective Criminal Justice Responses to Gender-Based Violence against Women and Girls, (forthcoming) pag. 12.

¹³⁹ World Bank, Good Practice Note Addressing Gender Based Violence in Investment Project Financing involving Major Civil Works 2018.

4. What key guiding principles should inform the delivery of legal aid to victims/survivors of gender-based violence?

Providing legal aid to victims/survivors of gender-based violence against women

Provision of legal aid to victims/survivors of gender-based violence against women should be informed to a set of principles and skills designed to take a holistic, victim/survivor-centred approach. A victim/survivor-centred approach aims to create a supportive environment in which:

- the victim/survivor's rights are respected and prioritized;
- the victim/survivor's safety and the safety of her family are guaranteed;
- the victim/survivor is treated with dignity and respect;
- offenders are held accountable.

The victim/survivor-centred approach helps to promote the victim/survivor's recovery and ability to identify and express needs and wishes, as well as to reinforce her capacity to make decisions about possible interventions.¹⁴⁰

The following key guiding principles may be applied to the provision of legal aid to victims/survivors of gender-based violence against women:¹⁴¹

- *Human rights-based.* Legal aid providers must bear in mind that all women should be able to enjoy and exercise their human rights, be protected from violence and treated with dignity and respect. Providers must understand that violence against women is both a cause and a consequence of gender inequality as well as a violation of women's human rights. The wider dynamics of inequalities between men and women create gender specific vulnerabilities, such as economic and legal dependency, that impact on victims' willingness to cooperate with the criminal justice system and break out of the cycle of violence.
- *Victim/survivor-centred.* Legal aid providers must understand that gender-based violence against women has a traumatic and disempowering impact on victims/survivors. A victim/survivor-centred approach puts the needs of the victims/survivors at the core of legal aid provision and recognizes that victims/survivors deserve timely, compassionate, respectful and appropriate treatment. Victims/survivors have the right to be well

¹⁴⁰ *Id.*

¹⁴¹ Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, *supra*, note 127, Par. 13.

informed in order to make their own decisions about participation in all the stages of the criminal justice process. Legal aid providers should assist victims/survivors in managing risk and ensuring victim/survivor safety. However possible within the national legal framework, legal aid providers should ensure that rules and criminal procedures are applied in a manner that empowers individual women who are victims/survivors 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. Legal aid providers should seek to restore and reinforce those qualities, while avoiding measures that lead to secondary victimization. Victim/survivor -centred approaches shift the focus to assisting victims/survivors rather than holding them responsible for their frequent reluctance to cooperate with the criminal justice system.

- *Offender accountability.* The work of the legal aid provider is to make sure that investigation and prosecution of cases of gender-based violence against women shift their focus away from discrediting victims/survivors to enhancing consistent evidence-gathering and case-building in order to guarantee a fair trial. This could include early case discussion with police and prosecutor to maximize the victim/survivor's cooperation with the criminal justice system.
- *Comprehensive, coordinated and multidisciplinary approach.* Legal aid providers should cooperate with relevant service providers to assist victims/survivors to ensure a comprehensive response to victims/survivors of violence. For instance, support agencies could work with police and prosecutors to guarantee support to victims/survivors during statement taking and provision of information on the progress of the case.¹⁴²

Table 2. Challenges for victims/survivors of gender-based violence against women and appropriate responses by legal aid providers

Challenges	Responses
Safety/fear to be near perpetrator	<ul style="list-style-type: none"> . Risk assessment . Referral to service providers . Protective orders
Trauma	<ul style="list-style-type: none"> . Gender-sensitive interviews . Counselling

¹⁴² UNODC, Resource book for trainers on effective prosecution responses to violence against women and girls, supra, note 5, pag. 42-43

Shame and embarrassment	<ul style="list-style-type: none"> . Measures to facilitate victim's participation: on camera testimonies etc. . Duty of confidentiality
Fear of being harassed by defendant in cross examination	<ul style="list-style-type: none"> . Dismantling discriminatory defences
Need to obtain justice	<ul style="list-style-type: none"> . Appropriate sentences – victim's impact statements . Civil compensation . Family law remedies (child custody, divorce, etc.) . Restitution



Exercise 2: Gender stereotyping in cases of gender-based violence against women

Ask the participants to write down at least five examples of gender stereotypes related to gender-based violence. Each participant will then read them to the audience and the trainer will write them on a board. For each stereotype ask the participants how it could affect the prosecution and defence of cases of gender-based violence and how it could be addressed by practitioners assisting victims/survivors and by prosecutors.



Exercise 3: A justice system that is victim/survivor centred

Ask the participants to think about questions that can be posed to the victim/survivor in order to know what kind of response she needs and wants from the justice system. Tell the participants to consider the client's social and economic background, family situation, and future needs that may be a consequence of the violence suffered. Write down the questions on the board and then ask the audience what possible responses they would give to their client.

Victim/survivor's safety

Victims/survivors of gender-based violence against women often fear for that the violence they have experienced might occur again and it is in fact possible that their safety is still at high risk. Legal aid providers should be mindful that the abuser will often attempt to maintain control over the victim/survivor during the prosecution process. The success of maintaining this control is directly related to the degree the perpetrator has access to the victim/survivor.¹⁴³

Legal aid providers could adopt the following measures to protect the victim/survivor's safety:

1. Risk assessments. Legal aid providers should be able to conduct a systematic risk assessment and recognize certain signs alerting that the victim/survivor's safety is at high risk. It might be useful to utilize existing tools to conduct risk assessments but also to foster a conversation with the victim/survivor. Engaging the victim/survivor in a discussion of these risk and dangers improves the information available and helps place the events into a context that might be indicative of further risk. When reviewing the victim/survivor's responses, legal aid providers should remember that victims/survivors often underestimate their own vulnerability to future assaults. A possible standard checklist should contain the elements below:

Prior Victimization

- Type, severity and frequency of assault
- Date of most recent assault
- Severity of this incident: strangulation, burning, permanent physical damage, head injuries, weapons involved, sexual aggression and coercion, drugging, poisoning, confinement
- Serious injury in prior assaults
- History and nature of past violence towards this victim/survivor
- 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/survivor 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

Perpetrator's alcohol or drug use

- Alcohol or drug use

¹⁴³ UNODC, Handbook for Legal Aid Providers at Local Level to Provide Legal Aid in Domestic Violence Cases, 2011, pag. 43.

Perpetrator's obsessive/possessive behaviour and excessive jealousy

- Jealous or controlling behaviours
- Intimidation of victim if she seeks help
- Nature of controlling behaviour: threats of future injury or death (the more specific the threat, the greater the risk), threats to use a weapon, threats of child abduction or denial of visitation rights, threats made openly and in presence of others
- What kind of threats or coercion have been used to dissuade the victim/survivor 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)

- 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/survivor or her children

- Threat to harm victim/survivor 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/survivor 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

- 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

- Stalking behaviour; use of weapon; sexual abuse; animal abuse; property damage or threats of future property damage; hostage-taking; victim/survivor's increased vulnerability due to age, disability, pregnancy

Perpetrator's possession of, access to, familiarity with and degree of fascination with guns

- Access to firearms/availability of weapons¹⁴⁴

It is a good practice to also have a danger-assessment protocol to follow in these cases.¹⁴⁵

¹⁴⁴ UNODC, Handbook on Effective Prosecution Responses to Violence against Women and Girls, Criminal Justice Handbook Series, New York, 2014, pag. 54.

¹⁴⁵ The following questionnaire is adopted by the Sierra Leonean paralegal program Timap for Justice. See, Timap for Justice, Paralegal Manual, 2012, pag. 150.

Risk Assessment for victims/survivors of gender-based violence against women

Was the crime planned?

Did the perpetrator tell you beforehand or indicate in any way that he was going to hurt you? Did he bring a weapon? Did he take you to some place in order to beat you? Did he tell someone else he was going to hurt you?

Is there a history of abuse?

Has the perpetrator beaten you in the past? How often? For how long has he been violent to you? Can you describe previous incidents? E.g. Weapon used, planned etc. Have you suffered any serious injuries in the past? Has he beaten other women in the past? Has he beaten children? Did they incur serious injuries?

This is an alarming risk sign. Perpetrators who have previously been violent against your beneficiary or other women are particularly dangerous.

Does the perpetrator have a criminal record?

Has he ever committed a crime before? What type?

Is there a history of forced sex?

Does the perpetrator force you to have sex when you do not want it? Has he done this in the past? On one occasion or more often?

This is a sign of high risk. Questions related to sex are very delicate and the beneficiary may not be comfortable. It is best to ensure that a female provider asks this type of questions.

Did the perpetrator use a weapon?

Did the perpetrator use anything other than his hands to hurt you? Can you please describe? How was it used? Was there any attempt at choking or strangulation?

Has the perpetrator ever threatened the victim?

Has he ever told you how he was going to hurt you? Has he made threats against any other family member? Has he threatened to commit suicide? Please describe what he said, writing down his specific language.

Is the perpetrator possessive or jealous? Does he stalk the victim?

Does he check where you are too often? Does he distrust you unreasonably? Does he think you are having affairs when you are not? Does he restrict your movements? Does he follow you?

Are there signs of psychological or emotional abuse?

Does he try to isolate you from her friends and family? Does he make you feel small or inadequate? In public or in private? Do you feel intimidated by him? How does he do this?

Is the victim pregnant?

Are you pregnant or were you at the time of the assault?

Is the victim disabled or mentally/ physically ill?

You can observe this, and you can ask. Disability or illness may be because of the violence, but it may also be important in assessing the victim/survivor's vulnerability to future harm.

If the risk assessment reveals that the victim/survivor is still at risk, legal aid providers should cooperate with other professionals to ensure the victim/survivor's safety. (see Challenge 3. Trauma)

2. Procedural safeguards. Legal aid providers can further protect the safety of the victims/survivors by bringing to the attention of the court any safety risks, including any special vulnerability of the victims/survivors, so that the courts can take them into account in decisions concerning remand detention, the granting of bail, conditional release, parole or probation, non-custodial or quasi-custodial sentences, especially when dealing with repeat and dangerous offenders.

Victims/survivors' safety should be ensured during legal proceedings, and for that purpose, whenever possible within the framework of the national legal framework, legal aid providers should request available measures to prohibit or restrain alleged perpetrators from harassing, intimidating, or threatening women. These measures can include:

- Removal of the perpetrator from the domicile;
- Prohibiting further contact with the victim and other affected parties, inside and outside the domicile;
- Safe entrance and waiting areas at the courthouse;
- Police escort to and from the courthouse;
- Removing references to victim/survivor's identity, address, location from court documents - use of pseudonyms;
- Child support and custody orders;
- Victim/survivor protection programmes.

As a further measure to protect the safety of victims, even after trial and conviction, legal aid providers should make sure that victims of violence be notified of the offender's release from detention or imprisonment.¹⁴⁶

¹⁴⁶ Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, *supra*, note 127, Par. 17(c).



Exercise 4: Risk assessment

The participants are divided into small groups of 5-6 people. After a short group brainstorming session on how to prepare a risk assessment for victims/survivors of gender-based violence, ask them to draft a model risk assessment questionnaire.

At the end of the exercise, the trainer will distribute the above *Risk Assessment for victims/survivors of gender-based violence against women* as a handout and ask the participants to compare their answers to the handout. Participants and trainer will prepare a final draft questionnaire together.



Exercise 5: Procedural safeguards

Participants must write down a list of procedural safeguards legal aid providers could request to protect a victim/survivor's privacy and confidentiality and to protect her from threats, harassment and intimidation before and during trial

Trauma and safety: coordinated response and referral systems

Victims/survivors of gender-based violence against women are vulnerable because of the harm they have endured and the losses they have suffered. Acknowledging the victim/survivor's vulnerability is important for a legal aid provider to establish whether a victim/survivor is able to recount events or give testimony in court. A victim/survivor of crime may experience memory loss due to the trauma she has suffered or might be hostile or reluctant to talk to the authorities about sexual offences because of a sense of shame, guilt, and stigma that is still related to those crimes in many societies.

When physical and sexual violence and severe abuse have taken place, it is recommended that a legal aid provider work in close cooperation with other professionals, such as health, social, and psychological providers, to be able to assess the victim's conditions and needs and provide legal assistance in a way that takes into account the victim's psychological, social, emotional and physical situation. Tackling gender-based violence against women requires multidisciplinary and coordinated approaches addressing the health, educational, economic, social, and legal dimensions of the case. Legal aid must be one component in multidimensional approaches to gender-based violence against women and must be connected to the provision of other services to victims/survivors.

Victims/survivors of gender-based violence against women need a variety of services including medical facilities, psycho-social and counselling support, legal services, safety and security services and livelihood support. Some civil society organizations provide all of these services together. Other providers focus more exclusively on legal aid and advocacy measures, while referring beneficiaries for services such as medical treatment and psychosocial support.

Experience suggests that cases of gender-based violence against women should be handled through a case management-based referral system, both where a provider offers all of these services themselves and where they refer to other entities for services they do not provide.

The first service provider that the victim/survivor gets in touch with, being a legal aid provider or other service provider, determines all the needs and preferences of the survivor on their initial visit and then:

1. Provides them with any services they are equipped to offer themselves;
2. Refers them to service providers who are equipped to offer the remainder of needed services;
3. Comprehensively informs the victim/survivor about the process involved and the options available to them.

Strong links in the 'pathway' a case moves through from the time at which it is initially reported to the police, a hospital or a legal aid provider until the case is heard in court are crucial. Cases might be dropped somewhere within the referral process because of poor links between response providers, and little oversight over the referral pathway.

The United Nations Principles and Guidelines encourage this approach and provide that partnerships should be formed to extend the reach of legal aid.¹⁴⁷ Guideline 11 calls on States to establish:

e) [...M]echanisms and procedures to ensure close cooperation and appropriate referral systems between legal aid providers and different professionals to obtain a comprehensive understanding of the child, as well as an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation and needs.

Effective cooperation between legal aid providers and other professionals is needed when assisting vulnerable beneficiaries. For example, when the beneficiary is a child, disabled, physically or mentally ill, a person living with HIV/AIDS, a victim of trauma, a refugee or internally displaced person, or an asylum seeker, cooperation with health, social, and psychological services is vital to cater to the immediate needs of the beneficiary and to provide for effective legal aid.

¹⁴⁷ United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, *supra* note 34, principle 14, para. 40.

A legal aid provider should consider the following steps to implement coordination mechanisms with other services:

Familiarize yourself with the expertise and duties of other disciplines. Ensure that you have a good knowledge of the various organizations or institutions available and of the services they provide. Cooperation may be needed with health care providers; psychologists; organizations providing services with victims of trauma; violent crimes, or gender-based violence; shelters; charitable organizations; organizations offering vocational programmes; institutions offering microcredit programmes.

Establish a streamlined referral system. Whenever possible, establish a streamlined referral system. Best practices include networks of health care providers, legal advocates, social workers, so that the appropriate organization can be promptly contacted and is ready to assist. The referral system should provide for the other professional to visit your office, or for you to accompany the victim/survivor to the appropriate organization. It is not advisable to send the victim/survivor over to a referral organization unaccompanied.

Ensure that you make the best choice about the identified organization based on the specific elements of the case. Does the victim/survivor need a doctor? Does she need medications? Does she look scared, confused, anxious, distant and untrustworthy? Does she need food and a place to stay?

Explain the process to the victims/survivors. Whenever appropriate in cases when the victim/survivor is able to understand, inform her that another professional is available to assist with her special needs. If the professional is based at an organization, explain the services that the organization provides, and the procedure they apply.

Ensure consent. Ask whether the victim/survivor consents to be assisted by another professional. You may guide her through this choice, stressing how you and the other professionals are only there to help her and protect her interests.¹⁴⁸

Work with other professionals in a respectful and cooperative way. Respect their expertise and opinion.



Exercise 6: Risk assessment, trauma and safety: coordinated response and referral system

The trainer tells the participants the following story:

¹⁴⁸ The Legal Aid Forum – Rwanda, The Paralegal Practice Manual, A Guide to Paralegal Roles and Techniques, pag. 23-26.

Aida has been married to Omar for about six years. Her husband was quite controlling from the moment they met, but it just escalated from there and got worse when he started having job problems. Omar started drinking a lot and verbally and physically abusing her wife on a daily basis. One day, he sees Aida talking to a man on the street. Once home, he locked the door, hit the wall in the living room with his belt, and threw a framed picture of their oldest daughter on the floor and kicked things on the floor around. Aida was frightened by his behaviour and went into one of the two bedrooms to avoid him. He came to the room and raped her. He threatened her with a knife then threatened to kill whole family. Their son managed to push his father on the floor and Aida called the police. Then her son unlocked the door so he, his mother and sister could escape.

Volunteers among the participants are asked to conduct a risk assessment of Aida's case. The trainer will play Aida.

A group discussion will follow on the appropriate course of action for a legal aid provider in this case, including referral and cooperation with other professionals. It is important to note that the fact that he has problems at work does not justify the treatment of his wife.

Guidelines for interviewing victims/survivors of gender-based violence against women¹⁴⁹

Victims/survivors of gender-based violence against women typically act as key witnesses for the prosecution and their testimony is a central piece of evidence for the prosecution.

Given the importance of this evidence to hold prosecutors accountable, legal aid providers assisting victims/survivors must ensure to obtain all relevant information while treating victims with courtesy, dignity, respect and sensitivity when interviewing them. How a legal aid provider communicates with the victim/survivor at the very start is key to assisting her in providing a clear account of what happened. The victim/survivor needs to know that she is being listened to and that her changing justice needs are being understood and addressed. Information and the way it is communicated can empower her to make informed decisions regarding her engagement with the justice system. Legal aid providers should be mindful that interviewing women who have been victims of violence requires care, patience and sensitivity. Some may be reluctant to give full details or hesitant to relate facts or may attempt to withdraw their statement at some point. However, victims/survivors 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

¹⁴⁹ The interview guidelines are based on: UNODC, Handbook on effective police responses to violence against women, Criminal Justice Handbook Series, New York, 2010; and UNODC, on effective prosecution responses to violence against women and girls, *supra*, note 5, Module 5.

the process at a later date, but also more likely to feel able to tell what they know in a clear and coherent manner.¹⁵⁰

The following pointers can be used by legal aid providers when preparing to interview victims/survivors:¹⁵¹

1. *Never blame or judge the victim/survivor.* No one, under any circumstances, deserves to be violated. It is important that you put the victim/survivor at ease by using safe and supportive language.

2. *Listen to the victim/survivor, be patient and take detailed notes.* At the beginning, permit free narrative by the victim/survivor. Give the victim/survivor time to tell you what happened in her own words. Remember that some victims/survivors of violence or abuse may be reluctant to talk about what happened. They may have been threatened with harm, or death, by the offender. If there are things left out of what you wanted to explore you can always come back to them with open-ended questions. An open-ended question is one that is worded in such a way as to enable the individual to provide more information about any event in a way that is not leading or suggestive and does not put them under any pressure. Open-ended questions are ones that cannot be answered by “yes” or “no”. For example: “Tell me about ...” “What happened next?” “And then what did you see?” “Tell me what else you remember.” “And then what happened?” “What else did you see?” When you ask a question, allow the victim some time to compose her thoughts. Ensure that the key points of *who, what, where, when, how and why* are covered. One way of proceeding is to start from the beginning of the account and ask questions on parts of the narrative that are unclear or inconsistent, as well as any pre-prepared questions. For example: “Earlier you told me that you were forced to sign a document. Can you provide more details about this?” From time to time, it is also useful to summarize a portion of the person’s account and to ensure that the information was correctly understood. For instance: “You mentioned that you saw the soldiers entering the house through the back door. Is that correct?” This approach is also useful to show the victim/survivor that the legal aid provider is listening carefully. Start your questions with non-controversial and non-sensitive topics and then move towards more sensitive issues, without pushing the victim/survivor. If an issue is too delicate or sensitive for the victim/survivor, change the subject and come back to it later. Take a break if the victim/survivor appears tired. If you believe that the victim/survivor’s narrative is inconsistent, try to clarify the facts, for example by asking the same question in different ways to help the interviewee to see the facts from different perspectives and assess the reliability of the entire story and its consistency with other information gathered.¹⁵²

¹⁵⁰ UNODC, Resource Book for Trainers on effective prosecution responses to violence against women and girls, *supra*, note 5, Module 5.

¹⁵¹ The pointers are adapted from: UNODC, Resource Book for Trainers on effective prosecution responses to violence against women and girls, *supra*, note 5, Module 5.

¹⁵² OHCHR, Training Manual on Human Rights Monitoring, Professional Training Series No. 7, New York and Geneva, 2001, Chapter 11

3. *Tell the victim/survivor that the violence was not her fault.* The victims/survivor should be reminded and encouraged to recognize that the violation was not her fault and that she did nothing to deserve this offence.
4. *Never ask the victim/survivor about her prior sexual history.* It does not matter whether she has had other sexual partners.
5. *Be honest about the challenges of the legal process.* A criminal trial can be long and this can be difficult for a victim/survivor. Explain the victim/survivor's role in the legal process. Legal aid providers should understand that the victim/survivor might feel she is being discouraged to continue with the case. Depending on the national legal system, prosecutors may decide to issue a subpoena to get the victim/survivor to testify in the case. Legal aid providers should inform victims/survivors of this possibility, showing how subpoenas may be useful because the victim/survivor can tell the abuser that it is not her decision to testify and be released from pressure from the abuser.
6. *Explain defences and the role of the defence counsel.* This prepares the victim/survivor for challenging cross examinations. Take time with the victim/survivor in advance to explain that the legal process allows the defendant to present a defence and often that process can be uncomfortable. Explain to the victim/survivor that she can help the prosecution prepare for the defence by sharing details of the crime in this interview.¹⁵³
7. *Confidentiality.* Keep personal information about the victim/survivor completely confidential. Only share information about the offence when it is necessary to provide assistance and intervention, such as a referral, and even then, only with the written permission of the victim/survivor. Tell the victim/survivor that her privacy and confidentiality will always be respected.
8. *Ensure the victim/survivor understands the language.* Whenever possible and available, be ready to obtain an interpreter if necessary. Check with the victim/survivor if the interpreter is appropriate or not. Ensure that the victim feels comfortable with the interpreter and that there are no concerns related to gender or other factors. Allow twice the amount of time for the interview involving an interpreter.
9. *Try to understand the victim/survivor's challenges.* Victims/survivors may have multiple problems: they may have difficulties making choices about being a witness. They may have low self-esteem or may be reliving the past. They may be experiencing anxiety or aggression. They may feel isolated. They may be unable to express their needs or unable to plan for the future. They may be trying to please everyone. Be patient and take sufficient time with them. Show empathy and understanding of the emotions experienced by the victim/survivor, without being patronizing, especially if the emotions are painful or difficult to express. You may say "I appreciate

¹⁵³ UNODC, Handbook on Effective Prosecution Responses to Violence against Women and Girls, *supra*, note 137, pag. 50.

that this may be difficult for you”, rather than “I understand what you are going through”.¹⁵⁴ Be patient and reassuring, stop and take a break to give the victim/survivor time to deal with her emotions. While it is important to show compassion during the interview, do not become overly emotional or show your anger or frustration. Ensure that the victim/survivor has control over the flow of information and avoid the risk of imposing your own personal views of what the victim/survivor means to say.

10. *Take any statement that the victim/survivor wants to hurt herself seriously.* In this case, immediately refer the victim/survivor to a psycho-social counsellor. Ask for the victim/survivor’s consent to call the counsellor on her behalf and try to arrange a meeting as soon as possible.

11. *Ask the victim/ survivor about safety concerns.* Conduct a threat assessment and consider risk management issues. Discuss a personal safety plan with the victim/survivor, which should include, whenever possible, physical and psychological safety. You can refer the woman to additional services/assistance, such as health care, counselling or some form of social assistance.

12. *Decide on a course of action.* Quite frequently it may happen that victims/survivors decide not to pursue charges, or even when they do, they may be uncooperative or decide to recant. This is a normal reaction to the trauma they have suffered and legal aid providers should make an effort to understand this reaction and the victim/survivor’s reluctance to go through with the case and address it so as to assist these victims/survivors more effectively. For example, in intimate partner violence cases, the victim/survivor may think that she is expected to leave the abuser. However, the legal aid provider can make it clear that the decision about the relationship is her decision. The message to convey is that both share the goal of ending the violence in her life. Explain how holding the perpetrator accountable can provide him with an opportunity to change.

13. *Conclusion.* At the conclusion of the interview, when you believe you have obtained all possible information, ask questions such as “Is there anything else about this incident that you think I should know?” or, “What else do you know that I didn’t ask about?” At the end of the interview, ask the victim/survivor whether she has any questions or concerns, or additional information to share. Answer any questions to the best of your ability. Thank the victim/survivor for her assistance and cooperation. Establish a mechanism to keep in touch and depending on the situation, arrange a follow-up meeting. Certain victims/survivors need more than one meeting to be able to feel safe and establish a rapport.¹⁵⁵

Some examples of the way victims/survivors should be approached are:

- “I am here to help, not to judge or accuse.”

¹⁵⁴ OHCHR, Training Manual on Human Rights Monitoring, *supra*, note 144, Chapter 11.

¹⁵⁵ *Id.*

- “If I misunderstand something you say, please tell me. I want to know, and I want to get it right.”
- “If you don’t understand something I say, please tell me and I will try again.”
- “If you feel uncomfortable at any time, please tell me or show me the ‘stop sign’ (one hand held up, palm facing the other person).”
- “Even if you think I already know something, tell me anyway.”
- “If you are not sure about an answer, please do not guess, tell me you are not sure before you say it.”
- “Please remember when you are describing something to me that I was not there when it happened. The more you can tell me about what happened, the more I will understand what happened.”
- “Please remember that I will not get angry or upset with you.”
- “Only talk about things that are true and really happened.”
- “I’d like you to tell me everything you remember about what happened, starting from the beginning.” Do not interrupt. If the woman stops, ask “What happened next?” or, “You were saying that [restate the last thing she said]”.

Use voice prompts to keep them talking, such as “uh huh” or “umm”.

Information legal aid providers should collect while interviewing a victim/survivor of gender-based violence against women, includes:

- The circumstances leading up to the acts of violence;
- Approximate dates and times of the abuse; it is good practice to advise the victim/survivor to keep a diary of the abuse;
- A detailed description of the persons involved in the acts of violence, including whether she knew any of them, clothing, scars, birthmarks, tattoos, height, weight, anything unusual about the perpetrator’s anatomy, language and accent and whether the perpetrators were intoxicated at any time;
- A detailed description of the place where the violence took place;
- A description of the facts of the violence, including methods used. This is understandably often difficult, and legal aid providers should not expect to obtain the full story during one interview. It is important to obtain precise information, but questions related to intimate humiliation and assault will be traumatic, often extremely so;
- Whether the victim/survivor was sexually assaulted;
- Physical injuries sustained in the course of the violence;

- A description of weapons or other physical objects used;
- The identity of witnesses to the events.

Victims/survivors' interview at the police

These same pointers are effective material for legal aid providers when assisting victims/survivors being interviewed by police or prosecutors. Victims/survivors have the right to refuse to report a crime, give a statement or to provide one later. Going to the police station to make a report is often a very difficult step for victims, and many feel more comfortable if someone accompanies them to the station. If the victim/survivor has reached out to a legal aid provider first, he/she should make him/herself available to accompany her to the police.

At the police station, the victim/survivor may need assistance in reporting the facts. It is important to remember that the woman is a victim, not a suspect, and is therefore not subjected to methods police might use in an interview. Many women are so nervous upon arrival at a police station that they have difficulty relating a narrative with a beginning, middle and end. They fear that their privacy and confidentiality will not be safeguarded. They are often ashamed or embarrassed by what they have experienced, especially in cases of sexual abuse or rape. Many women also fear that their abusers will find out about the reporting and kill them, or that their families and communities will humiliate them if they find out. In cases of domestic violence, some women may be afraid of being left alone if the abuser is removed from the home. Such situations generate stress and may cause police officers to become impatient and assume an attitude of detachment, scorn and even rudeness. Request that the victim/survivor be treated with respect and dignity and that she is entitled to rights. Ask, whenever possible and available, for a private, quiet areas where victim/survivor interviews can be conducted. Interview rooms are not appropriate places for such interviews. And interviews of victims/survivors should never be conducted in the presence of the attacker.¹⁵⁶

Summary of the Role of Legal Aid Providers in Representing Victims in the Criminal Justice Process¹⁵⁷

Investigation	Prosecution	Trial
Encourage matter to be referred to police. Assist victim in drafting her complaint. Encourage victim to participate in investigation.	Ensure effective supervision of investigation by prosecutor.	Request for measures to facilitate victim's participation during trial.

¹⁵⁶ UNODC, Handbook on effective police responses to violence against women, supra note 141, pag. 50.

¹⁵⁷ UNODC, Handbook for Legal Aid Providers at Local Level to Provide Legal Aid in Domestic Violence Cases, 2011, pag. 41.

Assist victim in seeking medical examination. Advocate for prompt, timely action by criminal investigation body.	Advocate for appropriate charges to be included in the Bill of Indictment.	Ensuring victim not subject to unnecessary intrusive or embarrassing questions.
Ensure comprehensive gathering of evidence – ie. History of violence, witness statements, photos. Provide support and information to victim and refer to other services. Ensure appropriate protection measures are in place.	Continue providing support and information on the process.	Prepare against discriminatory defences
	Continue ensuring effective protection measures are in place.	Advocate for calling expert witness, where appropriate
	Encourage victim to continue to participate and not withdraw or recant.	Continue ensuring effective protection measures are in place.
		Advocate for appropriate sentences



Exercise 7: Role play: interviewing victims/survivors

Volunteers among the participants are asked to interview the victim/survivor. The trainer will play the victim/survivor changing attitude at every interview as follows:

1. Hostile, antagonistic, uncooperative

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

2. Frightened, anxious, troubled

- Afraid of seeing him
- Afraid he will recognize you, fixate on your face
- Worried you will not remember everything perfectly and that you might be charged with lying
- Afraid of the unknown, do not know what questions the judge will ask you
- Afraid of retaliation if you proceed

3. Uncomfortable, awkward, embarrassed

- Privacy – afraid your name will be in the news, media in the courtroom, ostracized
- Just want to leave this behind, want to forget about it because you cannot sleep.
- Your whole family is worried and anguished.

4. Distraught, upset, crying

- Father/family is upset about you going to court and you are not sure why
- Feel isolated and would like your family or friends with you in court
- Afraid of crying on the stand, breaking down, embarrassing yourself

5. Unemotional, impassive, aloof

- Lack of confidence in the system – what good will it do to proceed when nothing comes of it in the end
- Does not want to talk about it again, it was so awful and does not want to relive it

After the practice interviews, the group discussion will focus on what was done well, what went wrong during the interview, and what could be improved. The trainers will guide the discussion.

(Source: UNODC, Resource book for trainers on effective prosecution responses on violence against women, Criminal Justice Handbook Series, Vienna, 2017)

The Role of Legal Aid Providers at Trial

Facilitating the participation, protection and support of victims/survivors

At trial, legal aid providers should request the application of measures to facilitate the victim/survivor's participation, whenever available. The purpose of such measures is essentially to create an enabling courtroom environment for women. Legal aid providers must be aware that even for those victims/survivors who are motivated to testify, trials can be an emotionally difficult experience, both because of fear and because of shame and embarrassment for having to disclose intimate details. Different jurisdictions have different ranges of protective measures designed to ease victims' experiences of the trial and facilitate their testimony. Legal aid providers should be aware of the measures available in their jurisdiction and how to request them. These measures may include:

Confidentiality measures.

Legal aid providers may make use, whenever available, of the following measures to ensure that the victim's confidentiality is respected:

- Request that any identifying information such as names and addresses be removed from the court's public records and media;
- Request using a pseudonym for the victim/survivor;
- Request prohibition of disclosure of the identity of the victim/survivor or identifying information to a third party;
- Request that victims/survivor's testimonies be given behind screens or through electronic or other special methods, whenever available;
- Request in camera proceedings or closed sessions during all or part of the trial, for example during victim/survivor's testimony.¹⁵⁸

Privacy measures

Special evidentiary rules designed to limit the questions that can be posed to a victim/survivor during her trial in respect of her privacy include:

- Object to questions about the victim/survivor's prior or subsequent sexual conduct;
- Make sure no corroboration of the victim's testimony is required. In Liberia, Senegal and Sierra Leone the testimony of a woman has the same weight as that of a man.

Victim/survivor support measures

Measures designed to ease the victim/survivor's experience during testimony include:

- If the presence of the accused makes the victim/survivor uncomfortable, ask that she is allowed to testify in a manner that allows to avoid seeing the accused, such as closed-circuit TV or screens, whenever available;
- Limiting the frequency, manner and length of questioning;
- Ask to have a support person, such as a family member or friend, to attend the trial with the victim/survivor.

When dealing with cases involving girl victims/survivors:

- Apply for the assignment of a support person to accompany a girl victim/survivor at all times during her involvement in the justice process;
- Familiarize children with court proceedings before their appearance in court;

¹⁵⁸ The Sexual Offences Act of Sierra Leone provides: "Publication - (1) No person shall publish or make public information that has the effect of identifying a person who is a victim of an offence under this Act; (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding Le10 million or to a term of imprisonment not exceeding three years. Sexual Offences Act of Sierra Leone, 2012, Art. 41.

- Request that interviews be conducted in a child-friendly environment, such as at his or her school, in a specific room decorated in a child-friendly way or at a child advocacy centre.



Exercise 8: Requesting measures to protect, support and facilitate participation of victims and survivors

Ask participants to split into small groups and give them time to draft a motion requesting the court to apply relevant measures to protect, support and facilitate participation of victims and survivors. Each group can be given a different scenario, involving various forms of violence (e.g. rape, domestic violence, stalking) and types of proceedings (e.g. criminal, civil, family law).

Explain that the motion should contain the reasons for the requested measures. Each group should consider all relevant requirements during the trial/hearing, including where the defendant/respondent and the victim/complainant will sit, or which questions should and should not be asked.

Protecting victims/survivors from discriminatory procedures and defences

Legal aid providers should be aware that in cases of gender-based violence against women, and in cases of sexual violence against women in particular, defence counsels make large use of defences that are discriminatory and largely based on assumptions and false myths about the roles and perception of women in society. Legal aid providers should be able to address the following common defences in cases of sexual violence against women. One strategy is to use expert witnesses to testify about the trauma endured by victims of sexual violence and typical reactions.

Victim/survivor's sexual history

Often in sexual violence cases a common defence strategy is to introduce evidence concerning the victim/survivor's sexual history to undermine the credibility of the complainant.

International standards provide that “the introduction of the complainant's sexual history in both civil and criminal proceedings is prohibited when it is unrelated to the case”.¹⁵⁹ However, judges still allow this evidence despite it being based on stereotypes about the credibility of more experienced women and on the biased assumption that when a woman has a sexual history she is of dubious character and must always consent to a sexual act.¹⁶⁰

¹⁵⁹ Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, *supra*, note 127, Art 15.

¹⁶⁰ UNODC, Handbook for the Judiciary on Effective Criminal Justice Responses to Gender-Based Violence against Women and Girls (forthcoming) pag. 61.

The admissibility of evidence regarding a victim/survivor of sexual violence's sexual history is discriminatory and detrimental to women. The fact that a woman has consented to sex previously should be irrelevant to whether she is likely to have consented to the sexual act in question.¹⁶¹

It may also happen that if the victim/survivor had made in the past allegations of prior abuse that did not result in conviction, defence counsel may use this to infer that the victim tends to lie. Or, conversely, past sexual history may be used indirectly to demonstrate that the complainant has been sexually abused in the past and because of this abuse she has a disordered sexual perception that could lead to misinterpretations, overreactions and false criminal accusations.¹⁶²

Consent

Consent is a defence that acknowledges that the defendant committed some sort of action but also states that this act was consented to by the victim/survivor.

Provocation

Provocation is usually a partial defence and mitigating factor that can be defined as a sudden or temporary loss of control as a response to another's provocative conduct. A defence lawyer may invoke the defence of provocation to argue that that crime had been committed in the heat of passion, under an irresistible urge incited by the provoking events, and without being entirely determined by reason.

The defence of provocation is particularly controversial as discriminatory legal and social norms may lead to apply it differently to men and women. For example, laws may provide for reduced sentences for predominantly male perpetrators who kill in response to provocation caused by the behaviour of wives and female relatives, but require aggravated sentences for predominantly female perpetrators who kill their abusers with premeditation.¹⁶³ A violent act due to a sudden loss of self-control in response to a particular trigger is seen as the archetypal male response to provocation. However, this test still remains very difficult for women to use.¹⁶⁴

This discrimination is worsened by the fact that when many men who kill their partners successfully raise provocation, the provocation is often their partners' alleged infidelity and/or their partner leaving or threatening to leave. Their actions are therefore primarily motivated by jealousy and control. In comparison, when women kill their partners and successfully raise the provocation defence, it is often because of a history of physical abuse in the relationship.¹⁶⁵

¹⁶¹ International Commission of Jurists, *Sexual Violence Against Women: Eradicating Harmful Gender Stereotypes and Assumptions in Laws and Practice*, 2015, pag. 18.

¹⁶² UNODC, *Handbook for the Judiciary on Effective Criminal Justice Responses to Gender-Based Violence against Women and Girls* (forthcoming), pag. 62.

¹⁶³ UNODC, *A Practitioner's Toolkit on Women's Access to Justice Programming*, *supra*, note 30, pag. 278.

¹⁶⁴ "Provocation and self-defence in intimate partner and sexual advance homicides". Briefing Paper No 5/2012. NSW Parliamentary Research Service. August 2012.

¹⁶⁵ *Id.*

Delayed complaint

Some defence lawyers in cases of violence against women will try to make an adverse inference as a result of delay on the part of the victim/survivor in making a report. The Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice specifically require that “no adverse inference is drawn solely from a delay of any length between the alleged commission of a sexual offence and the reporting therefor”.¹⁶⁶

Recent complaint is still used to damage a complainant’s credibility, despite no evidence supports that delayed reports are less truthful. On the contrary, studies show that most cases of sexual violence are never reported at all and that it is not a natural behaviour for the victim/survivor to disclose the violence in the immediate aftermath of its occurrence.¹⁶⁷

The idea that a woman who is sexually assaulted will immediately disclose her violation is based on false assumptions about how victims/survivors of sexual assault should behave, such as making a prompt complaint when her chastity is at stake.¹⁶⁸ At trial, a delay in disclosing an assault is used by defence counsel to discredit the victim/survivor’s credibility: *Why didn’t she call the police straight away?*

Paradoxically, if the victim/survivor promptly reports the violence, the defence counsel could rely on the fact that victims/survivors of violence usually delayed their complaint to discredit the complainant’s credibility.¹⁶⁹

Lack of victim/survivor’s resistance

Assumptions on a woman’s proper reaction to an act of sexual violence are based on harmful, “preconceived notions of what defines a rape victim or a victim of gender-based violence.”¹⁷⁰ They rely on the false assumption that women will or should always, physically resist sexual assault and that if sex is truly non-consensual, a woman will fight back and physically defend herself. These assumptions do not take into account that fear, shock and power dynamics influence the reaction of victims of sexual assault crimes in many different ways and that coercion may involve many forms of non-violent threats, intimidation and duress. Survivors in many

¹⁶⁶ United Nations General Assembly, Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, *supra*, note 127, Art 15(e).

¹⁶⁷ International Commission of Jurists, Sexual Violence against Women: Eradicating Harmful Gender Stereotypes and Assumptions in Laws and Practice, *supra*, note 153, pag. 12.

¹⁶⁸ Elaine Craig, “The Relevance of Delayed Disclosure to Complainant Credibility in Cases of Sexual Offence” (2011) 36:2 Queen’s Law Journal 551, pag. 556.

¹⁶⁹ UNODC, Handbook for the Judiciary on Effective Criminal Justice Responses to Gender-Based Violence against Women and Girls (forthcoming), pag. 64-65.

¹⁷⁰ Vertido v. The Philippines, CEDAW Communication No. 18/2008, Views of 16 July 2010, UN Doc. CEDAW/C/46/D/18/2008, Para. 8.4

instances may not physically resist sexual assault and perpetrators may not always use physical violence.¹⁷¹

There should be, “no assumption in law or in practice that a woman gives her consent because she has not physically resisted the unwanted sexual conduct, regardless of whether the perpetrator threatened to use or used physical violence.”¹⁷²

Corroboration requirements or practices

Certain rules and practices may prohibit convictions solely on the basis of a victim/survivor’s testimony and require corroborating evidence such as physical, medical or forensic evidence or the testimony of additional witnesses in support of the victim/survivor’s testimony. However, international standards require that “the credibility of a complainant in a sexual violence case is understood to be the same as that of a complaint in any other criminal proceeding”.¹⁷³

Therefore, corroboration requirements in sexual assault cases, based on the myth that women tend to fabricate claims of sexual assault, should not be allowed. Corroboration requirements are also based on the false assumption that rape would always involve force, resistance, and physical injury and therefore leave physical evidence.¹⁷⁴

Marriage exceptions and crimes against public morals

Sexual crimes are sometimes treated as crimes against honour or public morals. This means they are placed in a different section of the criminal code than crimes such as physical assault or murder, which are categorized as crimes against the person. Some jurisdictions even allow the perpetrator to escape prosecution or penalty for sexual assault if he marries the victim/survivor, thus restoring the victim/survivor’s honour. Instead of promoting respect for women’s rights to dignity, integrity and security of person, and viewing sexual violence as a violent act of non-consensual sex, this approach reflects the belief that women’s involvement in any form of extramarital sex is dishonourable.¹⁷⁵

¹⁷¹ International Commission of Jurists, *Sexual Violence against Women: Eradicating Harmful Gender Stereotypes and Assumptions in Laws and Practice*, *supra* note 153, pag. 22.

¹⁷² *Vertido v. The Philippines*, CEDAW Communication No. 18/2008, Views of 16 July 2010, UN Doc. CEDAW/C/46/D/18/2008, Para. 8.5

¹⁷³ United Nations General Assembly, *Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice*, *supra*, note 127, Art 15(e).

¹⁷⁴ UNODC, *Handbook for the Judiciary on Effective Criminal Justice Responses to Gender-Based Violence against Women and Girls* (forthcoming), pag. 65.

¹⁷⁵ International Commission of Jurists, *Sexual Violence against Women: Eradicating Harmful Gender Stereotypes and Assumptions in Laws and Practice*, *supra*, note 153, pag. 29.



Exercise 9: Group discussion: discriminatory defences

The trainer will moderate a group discussion on discriminatory defences in cases of gender-based violence, particularly sexual violence against women. Should the victim/survivor's sexual history be relevant in cases of sexual violence against women?

- If a victim/survivor of rape was wearing a revealing dress and having drinks at a bar, does it mean she consented to the sexual act? Does it mean "she was asking for it?"
- A wife had promised her husband she would end her affair with another man. When the husband found out she had not, he beat her up and almost killed her. Should the husband's sentence be reduced because she had cheated on him?
- Should the fact that a victim of sexual abuse did not immediately report the crime affect her credibility?
- A victim/survivor of rape told her assaulter to stop and tried to resist him. When she realized he was much stronger than she is, she asked him to use a condom. Does this mean she consented to the act?
- Would the testimony of a victim/survivor suffice to obtain a conviction, or is corroborating evidence necessary?
- Can the perpetrator escape prosecution if he marries the victim/survivor?

Collection of forensic evidence

The collection of forensic evidence is usually vital in cases of gender-based violence against women and legal aid providers should be trained in the collection of forensic evidence. Legal aid providers should be aware of the immediate services needed by victims/survivors of gender-based violence, including treatment of injuries, preservation of evidence, prevention of unwanted pregnancies and sexually transmitted infections, and psychosocial support.

Pointers for effective collection of forensic evidence:

- Forensic services should have minimal wait times;
- Medical examinations should be conducted by trained and accredited providers, and whenever possible, by a woman;
- If possible, forensic evidence should be kept on file should a woman decide to press charges later;
- Confidentiality surrounding forensic exams should be of paramount concern;
- Testing for virginity should never be a part of the forensic examination.



Further reading: UNODC and WHO, Toolkit on Strengthening the Medico-Legal Response to Sexual Violence (2017, available in [English](#))

Appropriate sentences

Legal aid providers should bring to the attention of the court the impact on victims/survivors and their family members of sentences imposed on perpetrators and request that the perpetrators of violence against women are sentenced in a manner commensurate with the severity of the offence. Legal aid providers should highlight the severity of the physical and psychological harm and the impact of victimization, including through victim impact statements. In this regard, they should prompt the court to take into account specific circumstances as aggravating factors for sentencing purposes, within the framework of the national procedural law. Aggravating factors could include, for example:

- repeated violent acts;
- abuse of a position of trust or authority;
- perpetration of violence against an intimate partner; and
- perpetration of violence against a person under 18 years of age.¹⁷⁶

Victim/survivor's input

Legal aid providers may promote, within the framework of their jurisdiction, the victim/survivor's participation at the sentencing stage. At the time of sentencing, victims/survivors may want to raise attention on the impact that the violence had on her life by:

- 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).

¹⁷⁶ In this regard, the Sexual Offences Act of Sierra Leone provides: “*Aggravating Factors – “In sentencing a person for any offence under this Act, the presence of any one of the following aggravating factors can permit a maximum sentence-*

(a) the defendant committed the offence in the company of another person or persons;

(b) at the time of or immediately before or after the commission of the offence, the defendant used or threatened to use a weapon;

(c) at the time of or immediately before or after the commission of the offence, the defendant caused bodily harm to the victim;

(d) the defendant confined or restrained the victim before or after the commission of the offence;

(e) the defendant in committing the offence, abused a position of trust, authority or dependency;

(f) the defendant is a member of the same family as the victim;

(g) the victim is a child; or

(h) the victim has a physical or mental disability.” Sexual Offences Act of Sierra Leone, 2012, article 35.

Legal aid providers should prepare the victim/survivor for the sentencing hearing and advise her of her options. The victim/survivor should describe, whether in a victim impact statement or other means, her opinion for sentencing of the perpetrator, describe how she and her family and friends have been affected by the crime and raise any other concerns that she believes are relevant to sentencing or important in terms of public safety, for example if she believes that the perpetrator is a dangerous individual.

Victim impact statements have two advantages:

They 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. By giving the victim the opportunity to express herself, they might assist in the victim's recovery.



Exercise 10: Victim's impact statement

Read the following provision from the Sexual Offences Act of Sierra Leone:

Victim Impact Statements in Sierra Leone

(1) For the purposes of determining the sentence to be imposed on a defendant under this Act, the court shall consider any statement that may have been prepared orally or in writing of a victim of the offence describing the harm done to or loss suffered by the victim arising from the commission of the offence.

(2) A statement of the victim of an offence prepared and submitted to the court in accordance with subsection (1) does not prevent the court from considering any other evidence concerning any victim of the offence for the purpose of determining the sentence to be imposed on the offender.

(Sexual Offences Act of Sierra Leone, 2012, Art. 36)

Based on the story of Aida discussed in exercise 6 above, ask the participants to draft a victim impact statement.

Restitution

Restitution is intended as gains-based recovery and consists of measures taken to restore the victim/survivor to the condition in which he or she was if the crime had not been committed and the victimization had not occurred. It is a concept that aims at making the offender give up his or her gain to the victim/survivor. It would be appropriate for offenders to make fair restitution to victims, their families or dependents. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power provides that such restitution should include the return

of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.¹⁷⁷

Restitution is important because the return of the victim/survivor to social life includes not only his or her physical and emotional return, consisting of medical and psychological and social assistance, but also the economic return, meaning economic restitution to restore the victim/survivor to his or her status before victimization.¹⁷⁸

Civil Compensation

Regardless of the outcome of the criminal prosecution, or even if there was no prosecution, victims/survivors can file civil lawsuits or make claims for compensation during the criminal trial against offenders and other responsible parties. As opposed to the concept of restitution, which aims at returning any unlawful gain to the victim/survivor, compensation is a mechanism that aims at compensating the victim/survivor for the harm and losses suffered because of the crime through the payment of monetary damages. While monetary damages can never fully compensate a victim/survivor for the trauma of victimization or the loss of a loved one, they can be a valuable resource to help crime victims rebuild their lives. The United Nations Principles and Guidelines mention the possibility for victims/survivors to receive legal advice for the purpose of taking civil action or making a claim for compensation in separate legal proceedings, depending on the applicable law.¹⁷⁹

Victims/survivors can claim compensation for a wide variety of expenses and losses related to the crime, including:

- Expenses for medical care, including mental health treatment;
- Funeral expenses;
- Lost wages, intended also as loss of job opportunities during the period of victimization;
- Moral damages to compensate for pain and suffering;
- Bodily injury or mental impairment;

¹⁷⁷ United Nations General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, *supra*, note 117, art. 8.

¹⁷⁸ UNODC, Criminal Legal Aid Manual for Law Practitioners in Somaliland, *supra* note 44, pag. 141.

¹⁷⁹ The Sexual Offences Act of Sierra Leone provides: “(1) When a person is convicted of an offence under this Act, the court may, in addition to any other punishment order the person convicted to pay the victim such sum as appears to the court to be reasonable compensation.

(2) An order under subsection (1) shall compensate the victim for-

(a) costs of medical and psychological treatment;

(b) costs of physical and occupational therapy and rehabilitation;

(c) costs of necessary transportation, temporary housing and child care;

(d) lost income;

(e) legal practitioner’s fees and other legal costs;

(f) compensation for emotional distress, pain and suffering; and

(g) any other losses suffered by the victim.” Sexual Offences Act of Sierra Leone, 2012, art. 37.

- Travel costs to receive medical treatment
- The costs of housekeeping and childcare if the victim is unable to perform those tasks.

In general, the court orders the offender to pay damages in compensation for the victim/survivor. However, in circumstances where it appears unlikely that the offender will be able to pay on his own, the Court may order that the proceeds of the sale of forfeited assets, or any paid surety, or part of a monetary penalty is used to compensate the victim/survivor. Unfortunately, the difficulty is that these compensation rights may be hollow promises if the offender lacks the resources to satisfy court-ordered compensation.

In Senegal, victims can be *partie civile* to the criminal case and ask for damages.¹⁸⁰ In Liberia and Sierra Leone, a separate claim for civil compensation must be filed.



Exercise 11: Group discussion: restitution and compensation

What is the difference between restitution and compensation?

What are the main expense/losses that victims/survivor may claim in compensation for damages suffered as a result of the crime?

A step-by-step guide to providing legal aid to victims/survivors of gender-based violence against women

1. *Show compassion and understanding.* When dealing with a woman victim/survivor of gender-based violence, at the first meeting, make her feel welcome, tell her immediately that you are there to help and protect her, that she is safe, and let her take her time to tell you her story. Listen to her carefully, reassure her that what happened is not her fault, and that you will respect her privacy and confidentiality.
2. *Immediately assess whether the victim/survivor is in need of medical treatment.* If the victim/survivor has been raped, beaten, or subject to any harmful practice and is in need of assistance, seek medical attention. Make sure to collect medical records to introduce as evidence. Whenever possible, accompany the victim/survivor to a medical facility and make sure she feels comfortable, that procedures are explained and that all the documents are confidential.

¹⁸⁰ Code de Procédure Pénale Sénégalais, Artt. 76-82.

3. *Immediately assess whether the victim/survivor is in danger.* Victims/survivors of gender-based violence may be in extreme danger. It is therefore vital to recognize the signs that should alert the legal aid provider that the beneficiary's safety is at high risk. It is a good practice to have a danger-assessment protocol to follow in these cases.
4. *Seek to ensure the victim/survivor is safe.* If the risk assessment shows that the victim/survivor is in danger, it is not appropriate to advise the victim/survivor to go back to the perpetrator. She is entitled to, but as a legal aid provider you should not recommend it. Determine whether there is a safe place where she can stay, such as a shelter. Consider applying for a protection order. If the perpetrator is detained or imprisoned, the victim/survivor is entitled to be notified of his release.
5. *Verify whether the beneficiary is in need of counselling.* The victim/survivor is at her most vulnerable after an episode of violence. A meeting with a psychotherapist is appropriate to address the trauma and make the victim/survivor more comfortable.
6. *Consider reporting the case to the police.* Explain to the beneficiary in clear and simple words her rights, remedies and victim support services, in addition to information about their role and opportunities for participating in criminal proceedings without fear, and their right to seek restitution from the offender or compensation from the State, whenever available. The decision to report the crime must be taken in consultation with the beneficiary. Her decision to pursue or not to pursue the case must be respected.
7. *If the victim/survivor wants to pursue prosecution:* do not contact the perpetrator. Accompany her to the police station and ask to be present at interview. Bring any medical records with you.
8. *Verify whether the victim/survivor is financially independent.* Victims/survivors of gender-based violence, especially domestic violence, are often financially dependent on the perpetrator. If that is the case, advise the victim/survivor on how she can support herself. It is useful to be aware of any vocational training programmes, any social services, or microfinance programmes available.
9. *Assist in seeking child maintenance.*
10. *At trial, make use of any available mechanisms to:*
 - *Facilitate victim/survivor's participation;*
 - *Address discriminatory defences and procedures;*
 - *Protect the safety of victims/survivors;*
 - *Ensure appropriate sentences are imposed taking into account the severity of the crime and its impact on victims/survivors and their families;*
 - *Make claims for restitution and compensation, whenever available.*

The additional guidelines may be useful for effective delivery of legal aid to women victims of gender-based violence:

1. *Geographic access.* One major difficulty that women encounter in accessing legal aid is that women often lack the financial and practical means to leave the house and travel to seek legal assistance, especially when living in rural areas, where the number of lawyers is typically low. Paralegal programmes, clinics, and NGOs should consider geographical coverage and try to establish community-based offices or make use of mobile units.
2. *Raise awareness about the services you provide.* Stay-at-home women are less likely than men to leave the house and visit urban areas, where information about legal aid services might be more easily available. Consider raising awareness about the legal aid services you provide in places more commonly frequented by women, such as local markets, places of worship, and schools. Radio programmes are also effective.

ANNEX 1- Glossary of Terms used in this Tool

"Accused" is the defendant in a criminal process, someone who has been formally charged with the commission of an offence punishable in a court of law.

"Arrest" means the act of apprehending a person for the alleged commission of an offence or by the action of an authority.

"Arrested person" refers to a person who has been apprehended by the authorities for the alleged commission of an offence.

"Beneficiary" means a person using the services of a legal aid provider or legal practitioner.

"Charged" refers to the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence, such as a formal indictment.

"Claimant" refers to a person seeking compensation for damages suffered as a victim of a crime.

"Criminal" means related to an action or omission that constitutes an offence punishable by law.

"Criminal justice system" means the set of processes and law enforcement agencies directed at crime prevention and detection, prosecution, defence, trial, sentencing, and the serving of sentences.

"Criminal justice process" means the process encompassing detection of the crime, making of the complaint, investigation, prosecution and trial and post-trial procedures.

"Defendant" refers to a person being accused of a crime in a criminal action or to a person against whom a suit is brought in a civil action.

"Detained person" is any person deprived of personal liberty except as a result of conviction for an offence.

"Detention" means the condition of any person deprived of personal liberty except as a result of conviction for an offence.

"Gender-neutral" means non-discriminatory language that neutralizes reference to gender to describe people or relationships.

"Gender identity" refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond to the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and

mannerisms. The concept of Gender identity includes being transgender and, for individuals with bodily diversity who choose to identify as intersex, gender identity also encompasses intersex.

“Gender-sensitive” means an approach that understands and takes into account the societal and cultural factors involved in gender-based exclusion and discrimination.

“Imprisoned person” is any person who has been deprived of personal liberty as a result of conviction for an offence.

“Imprisonment” means the condition of any person deprived of personal liberty as a result of conviction for an offence.

“Law clinic” means a clinic based at a recognized academic institution or non-governmental organization offering free legal services.

“Legal advice” refers to the provision of advice about the application of relevant law to the circumstances of the case, and about any appropriate action that the recipient might take.

“Legal aid” means legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require.

“Legal aid provider” means an individual who provides legal aid, including public defenders, private lawyers, contract lawyers, pro bono lawyers, paralegals.

“Legal aid service providers” means the organizations that provide legal aid, including, where available, non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations and academia.

“Legal assistance” refers to assistance by any legal aid provider in taking any appropriate action the recipient might take, including by taking such action on his or her behalf, for example, by interacting with the police if the assisted person is in custody.

“Legal practitioner” means an attorney, that is, a lawyer legally qualified to initiate and defend actions on behalf of beneficiaries in a court of law.

“Legal representation” refers to the work of a licensed legal practitioner speaking or acting on behalf of the recipient before a prosecutor, a court, or tribunal.

“Paralegal” means a person who provides free legal advice and assistance, who is not licensed to practice as a legal practitioner.

"Suspected" refers to a person who is the subject of an investigation and is made aware of this by the relevant authorities.

"Torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

"Victims of a crime" means persons who, individually, or collectively, have suffered harm, including physical or mental injury, emotional suffering, economical loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws.

"Victims/survivors" refers to women and girls who have experienced or are experiencing gender-based violence and reflects both the terminology used in the legal process and the agency of these women and girls in seeking essential services.

"Vulnerable" means a person who is in need of special protection because of age, gender, sexual orientation, illness, disability, national, social, or personal status, or other status, including but not limited to children, refugees, internally displaced persons, stateless persons, asylum seekers, victims of human trafficking and of gender-based violence, illiterate persons, minorities, migrants and migrant workers, persons who do not speak or understand the language of the proceedings, elderly, persons with disabilities, persons with mental illnesses, persons living with HIV/AIDS and other serious contagious diseases, persons in custody, and drug users.

"Witness of crime" is someone who has seen a crime being committed and may be called in a court of law to testify about it.

ANNEX 2: Non-Discrimination, Equality, and Equal Protection of the Law: the International Legal Framework

Gender equality in access to justice has a legal basis in the rights of equality and non-discrimination and equal protection of the law.

Historically, the principles of equality between men and women and non-discrimination on the basis of sex have been enshrined in a number of international conventions.

The Preamble to the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women.¹⁸¹ Article 1 proclaims that one of the purposes of the United Nations is promoting respect for human rights and for fundamental freedoms for all without distinction as to, *inter alia*, sex.¹⁸² Article 55 goes further to state that the United Nations shall promote universal respect for and observance of human rights and fundamental freedoms for all without distinction as to, *inter alia*, sex, with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations.

The International Bill of Human Rights strengthens and extends this emphasis on the human rights of women. The 1948 Universal Declaration of Human Rights proclaims the entitlement of everyone to equality before the law and to the enjoyment of human rights and fundamental freedoms without distinction of any kind, including sex, or other status.¹⁸³ Article 7 provides that all are equal before the law and are entitled without any discrimination to equal protection of the law.

The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, both of 1966, which translate the principles of the Declaration into legally binding form, clearly state that the rights set forth are applicable to all persons without distinction of any kind and put forth sex as one of the grounds of impermissible distinction.¹⁸⁴

More specifically, the International Covenant on Economic, Social and Cultural Rights, under article 3, calls on States Parties undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the Covenant.¹⁸⁵

¹⁸¹ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Preamble.

¹⁸² *Id.*, art. 1

¹⁸³ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III) Article 2.

¹⁸⁴ International Covenant on Civil and Political Rights, *supra*, note 40, article 2; United Nations General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, article 2.

¹⁸⁵ International Covenant on Economic, Social and Cultural Rights, *supra*, note 178, article 3.

Article 3 of the ICCPR provides that the States Parties to the Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant.¹⁸⁶

The principle of equality in access to justice is expressed in article 14, which provides that all persons shall be equal before the courts and tribunals.

The principle of equal protection of the law is illustrated in article 26, which provides that: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁸⁷ The principle of the equal protection of the law means that any law in force in a member state must be applied without discrimination.

The 1979 CEDAW Convention, defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:
a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

¹⁸⁶ International Covenant on Civil and Political Rights, *supra*, note 40, article 3.

¹⁸⁷ International Covenant on Civil and Political Rights, *supra*, note 40, article 26.

g) To repeal all national penal provisions which constitute discrimination against women.

Although the Convention only refers to sex-based discrimination, the CEDAW Committee explains that interpreting article 1 together with articles 2 (f) and 5 (a) on the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women indicates that the Convention covers also gender-based discrimination against women.¹⁸⁸

¹⁸⁸ United Nations CEDAW Committee General Recommendation No. 28, *supra*, note 4, Par 5.

ANNEX 3: Non-Discrimination, Equality, and Equal Protection of the Law: the National Legal Framework in Liberia, Senegal and Sierra Leone

The following sections provide an overview of the national legal and institutional framework on equality and non-discrimination in the three target countries of Liberia, Senegal and Sierra Leone, as well as pertinent observations of the CEDAW Committee.

Liberia

Article 8 of the Constitution of Liberia states that:

*The Republic shall direct its policy towards ensuring for all citizens, without discrimination, opportunities for employment and livelihood under just and humane conditions, and towards promoting safety, health and welfare facilities in employment.*¹⁸⁹

And article 11(b) provides that:

*All persons, irrespective of ethnic background, race, sex, creed, place of origin or political opinion, are entitled to the fundamental rights and freedoms of the individual, subject to such qualifications as provided for in this Constitution.*¹⁹⁰

In this regard, the CEDAW Committee has expressed concern at the fact that the prohibition of discrimination in the Constitution does not encompass other prohibited grounds of discrimination, such as marital status, and that the definition is not fully in line with article 1 of the CEDAW Convention.¹⁹¹ The Committee explained how a comprehensive legal definition of discrimination against women in line with article 1 of the Convention should cover all prohibited grounds of discrimination, direct and indirect discrimination in the public and private spheres, and intersecting forms of discrimination based on sex and other grounds.¹⁹²

The Liberian Constitution contains an equality clause. Article 11(c) provides that

All persons are equal before the law and are therefore entitled to the equal protection of the law.

Therefore, the framework on access to justice and legal aid must be applied equally to all persons.

In 2005, Liberia has established an Independent National Commission on Human Rights (INCHR) by an Act of the National Legislature.¹⁹³ The Commission is a National Human Rights Institution (NHRI) responsible for the promotion and protection of human rights in Liberia.

¹⁸⁹ Constitution of the Republic of Liberia, *supra*, note 35, art. 8.

¹⁹⁰ *Id.* Art. 11.

¹⁹¹ United Nations CEDAW Committee, Concluding Observations to the combined sixth and seventh periodic reports of Liberia, CEDAW/C/LBR/CO/7-8, 24 November 2015, par. 11.

¹⁹² *Id.*, par. 12.

¹⁹³ National Commission on Human Rights (INCHR), at <http://inchrliberia.com/index.php/about-us/what-we-do>

The main functions of the INCHR are:

- a) promoting and protecting human rights;
- b) investigating complaints of human rights violations and conduct hearing;
- c) proposing amendments or reform to laws, policies and administrative practices and regulations; and
- d) advising the Government on the implementation of national and international human rights standards.

The Commission submits reports on the human rights situation of the country to the Legislative, Executive, and Judiciary branches of government and is also responsible for monitoring implementation of the recommendations of the Truth and Reconciliation Commission (TRC).

Finally, the Commission receives complaints, conducts investigation and takes appropriate actions on instances of human rights violations.

Senegal

The Constitution of Senegal provides for the right to equality before the law. It states:

*The Republic of Senegal [...] shall ensure equality before the law for all citizens, without distinction as to origin, race, sex or religion.*¹⁹⁴

Article 5 prohibits any act of racial, ethnic or religious discrimination but it does not prohibit discrimination based on sex or gender.¹⁹⁵

The CEDAW Committee has noted how the Constitution and ordinary legislation lack an explicit definition of discrimination covering direct and indirect discrimination and discrimination in the public and private spheres, as well as provisions guaranteeing equal rights of women and men in line with article 2 (a) of the CEDAW Convention.¹⁹⁶ The Committee therefore recommended that Senegal introduce in its legislation the definition of discrimination included in article 1 of the Convention, covering direct and indirect discrimination and discrimination in the public and private spheres, as well as provisions guaranteeing equal rights of women and men, in line with article 2 (a) of the Convention, in the Constitution or other appropriate legislation.¹⁹⁷

Sierra Leone

In Sierra Leone, article 6(2) of the Constitution discourages discrimination:

¹⁹⁴ Constitution de la République du Sénégal, 7 January 2001, art. 1.

¹⁹⁵ Id., Art. 5

¹⁹⁶ United Nations CEDAW Committee, Concluding observations on the combined third to seventh periodic reports of Senegal, CEDAW/C/SEN/CO/3-7, 28 July 2015, par. 10.

¹⁹⁷ Id., par. 11.

*[T]he State shall promote national integration and unity and discourage discrimination on the grounds of place of origin, circumstance of birth, sex, religion, status, ethnic or linguistic association or ties.*¹⁹⁸

Article 27 contains a more detailed protection against discrimination:

(1) [...] no law shall make provision which is discriminatory either of itself or in its effect.

(2) [...] no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.

(3) In this section the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description.¹⁹⁹

Pursuant to subsection (4), the protection from non-discrimination contained in subsection (1) does not apply in a number of cases, including with regard to laws on adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law; in the case of members of a particular race or tribe; or in matters of customary law. The CEDAW Committee has expressed concern at the selective application of the non-discrimination clause and at the fact that not only does it discriminate against women, but it also prevails over the Registration of Customary Marriage and Divorce Act, the Domestic Violence Act and the Devolution of Estates Act, thus defeating the efforts of the State party to comply with the Convention.²⁰⁰

Furthermore, subsection (8) provides:

*The exercise of any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person under or by this Constitution or any other law shall not be enquired into by any Court on the grounds that it contravenes the provision of subsection (2).*²⁰¹

Article 15(a) provides for equal protection of the law. It states:

Whereas every person in Sierra Leone is entitled to the fundamental human rights and freedoms of the individual, that is to say, has the right, whatever his race, tribe, place of origin, political opinion, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following
— a. life, liberty, security of person, the enjoyment of property, and the protection of law.²⁰²

¹⁹⁸ Constitution of Sierra Leone, 1991, as amended to 2013, art. 6(2).

¹⁹⁹ Id., art. 27(1-3).

²⁰⁰ CEDAW Concluding Observations to Sierra Leone's sixth periodic report, CEDAW/C/SLE/CO/6, 10 March 2014, Par. 9.

²⁰¹ Constitution of Sierra Leone, 1991, as amended to 2013, art. 27(8).

²⁰² Id., art. 15(a).

The CEDAW Committee has called upon the State to prioritize incorporation into appropriate national legislation of a definition of discrimination against women in conformity with article 1 of the Convention. The Committee also recommended to incorporate the principle of equality between women and men in line with article 2 of the Convention into the Constitution.²⁰³ The Committee was also concerned that some statutory and customary norms discriminate against women, including those contained in:

- The Criminal Procedure (Amendment) Act No. 12 of 1972, which provides for different minimum ages for men and women to qualify as jurors;
- Customary law pertaining to marriage consent and women's right to inheritance.

The Constitution of Sierra Leone is currently under review and the Gender Equality and Women's Empowerment Bill has not been approved as of May 2021.

In 2004, a Human Rights Commission has been established, with the purpose of promoting and protecting human rights in Sierra Leone.²⁰⁴ The Commission has the following functions, as provided in article 7(2):

(a) investigate or inquire into on its own or on complaint by any person any allegations of human rights violations and to report thereon in writing;

(b) promote respect for human rights, through -

(i) public awareness and education programmes aimed at creating a culture of human rights in Sierra Leone;

(ii) providing human rights information, including locating within the Commission a national human rights resource and documentation centre;

(iii) publishing guidelines, manuals and other materials explaining the obligations of public officials in the protection of human rights;

(iv) effective co-operation with non- governmental organisations and other public - interest bodies engaged in the field of human rights;

(c) review existing legislation and advise the Government concerning compliance by such legislation with the obligations of Sierra Leone under international treaties or agreements;

(d) advise the Government concerning draft legislation, which may affect human rights;

(e) advise Government concerning preparation of periodic reports required by international human rights treaties or agreements to which Sierra Leone is a party;

(f) monitor and document violations of human rights in Sierra Leone;

(g) publish an annual report on the State of Human Rights in Sierra Leone.

²⁰³ CEDAW Concluding Observations to Sierra Leone's sixth periodic report, CEDAW/C/SLE/CO/6, 10 March 2014, Par. 10

²⁰⁴ Human Rights Commission of Sierra Leone Act, 2004.

ANNEX 4: Barriers to Women's Access to Justice in Liberia, Senegal and Sierra Leone

The information contained in this annex is based on an assessment conducted by UNODC involving various stakeholders in the three countries, including Ministries of Justice, Legal Aid Providers, Civil Society, NGOs and others. The three individual assessment reports were shared with the stakeholders from the respective countries for their comments and suggestions, which after were incorporated in the final reports.

Liberia

An assessment conducted by UNODC in 2010 revealed that access to justice in Liberia was hindered by several obstacles, including corruption, costs, geographical distance from courts, lack of trust in the formal system, and lengthy judicial procedures.

According to UNODC's more recent assessment in 2018, women face additional hurdles when accessing justice, as discriminatory perceptions of women as less trustworthy and similar gender-based stereotypes prevent them from seeking justice. Other obstacles include low literacy, gender-biased customary laws and practices, stigmatization of survivors of gender-based violence, as well as marginalization of female Ebola survivors and health workers. Timely case management is a challenge, resulting in the denial of justice to victims and the violation of the rights of alleged perpetrators. Nearly 80 percent of the detained population are in pre-trial detention, which has a negative impact on corrections facilities, with frequent prison disturbances and escape incidents. Weak infrastructure, overcrowding, absenteeism and a heavy reliance on untrained volunteer staff all contribute to these incidents.

The statutory justice system suffers from chronic capacity constraints in terms of basic infrastructure and material resources and acute shortages in human and financial resources, all of which severely hampers the administration and delivery of justice, in particular outside Monrovia. Most people refer their disputes to traditional and customary fora for resolution of their disputes.

Liberia counts on a very limited number of lawyers, the majority of whom are located in Monrovia. Most corrections facilities, including the Monrovia Central Prison, are either overcrowded or are operating at full capacity and facing increasingly frequent breakouts due to the slow process through the courts which themselves sit on an irregular basis and/or are themselves unable to 'advance' a case due to the weak investigative capacity of the police, or non-appearance of witnesses and victims of crime whether because of a failure to warn them in advance of the trial date or reluctance to appear for a host of reasons. An additional constraint is the abuse of the formal justice process to resolve private disputes and bring false or vexatious charges. To the extent cases do enter the formal justice system, they are often subject to severe case backlogs and delays that contribute to a sense of injustice. The formal system is also largely seen as ineffective and failing to enforce judgments against offenders that are found guilty.

When it comes to matters of accessibility, timeliness and affordability, according to some studies, Liberians overwhelmingly believe that the formal justice system is too costly, corrupt and biased. By contrast, Liberians reported far more satisfaction with customary justice institutions.

Women seek justice primarily for child maintenance/persistent non-support cases. Section 16.5 of the Penal Law provides that a person commits this misdemeanour if “he persistently fails to provide support which he can provide and which he knows he is legally obliged to provide to a spouse, child or other dependent”. Numerous reports are received at police stations by women who accuse their husbands of persistent non-support and Public Defenders often represent men in such cases.

Senegal

In Senegal, the CEDAW Committee²⁰⁵ has identified the following barriers to access to justice for women:

- legal illiteracy, stigmatization of victims, stigmatization of women fighting for their rights, fear of reprisals, difficulties in gaining access to justice infrastructure, difficulties in producing evidence and the limited number of female police officers, especially in rural and peri-urban areas;
- The limited protection offered by the free legal aid system for women without sufficient means;
- The lack of cases in which discrimination has been invoked, showing the limited efficiency of the formal appeal mechanisms;
- The impossibility for civil society organizations with an interest in the proceedings to lodge petitions and participate in the proceedings;
- The lack of sufficient training of justice personnel on women’s rights and gender equality.

Sierra Leone

In Sierra Leone, the adoption of the new Justice Sector Reform Strategy and Investment Plan (2011-2014), the 2011 Local Courts Act and the 2012 Legal Aid Act and have been significant steps forward in promoting access to justice. Still, the CEDAW Committee has expressed concern about several factors that still hinder access to justice, particularly for women, including:

- Lack of independency of the judiciary;
- Inadequate court infrastructure;

²⁰⁵ CEDAW Committee, Concluding observations on the combined third to seventh periodic reports of Senegal, CEDAW/C/SEN/CO/3-7, 28 July 2015, par. 12.

- Lengthy trials and delays especially in cases of sexual violence;
- Capacity constraints;
- Lack of due process guarantees;
- Insufficient capacity-building on existing legislative frameworks for judges, prosecutors, lawyers and relevant law enforcement agents;
- Low literacy;
- Stigmatization of GBV survivors; and
- Gender-biased customary laws and practices.²⁰⁶

Furthermore, despite the recommendations made by the Truth and Reconciliation Commission reparation for victims of the civil war, including women victims of sexual violence have been inadequate.²⁰⁷

Challenges to accessing justice in plural legal systems: harmonization with customary laws

Plural justice systems are justice systems where laws, regulations, procedures and decisions coexist with religious, customary, indigenous or community laws and practices. With regard of women's access to justice, this means that in plural justice systems women may encounter multiple sources of law, whether formal or informal, whether State, non-State or mixed, when seeking to exercise their right to access to justice.

Religious, customary, indigenous and community justice systems may be formally recognized by the State, as they are sometimes recognized in the constitution as valid sources of law, or operate with the acquiescence of the State, with or without any explicit status, or function outside of the State's regulatory framework.²⁰⁸

Customary law is recognized as a valid source of law in the constitutions of Liberia²⁰⁹ and Sierra Leone.²¹⁰ In Liberia, the Judiciary law also recognizes customary courts.²¹¹ Liberia currently has a dual justice system involving a formal court hierarchy under the judiciary, and a system of customary courts.

²⁰⁶ CEDAW Committee, Concluding observations on the sixth periodic report of Sierra Leone, CEDAW/C/SLE/CO/6, 10 March 2014, par. 12.

²⁰⁷ *Id.*

²⁰⁸ United Nations CEDAW Committee, General Recommendation No. 33, *supra*, note 7, Par.

²⁰⁹ Constitution of Liberia, *supra*, note 35, art. 65.

²¹⁰ Constitution of Sierra Leone, *supra*, note 36, art. 170 (1)-(2).

²¹¹ Judiciary Law - Title 17 - Liberian Code of Laws Revised, 1972, Section 1.1.

Their decisions cannot be appealed before statutory courts. Customary systems of justice remain the primary vehicle for dispute resolution for most of the population. The Liberian Constitution provides the basis for the integration of customary justice into the formal system. Specifically, Article 5b provides that the Republic shall “protect and promote positive Liberian culture ensuring that traditional values which are compatible with public policy and national progress are adopted and developed as an integral part of the growing needs of the Liberian society.”²¹² Also, article 65 states that “the Judicial Power of the Republic shall be vested in a Supreme Court and such subordinate courts as the legislature may from time to time establish. The courts shall apply both statutory and customary laws in accordance with the standards enacted by the Legislature.”²¹³

In Sierra Leone, customary law prevails over the constitutional protection from discrimination. Article 27 of the constitution, which states that no law shall make provision which is discriminatory either of itself or in its effect, does not apply to customary law.²¹⁴

Customary systems serve positive purposes, including providing an accessible and affordable means of resolving disputes. With regard to women’s access to justice, especially in cases of gender-based violence against women, some issues raise concern though, including:

- a primary emphasis on social reconciliation of the aggrieved parties, which raises concerns about the state’s responsibility and authority to bring justice to crime;
- concerns about due process and human rights, especially considering certain methods used to identify perpetrators, such as trial by ordeal;
- concerns about gender equality, to the extent it follows norms and practices that deviate from constitutional and statutory equality rights, particularly those granted to women.²¹⁵
- Lack of harmonization with statutory law, which may contribute to perpetuate discrimination against women. For example, while the statutory law in Liberia sets the age of marriage at 18, Hinterland regulations set it at 15. Furthermore, while polygamy is not recognized under statutory law in Liberia, it is recognized under customary law, which has a number of implications for women, including discriminatory division of inheritance, which may be divided among all the wives, or just assigned only to the first wife.²¹⁶

²¹² Constitution of Liberia, *supra*, note 35, art. 27.

²¹³ *Id.*, art. 65.

²¹⁴ Constitution of Sierra Leone, *supra*, note 36, art. 27(4)(e).

²¹⁵ UNODC Liberia Needs Assessment, 2010.

²¹⁶ Assessment Report, The Legal Aid Systems in Sierra Leone, Liberia, Senegal. UNODC

ANNEX 5: Legal Aid Framework in Liberia, Senegal, and Sierra Leone

The information contained in this annex is based on an assessment conducted by UNODC involving various stakeholders in the three countries, including Ministries of Justice, Legal Aid Providers, Civil Society, NGOs and others. The three individual assessment reports were shared with the stakeholders from the respective countries for their comments and suggestions, which after were incorporated in the final reports.

The national legal framework for the provision of legal aid differs in Liberia, Senegal and Sierra Leone. The following sections will provide an overview of the applicable legal framework for the provision of legal aid as well as the main challenges that bring women in contact or conflict with the law in the three target countries and hinder their access to justice.

Liberia

The Constitution of Liberia provides several guarantees for people in contact and conflict with the law, including the right to due process of law, *habeas corpus*, counsel, release on bail, the right to be brought before a court of law within forty-eight hours of arrest, and freedom from torture or inhuman treatment while in detention.

Article 20

"No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law. Justice shall be done without sale, denial, or delay; and in all cases not arising in courts not of record, under court-martial and upon impeachment, the parties shall have the right to trial by jury."

Article 21

a) No person shall be made subject to any law or punishment which was not in effect at the time of commission of an offense, nor shall the Legislature enact any bill of attainder or ex post facto law.

b) No person shall be subject to search or seizure of his person or property, whether on a criminal charge or for any other purpose, unless upon warrant lawfully issued upon probable cause supported by a solemn oath or affirmation, specifically identifying the person or place to be searched and stating the object of the search; provided, however, that a search or seizure shall be permissible without a search warrant where the arresting authorities act during the commission of a crime or in hot pursuit of a person who has committed a crime.

c) Every person suspected or accused of committing a crime shall immediately upon arrest be informed in detail of the charges, of the right to remain silent and of the fact that any statement made could be used against him in a court of law. Such person shall be entitled to counsel at every stage of the investigation and shall have the right not to be interrogated except in the presence of counsel. Any admission or other statements made by the accused in the absence of such counsel shall be deemed inadmissible as evidence in a court of law.

d) (i) All accused persons shall be bailable upon their personal recognizance or by sufficient sureties, depending upon the gravity of the charge, unless charged for capital offenses or grave offenses as defined by law.

(ii) Excessive bail shall not be required, nor excessive fines imposed, nor excessive punishment inflicted.

e) No person charged, arrested, restricted, detained or otherwise held in confinement shall be subject to torture or inhumane treatment; nor shall any person except military personnel, be kept or confined in any military facility; nor shall any person be seized and kept among convicted prisoners or treated as a convict, unless such person first shall have been convicted of a crime in a court of competent jurisdiction. The Legislature shall make it a criminal offense and provide for appropriate penalties against any police or security officer, prosecutor, administrator or any other public official acting in contravention of this provision; and any person so damaged by the conduct of any such public official shall have a civil remedy therefor, exclusive of any criminal penalties imposed.

f) Every person arrested or detained shall be formally charged and presented before a court of competent jurisdiction within forty-eight hours. Should the court determine the existence of a prima facie case against the accused, it shall issue a formal writ of arrest setting out the charge or charges and shall provide for a speedy trial. There shall be no preventive detention.

g) The right to the writ of habeas corpus, being essential to the protection of human rights, shall be guaranteed at all times, and any person arrested or detained and not presented to court within the period specified may in consequence exercise this right.

h) No person shall be held to answer for a capital or infamous crime except in cases of impeachment, cases arising in the Armed Forces and petty offenses, unless upon indictment by a Grand Jury; and in all such cases, the accused shall have the right to a speedy, public and impartial trial by a jury of the vicinity, unless such person shall, with appropriate understanding, expressly waive the right to a jury trial. In all criminal cases, the accused shall have the right to be represented by counsel of his choice, to confront witnesses against him and to have compulsory process for obtaining witnesses in his favour. He shall not be compelled to furnish evidence against himself and he shall be presumed innocent until the contrary is proved beyond a reasonable doubt. No person shall be subject to double jeopardy.

i) The right to counsel and the rights of counsel shall be inviolable. There shall be no interference with the lawyer-beneficiary relationship. In all trials, hearings, interrogatories and other proceedings where a person is accused of a criminal offense, the accused shall have the right to counsel of his choice; and where the accused is unable to secure such representation, the Republic shall make available legal aid services to ensure the protection of his rights.

There shall be absolute immunity from any government sanctions or interference in the performance of legal services as a counsellor or advocate; lawyers' offices and homes shall not be searched or papers examined or taken save pursuant to a search warrant and court order; and no lawyer shall be prevented from or punished for providing legal services, regardless of the charges against or the guilt of his beneficiary. No lawyer shall be barred from practice for political reasons.

j) Any person who, upon conviction of a criminal offense was deprived of the enjoyment of his civil rights and liberties, shall have the same automatically restored upon serving the sentence and satisfying any other penalty imposed, or upon an executive pardon.

Constitution of Liberia, arts. 20-21.

The right to criminal legal aid is also enshrined in the Liberian Constitution.

Article 21(i) on the right to counsel (see above) provides that ***when the accused is unable to secure representation, the Republic shall make available legal aid services to ensure the protection of his right.***²¹⁷

The 1972 Criminal Procedure Code implements the constitutional right to criminal legal aid in Section 2.2. *“Adequate legal representation of accused persons,”* which provides for the right to representation by legal counsel at every stage of proceedings.

Article 1 of section 2.2 reads: ²¹⁸

“In all criminal prosecutions the accused shall enjoy the right to be represented by legal counsel at every stage of the proceedings from the time of arrest or, where no arrest has been made, from the initial appearance and submission of the accused to the jurisdiction of the court. This right continues through appeal and post-conviction proceedings, if any.”

And, for persons without sufficient means, **for crimes triable in the Circuit Court only**, article 4, *“Appointment of Defence Counsel for those financially unable to retain legal counsel,”* provides:

“In all cases where the crimes charged are triable only in the Circuit Court, at any time when an accused advises that he is financially unable to retain legal counsel and that he desires to have legal counsel assigned to represent him, as soon after his request as practicable, he shall be brought before the court then having jurisdiction over him to decide whether the county Defence Counsel shall be assigned to represent him. If the court is satisfied after appropriate inquiry that the accused is financially unable to retain legal counsel, it shall assign the county Defence Counsel to represent him, and the accused shall be allowed reasonable time and opportunity to consult privately with such counsel before any further proceedings are had.

*Counsel so assigned shall serve without cost to the accused and he shall have free access to the accused, in private, at all reasonable hours while acting as legal counsel for him. The assignment of Defence Counsel shall not deprive the accused of the right to engage other legal counsel in substitution at any stage of the proceedings.”*²¹⁹

The Office of the Public Defenders, established in 2009 within the Judiciary, is the only institution with a legal mandate to deliver legal representation to persons without sufficient means in the Constitution and Criminal Procedure Code, but the Criminal Procedure Code does not specify clear functions. The only reference document that contains information on the role and functions of public defenders is the Terms of Reference issued by the Office of the National Public Defenders within the Supreme Court. At present, no legal aid framework provides for eligibility criteria or types of cases covered.

While Public Defenders are formally entitled to take up only criminal cases, they also handle a limited number of civil cases, although the criteria for accepting such cases are not predefined. These cases are considered an exception, so the Office Coordinator in Monrovia must authorize the designation. In their daily practice, Public Defenders perform also other tasks, including

²¹⁷ Constitution of Liberia, *supra* note 36, art. 21(i)

²¹⁸ Criminal Procedure Law of Liberia, *supra*, note 45, Sec. 2.2, art. 1.

²¹⁹ *Id.*, Sec. 2.2, art. 4.

representing beneficiaries in administrative hearings, attending police investigations and visiting prisons.

Primary Duties and Responsibilities of National Public Defenders

(a) Represents all indigent persons charged with crimes in the County. Defends individuals charged with felonies, misdemeanors and traffic cases for which a sentence of incarceration may be imposed. Provides effective representation to beneficiaries who are frequently illiterate, uneducated, financially unable to hire lawyers or pay legal fees, and uncooperative while managing a large caseload.

(b) Represents juveniles in juvenile delinquency petitions; and parents and children in child abuse and neglect cases. Represents indigent persons in paternity actions and involuntary commitments to mental health institutions.

(c) May concentrate in representing juveniles in juvenile delinquency proceedings and children and adults in child abuse and neglect cases. Works closely with the Juvenile Court Services, Ministry of Gender, Children & Social Protection; and county-based family services and other social service agencies in the county and ensure that children in the county receive the protection and care that is needed.

(d) Handles court arraignment and court bond for indigent party litigants. Meets with beneficiaries when arrested and obtains their history to make bond arguments to the court. Maintains working relationship with beneficiaries in person, by phone and by mail contact.

(e) May be called to represent individuals at investigative proceedings such as line-ups, taking of blood, urine, hair and fingernail scraping samples. May be assigned to handle cases involving post-conviction or appellate relief.

(f) Interviews and counsels respondents in mental health proceedings in the county or state treatment units where they may be confined; and works closely with psychiatrists and other medical or treatment personnel.

(g) Investigates alleged crime(s) or offense(s) by meeting with witnesses, police officers; and reviewing the facts. Meets with the beneficiary to discuss the appropriate action to be taken and whether pre-trial motions should be filed.

(h) Establishes close contact with defendants by regular visits to the Correctional facilities or by constant correspondence via personal visits to the Public Defender's Office, phone contact or by letters to defendants not in custody.

(i) Performs as trial counsel by representing defendants during courtroom proceeding. Researches case law, communicates with defendant to determine trial strategy such as cross-examination procedures, witness selection, jury selection, testimony decisions and opening and closing arguments.

(j) Acts as negotiator between the defendant and the County Attorney's Office to secure acquittals or reach agreement concerning sentence time which would be the most beneficial for the defendant and the County Attorney's Office.

(k) Researches case law and witness testimony, conducts investigations and negotiates with the County Attorney's Office. Analyzes facts, evidence and the strength of case, determines beneficiary's wishes and meets with prosecutor to resolve the matter short of trial.

(l) Represents defendants during other court proceedings. Prepares pre-trial motions such as Answer to Discovery, Motions to Suppress Evidence, Motions to Dismiss and Motions to Additional Discovery, which are required to be filed and a hearing set to ensure that they are carried out properly. Prepares post-trial matters such as motions to withdraw pleas, motions to reconsider sentence and post-conviction petitions.

(m) Keeps abreast of developments in the law and attends training sessions offered by the Judicial Training Institute, the Trial Judges' association of the National Bar Association.

(n) Serves as librarian between the National Public Defenders' Program Office and the County Attorney's Office. Ensures orders of updates of all material and reviews including new publications for possible addition are acquired regularly from the Judiciary Law Library or the Judicial Institute Resource Center. Responsible for circulating "advance sheets" to the other attorneys in the office so that the entire staff has a current knowledge of relevant law.

(o) Notes and records any mistakes made by the County Attorney's Office or by the Presiding Judge during the trial which could infringe upon the defendant's rights in order that a proper motion for a new trial can be prepared, filed and set for a later hearing.

(p) Works to determine a fair and affordable bond for the defendant through research and discussion about past and present employment, current residence, past histories of mental or medical problems, existence of previous criminal records and information on family status. Prepares the motion for Reduction of Bond and schedules a hearing.

(q) Maintains close contact with the County Attorney's Office, Sheriff's Office, staff at the County Correctional facilities, judges, police officials and numerous physicians and psychiatrists who may be called as expert witnesses.

(r) Trains and advises new attorneys and law student volunteers in the research and preparation of trials, witnesses and assists in trial procedure.

(s) Identifies legal problem areas, develops policy recommendations to the attention of the Coordinator for the National Public Defenders' Program; and forwards media inquiries to the Office of the Court Administrator for proper redress by Judiciary Public Information Officer.

(t) Maintains extensive contact with the County Attorney's Office, social service agencies, Correctional facilities staff, Police, County medical authorities (Criminal Lab, pathologists and the Coroner's Office). Maintains frequent contact with the County Health Department of Family Services, and of Mental Health; and agencies regarding the referral of beneficiaries for drug treatment, family counseling and other assistance.

(u) Performs responsible administrative functions as lead Public Defender within the County while also handling serious felony caseloads.

Source: Supreme Court of Liberia, Office of the National Public Defenders, Terms of Reference for the position of Public Defender²²⁰

Other legal aid providers and service providers include private lawyers offering pro bono services, the Independent National Commission on Human Rights (INCHR), the Special Gender-Based Violence Crimes Units, the Child Justice Section within the Ministry of Justice, civil society organizations, community advisers and educators providing services similar to those of paralegals. These providers do currently not operate under a comprehensive framework and are primarily depending on the availability of donor-funding.

The Police Women and Children Protection Sections (WACPS) was established in 2005 under the Police Crime Service Department with the mandate to investigate cases of gender-based violence against women.²²¹ The WACPS contact the office of the Public Defender on behalf of women or minor to be present at any interview and provide mediation services for minor cases.

²²⁰ Available at <https://www.emansion.gov.lr/doc/DEFENDERS.pdf>

²²¹ 61 WACPS are active across Liberia staffed with 187 police officers nationwide. (100 male and 87 female).

A draft National Legal Aid Policy was submitted in August 2017 to the Codification Department of the Ministry of Justice. The policy adopts a broader definition of legal aid that includes other services beyond legal representation and addresses the provision of criminal and civil legal aid by a broad range of providers and service providers, including paralegals, traditional chiefs and the National Human Rights Commission. The policy further provides for a coordination structure embedded in a State institution to oversee the national legal aid scheme as well as the terms for the state's budgetary responsibility for legal aid.

Challenges for women in Liberia

An assessment conducted by UNODC in 2018 found that the prevalence of sexual and gender-based violence (SGBV) remains one of Liberia's greatest post-conflict challenges as its incidence is still alarmingly high. Survivors of sexual assault in Liberia face stigmatization and are often pressured by their family members or communities not to pursue formal charges against perpetrators, a practice known as "compromising" rape. The number of reported cases of sexual and gender-based violence, especially involving children, that are fully tried is still low, predominantly for fear of stigmatization and intimidation from the community. Specific challenges in these cases relate to the gathering of evidence, including the lack of forensics equipment, and insufficient coordination between the police and prosecution, leading to weaknesses in the preparation of cases.²²² Domestic violence is commonplace. Most of the reported rape cases are committed by family members against child victims.²²³

Patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in society and in the family, are perpetuated by secret tribal societies such as the Sande and the Poro. These traditional groups carry out harmful practices, including female genital mutilation (FGM), through their initiation rites, and practices such as trial by ordeal for women and girls accused of witchcraft, as well as ritual murders, particularly during pre-election periods, are rife. There are also continuing cases of forced widow inheritance, in which a widow is required to marry a male relative of her deceased spouse, even though this practice is illegal.²²⁴ These practices are deeply rooted in the Liberian society, and attempts to curtail them are often strongly resisted by the local communities, which perceive government intervention in this area as an attack on their cultural heritage.

Senegal

While the 2001 Constitution does not include explicit provisions concerning the rights of the accused, including the right to free legal aid, different legal and regulatory sources provide for the right to counsel and legal aid for indigent persons, as follows:

²²² Twenty-sixth progress report of the Secretary-General on the United Nations Mission in Liberia (UNMIL), S/2013/479

²²³ Shai, Debey Sayndee, Morten Boas "Gender based violence and access to justice: the case of Ganta, Liberia" 2016

²²⁴ USAID, Women's Land Rights in Liberia in Law, Practice, and Future Reforms: LGSA Women's Land Rights Study, 2018

The Code of Criminal Procedure provides that a defence counsel will be appointed where the accused does not have one,²²⁵ upon the start of the trial at the Cour d'Assises. Article 257 provides that the defendant must be represented by counsel. If the defendant does not have counsel of his own, the state will assign him an attorney:

*“L’accusé est ensuite invité à choisir un conseil pour assister dans sa défense. Si l’accusé ne choisit pas son conseil, le président ou son délégué lui en désigne un d’office. Cette désignation est non avenue, si par la suite, l’accusé choisit un conseil.”*²²⁶

A Circular issued in 2018 by the Ministry of Justice recognizes the right to legal assistance during police interviews.²²⁷

A Draft Law on Legal Representation, *“Projet de loi relative à l’aide juridictionnelle”* is currently being developed by the Ministry of Justice. An Executive Order, *“Projet de décret fixant la composition, les missions, l’organisation et le fonctionnement du Bureau d’aide juridictionnelle ainsi que les modalités de gestion et de répartition des fonds de l’aide juridictionnelle”* is also under consideration to create a “Legal Representation Commission” with branches in all the regions. Neither the draft law nor the executive order provide for the specific needs of women beneficiaries.

Decree n. 2007-554 of April 30, 2007, on the organization of the Ministry of Justice, provides that one of the functions of the Department for Civil Affairs within the Ministry is supervising the well-functioning of legal aid.

Article 10 provides: *“La Direction des Affaires civiles et du Sceau est chargée: [...] - du suivi du bon fonctionnement de l’aide juridictionnelle.”*²²⁸

Organic Law No. 2008-35 of August 7, 2008, regulating the organization and functioning of the Supreme Court, provides that legal aid can be granted for disputes brought before the Supreme Court.²²⁹ A Legal Aid Bureau based within the Supreme Court decides on eligibility, but its composition, functioning and budget are to be regulated by Decree.

Loi organique n° 2008-35 du 7 août 2008 portant création de la Cour suprême

Art. 35(3) [...] Hors les cas prévus par d’autres textes, les personnes morales de droit public, les personnes admises au bénéfice de l’aide juridictionnelle et les personnes intentant des actions en justice en matière de droit de la famille, de droit du travail et de la sécurité sociale sont dispensées de la consignation. En cas de rejet, s’il apparaît que le

²²⁵ Article 101 (loi n 99-06 du 29 janvier 1999): « L’assistance d’un défenseur est obligatoire en matière criminelle ou quand l’inculpé est atteint d’une infirmité de nature à compromettre sa défense. Dans ces cas, si l’inculpé n’a pas fait le choix d’un défenseur, le magistrat en commet d’office ».

²²⁶ Code de Procédure Penale, 1965 as amended by LOI n° 2008-50 du 23 septembre 2008, art. 257.

²²⁷ Circulaire n° 179/MJ/DACG/MN de 2018

²²⁸ Décret n° 2007-554 du 30 avril 2007 portant organisation du Ministère de la Justice

²²⁹ Loi organique n° 2008-35 du 7 août 2008 portant création de la Cour Suprême, Arts. 35-36.

pourvoi est abusif, la chambre saisie condamne le demandeur à une amende civile dont le montant ne peut excéder un million (1.000.000) de francs.

Article 36

Une aide juridictionnelle peut être accordée pour les litiges portés devant la Cour suprême. L'admission au bénéfice de l'aide est prononcée par le bureau de l'aide juridictionnelle près la Cour suprême. En cas d'admission, le pourvoi ou le recours sont réputés avoir été formés du jour de la demande d'aide juridictionnelle. Cette demande suspend, jusqu'à ce qu'il ait été statué, le délai de recours. Les règles concernant la composition, le fonctionnement et le budget du bureau d'aide juridictionnelle près la Cour suprême sont déterminées par décret.

The Code of Civil Procedure mentions the provision of legal aid in articles 5 and 301, which exempt legal aid beneficiaries from the payment of court fees.²³⁰

Code de Procedure Civile

Article 5 (D. 92-1743 du 22.12.92) Hormis le cas d'assistance judiciaire dans toutes les affaires où la procédure n'est pas gratuite, le demandeur est tenu de consigner au greffe du tribunal départemental qu'il saisit, une somme suffisante pour garantir le paiement des droits de timbre et d'enregistrement au droit fixe. Les dispositions des articles 56 bis et 56 ter sont obligatoirement appliquées devant le tribunal départemental dans toutes les instances visées à l'alinéa précédent.

Article 301 La requête civile d'aucune partie, autre que celles qui stipulent les intérêts de l'Etat, n'est reçue si, avant que cette requête ait été présentée, il n'a été consigné au greffe une somme de 30.000 francs pour amende et de 50.000 francs pour dommages-intérêts de la partie, s'il y a lieu; la consignation est de moitié si le jugement est par défaut ou par forclusion et du quart s'il s'agit de jugements rendus par les tribunaux régionaux. La consignation est effectuée dans les conditions fixées à l'article 111 (bis) (D.92 -1743 du 22.12.92). Il n'y a pas lieu à consignation lorsqu'il s'agit de jugements rendus par les tribunaux départementaux ou les juridictions du travail ou de personnes admises au bénéfice de l'assistance judiciaire.

In the absence of an independent body with the mandate to regulate the provision of legal aid at national level, legal aid is provided by court-appointed lawyers registered with the Bar Association on the basis of a yearly MoU with the Ministry of Justice Department of Civil Affairs. The CEDAW Committee noted that the legal aid system offers only limited protection for women without sufficient means, and civil society organizations cannot lodge petitions on behalf of victims of crimes or participate in proceedings.²³¹

The legal aid budget is allocated with the Ministry of Justice and managed by the Bar association. The Bar Association allots 10% of their legal aid funds to assist women in civil cases and children in conflict with the law.

Two entities are responsible for implementing the legal aid scheme: the Bar Legal Aid Commission and the Bar Legal Aid Office, responsible for eligibility issues and case assignment.

²³⁰ Décret n° 64-572 du 30 Juillet 1964 portant Code de Procédure Civile

²³¹ United Nations CEDAW Committee, Concluding observations on the combined third to seventh periodic reports of Senegal, CEDAW/C/SEN/CO/3-7, 28 July 2015, Par. 12(b).

The majority of legal aid cases are criminal cases with male defendants and very scarce funds remain available for victims and of crimes and civil cases.

Houses of justice, legal information offices within the courts, and university law clinics provide legal advice and information services, also under the supervision of the Ministry of Justice. The Ministry of Justice has developed a so-called framework for the “justice de proximité”, a comprehensive scheme to provide legal advice, information and ADR at grassroots level across the country. The scheme includes: 1) Houses of Justice, 2) legal information offices within the courts and 3) university law clinics.

The Houses of Justice are located across the different regions and address minor disputes at community level. Disputes brought before the Houses of Justice are quickly resolved, normally within a day, with a restorative approach. All the procedures are held in local languages and not in French, as in the courts. Legal aid services provided by the House of Justice include mediation of minor disputes, for example related to rents or minor debts deriving from tontine systems; assistance in administrative matters, including to obtain birth certificates or criminal record checks; and legal information.

Legal Information Desks are based in all jurisdictions with the objective to help court users navigating the court building; filing and applying for paperwork; and receiving basic information about their cases. The service targets illiterate beneficiaries with as basic issues as finding out the outcome of their cases.

Lawyers and paralegals based at civil society organizations also provide legal assistance and legal representation both in court and through alternative dispute resolution mechanisms, although sporadically, due to the inconstant availability of funding. Paralegals include member of the community who receives a basic training on law, and not necessarily law graduates.

Civil society organizations operate through legal aid clinics, which handle primarily civil cases for women, including divorce and gender-based violence against women.

The National Human Rights Committee (Comité Sénégalais des Droits de l'Homme - CNDH) provides some legal aid services, including prison monitoring visits and advocacy to improve the situation of women in detention, legal advice and mediation.²³²

²³² UNODC field assessment, 2018.

Challenges for women in Senegal

An assessment conducted by UNODC in 2018, women face a number of barriers in effectively gaining access to justice in Senegal, including legal illiteracy, stigmatization of victims, stigmatization of women fighting for their rights, fear of reprisals, difficulties in gaining access to justice infrastructure, and difficulties in producing evidence. The persistence of stereotypes within the judiciary according to which women are perceived to be partly responsible for the violence that they suffer is an additional challenge women have to face. Adverse cultural norms, practices and traditions as well as patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in the family and society persist in Senegal. Stereotypes contribute to the persistence of violence against women as well as harmful practices, including female genital mutilation, levirate and sororate, child marriage, polygamy, repudiation, and food prohibitions or taboos.²³³

Voluntary abortion is criminalized and sanctioned with a penalty of up to 5 years of imprisonment.²³⁴

Gender-based violence against women persist, especially in the form of sexual violence. A medical certificate is necessary to report cases of rape. In practice, the mandatory fee to obtain the certificate is too costly for many Senegalese women, and doctors are not available in rural areas to issue the certificate.

Domestic violence is widespread, but few cases are reported for lack of knowledge, fear of reprisal, and the impact that a formal report might have on family life. Very limited medical psychological and legal assistance is available to women who are victims of violence.

Trafficking in person is also a severe problem. Women are trafficked to become domestic workers, “Internet brides” and to be subjected to forced labour, sexual exploitation, and forced begging, such as talibe children forced to beg.

Prostitution is legal in Senegal, but sex workers need to be registered and have a health certificate, under penalty of imprisonment.²³⁵ The offence is considered as a minor misdemeanour for which the assistance of a lawyer is not required by law.

Women need legal aid also for a number of civil law issues, especially divorce (it is reported that divorce is often a consequence of domestic violence), and inheritance, particularly for Muslim women.

²³³ United Nations CEDAW Committee, Concluding observations on the combined third to seventh periodic reports of Senegal, CEDAW/C/SEN/CO/3-7, 28 July 2015, Par. 12 and 18.

²³⁴ Code Penal du Senegal, Arts.305 and Act No. 2005-18 on Reproductive Health.

²³⁵ Law No. 66-21, art. 1.

Sierra Leone

Sierra Leone adopted a Legal Aid Act in 2012, which sets out a comprehensive scheme for the provision of legal aid that is based on the United Nations Principles and Guidelines.

The Law establishes the Legal Aid Board as the institution responsible to provide, administer, coordinate and monitor the provision of accessible, affordable, credible and sustainable criminal and civil legal aid services to indigent persons.

Article 9 lists the specific functions of the Board as follows:

- (a) provide legal aid;*
- (b) accredit persons or bodies to provide legal aid;*
- (c) determine the types of persons and cases for which legal aid may be granted;*
- (d) determine the circumstances in which contributions towards legal aid shall be paid by legally-aided persons and how the contributions shall be calculated;*
- (e) enter into cooperation agreements with legal practitioners, civil society and nongovernmental organizations, university law clinics or law departments;*
- (f) compile and publish information about the functions of the Board and other legal aid providers;*
- (g) cooperate with other bodies as it may determine for achieving its object;*
- (h) carry out other activities conducive to the attainment of the object of the Board;*
- (i) undertake research into all aspects of legal aid.*

The Board has a number of discretionary powers to provide legal aid including, as provided in article 10,

- (a) granting legal aid with or without conditions or varying , withdrawing or revoking the legal aid;*
- (b) contracting legal aid work to legal aid practitioners in private practice on such terms and conditions as the Board may consider appropriate;*
- (c) entering into co-operation agreements with legal aid providers;*
- (d) establishing mechanisms for the effective administration, coordination and evaluation of legal aid;*
- (e) undertaking inquiries or investigations which the Board considers expedient in order to discharge its functions;*
- (f) disseminating information regarding the national legal aid scheme;*
- (g) requesting assistance of the ministry responsible for justice, public and private and other bodies as may be necessary for carrying out its functions.*

The law institutes a Legal Aid Fund, composed of monies appropriated by Parliament; monies generated by the Board in the course of its activities; and grants, donations, bequests or other contributions made to the Board. Administrative and secretarial activities are carried out by a Secretariat.

Criminal legal aid services include legal advice and representation from the moment of the arrest and throughout all stages of the criminal justice process, until resolution of the matter, including appeals.

Civil legal aid services include legal advice and representation.

Based on the Legal Aid Act, the Sierra Leonean Legal Aid Board currently runs the following 4 programmes:²³⁶

- **Legal advice and representation.** The program is staffed with 16 legal aid lawyers (5 women), of which 6 are assigned by the Bar Association. They assist in criminal and civil cases at any stage of the criminal procedure and are paid per case. The main eligibility criterion is the indigence of the beneficiary, understood a salary below the minimum wage.²³⁷ Some categories are automatically eligible (juveniles, disables, retiree, amputees, war widows) and additional criteria are occasionally applied (dependency or human rights reasons)
- **Alternative Dispute Resolution (ADR).** 4 staff are assigned to the program in Freetown (1 lawyer, 1 mediator and 2 assistants) and each of the field offices has one ADR and one outreach officer. The majority of the handled cases are civil cases (child maintenance, evictions from rented houses, inheritance, land disputes).
- **Outreach and legal empowerment.** The program includes outreach and awareness raising activities targeting local communities and schools on women and children rights and the right to legal aid.

Legal aid providers need to be accredited by the Legal Aid Board in order to provide legal aid services. They include:

- (a) legal practitioners;
- (b) civil society organizations;
- (c) university law clinics;
- (d) paralegals; and
- (e) non-governmental organisations.²³⁸

Legal aid at pre-trial stage is generally provided by paralegals, with lawyers intervening to provide legal representation at trial.

Civil society organizations mainly specialize in providing legal aid to women, both accused of a crime and victims, especially victims of gender-based violence. They intervene at all stages of the criminal justice process and provide paralegal services and legal representation by lawyers; they

²³⁶ UNODC field assessment, 2018.

²³⁷ 500.000 Leones, equivalent to less than 100 USD at the current exchange rate, UNODC field assessment, 2018.

²³⁸ Legal Aid Act of Sierra Leone, 2012, Article 30.

also carry out monitoring visits in courts and police stations. Areas of intervention covered by other CSOs include: monitoring Police FSU with a focus on child protection, legal issues for community living in mining areas, assistance to female domestic helpers, children involved in domestic violence, human trafficking, court monitoring.²³⁹

Challenges for women in Sierra Leone

An assessment conducted by UNODC in 2018, women face multiple challenges in Sierra Leone. Gender inequalities are exacerbated by discriminatory customs, particularly in relation to marriage, property rights and sexual offences. Adverse traditional stereotypes regarding the roles and responsibilities of women and men in society and, in particular in the family, as well as patriarchal norms that reinforce male dominance persist, especially among rural communities. For example, female genital mutilation is still prevalent and despite a memorandum of understanding signed between the “Soweis,” local chiefs, and civil society organizations on the banning of child female genital mutilation throughout the country, this practice was not criminalized in the 2007 Child Rights Act. Also, the Registration of Customary Marriage and Divorce Act allows child marriage subject to parental consent.²⁴⁰ Harmful traditional practices inflicted on elderly women in relation to allegations of witchcraft persist. These ritual crimes are not investigated effectively, and there is heavy reliance on out-of-court settlement for these cases.²⁴¹

Despite recent efforts to combat violence against women with the adoption of the Domestic Violence Act in 2007 and of the Sexual Offences Act in 2012 (see *infra* Module 3), rates of domestic and sexual violence against women are still high. Rape and other forms of gender-based violence, including domestic violence, female genital mutilation (FGM), and early and forced marriage are the most common crimes committed against women. In particular, domestic violence cases are lengthy, and women victims are pressured into settling cases out of court, which often results in impunity for the perpetrators. Even when the cases are tried in court, they have very low conviction rates. Women accused of murder have in most cases retaliated to an aggression of a man. Murders committed by women frequently occur within the family.²⁴²

²³⁹ UNODC Field assessment, 2018.

²⁴⁰ United Nations CEDAW Committee, Concluding observations on the sixth periodic report of Sierra Leone, CEDAW/C/SLE/CO/6, Par. 18.

²⁴¹ Human Rights Council, Report of the Working Group on the Universal Periodic Review, Sierra Leone, A/HRC/32/16, 14 April 2016.

²⁴² CEDAW, Concluding observations on the sixth periodic report of Sierra Leone, CEDAW/C/SLE/CO/6, Par. 21 and UNODC field assessment, 2018.

Sierra Leone is a source, transit and destination country for women and children trafficked for purposes of sexual exploitation and forced labour. Domestic trafficking of women and girls from rural areas is also rampant (high incidence). A Human Trafficking Act was adopted in 2005 but the prosecutions and conviction rates are limited.²⁴³

There is a discrepancy in the legal framework on child marriage, as under the Child Rights Act the minimum age for marriage is 18 years, while under the Registration of Customary Marriages and Divorce Act child marriage is allowed with parental consent. There are restrictions on widows' right to inheritance, as in practice their and their children's possessions are taken by the family of the deceased husband. Polygamous marriages are permitted under customary law and the Mohammedan Marriage Act and property is distributed among the surviving widows of the deceased polygamous husband in proportion to the length of their marriage. Customary marriages are not registered and that can be a cause for disputes.²⁴⁴

Women are mostly involved in civil law disputes about ownership of property, inheritance, debt recovery in the framework of microcredit schemes, divorce and child maintenance. Many women accept money under a microcredit scheme but use it for personal expenses and then are not able to repay it. These women are charged with "fraudulent conversion" under the Larceny Act of 1916 and constitute the majority of convicted women.²⁴⁵

²⁴³ Id., Par. 22.

²⁴⁴ Id., Par 36-40.

²⁴⁵ UNODC Field assessment, 2018. The charge of fraudulent conversion alone represents an estimated 10% of all charges issued by the Sierra Leone Police. AdvocAid, *"Women, Debt & Detention: An Exploratory Report on Fraudulent Conversion and the Criminalisation on of Debt in Sierra Leone"* 2012. Police statistics indicate that the number of fraudulent conversion cases was 5.741 in 2007 and 4.733 in 2011. Police Annual Crime Statistics, 2012

ANNEX 6: Gender-Based Violence against Women in Liberia, Sierra Leone and Senegal

The information contained in this annex is based on an assessment conducted by UNODC involving various stakeholders in the three countries, including Ministries of Justice, Legal Aid Providers, Civil Society, NGOs and others. The three individual assessment reports were shared with the stakeholders from the respective countries for their comments and suggestions, which after were incorporated in the final reports.

The most common forms of gender-based violence against women in the three target countries include: domestic violence; early and forced marriages; sexual abuse.

A field assessment in the three target countries has identified some common major challenges in addressing gender-based violence against women. These challenges include:

1. Gaps and deficiencies in law, policy and practice
2. Limited availability and low quality of information relating to GBV offences
3. Limited cooperation between the actors responding to GBV
4. Influence of customary and Sharia law
6. Inaccessibility of rural and remote areas
7. Clan influence
8. Social and cultural barriers

The national legal framework on gender-based violence against women in the three countries is shaped as follows:

Liberia

Liberia has enacted the following laws to enhance protection against gender-based violence against women:

In 2003, the law on the Devolution of Estates,²⁴⁶ the so-called **Customary Marriages law**, established equal inheritance rights for widowed women of customary and statutory marriages. In particular, the wives of customary marriages are now entitled to one-third of the husband's property upon marriage or upon his death.

In 2005 an amendment of the Penal Code introduced the **Rape law**²⁴⁷ which broadens the

²⁴⁶ "An act to govern the devolution of estates and establish rights of inheritance for spouses of both statutory and customary marriages"

²⁴⁷ "Act to Amend the New Penal Code Chapter 14 Sections 14.70 and 14.71 and to Provide for Gang Rape", 14/12/2005

definition of rape to include gang rape, introduces more severe sentences for perpetrators, provides for *in camera* hearings and raises the age of consent to 18.

In 2005, Liberia adopted the Act to Ban Trafficking, which criminalizes all forms of **human trafficking**.

A draft **Domestic Violence Act** was passed by the House of Representatives in July 2016, but was not approved by the Senate. The contention issue was the inclusion in the Act of a provision banning **Female Genital Mutilation**, which is widely practiced. The provision in the draft law is narrow, as female genital mutilation is criminalized only if performed on a person either minor or adult without their consent, which would allow parents to give consent on behalf of minors.

In January of 2018, former President Sirleaf issued **Executive Order n. 92 on Domestic Violence**, which introduces a broad definition of domestic violence, provides legal sanctions for sexual violence, explicitly criminalizes spousal rape and other forms of sexual violence perpetrated by any close relative of the victim. It also includes a section on the prohibition of female genital mutilation on a person without consent. While it is binding law, the Order will be in force for only one year. According to a 1974 ruling of the Liberia Supreme Court, presidential executive orders lapse after one year unless they are ratified by the legislature.²⁴⁸

The Order adopts a broad definition of domestic violence. It is:

*“in general any act that results in, or is likely to result in, physical, sexual or psychological harm or suffering ... , including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life between parties in an existing or former domestic relationship.”*²⁴⁹

The Executive Order also defines “emotional, verbal and psychological abuse,” as:

‘a pattern or one time occurrence of degrading or humiliating conduct towards a person including any behaviour that causes emotional damage and reduction of self-esteem, or that harms and disturbs full development, or that aims at degrading or controlling a person’s actions, behaviour, beliefs and decisions, by means of reduction of self-esteem, threat, embarrassment, humiliation, manipulation, isolation, constant surveillance, constant pursuit, insult, intimidation, blackmail, ridiculing, exploitation and limitation of the rights to come and go, repeated exhibition of

²⁴⁸ (*Ayad v. Dennis* 23 LLR 165, 171 (1974).) The Court held that [i]n the exercise of the executive power vested in him by the Constitution, the President may issue executive orders in the public interest, either to meet emergencies or to correct particular situations which cannot wait until the lengthy legislative process has run its course. However, he must refer each executive order to the Legislature as soon as possible for ratification. If the Legislature does not act up on the executive order after it has been referred to it, the order lapses a year after issuance. Until it lapses it has the effect of law, and all courts in Liberia are bound to take note of and give effect to it.

²⁴⁹ Executive Order on Domestic Violence (E.O. No. 92) § 1 (Jan. 19, 2018)

obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of a person's privacy, liberty, integrity, or security, or any other acts that cause damage to a person's psychological health and self-determination, or any other series of acts which collectively cause a person to fear for his or her safety and life."

Also considered a form of domestic violence is economic abuse, including *"unreasonable deprivation of economic or financial resources to which a spouse is entitled under the law."*

Any act or omission that amounts to domestic violence is an offense under the Order.

Offenses include:

- deliberately preventing a person *"from engaging in any legitimate profession, occupation, business or activity,"*
- depriving a person of the *"use and enjoyment of conjugal property or property owned in common,"*
- or coercing or attempting to coerce *"a person to engage in any sexual activity which does not constitute rape by force, threat or intimidation."*²⁵⁰
- *"dowry related violence,"* that is, *"harassment or any act of violence or harassment associated with [the] giving or receiving of [a] dowry at any time before, during or after [a] marriage."*²⁵¹
- performing female genital mutilation (FGM) on a person below the age of eighteen under any circumstance or on an adult person without first securing the person's consent.²⁵²
- forcing a person into marriage, including early marriage, or subjecting a person into cultural torture, such as *"sassy wood"* (a form of trial by ordeal) or other forms of trial by ordeal.²⁵³

In addition to detention penalties, the Court may also order the convict to pay restitution to the victim and may order a person convicted on a domestic violence charge to attend a counselling or rehabilitation programme.²⁵⁴

Being under the influence of mind-altering substances or having the consent of the victim is not an acceptable defence against a domestic violence charge.²⁵⁵

²⁵⁰ Executive Order on Domestic Violence (E.O. No. 92) § 2 (Jan. 19, 2018)

²⁵¹ *Id.*, § 1 and 2.

²⁵² *Id.*, § 2.

²⁵³ *Id.* § 2.

²⁵⁴ *Id.* § 5.

²⁵⁵ *Id.* § 6.

Senegal

The 1999 revision of the Penal Code has criminalized a comprehensive range of gender-based-violence-related offences, including domestic violence,²⁵⁶ female genital mutilation,²⁵⁷ and sexual harassment.²⁵⁸

Provisions in the family and criminal code discriminate against women, including;

- Articles 109 and 276 of the 1972 Family Code which allows girls to get married at 16 with parental consent, despite the legal age for marriage is 18 for boys and girls; and
- The prohibition of voluntary abortion, contained in both the Criminal Code²⁵⁹ and the Reproductive Health Act and for which a penalty of up to 5 years imprisonment is imposed.

Sierra Leone

Sierra Leone has enacted several pieces of legislation in recent years to enhance protection against gender-based violence against women.

Between 2007 and 2012, Sierra Leone has adopted the so-called “Gender-Justice Laws,” which include:

The **Domestic Violence Act** 2007, which is the first formal law to criminalize domestic violence in Sierra Leone. The Act provides a broad definition of domestic violence: in addition to sexual abuse and harassment, a wide range of non-sexual offenses are included (economic abuse, verbal or psychological abuse, intimidation).

Domestic violence is defined as:

any of the following acts or threat of any such act [committed by a person in a domestic relationship]:-

(a) physical or sexual abuse;

(b) economic abuse;

(c) emotional, verbal or psychological abuse, including any conduct that makes another person feel constantly unhappy, humiliated, ridiculed, afraid or depressed or to feel inadequate or worthless;

(d) harassment, including sexual harassment and intimidation;

²⁵⁶ Code Pénal, Arts. 297, 297 bis et 312.

²⁵⁷ Code Pénal, Art. 299 bis.

²⁵⁸ Code Pénal, Art. 319 bis.

²⁵⁹ Code Pénal, Art. 305.

(e) conduct that in any way harms or may harm another person including any omission that results in harm and either-

- (i) endangers the safety, health or wellbeing of another person;
- (ii) undermines another person's privacy, integrity or security; or
- (iii) detracts or is likely to detract from another person's dignity or worth as a human being.

The **Devolution of Estate Act** of 2007, which addresses women's property inheritance rights. The law establishes that property should be equally divided between the deceased's wife and children regardless of sex and criminalizes the expulsion of widows from their homes after the death of the husband. Before 2007, under formal law wives only received 30% of their deceased husband's property while a husband would receive 100% of a deceased wife's property. Under Customary law marital property reverts to the husband's family.²⁶⁰

The **Registration of Customary Marriage and Divorce Act** of 2009, which addresses the rights of women in customary marriages. The law raises the age of consent for marriage to 18 years for both females and males; however, article 2.2 allows parents, and in their absence, local government officials, to consent to a child's marriage, thus creating a loophole that permits customary child marriages.²⁶¹

The **Sexual Offences Act** of 2012, which introduces the crime of marital rape and aggravating factors, such as the victim's mental disability, prohibits the defence of consent and provides for compensation for the victim. Special measures are required to protect the identity of the victims during court proceedings.²⁶²

The **Safe Abortion Act 2015 was passed by Parliament** in December 2015 but rejected by President Koroma in March 2016, reportedly due to some concerns raised by religious leaders.²⁶³

Consent under the Sexual Offences Act of Sierra Leone

The Sexual Offences Act of Sierra Leone provides an extensive definition of consent and specifies that belief in consent cannot be used as a defence.

Article 2. Meaning of Consent

(1) For the purposes of this Act, consent means agreement by choice and with the freedom and capacity to make that choice.

²⁶⁰ Alyson Zureich "Implementing the gender acts in Sierra Leone" 2008.

²⁶¹ Plan, "Before their time. Challenges to implement the prohibit the prohibition gains child marriage in Sierra Leone" 2013.

²⁶² Sonkita Conteh, "From Law To Practice Part I: The Sexual Offences Act 2012" Namati Sierra Leone 2013.

²⁶³ The objective of the law was to legalize abortion at up to 12 weeks of pregnancy under any circumstances and up to 24 weeks under special circumstances. Freedom House "annual report" 2017 See also AdvocAid, "Criminalisation of Abortion in Sierra Leone", 2016.

(2) Circumstances in which a person does not consent to an act include—

- (a) the person submits to the act because of the use of violence or force on that person or someone else;
- (b) the person submits because of threats or intimidation against that person or someone else;
- (c) the person submits because of fear of harm to that person or to someone else;
- (d) the person submits because he or she is unlawfully detained;
- (e) the person is asleep, unconscious or so affected by alcohol or another drug as to be incapable of freely consenting;
- (f) the person is incapable of understanding the essential nature of the act or of communicating their unwillingness to participate in the act due to mental or physical disability;
- (g) the person is mistaken about the sexual nature of the act or by the identity of the person;
- (h) the accused induces the person to engage in the activity by abusing a position of trust, power or authority;
- (i) the person, having consented to engage in the sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.

(3) In determining whether or not a person consented to the act that forms the subject matter of the charge, the court shall have regard to the following: —

- (a) the fact that a person did not say or do anything to indicate consent to a sexual act is enough to show that the act took place without that person's consent: and
- (b) a person is not to be regarded as having consented to a sexual act just because—
 - (i) the person did not physically resist;
 - (ii) the person did not sustain physical injury; or
 - (iii) on that or an earlier occasion the person freely agreed to engage in another sexual act with that person or some other person.

Article 3. Belief in consent not a defence

It is not a defence to a charge under this Act that the defendant believed the person consented to the activity that forms the subject matter of the charge where—

- (a) the defendant's belief arose from his or her—
 - (i) self-induced intoxication; or
 - (ii) recklessness or willful blindness; or
- (b) the defendant did not take reasonable steps, in the circumstances known to the defendant at the time, to ascertain whether the person was consenting.

Article 4. Person under 18 cannot consent

Subject to section 24, a person below the age of 18 is not capable of giving consent for the purpose of this Act, and, accordingly, it shall not be a defence to an offence under this Act to show that the child has consented to the act that forms the subject matter of the charge.

Article 5. Marriage not defence to offence

Subject to subsection (4) of section 9, the marriage of a defendant and the victim shall not be a defence to an offence under this Act.

(Sexual Offences Act of Sierra Leone, 2012, arts. 2-5)

Bibliography:

AdvocAid, “Criminalisation of Abortion in Sierra Leone – Women’s Lives at Risk” (2016).

African Commission on Human and People’s Rights, *Principles and Guidelines on the Right to a Fair Trial and Access to Justice* (2003).

ARC International, *Gender-Based Violence Legal Aid: A Participatory Toolkit* (2005).

Asian Development Bank, *Gender and Law: Temporary Special Measures to Promote Gender Equality* (2012).

Boas et al. “Gender based violence and access to justice: the case of Ganta, Liberia”, NUPI Working Paper (2016).

Brown, *Legal Terminology*, 5th ed. (2008).

Campbell, “Battered Woman Syndrome: a Critical Review”, *Violence Update*, vol. 1, No. 4 (1990).

Cape, *Defending Suspects at Police Stations: Practitioner’s Guide to Advice and Representation*, 6th ed. (London, Legal Action Group, 2011).

Center for Human Rights and Humanitarian Law at American University Washington College of Law, *Human Rights in the U.S.: A Handbook for Legal Aid Attorneys* (2014).

Chiongson et al., *The Role of Law and Justice in Achieving Gender Equality* (World Bank, 2012).

Chirwa, Special Rapporteur on Prisons, African Commission on Human and Peoples’ Rights, *Report on prisons and conditions of detention in the Federal Democratic Republic of Ethiopia* (2004).

Columbia Law School, *Human Rights and Domestic Violence: an Advocacy Manual* (2010).

Constitution de la République du Sénégal (2001).

Constitution of Liberia (1986).

Constitution of Sierra Leone (1991).

Conteh, *From Law To Practice Part I: The Sexual Offences Act 2012* (Namati Sierra Leone, 2013).

Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13.

Council of Europe Gender Equality Commission, *Gender Equality Glossary* (2016).

Covington and Bloom, "Gendered Justice: Women in the Criminal Justice System", in *Gendered Justice: Addressing Female Offenders*, Barbara E. Bloom, ed. (Durham, North Carolina, Carolina Academic Press, 2003).

Craig, "The Relevance of Delayed Disclosure to Complainant Credibility in Cases of Sexual Offence", *Queen's Law Journal* vol. 36, No. 2 (2011).

Cusack, *Eliminating Judicial Stereotyping: Equal Access to Justice for Women in Gender-based Violence Cases* (OHCHR, 2014).

Department of the Attorney General of Western Australia, *Equality Before the Law Bench Book* (2009).

Economic and Social Council resolution 2005/20, annex., Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Basic Principles on the Role of Lawyers (1990).

Engelhardt, "The Problem with Eyewitness Testimony, Commentary on a talk by Barbara Tversky and George Fisher", *Stanford Journal of Legal Studies*, vol. 1, No. 1 (1999).

European Institute for Gender Equality, "Gender Perspective", available at <https://eige.europa.eu/rdc/thesaurus/terms/1197>.

Gender Association Symmetry, Coalition Karat and Oxfam Novib, "Gender Recommendations in Strengthening Access to Justice".

Hale, "Impeachment of Witnesses by Prior Inconsistent Statements", *Southern California Law Review*, vol. 10 (1937).

Health and Human Rights Info, *Mental health and gender-based violence, Helping survivors of sexual violence in conflict – a training manual* (2016).

Human Rights Council, Report of the Working Group on the Universal Periodic Review, Sierra Leone, A/HRC/32/16, 14 April 2016.

IDLO, *Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment* (Rome, 2013).

International Commission of Jurists, *Women's Access to Justice for Gender-Based Violence: A Practitioners' Guide* (Geneva, 2016).

International Commission of Jurists, *Sexual Violence Against Women: Eradicating Harmful Gender Stereotypes and Assumptions in Laws and Practice* (2015).

International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

Isobel, *Legal Tools: An Arrest Rights Toolkit for Lawyers* (Open Society Foundations, 2013).

Liberian Code of Laws Revised, Judiciary Law - Title 17 (1972).

Ladd, "Some Observations on Credibility: Impeachment of Witnesses", *Cornell Law Review*, vol. 52 (1967).

Lee and Backes, "Civil Legal Aid and Domestic Violence: a Review of the Literature and Promising Directions", *Journal of Family Violence* vol. 33 (2018).

Lilongwe Declaration and Plan of Action on Accessing Legal Aid in the Criminal Justice System in Africa (2004).

Geoffrey and Harley, "Why is it Easier to Identify Someone Close Than Far Away?", *Psychonomic Bulletin and Review* (2004).

Mehrkins Steblay, "Social Influence in Eyewitness Recall: A Meta-Analytic Review of Lineup Instruction Effects, Law and Human Behaviour"; and "Eyewitness Misidentification, The Innocence Project", available at www.innocenceproject.org.

Myers, "The Child Witness: Techniques for Direct Examination, Cross-Examination, and Impeachment", *Pacific Law Journal*, vol. 18 (1987).

New South Wales Parliamentary Research Service, "Provocation and self-defence in intimate partner and sexual advance homicides", Briefing Paper No 5/2012 (August 2012).

OHCHR, "Background paper on the role of the judiciary in addressing the harmful gender stereotypes related to sexual and reproductive health and rights, A review of case law", available at https://www.ohchr.org/Documents/Issues/Women/WRGS/JudiciaryRoleCounterStereotypes_EN.pdf.

OHCHR, "Gender Stereotyping as a Human Rights Violation" (2013).

OHCHR, "Gender stereotypes and Stereotyping and women's rights" (2014).

OHCHR, “Gender Stereotyping”, available at <https://www.ohchr.org/en/issues/women/wrgs/pages/genderstereotypes.aspx>.

OHCHR, *Training Manual on Human Rights Monitoring*, Professional Training Series No. 7 (New York and Geneva, 2001).

Open Society Justice Initiative, *Pre-trial Detention and Health: Unintended Consequences, Deadly Results* (2011).

Open Society Justice Initiative, *Pre-trial Detention and Torture: Why Pre-trial Detainees Face the Greatest Risk* (2011).

Open Society Justice Initiative and Timap for Justice, *Improving Pre-trial Justice in Sierra Leone* (2012).

Penal Reform International and Linklaters LLP, *Women who kill in response to domestic violence, How do criminal justice systems respond?* (2016).

Plan, “Before their time. Challenges to implement the prohibition gains child marriage in Sierra Leone” 2013.

Pratt, “The Ten Commandments of Cross-Examination”, *Federation and Defence and Corporate Counsel Quarterly*, vol. 61, No. 2 (2011).

Raisler Cohn, “Fighting Pre-trial Detention”, National Lawyers Guild, Massachusetts Chapter, (2013).

Restless Development, *Gender-Based Violence Training Manual* (2013).

Sandefur and Siddiqi, *Delivering Justice to the Poor: Theory and Experimental Evidence from Liberia* (2013).

Senegal, Décret n° 64-572 du 30 Juillet 1964 portant Code de Procédure Civile.

Senegal, Loi n 99-06 du 29 janvier 1999.

Senegal, Loi Constitutionnelle No. 2016-10 du 05 Avril 2016 Portant Révision de la Constitution.

Senegal, Loi organique n° 2008-35 du 7 août 2008 portant création de la Cour Suprême.

Sierra Leone, Sexual Offences Act (2012).

Šribar, “Glossary of common terms in gender equality and feminist theory”, in *Gendering Science: Slovenian Surveys and Studies in the EU Paradigms*, Ule et al., eds. (Vienna, 2015).

The Legal Aid Forum – Rwanda, *The Paralegal Practice Manual, A Guide to Paralegal Roles and Techniques* (2009).

Timap for Justice, *Paralegal Manual* (2012).

Twenty-sixth progress report of the Secretary-General on the United Nations Mission in Liberia (UNMIL), S/2013/479.

UNDP, *Programming for Justice: Access for All: A Practitioner’s Guide to a Human Rights Based Approach to Access to Justice* (2005).

UNDP, *Legal Aid Service Provision: A Guide on Programming in Africa* (2014).

UNESCO, *A training manual for sensitizing education managers, curriculum and material developers and media professionals to gender concerns* (2004).

UNFPA, UNDP and Legal Action Worldwide, *Legal Aid Providers Supporting Gender Based Violence Survivors in Somalia* (2014).

UNFPA, *Minimum Standards for Prevention and Response to Gender-Based Violence in Emergencies* (New York, 2015).

UNICEF, UNDP and Legal Aid Scheme Ghana, *Training Manual for Legal Aid Scheme* (2014).

United Nations, Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, A/CONF.177/20 and A/CONF.177/20/Add.1 (1995).

United Nations, CEDAW Committee, Concluding Observations to the combined sixth and seventh periodic reports of Liberia, CEDAW/C/LBR/CO/7-8 (2015).

United Nations, CEDAW Committee, Concluding Observations on the Sixth Periodic Report of Sierra Leone, CEDAW/C/SLE/CO/6 (2014).

United Nations, CEDAW Committee, Concluding observations on the combined third to seventh periodic reports of Senegal, CEDAW/C/SEN/CO/3-7 (2015).

United Nations, CEDAW Committee, General Recommendation No. 19: Violence against Women, A/47/38 (1992).

United Nations, CEDAW Committee, General recommendation No. 25 on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women (Temporary Special Measures), Thirtieth Session (2004).

United Nations, CEDAW Committee, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/2010/47/GC.2 (2010).

United Nations, CEDAW Committee, General Recommendation No. 33 on Women's Access to Justice, CEDAW/C/GC/33 (2015).

United Nations, CEDAW Committee, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, 26 July, 2017

United Nations, CEDAW Committee, Vertido v. The Philippines, CEDAW Communication No. 18/2008, Views of 16 July 2010, CEDAW/C/46/D/18/2008.

United Nations, Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

United Nations, General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34 (1985).

United Nations, General Assembly, Declaration on the Elimination of Violence against Women, A/Res/48/104 (1993).

United Nations, General Assembly, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, A/RES/67/187 (2012).

United Nations, General Assembly, Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, A/RES/65/228 (2010).

United Nations, General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173 (1988).

United Nations, General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/RES/65/229 (2010).

United Nations, General Assembly, United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), A/RES/45/110 (1990).

United Nations, General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175 (2015).

United Nations, Human Rights Committee, CPR General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women), CCPR/C/21/Rev.1/Add.10.1 (2000).

United Nations, General Assembly, Taking action against gender-related killing of women and girls, A/RES/68/191 (2013).

United Nations, General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147 (2005).

United Nations, Special Rapporteur on Violence against Women, its Causes and Consequences, Report on “Pathways to, Conditions and Consequences of Incarceration for Women”, 21 August 2013, A/68/340.

United Nations, Special Rapporteur on Violence against Women, its Causes and Consequences, Report on “Human rights-based approach to integrated services and protection measures on violence against women: focus on shelters and protection orders”, 13 June 2017, A/HRC/35/30.

United Nations, Working Group on Arbitrary Detention, Report of the Working Group on Arbitrary Detention, E/CN.4/2006/7 (2006).

UNODC and UNDP, *Global Study on Legal Aid* (Vienna and New York, United Nations, 2016).

UNODC, *Criminal Legal Aid Manual for Law Practitioners in Somaliland, Criminal Justice Compendium for Somaliland* (2015).

UNODC and UNDP, *Early Access to Legal Aid in Criminal Justice Processes, a handbook for policymakers and practitioners* (2014).

UNODC, *Gender Mainstreaming in the Work of UNODC* (New York, United Nations, 2013).

UNODC, *Handbook for Legal Aid Providers at Local Level to Provide Legal Aid in Domestic Violence Cases* (2011).

UNODC, *Handbook for the Judiciary on Effective Criminal Justice Responses to Gender-Based Violence against Women and Girls* (2019).

UNODC, *Toolkit on Gender-Responsive Non-Custodial Measures* (2020).

UNODC, *Model Law on Legal Aid in Criminal Justice Systems with Commentaries* (2017)

UNODC, *Resource Book for Trainers on Effective Prosecution Responses to Violence against Women and Girls* (2017).

UNODC, *Handbook on Effective Police Responses to Violence against Women* (2010).

UNODC, *Handbook on Effective Prosecution Responses to Violence against Women and Girls* (2014).

UNODC, *Handbook on Women and Imprisonment*, 2nd ed. (2014).

UNODC, *Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women* (2014).

UNODC, *Training Curriculum on Effective Police Responses to Violence against Women* (2010).

UNODC, *Training Manual on Policing Urban Space* (2013).

UNODC, *Training Curriculum on Women and Imprisonment* (2015).

UN Women, UNDP, UNODC and OHCHR, *A Practitioner's Toolkit on Women's Access to Justice Programming* (2018).

UNITE Campaign, *The Change-Makers, A Young Activist's Toolkit for Ending Violence against Women and Girls* (2014).

UN Women, *Progress of the World's Women 2011-2012: In Pursuit of Justice*, (New York, 2011).

UN Women, UNFPA, WHO, UNDP and UNODC, *Essential Services Package for Women and Girls Subject to Violence Core Elements and Quality Guidelines* (2015).

UN Women, "Why and how constitutions matter for advancing gender equality: Gains, gaps and policy implications", Policy Brief No. 8 (New York, 2017)

UN Women Training Centre, "Gender Equality Glossary", available at <https://trainingcentre.unwomen.org/mod/glossary/view.php?id=36&mode=letter&hook=G&sortkey=&sortorder>.

UN Women, Virtual Knowledge Centre to End Violence against Women and Girls, "Glossary of Terms from Programming Essentials and Monitoring and Evaluation Sections" (2012).

USAID, *A guide to Programming Gender-Based Violence Prevention and Response Activities* (2009).

USAID, *Women's Land Rights in Liberia in Law, Practice, and Future Reforms: LGSA Women's Land Rights Study* (2018).

USAID, Women's Legal Rights Initiative, *Paralegal Manual on Domestic Violence* (2006).

Van Der Hart and Brom, "When the Victim Forgets", in *International Handbook of Human Response to Trauma*, Shalev et al., eds. (2000).

Walmsley, *World female Imprisonment List, Women and Girls in Penal Institutions, including pre-trial detainees/remand prisoners* (2015).

Walsh Barry, *In Search of Success: Case Studies in Justice Sector Development in Sub-Saharan Africa* (2010).

Walter Leitner International Human Rights Clinic, *A Handbook for the Justice and Peace Commission: Best Practices of Community Legal Advice Programs, Program Assessment and Recommendations* (Fordham Law School, 2008).

World Bank, *Good Practice Note Addressing Gender Based Violence in Investment Project Financing involving Major Civil Works* (2018).

Zureich Alyson, *Implementing the gender acts in Sierra Leone* (2008).