



Empowered lives.
Resilient nations.



Global Technical Consultation on essential policing and justice sector services to respond to violence against women and girls

Justice Sector's Response to Violence against Women and Girls

BACKGROUND PAPER

22 June 2014

The Background Paper on the Justice Sector's Response to Violence against Women and Girls is one of two background papers developed to inform the Global Technical Consultation on essential policing and justice sector services to respond to violence against women and girls. This technical consultation, taking place in Marrakesh, Morocco from 1-4 July 2014 and convened by UNDP, UNFPA, UNODC, and UN Women, is part of the Joint Global Programme on Essential Services for Women and Girls Subject to Violence which aims to provide all women and girls who have experienced gender-based violence with greater access to a set of essential quality and coordinated multi-sectoral services. This paper complements the Background Paper on Essential Policing Services to Respond to Violence against Women and Girls.

The objectives of the consultation, as set out in the concept note, are to:

- Identify what policy / legal frameworks have to be in place for the delivery of essential police and justice sector responses (focused on low to middle income countries);
- Identify and agree on the core elements of the range of essential police interventions and justice services required for supporting women and girls who have experienced gender-based violence;
- Agree on the quality standards and guidelines for the delivery of essential police interventions and justice services;
- Identify any remaining gaps in the requirements for quality service provisions; and
- Make recommendations on tools necessary to guide the police and justice sector's response to violence against women and girls in different contexts.

Acknowledgements:

The Joint Global Programme on Essential Services for Women and Girls Subject to Violence received initial support and funding from the Australian Government. This background paper was written by Eileen Skinnider, Senior Associate with the International Centre for Criminal Law Reform and Criminal Justice Policy, with contributions by Tania Farha (UN Women), Upala Devi (UNFPA), Claudia Baroni (UNODC), Sven Pfeiffer (UNODC), Nicola Palmer (UNDP), Suki Beavers (UNDP) and Charles Chauvel (UNDP).

TABLE OF CONTENTS

INTRODUCTION

PART 1: CONTEXTUAL INFORMATION

1. Contextual Background
 - a. The justice continuum
 - b. Current realities for women and girls seeking justice
 - c. Women and girls' justice needs: What does the research tell us?
2. The Normative and Institutional Framework
 - a. The global normative framework
 - b. The legislative framework
 - c. Global continuing challenges for implementation
 - d. Guiding principles for a quality justice sector response

PART 2: ESSENTIAL JUSTICE SECTOR SERVICES AND POSSIBLE CORE ELEMENTS

1. Safety and protection
2. Women-centered assistance and support services
3. Access to gender responsive justice (pre-trial issues)
4. Victim / survivor sensitive trials (courtroom environment and procedures)
5. Punishment
6. Redress and reparations
7. Justice services for women who are defendants / offenders within the criminal justice system

PART 3: QUALITY STANDARDS AND GUIDELINES FOR THE DELIVERY OF JUSTICE SECTOR SERVICES

1. Overall standards and guidelines for a women-centered justice sector response
2. Specific standards and guidelines for the different essential services

PART 4: ADDITIONAL INSTITUTIONAL / ORGANIZATIONAL FACTORS THAT ARE NECESSARY FOR EFFECTIVE JUSTICE RESPONSE

1. Gender equality and women's empowerment mainstreamed into policies, practices and resource allocations
2. Developing policies and protocols to ensure comprehensive and coordinated response
3. Resources
4. Training and workforce development
5. Infrastructure and specialization
6. Accountability and oversight
7. Monitoring and evaluation

Table summarizing essential services, core elements and standards and guidelines

INTRODUCTION

Violence against women and girls is widespread, systematic and culturally entrenched. It has been described by the United Nations General Secretary as reaching pandemic proportions.¹ According to a 2013 global review of available data, 35% of women worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence.² Some country studies show up to 70% of women experience physical or sexual violence from men in their lifetimes, the majority by husband, intimate partners or someone they know.³ It is estimated that 150 million girls under 18 have experienced sexual violence.⁴ Gender based power relations within society put many girls at a much higher risk for some forms of violence, and sexual violence, in particular, than boys. The first sexual experience of some 30% of women was forced with the percentage as high as 45% for those who were under 15 at the time of their sexual initiation.⁵ A study on men's use of violence revealed 26-80% of men reported having perpetrated physical and/or sexual intimate partner violence and 10-40% of men reported committing non-partner rape, citing the most common motivation as being sexual entitlement.⁶

While many countries have legal and policy frameworks through which to address gender-based violence, the justice sector's response to cases involving violence against women and girls is notably deficient and hardly at a level required for the severity and incidence of the problem. Research shows that, in some regions, the vast majority of perpetrators of violence against women and girls face no legal consequences.⁷ This paper will use the term "women" to encompass "girl children" except where otherwise specified and hereafter refer to violence against women as VAW.

Often the justice response only compounds the problems for women who suffer from such violence. Engaging the justice process may actually increase the level of risk of harm without offering effective protection. Prosecution rates for VAW cases, particularly sexual

"Today, 160 countries have laws to address violence against women. Yet at all too often, the women subjected to violence are violated twice – the first time when they are victims of violence, and the second time when they seek, and do not find, the justice and services they are entitled to. All too often the rate of trials and sanctions for acts of violence against women is very low, and when perpetrators are held accountable, they are punished for lesser crimes, given shorter and light sentences...."¹

Michelle Bachelet, former Executive Director of UN Women

¹ United Nations (2006) *Secretary-General's In-depth Study on Violence Against Women A/61/122/Add.1*.

² WHO, *Global and Regional Estimates of Violence against Women*, http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625_eng.pdf. At p. 2.

³ UN Women "Violence against Women: Facts and Figures" SAY NO UNITE TO END VIOLENCE AGAINST WOMEN, retrieved from www.saynotoviolence.org/issues/facts-and-figures - Population surveys have found that between 10-70% of women report being physically assaulted by an intimate male partner at some point in their lives, see Heise, L., Ellsberg, M. and Gottemoeller, M. (1999) *Ending Violence against Women* (Baltimore, MD: John Hopkins University School of Public Health). The UN SG's Study, *supra* note 1 states that VAW affects one third of all women in their lifetime.

⁴ Pinheiro, P.S. (2006) *World Report on Violence against Children* (United Nations) p. 17.

⁵ WHO (2005) *WHO Multi-Country Study on Women's Health and Domestic Violence against Women* (Geneva), p. 52.

⁶ UN Women (2013) *Why do some men use violence against women and how can we prevent it? Quantitative findings from the United Nations Multi-country Study on Men and Violence in Asia and the Pacific* (UN Women, UNFPA, UNDP and UN Volunteers).

⁷ *Ibid.*

violence, are among the lowest for all crimes. Women frequently experience harsh treatment by justice officials leading to secondary victimization.⁸ When the alleged perpetrators are intimate partners or family members, women fear losing their children in divorce hearings or girls fear breaking up their family in child protection hearings when issues of gender-based violence are raised.

There is compelling evidence that VAW is rooted in gender inequalities and is both tolerated and sometimes even condoned by laws, institutions and community norms that discriminate against women.⁹ Such violence is thus not only a manifestation of gender inequality but often serves to reinforce it. VAW is often considered normal and justified by society. Blame for the violence is frequently shifted onto the victims rather than the perpetrators. This broad social tolerance of VAW and the associated lack of stigma of this form of violence can translate into biases held by individuals working in the justice sector and by the justice institutional cultures, resulting in huge accountability and implementation gaps, low reporting, high attrition and negative attitudes of justice sector actors. VAW cannot be understood in isolation from the gender norms, social structures and roles that influence women's vulnerability to violence.¹⁰

Purpose of the Background Paper

This background paper is intended to provide i) the context for the identification of essential justice sector services, ii) the core elements of these services and iii) the standards and guidelines needed for the provision of a quality justice responses to all women and girls who are victims and survivors of violence, including those living in low to middle income countries.

This paper is one of two papers developed for the Global Technical Consultation on essential policing and justice sector services and therefore will focus more on the broader justice sector response while highlighting issues of mutual concern or overlap with the police services and response. The importance of holistic and multi-sectoral approaches will also be acknowledged throughout the paper. Coordinated interventions operating at multiple levels, across sectors and over multiple time-frames are more likely to address the various aspects of and therefore have greater impact on confronting VAW. This paper explores key issues and raises questions that are critical to developing and implementing a quality justice response to VAW, one that builds on norms and guidelines at the global and regional levels, as well as available and well-tested national practices. It is meant to assist the experts at the consultation meeting in their development of a practical tool for justice providers in all countries in ensuring that women have access to essential justice services, protection and redress.

Clarifying the task of the global technical consultation

The task of identifying essential justice services, core elements and standards of quality delivery to respond to VAW is a formidable one. It is complicated by the realities that justice sectors around the

⁸ "Secondary victimization" is victimization that occurs not as a direct result of a criminal act but through the inadequate response of institutions and individuals to the victim, defined in the 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.

⁹ Heise, Ellsberg and Gottemoeller, *supra* note 3.

¹⁰ Bott, S., et al (2005) *Preventing and Responding to Gender based Violence in Middle and Low Income Countries: A Global Review and Analysis* (World Bank Policy Research Working Paper 3618)

world vary greatly, both criminal justice systems (adversarial, inquisitorial, religious based) as well as civil law and application of family law, child protection issues, to name a few and the need to ensure essential services are practical and reflect universality of application (low, middle and high income countries, urban, remote and rural settings). There is need to clarify the focus of the task and ensure a common understanding of the terms such as ‘essential’ justice services, ‘core’ elements and standards of ‘quality’ delivery, as these are our primary focus in order to address women and girls’ justice needs wherever they may live.

What is meant by the justice sector? The United Nations defines “justice” as an “ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs”.¹¹ “Access to justice” means “the ability of people to seek and obtain a remedy through formal or informal institutions of justice, in conformity with human rights standards”.¹² The “justice sector”, therefore refers to the institutions that are central to resolving people’s disputes and reaching adequate remedies for grievance.¹³ Justice systems include both criminal and civil law matters (family, child protection, personal injury law, immigration, etc), as well as formal and informal systems of law. This programme of work and consultation focuses on formal justice mechanisms, based on both criminal and civil law, when identifying essential justice sector services, their core elements and quality standards for their delivery. Further details regarding how to frame this discussion are dealt within the next section.

What is meant by “essential services” and “core elements”? Essential services mean those services that are absolutely necessary, indispensable or extremely important, from the perspective of the victims / survivors and women and girls who are at risk of further violence. The attention will be on those justice services and responses that are seen as critical and most typically respond to the needs of women who have experienced violence or who have access the justice sector due to fear of violence. Core elements describe the basic features or components of the services that apply in all legal traditions and contexts, including low to middle income countries.

What is meant by “quality standards”? While essential services and their core elements describe what needs to be done, the quality standards and guidelines address the issue of how they should be implemented to ensure that the essential services will be of sufficient quality or merit to effectively address a woman’s justice needs.

Focus on intimate partner violence and sexual violence. While VAW is defined broadly in the UN Declaration - *any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether in public or private* – this paper will focus on the two most common forms

¹¹ United Nations (2004) Report of the Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* S/2004/616, 23 August 2004, p. 4.

¹² UNDP (2005) *Programming for Justice: Access for All. A Practitioner’s Guide to a Human Rights-Based Approach to Access to Justice* (UNDP: Asia-Pacific Regional Center, Bangkok, Thailand).

¹³ The World Bank defines “justice sector: “the institutions that are central to resolving conflicts over alleged violations or different interpretations of the rules that societies create to govern members’ behaviour, and that, as a consequence, are central to strengthening the normative framework (laws and rules) that shapes public and private actions”. Definition found in The World Bank (2006) *Justice Sector Assessments: A Handbook* (The World Bank) retrieved at www.worldbank.org/INTLAWJUSTINST/Resources/JSAHandbookWedEdition_1pdf.

of gender based violence: intimate partner violence and sexual violence by any perpetrator.¹⁴ However, given the overlap and intersection of the various manifestations of VAW, the gendered nature of the abuse and the need for the justice system to address the victim's whole experience, women who experience other forms of violence, such as human trafficking, forced and early marriage, and female genital mutilation, will likely benefit from similar services and responses.¹⁵

Overall questions:

- Which services of the justice sector are essential, absolutely necessary in low and middle income countries, for all victims / survivors?
- What are the core elements or basic features of such services that reflect their universal nature, making them applicable in varied legal and cultural context?
- What standards and guidelines need to be in place to ensure quality delivery of these justice services?

PART 1: CONTEXTUAL INFORMATION

1. Contextual background

a) The justice sector continuum

The spectrum of justice sector services includes services provided by the criminal as well as civil justice systems. Criminal justice systems handle incidents of violence experienced by women and who are seen as “victims” of crime. Victims or survivors of gender based violence may also look to justice services, other than criminal prosecution, for protection and redress. This can include civil law protection orders, state criminal injuries compensation schemes that can be initiated outside the criminal justice system and civil damages for personal injury. Survivors of violence may also seek justice from family law, through divorce and child custody, as well as supports to girl victims involved in child protection and welfare systems. This consultation focuses on the aspects of the criminal and civil justice system that are responsible for responding to violence against women and girls and protecting them from further harm, and in particular, the intersection between them.

In terms of prevention of VAW more broadly, i.e. efforts that address the root causes of VAW with the aim of stopping it from occurring in the first place, a broader range of civil justice services may be needed. This could include access to justice mechanisms, for example human rights commissions or estate courts, that address discrimination issues and gender equality, the root cause of gender based violence and vulnerabilities of women and girls. The discussion of these broader mechanisms, however, is beyond the scope of this paper.

¹⁴ World Report on Violence and Health, Krug et al, 2002, cited in Bott et al, *supra* note 10. They offered the following definitions: “intimate partner violence: any behaviour within an intimate relationship that causes physical, psychological or sexual harm... such behaviour includes: acts of physical aggression such as slapping, hitting, kicking and beating; psychological abuse such as intimidation, constant belittling and humiliating; forced intercourse and other forms of sexual coercion; and various controlling behaviours such as isolating a person from their family and friends, monitoring their movement and restricting their access to information or assistance. Sexual violence “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances.... using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.

¹⁵ Examples of how forms of VAW overlap or intersect: coerced prostitution by abusive partners; forced marriage often includes coerced sex; trafficked women are repeatedly raped. Further discussion, see Kelly, L., and Cox, M. (2012) *Building Blocks: A Strategy and Action Plan for Addressing Violence against Women and Girls in Thurrock* at www.thurrock-community.org.uk/sericc/pdf/thurrock_vawg_201203.pdf.

Justice plays an important role in a coordinated and multi-sector response to ending VAW. The justice sector has obligations to uphold the law; protect victims of violence; hold perpetrators accountable; ensure victims have access to legal information, counsel and representation, provide an enabling environment necessary to prevent and respond to gender based violence, and ensure it does not create more risk for women who are vulnerable to or remain at risk of future violence.

An effective judicial response prioritizes victim safety and offender accountability. It includes the opportunity to access redress for violence in a timely manner, the avoidance of re-victimization, and the enforcement of legal remedies, including appropriate sanctions and/or punishment for perpetrators.

UN Women, Virtual Knowledge Center

The formal justice sector consists of the State government and its judicial officials, including judges, prosecutors, legal aid and court administrators as well as other justice actors such as lawyers and victim support staff. Courts form the center of the formal justice sector and are complemented by non-court mechanisms such as arbitration, mediation, restorative justice, and state compensation schemes. Interacting closely with the formal justice system are the police and other law enforcement officers, the subject of the other background paper.

Justice systems around the world also reflect differing legal traditions (common law systems/adversarial, civil law systems/inquisitorial, religious based systems, hybrid systems) and differing cultures. Given the diversity of mandates and task of the relevant justice agencies around the globe, this paper will focus on tasks and service activities of the justice sector as opposed to discussing the specific justice agencies or officials that might provide such services (as highlighted by the blue squares in Box 1 below). The discussion for essential justice sector services therefore is divided into themes that reflect broadly the various stages in the justice system, recognizing that protection and support services need to be available throughout the whole justice system.

| Box 1: Police and Justice Sector Responses to VAW | | |
|--|--|--|
| Stages of the Justice system | Criminal Justice Sector | Civil / Administrative Justice Sector |
| Prevention measures | Prevention measures | |
| Initial contact | Early detection / report to police Case is registered | Victim seeks advice from lawyers or court staff Case is registered Administrative application made |
| Urgent / emergency protection measures | Police investigative and protective powers Criminal protection orders by court | Civil protection courts / interim family law hearings |
| Pre-trial procedures / administrative procedures | Investigation Evidence gathering / forensic examinations Arrest Bail / pre-trial hearings Selection of charges Decision to prosecute Committal hearings Preparation for trial | Interim child custody/ support orders Discovery procedures in civil cases (i.e. tort cases) Production orders Preparation for trial Administrative proceedings |
| Trial / administrative hearing | Presentation of evidence Verdict | Presentation of evidence Civil Judgment |
| Punishment and redress | Sentencing hearing Restitution order Compensation schemes | Compensation schemes Civil award |

| | | |
|-----------------------------------|---|---------|
| Post trial | Corrections (rehabilitation) Appeals | Appeals |
| Protection and support throughout | | |

*The background paper to police response will cover essential services in the investigation and evidence gathering phase even though in some countries, these services are undertaken by prosecutors or investigative judges or supervised by either.

b) Current realities for women and girls in justice sector

A woman's access to the formal justice sector is shaped by a variety of factors. Women may suffer from illiteracy and lack of knowledge about their legal rights. Women may face mobility restrictions, have heavier workload at home and less free time, have less access to financial resources, lack physical security or be subject to customs or traditions that impede access (i.e. in some countries women may not travel alone or drive a vehicle) to the public domain. Gender bias and discrimination and persistent stereotyping may also impact a woman's interaction with the justice system. In cases of intimate partner violence, the bonds of family, economic and emotional dependency adds complexity to her access to justice. In many low income countries, particularly in rural and urban poor areas, research suggests that very few women seek justice from the formal system, with up to 80% of VAW cases resolved by informal justice systems.¹⁶

Women may fear or lack confidence in the formal justice system. In some countries, biases of the lawyers, judges, police and legal aid providers (particularly in those countries where the majority are male) may underlie the exercise of judicial, prosecutorial or police discretion. For example, a study from one country found that police and prosecutors had specific ideas as to how a real rape victim should behave, and if the alleged victim did not behave in the expected manner, they likely would not proceed with the case on the grounds that there was no credible evidence.¹⁷ Other studies show the common belief of justice providers that intimate partner violence is a 'private' matter and is better dealt with in the family.¹⁸ Researchers have also looked at how often judges minimized the criminal nature of gender-based violence and expressed bias against its victims, condoning or falsely believing that women bring on violence by their actions, such as arguing with a spouse, dressing provocatively to go out, or walking alone at night.¹⁹ These attitudes result in cases not being effectively investigated and punished or proper redress provided, as well as causing secondary victimization. Impunity perpetuates a social acceptance which in turns feeds women's sense of insecurity and mistrust in the justice system.

Criminal justice. Studies undertaken in several countries have reviewed gender based violence cases to learn more about how many cases exit the criminal justice system, at what stage and factors associated with these cases. Some of the findings illustrate the stark reality for women who seek to engage the criminal justice process:

¹⁶ IDLO (2013) *Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment* (Int'l Development Law Organisation, Rome).

¹⁷ Kelly, L., and Regan, L. (2005) *A Gap or a Chasm? Attrition in reported rape cases* (Home Office Research Study).

¹⁸ UNODC, HEUNI, Research Center for Gender and Development (2010) *Research on the Quality of Criminal Justice Services available to Victims of Domestic Violence in Viet Nam*.

¹⁹ Morley and Mullender, 1994 as cited in Bott et al, *supra* note 10.

- The rates of perpetrators being charged and convicted are very low, generally less than 10% of reported cases.²⁰
- In Viet Nam, most cases of domestic violence reported to the police did not lead to a criminal charge against the perpetrator (only 12%) and less than 1% of reported cases lead to conviction.²¹
- The classic attrition pattern in sexual violence cases, meaning increased reporting and falling rates of prosecution and conviction, is now predominant in Europe across both adversarial and investigative legal systems.²²
- Studies also have cited a number of reasons for victim withdrawal from the justice system, including: insensitive treatment by justice providers which compounds feelings of powerless; discouragement by justice providers; pressure from others to withdraw; and wanting to move on.²³
- Girls in particular can face extraordinary pressure by the abuser when a family member as well as from non-offending family members to withdraw their complaints. Even when abuser is not a family member, the pressure by family to withdraw can relate to implications for family honor which is inextricably tied to a female's marriageability.²⁴

Civil justice. Women and girl survivors may not seek justice through the criminal process and only involve civil justice, for example family law, divorce, child custody and support, child protection or welfare systems. Or women may seek justice from a personal injuries claim after the justice system fails them. In civil cases, survivors are private parties in justice processes that can be expensive, complicated and lengthy. Many countries provide no legal aid, or limited legal aid, for civil law matters. Furthermore, the civil justice system may not be set up to deal with victims of violence and are not aware that they face particular vulnerabilities and need special safeguards and care.

Challenges when both criminal and civil processes are involved. Some survivors of violence may be involved in criminal cases as well as family law cases. Research notes that women face a number of difficulties due to each system's differing objectives, procedures and timing.²⁵ If family courts are not aware of existing criminal protection orders or conditions of pre-release, their orders regarding child custody and access may be incompatible to the orders and may not take into account the level of risk to the women. Some challenges for girls who may be involved in both the criminal and child protection systems include concerns over not allowing children to act as witnesses or that their evidence is not given due weight in light of their age and level of maturity.

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

²¹ UNODC research, *supra* note 18.

²² Lovett, Jo and Kelly, Liz (2009) *Different systems, similar outcomes? Tracking attrition in reported rape cases across Europe* (Child and Women Abuse Studies Unit, London: 2009) at p. 111.

²³ Feist A., Ashe, J., Lawrence J., McPhee, D. and Wilson, R. (2007) *Investigating and Detecting Recorded Incidences of Rape* (Home Office Online Report 18/07) and Triggs, S., Mossman, E., Jordan, J. and Kingi, V. (2009) *Responding to sexual violence: Attrition in the New Zealand criminal justice system* (Ministry of Women's Affairs).

²⁴ Nguyen, T.T.H. (2011) *Rape experience and the limits of women's agency in contemporary post-reform Vietnam* retrieved at <http://dare.uva.nl/document/206769>.

²⁵ Report of the Federal-Provincial-Territorial Ad hoc Working Group on Family Violence (2013) *Making the Links in Family Violence Cases: Collaboration among family, child protection and criminal justice systems* (Department of Justice Canada).

Women may face other challenges with the justice sector. Women who report gender based violence run the risk of being charged with a crime, such as adultery, prostitution, or illegal immigration or might also run the risk of losing custody of her children. Given the complex nature of VAW, particularly intimate partner violence, female victims of violence may find themselves in the criminal justice system as the person charged with assault or murder as a result of hitting back in retaliation or in self defence.

c) Women and girls' justice needs: What does the research tell us?

Essential justice sector services should be developed from a rights-based perspective which fully takes into account the perspective and needs of women and girls as victims and survivors. A number of studies have found that whatever justice service is being provided, women prioritize services that empower them to provide their views and make their own decisions.²⁶ Violence against women and girls can take away the ability of the survivor to control their own body and life space. Repeated violations can undermine their trust in others. Research discusses four strategies that women found to be most empowering:²⁷

1. an integrated approach;
2. being treated as “deserving” of the best response possible;
3. a proactive response; and
4. a sense that their voices are being heard.

Within these themes, three empowerment components were consistently important to victims: (1) provision of information (2) timeliness of responses and (3) being treated with respect. Further studies have examined the needs of victims of intimate partner violence and victims of sexual violence more generally.

The needs of victims of intimate partner violence. A number of studies have found that women tend to become involved in the criminal process after all other resources have been exhausted and are usually looking for protection and an immediate stop to a particular incident of violence.²⁸ They do not necessarily want their partner arrested or to have long-term engagement with the criminal justice system. However, for others, when the justice system only focuses on the current incident, this can minimize the whole experience of the patterned use of coercion, intimidation and the use or threat of violence.²⁹ In a number of studies, women noted that the goals of the criminal justice system, that of punishment and retribution, are often at odds with the goals of women victims and in fact can contribute to feeling and being unsafe and worsen their personal and financial well-being.³⁰ There is a need to respond to the coherent picture of behaviour and complexity of risk and safety for the victim.

²⁶ UNODC research, *supra* note 18.

²⁷ Russell, M. (2002) *Measures of Empowerment for Women Who are Victims of Violence and Who Use the Justice System* (British Columbia Ministry of Public Safety and Solicitor General).

²⁸ A number of studies have been reviewed in Johnson, H., and Fraser, J., (2011) *Specialized Domestic Violence Courts: Do They Make Women Safer? Community Report: Phase I* (Department of Criminology, University of Ottawa).

²⁹ Praxis International (2003), *A Report from the 2003 Domestic Violence Safety and Accountability Audit: Prosecution Response to Misdemeanor Domestic Violence Cases Jackson County, Oregon* (Praxis International and Battered Women's Justice Project: 2003).

³⁰ Johnson and Fraser, *supra* note 28.

For some women, family law that provides child support and equitable division of marital property, and laws ensuring equal rights to inheritance may make it more possible to leave a violent partner rather than relying on criminal law. However, where family law codifies the traditional patriarchal views of marriage and parenthood, this avenue of justice will not meet the wants and needs of survivors of violence. In fact, research that reviewed 141 countries demonstrated that higher degrees of inequality in family law favoring men experienced higher rates of VAW.³¹ Women have expressed the need for family courts to give more credence to the abuse and violence when deciding on child custody and access.³²

Essential justice services need to be designed to ensure protection from abusive partners while ensuring their right to autonomy. Other findings include:

- What matters to victims varies depending on critical factors such as race, ethnicity, sexual orientation, level of ability, age, poverty, refugee or immigrant status and experiences of colonization.³³
- Women highlighted the increased complexity of intimate partner violence when children are involved and the need for better coordination between the criminal justice, family law and child welfare system to reduce negative outcomes.
- Women want more choice and control over critical decisions during court proceedings.
- Reduce court delays and increase the awareness about dynamics of intimate partner violence among court personnel.
- Women also need to be believed, to have their experiences validated, to have immediate protection, and to secure their children's well-being.³⁴
- Women also want society, their family and friends, to condemn the violence.³⁵
- Women also expressed what they need for long-term physical, economic and emotional security, including coping strategies, counselling, information, advice and financial resources.

The needs of victims of sexual violence. An Australian study focused on the needs of victims of gender based violence in the criminal justice system. In that study, it was the opinion of service providers that women had cited to them a number of needs.³⁶ These include: receiving emotional support and counselling; having a voice and being heard; being believed; having their version of events vindicated; being informed about the status of their case; being educated as to how the criminal justice system works, the reasons for process such as cross examination, what acquittals and convictions mean, etc.; avoiding having to retell their story; and being able to give evidence remotely.

³¹ Hudson, V., Lee Bown, D., and Nielsen, P.L. (2011) "What is the Relationship between Inequity in Family Law and Violence against Women? Approaching the Issue of Legal Enclaves" *Politics and Gender* Volume 7, Issue 4, pp 453-492 at p 478.

³² Johnson and Fraser, *supra* note 28.

³³ *Ibid.*

³⁴ Minaker, J.C. (2001) Evaluating criminal justice response to intimate abuse through the lens of women's needs. *Canadian Journal of Women and Law*, 13(1), 74-106.

³⁵ Herman, J.L. (2005) Justice from the victim's perspective. *Violence against Women*, 11(5), 571-602.

³⁶ Bluett-Boyd, N. and Fileborn, B. (2014) *Victim / survivor-focused justice responses and reforms to criminal court practice: Implementation, current practice and future directions* (April 2014).

2. The Normative and Institutional Frameworks

a) The global normative framework

Women have the right to live free of violence and free of the fear of violence.³⁷ States have an international obligation to exercise due diligence to establish effective measures to prevent, investigate and prosecute cases of VAW. The Due Diligence Project, a research-advocacy project, has elaborated on the 5 P's of due diligence to eliminate VAW.³⁸

1. *Prevention*: includes measures taken by states to thwart the occurrence of VAW. Good prevention programmes provide awareness of VAW and of information services and legal protection available post incident, as well as targeting the underlying risks and causes of such violence.
2. *Protection*: keeps the victim / survivor safe from present harm and the re-occurrence of further violence as well as ensuring the victim / survivor receives adequate and timely services. This is sometimes referred to as secondary prevention.
3. *Prosecution*: refers to the duty of exercising criminal jurisdiction over those responsible for the violence. This duty must be exercised in an effective, prompt, impartial and thorough manner, which allows the victim to take steps to try to stop the violence without fear of repercussions.
4. *Punishment*: refers to the obligations of imposing a sanction on perpetrators as a consequence of their having committed VAW. Sanctions can be civil, criminal, administrative or others, such as social sanctions.
5. *Provision of redress and reparations*: refers to any form of remedy or compensation made available to the victim / survivor to address the harm or loss suffered by them.

Failure to exercise due diligence violates and impairs or nullifies the enjoyment of women and girls human rights and fundamental freedoms. Human rights principles, enshrined in hard and soft law norms (treaties, declarations, guidelines and standards) reflects the broad consensus by member states and provide the foundation for all justice sector services.

Box 2. Key human rights and legal instruments that address violence against women and girls

- ◇ Convention on the Elimination of All Forms of Discrimination against Women
- ◇ Convention on the Rights of the Child
- ◇ Declaration on the Elimination of Violence against Women
- ◇ United Nations Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (Updated MSPM on VAW)
- ◇ Commission on the Status of Women 57th Session (CSW57) Agreed Conclusions
- ◇ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- ◇ Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime
- ◇ UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems
- ◇ UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (MSPM on VAC)

³⁷ Discussed in more detail in CEDAW General Recommendation No. 19 (11th session, 1992).

³⁸ Due Diligence Project website found at www.duediligenceproject.org.

- ◇ Beijing Declaration and Platform for Action
- ◇ The various reports of the Special Rapporteur on violence against women, its causes and consequences³⁹
- ◇ The various resolutions of the General Assembly on violence against women and the reports on the intensification of efforts to eliminate all forms of violence against women⁴⁰

b) The legislative framework

A comprehensive national legal framework is a necessary condition for many of the essential justice sector services that are identified in the following section. Legislation is critical to states assuming accountability for VAW and providing the legal basis for ensuring survivors' human rights and states' obligations of due diligence. Legislative provisions should cover substantive, procedural and operational provisions, criminalization, prevention, protection, support and rights of survivors, investigation, prosecution and sentencing, issues in relation to civil lawsuits, family law and asylum law. A number of practical tools have been developed by the United Nations to provide guidance to states when adopting or revising their legislative framework to effectively respond to VAW as well as developing national action plans to ensure effective enforcement of the laws, see Box 3. Of specific mention is UNDP's forthcoming Guidance on Domestic Violence Law reform which will discuss the essential elements of a comprehensive domestic violence law. For guidance on comprehensive laws responding to all forms of VAW, see the UN Women's Handbook for Legislation on Violence against Women as well as the Virtual Knowledge Center's legislative module.

Box 3: selected tools to assist States in the implementation of norms and standards

- ◇ UN Women, "Handbook for National Action Plans on Violence against Women"
- ◇ UN Women, "Handbook for Legislation on Violence against Women" and its supplement on "Harmful Practices against Women"
- ◇ UN Women, Justice module of the Virtual Knowledge Centre to End Violence against Women and Girls
- ◇ UNODC, Blueprint for Action: An Implementation Plan for Criminal Justice Systems to Prevent and Respond to Violence Against Women and Girls
- ◇ UNODC, Handbook on Effective Prosecution Responses to Violence against Women and Girls (forthcoming)
- ◇ UNDP Guidance on Domestic Violence Law Reform (forthcoming)

Some states have made progress in reforming their laws to effectively and comprehensively respond to VAW and while more can be done in this area, this consultation focuses on the essential justice sector services that need to be available for victims / survivors of violence irrespective of what gaps are present in the states' legal frameworks.

Guidance and policy details provided by the CSW 57 Agreed Conclusions, calling on States to:

(c) adopt, as appropriate, review, and ensure the accelerated and effective implementation of laws and comprehensive measures that criminalize violence against women and girls and that provide multidisciplinary and gender-sensitive preventive and protective measures, such as emergency barring orders and protection orders, the investigation, submission for prosecution and appropriate punishment of perpetrators to end impunity, support services that empower victims and survivors, as well as access to appropriate civil remedies and redress.

(f) ensure women's and girls' unimpeded access to justice and to effective legal assistance so that they can make informed decisions regard, inter alia, legal proceedings and issues relating to family law and criminal law, and also

³⁹ Found at www.ohchr.org/EN/issues/Women/SRWomen/Pages/SRWomenindex.aspx.

⁴⁰ Found at www.un.org/womenwatch/daw/vaw/v-work-ga.htm.

ensure that they have access to just and effective remedies for the harm that they have suffered, including through the adoption of national legislation where necessary.

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

c) Global continuing challenges for implementation

Progress has been made by some states in implementing their obligations to exercise due diligence in certain areas. There are more dedicated laws and policies in place, new prevalence data in more countries, increasing evidence on costs and impact of VAW, studies on attrition and norms associated with violence, increased awareness and social mobilization. However, there are still many impediments to effectively prevent, respond and eradicate VAW. This includes legal gaps, such as loopholes in legislation and discriminatory laws and procedures; inadequate implementation of existing laws due to poor enforcement, weak institutional structures, organizational cultures, lack of proper capacity, lack of skill or discriminatory attitudes among relevant justice professionals; the lack of coordinated action plans; insufficient resource allocations; unclear referral pathways; limited availability and quality of survivor services; pockets of marginalization and exclusion; lack of comprehensive, long term prevention efforts; and widespread impunity for perpetrators.⁴¹

Low to middle income countries face particular institutional and organizational barriers and challenges.⁴² There is often a severe lack of resources for personnel, particularly trained justice personnel, basic equipment and infrastructure, training and transportation. There can also be issues of corruption, expensive, slow and inaccessible courts and an unaccountable judiciary.⁴³ Often services are not geographically accessible to women, especially rural and remote areas, many women may not have the time or resources to access them or the travel may carry safety risks. Even in mid-high income countries, there can also be a lack of specialist staff with little knowledge of violence against women and lack skill and knowledge to protect survivors, ensure confidentiality, investigate and respond appropriately. Even with strong legal systems, prosecutions can be lengthy, criminal and civil trials can be complicated, expensive, traumatic for the women and the results, whether conviction or child custody in family courts, are not always guaranteed. Victims / survivors in all countries face the lack of political commitment at all levels which does not sufficiently prioritize justice sector services for VAW.

d) Guiding principles for a quality justice sector response

In identifying essential justice sector services, the international instruments provide a number of guiding principles for a quality justice response. A set of guiding principles have been agreed to in the Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (Updated Model Strategies on VAW) which are to specifically inform the development of essential criminal justice initiatives.

⁴¹ Skinnider, E., "Validation workshop in Viet Nam: Attrition Study" presentation at validation workshop March 26, 2014, Hanoi, Viet Nam.

⁴² DFID (2013) *Addressing Violence against Women and Girls through Security and Justice Programming* (CHASE Guidance Note Series: Guidance Note 4).

⁴³ Bott et al, *supra* note 10.

Updated Model Strategies on VAW

I. Guiding principles

13. Member States are urged:

(a) To be guided by the overall principle that effective crime prevention and criminal justice responses to violence against women are human rights-based, manage risk and promote victim safety and empowerment while ensuring offender accountability;

(b) To develop mechanisms to ensure a comprehensive, coordinated, systematic and sustained approach for the implementation of the updated Model Strategies at the national, regional and international levels;

(c) To promote the involvement and participation of all relevant sectors of government and civil society and other stakeholders in the implementation process;

(d) To commit adequate and sustained resources and develop monitoring mechanisms to ensure their effective implementation and oversight;

(e) To take into account in the implementation of the updated Model Strategies the varying needs of women subjected to violence

Human rights-based. All essential justice services need to address the root causes of violence against women, such as the structural inequalities between men and women and discrimination based on sex and gender as well as gender dynamics of power and control. 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 women's use of justice sector services. According to the Updated Model Strategies on VAW, justice systems must be a place where all women and girls can enjoy and exercise their human rights and be protected from violence and be treated with dignity and respect. Justice services should not compromise the rights of women and girls, be non-coercive, as well as be grounded in a gender transformative approach.

Women-centered. A women-centered approach, as opposed to a justice system-centered one, puts the needs of the women at the core of any justice sector service. A women-centered approach means a gender sensitive approach. This means designing essential justice services from a gender perspective, taking into account the realities of all women and girls and their justice needs, as discussed in the above section. Principles of effective women-centered service: (1) think women safety; (2) think empowerment (3) treat every women with respect; (4) keep women informed; (5) support the women throughout the justice process; (6) expedite justice; and (7) address special needs of women who face particular barriers.⁴⁴

Offender accountability. Justice sector services need to effectively hold the perpetrators accountable while ensuring a fair trial. Sending a strong message to the community is vital and can contribute to prevention and reducing recidivism. In order to hold the perpetrator accountable, justice sector services need to maximize the survivor's cooperation with the justice process, promote her capacity of acting or exerting her power (agency), while ensuring that the burden or onus of seeking justice is on the justice providers.

⁴⁴ Adopted from the Justice Institute of British Columbia (2007) *Violence against Women in Relationships: Victim Service Worker Handbook* (BC Ministry of Public Safety and Solicitor General).

Accessible and affordable services. States must provide essential justice services and ensure that they are accessible and affordable to women and girls.

Varying needs of women subjected to violence. Victims of violence are not a homogenous group. Some victims face multiple forms of discrimination which can be based on nationality, ethnicity, religion or language in addition to gender. Some victims may be part of highly vulnerable groups of women, such as belonging to an indigenous group, are migrants, are stateless, are refugees, live in underdeveloped, rural or remote communities, are homeless, are in institutions or in detention, have disabilities, are elderly, are widowed or live in conflict, post-conflict or disaster situations or due to high risk nature of work or lifestyles such as commercial sex trade workers or women who use drugs. Justice services need to be accessible to all women and be responsive to the particular vulnerabilities and differential impacts of violence against women on different groups of women. All justice services should ensure diversity and inclusion.

Comprehensive and coordinated approaches. Justice sector services that are coordinated at multiple levels and involve multiple sectors, (amongst justice sector agencies as well as coordinating with other sectors, civil society and victims/ survivors have a greater impact on confronting VAW. More will be discussed in the part 4 of this paper.

PART 2: ESSENTIAL JUSTICE SECTOR SERVICES AND POSSIBLE CORE ELEMENTS

In order to provide a platform for the consultation towards gaining a consensus on an essential set of justice sector services, this section of the paper looks at seven suggested essential services and corresponding possible core elements. Similar to the policing background paper, the essential services are identified by the common main stages found in the various justice systems around the world. Protection and support are dealt with as distinct essential services as these are important services that transcend particular stages of the justice system.

1. Safety and protection (links with policing services on protection)
2. Women-centered assistance and support (links with policing services on support)
3. Access to gender-sensitive justice (pre-trial issues)
4. Victim / survivor sensitive trials
5. Punishment
6. Redress and reparations
7. Justice services for women who are defendant / offenders within the criminal justice system

For each of the seven essential justice services outlined in this section, a number of issues are raised for the consultation group to consider when identifying the core elements and quality standards and guidelines for delivery. Given that the undertaking for the consultation group is to decide which factors best describe core elements and which might more appropriately be described as quality standards and guidelines, the key issues that are relevant for both tasks are discussed in full in this part of the paper.

Part 3 sets out in more detail the possible types of standards and guidelines needed to ensure delivery of quality services.

1. Safety and protection

Protection of women who have experienced violence is critical in its own right and such measures should be available independent of any initiation of a criminal, civil or family law case.⁴⁵ Effective protection services provided by the justice sector should stop the violence and prevent violence from reoccurring and/or escalating as well as prevent threats of violence, intimidation and harassment. Effective protection can empower women to access justice and enable her to stay safely engaged with the justice process. Providing protection can contribute to holding the perpetrator accountable, whether this is through the criminal justice process or by ensuring an equitable resolution of family law issues, if through civil justice process.

Victims of gender based violence often fear for their safety and safety of their family. Research on intimate partner violence shows that, to women, safety means “living free of violence, having autonomy to negotiate daily life decisions, having confidence that children’s routines will be maintained, and living without constant fear and denigration.”⁴⁶ Their protection needs can be immediate, urgent, long term, as well as situational when they fear reprisal for reporting the violence and participate in the criminal justice system or involving the civil justice system. Research has shown that in cases involving intimate partner violence the act of approaching the justice system, whether to report a crime or seek divorce, dramatically increases the victim’s risk of serious injury or death at the hands of her intimate partner.⁴⁷

There needs to be available different kinds of measures for different forms of violence against women. Protection measures are perhaps more common in intimate partner violence situations than in non-partner sexual violence cases and require different considerations. Intimate partner violence cases are often characterized by a direct and on-going threat to the woman in her own home or elsewhere. It is vital to secure her safety by enforcing a period of physical distance during which the abuser cannot continue to threaten, intimidate or hurt her. Where possible, the woman should not be expected to leave her home and seek shelter or urged to denounce the abuser to the justice system, although there may be times where there is no other choice but to remove the women, and her children if necessary, from the home in order to ensure safety. Also, the realities in some countries where women live with their husband’s family means that removing the husband may not make her feel safe. In some cultures, if she leaves the family home seeking safe shelter, this may be tantamount to declaration of separation which she may feel unable to do, given her economic and social dependencies. The woman needs a secure space to get information on her rights and justice options and feel able to make informed

⁴⁵ Article 15 (h) of the Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice.

⁴⁶ Hart, 1998 cited in Johnson and Fraser, *supra* note 28.

⁴⁷ Studies show that women who are separating from their partner are at a much higher risk of domestic violence. See Long, J. et al (2010) *Model Policy for Prosecutors and Judges on Imposing, Modifying and Lifting Criminal No Contact Orders* (The Battered Women’s Justice Project). The British Crime Survey (1999) found that 22% of separated women were assaulted in the previous year by their partners or ex-partners. Metropolitan police review of domestic violence murders, in 76% of cases the victim was killed after they had terminated the relationship. For example, research from Brazil found that 57% of female homicides were committed by husbands or intimate partners in situations where the woman had left the abuser.

decisions in her and her families' best interest. She may not want to cooperate with criminal proceedings and this should be irrelevant to her right to protection. She may want to report and testify against the perpetrator, which as mentioned, might increase her risk. Protection concerns for victims of sexual violence that are committed by acquaintances, boyfriends or strangers, eviction is often not the solution. However, restraining orders and non-contact orders may be needed in these cases if intimidation or threats are involved.

Barriers need to be removed in order for women to seek and receive protection from the justice sector. Victims encountered a number of barriers when seeking judicial protection measures. These include: the financial cost; the geographic location of judicial bodies; lack of accessible information about legal rights and how to access judicial protection; discriminatory attitudes of justice providers; and lack of enforcement and overall lack of trust or faith in the justice system. Some justice providers may believe that the victims are themselves responsible for monitoring the protection measure, which can leave victims at risk to further violence or they may not gather the necessary information to give full consideration of the risk factors. In intimate partner violence, the justice system often fails to recognize the patterned nature of the coercive and abusive nature of the violence. A challenge faced by some victims is the failure of the justice providers to serve the order on the abuser. This can be due to a number of reasons, such as low priority given by the justice sector, or lack of resources. The women may have to take it upon herself to serve the abuser with the order, which places her at further risk of violence.

Protection measures can be civil interim injunctions or civil restraining orders, emergency removal orders, or criminal law protection orders or protection conditions on pre-trial release orders. Emergency measures should be available quickly to avoid an imminent threat of further violence. In some states, police have powers to undertake emergency protection measures, such as removal orders⁴⁸, whereas in other states, a judicial order may be required. Where judicial orders are required, timeliness is of the essence. Emergency court hearings may be done *ex parte* (without notice to the perpetrator) to provide shorter term protection measures, based on balance of probabilities and not require gathering of full evidence. For longer term protection, usually courts require a full hearing, allowing the perpetrator to be heard. Urgent measures, as opposed to emergency measures, are those that go to court without delay (fast track) but decisions are based on full hearing of the evidence and usually are for longer period of time than emergency measures. In some countries, protection orders are available even where the accused has been acquitted of any specific offence, see situation in Spain.⁴⁹ A study of the Austria law highlighted that one element that made the removal order a good practice was that it took the decision off the women's shoulders to seek the application to court.⁵⁰ In Ghana, women may apply for

⁴⁸ The issue of police responding to calls of domestic violence and powers of arrest will be discussed in the police background paper.

⁴⁹ The Spanish Organic Act on Integrated Protection Measures against Gender Violence provides that protective measures can be extended as long as they remain necessary.

⁵⁰ Hagemann-White, C., and Bohn, S. (2007) *Protecting women against violence: Analytical Study on the effective implementation of Recommendation Rec(2002)5 on the protection of women against violence in Council of Europe member States* (Council of Europe Directorate General of Human Rights and Legal Affairs, Strasbourg, 2007).

protection orders independently of any other proceedings, and the institution of criminal or civil proceedings does not affect her rights of an applicant to seek a protection order under the law.⁵¹

Victims of intimate partner violence face the dilemma of how best to ensure their safety and their children's safety. Victims often feel pressure by the perpetrator to drop or modify the protection order or ask the courts to modify pre-trial release conditions. Research from United States has shown that women who maintain restraining orders or no-contact orders against their abusers are as likely to be re-abused as those who drop the orders.⁵² An NGO in the United States have issued guidelines for modification which balances the risks to the victim and her own assessment of what is in her best interest.⁵³ Any modification should only be considered when a victim is present in court and requests modification.

Some studies show that protection orders increase women's safety, particularly when there are swift consequences for any violations. However, even in settings with strong legal systems, men routinely violate such orders, often with serious consequences. The lack of enforcement by police and others, procedural barriers and lack of resources are challenges faced by women whose protection orders are violated. Justice providers may blame the women for breaching the orders. Trend internationally to call on states to criminalize breaches of civil protection orders.

Coordinating protection measures with pro-active support and other assistance to survivors of violence is essential. Evaluation in South Africa shows the link between enforcement of protection orders, prosecuting cases and imposing jail time on perpetrators when there are adequate community services to assist women and children with emergency shelter, housing, and economic support.⁵⁴ Coordination of protection needs involving both criminal and civil systems needs to be addressed, and could include developing referral / information sharing protocols amongst the various justice agencies.

Possible core elements for safety and protection:

- i. Ensuring availability of and accessibility to a broad range of immediate and urgent protection / preventive measures, both criminal and civil law measures
- ii. Ensuring availability of and accessibility to broad range of longer term protection measures, both criminal and civil law measures
- iii. Conducting or ensuring a risk assessment has been conducted
- iv. Prioritizing safety concerns in all decisions relating to release of suspects or offenders
- v. Ensuring safety during trials, both criminal and civil law trials
- vi. Coordinating all protection measures
- vii. Coordinating protection measures with support services

⁵¹ Ghana, the *Domestic Violence Act* (2007).

⁵² Klein, A., (2008) *Practical Implications of Current Domestic Violence Research Part II: Prosecution* (National Institute of Justice).

⁵³ Long, J. et al, *supra* note 47.

⁵⁴ Parenzee, 2001, cited in Bott et al, *supra* note 10.

2. Women-centered assistance and support

Women who experience intimate partner violence or sexual violence can have very different support and assistance needs from the justice sector, depending on their circumstances and the severity of the violence and its consequences. These needs may vary over time, as the case progresses through the justice system and beyond. The issue of support services is a broad one, and women who have experienced violence or are vulnerable to violence require assistance and support whether or not they engage the justice system. Given its importance, there is to be a separate Global Consultation forum on support services. Therefore, the discussion here is focused on the services provided by the justice sector or by non-justice sector agencies to assist and support victims and survivors of violence through the justice process, both criminal and civil.

The international norms and guidelines and national practices highlight some of the aspects of support and assistance services for consideration. These include: legal assistance⁵⁵, practical, accurate and comprehensive information⁵⁶, and victim advocacy and support persons⁵⁷. Assistance and support services during the justice process empower women, allowing them to make their own informed decisions based on knowledge of their rights and justice options. As much as is possible, victims of violence need to have their sense of security restored.

A significant portion of victims of gender based violence suffer from trauma, such as post traumatic stress disorder, depression and anxiety.⁵⁸ The trauma might affect the victim's ability to coherently or fully recount her experience. In many countries, justice sector personnel conduct numerous interviews, often done by men, which can create a gender dynamic that may be especially uncomfortable or painful for a woman who has suffered violence by a man. The realities for women victims of violence going through the justice system, particularly the criminal justice system in countries where victims do not have standing and their roles are viewed as passive, can have negative consequences for her.⁵⁹

Studies confirm that support and assistance throughout the criminal justice system impacts on continued participation of victim, increase the likelihood of successful prosecution and conviction, increase victim satisfaction irrespective of justice outcome, as well as reducing the effects of secondary victimization.⁶⁰ These services should be victim centered and therefore not conditional on victim's participation or cooperation in the criminal justice process. One study showed that the way victims are supported and treated in the criminal justice process is as important as the eventual outcome of the

⁵⁵ See United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, A/RES/67/187 and the United Nations Guidelines on Justice Matters involving Child Victims and Witnesses of Crime, ECOSOC 2005/20.

⁵⁶ See the victim assistance section in the Updated MSPM on VAW and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34.

⁵⁷ Article 18(i) of the Updated MSPM on VAW calls for women to have access to qualified personnel who can provide victim advocacy and support services throughout the entire criminal justice process, as well as access to any other independent support person. Also the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Updated MSPM on VAW call for qualified support person who can provide victim advocacy and support services throughout the criminal justice process.

⁵⁸ Klein, A. (2008) *Practical Implications of Current Domestic Violence Research Part II: Prosecution* (National Institute of Justice).

⁵⁹ Council of Europe Recommendation No. R (85) 11 on the Position of the Victim in the Framework of Criminal Law and Procedures (June 1985) found at www.copii.ro/files2/30_RecomandareaCE_11_1985.pdf.

⁶⁰ Lovett, J., Regan, L. and Kelly, L. (2004) *Sexual Assault Referral Centers: Developing Good Practice and Maximizing Potential* (Home Office: London) and Goodman, L., Bennett, L., and Dulton, M.A., (1999) "Obstacles to victims' cooperation with the criminal prosecution of their abusers: the role of social support", *Violence and Victims*, 14/4.

case.⁶¹ Victims surveyed showed that in those cases that resulted in acquittals but where victims were supported throughout by a support worker, while they were disappointed in the outcome none regretted pursuing the case. This is in sharp contrast to those victims who had limited support.

Considered a basic need for victims/survivors of violence is timely information that is presented in easily understood terms and in a language she uses or can understand. Women need information about the justice and related systems that they will need to navigate, about the progress of their case through the system, about what to expect both in terms of 'normal' reactions to being victimized and in terms of a system response and about resources they can access to help keep themselves safe and to get on with their lives. Barriers for women to such information include high illiteracy rates, lack of access to communication in rural, remote regions, language issues for migrants, refugees or stateless women, etc.

Legal aid is defined in the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems as including legal advice, assistance and representation and is to be provided to 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 requires.⁶² Principles 7 and 9 set out a number of important aspects for this discussion:

- States are to ensure appropriate advice, assistance, care facilities and support to victims throughout the criminal justice process in a manner that prevents repeat victimization and secondary victimization.
- Includes 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 a separate legal proceeding.
- States are to ensure that the views and concerns of victims are presented and considered at the appropriate stages of the criminal justice process where their personal interests are affected or where the interests of justice so requires.
- Victim services agencies and NGOs can provide legal aid to victims.
- Mechanisms and procedures are established to ensure close cooperation and appropriate referral systems between legal aid providers and other professionals (ie health, social and child welfare providers) to obtain a comprehensive understanding of the victim, as well as an assessment of her legal, psychological, social, emotional, physical and cognitive situation and needs.
- Take steps to ensure, where possible, female legal aid providers are available
- Provide legal aid, advice and court support services in all legal proceedings to female victims of violence.

A number of states provide legal aid to victims of crime. However this can be qualified as to terms of means, the offence in question and may only be available to those who cooperate with criminal proceedings. The application process can be complex or only available in urban areas. Women may lack the ability to physically access available legal aid, particularly if they lack transportation, funds to travel,

⁶¹ Ford, D., and Breall, S. (2000) *Violence against Women: Synthesis of Research for Prosecutors* (National Institute of Justice).

⁶² Art 8 of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

or child care. Regarding criminal law, some states recognize the victim as party to the criminal case and her right to be represented by a lawyer. Other states do not. A recent study on attrition in the EU identified as one of the most promising practice to offer the potential for reversing increasing attrition rates was for victims to be a party to the criminal case and for victims to have a legal right to advice and support throughout the criminal process.⁶³ This study also concluded that a woman who has disclosed rape, sexual assault or domestic violence, and who may be asked to make a statement to the police or to testify in court, must have access to legal advice on what this may mean for her and what options she has. Others have held that at the very minimum, a victim who will be questioned about past sexual history be represented with legal counsel during trial.

In some situations, survivors of intimate partner violence choose the civil justice to seek resolution of family law issues, such as child custody, support and alimony. Her goal in accessing justice might be to remove herself and her children from the violent situation without involving the police. The survivor might be economically dependent on the abuser or unable to access the family income. Experiences in some countries highlight the concern that often eligibility for legal aid is assessed against family income, without taking into account the fact that women may not be able to access these resources in their own right. The first UN Guideline provides that: “Whenever States apply a means test to determine eligibility for legal aid they should ensure that: if the means test is calculated on the basis on the household income of families, but individual family members are in conflict with each other or do not have equal access to the family income, only the income of the person applying for legal aid is used for the purpose of the means test”.⁶⁴

Provision of support services and referrals are crucial to a women’s safety and well-being and her successful use of the justice system. The right to victim support services is one of the core rights of in the EU-Council Framework decision on the standing of victims in criminal proceedings.⁶⁵ Such a right can be delivered differently depending on national legal frameworks. In some countries, victim support services are within the justice sector whereas in others, the justice sector collaborates with NGOs for such support services. In those situations, the justice sector personnel must make the appropriate referrals to community support services. Women need emotional and practical support from pre-trial through to post-trial. A woman may need an advocate if she is not able to access the services she needs or if the system is not working as it should for her.

A professional support person or a victim advocate is someone with the knowledge of the complexity of violence against women as well as the justice system and is viewed as a good practice in many countries.⁶⁶

- They provide emotional support and practical assistance throughout the process, as well as keeping the victim informed about the justice process.
- This can also include, prepare victims for the court experience; provide accompaniment to appointments and to court wherever possible and appropriate.

⁶³ Lovett and Kelly, *supra* note 22 at p. 112.

⁶⁴ Guideline 1 of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

⁶⁵ 2012 EU-Council Framework decision on the standing of victims in criminal proceedings.

⁶⁶ Hagemann-White and Bohn, *supra* note 50.

- Wherever possible, provide additional assistance to victims who require transportation or childcare or who have special needs.
- Provide information and referral regarding custody and access, maintenance, or other family law matters.
- Communicate and liaise with other community-based and system-based service providers, as necessary and appropriate.
- Refer women to other services that may help them to move through the justice system, to address any special needs that victim service workers are not able to assist with, to deal with the violence in their relationships, or to address the needs of their children.
- Special support considerations for the girl child, particularly those involved in child protection hearings. Support professionals to make every effort to coordinate support to avoid unnecessary procedures and limit the number of interviews.

Support and assistance services need to be culturally appropriate. Women from different cultural backgrounds need services that are not only accessible in terms of language but also sensitive to various cultural pressures and conflicts. Services need to meet their special needs. Women with disabilities, very young women, older women, lesbians, and rural and isolated women all have special needs that must be addressed. All services and legal remedies available to victims are also available to immigrant women, trafficked women, refugee women, stateless women and all other women in need of such assistance, and that specialized services for such women are established, where appropriate.

Possible core elements for women-centered assistance and support:

- i. Providing practical, accurate and comprehensive information (criminal and civil)
- ii. Providing legal assistance to victims and witnesses (criminal and civil)
- iii. Ensuring availability of victim advocacy or support person (therapeutic support to assist participation in any justice process) (criminal and civil)
- iv. Providing referrals to non-justice sector support (criminal and civil)

3. Access to gender responsive justice (pre-trial issues)

Unimpeded access to gender responsive justice means that women who have experienced gender-based violence have access to both criminal and civil justice that is non-biased and non-discriminatory and sensitive to their specific needs. There are a number of aspects to this. First, accessing formal justice, the courts (civil and criminal) or administrative justice (i.e. states compensation schemes) needs to be timely, affordable, effective and equitable. Procedures that are expensive, lengthy, complicated, and discriminatory are all barriers that deny many women justice. Also, the justice sector has to recognize their needs as survivors of violence and treat them with respect and dignity. In addition to this, there are particular challenges faced by victims and survivors in accessing criminal justice. The policing background paper covers the initial stage of accessing the system through the reporting to police. This paper will therefore focus on the gatekeepers to the criminal courts, predominately prosecution services but also investigating judges or magistrates, depending on each state' legal traditions.

In many countries, there continues to be a culture of skepticism within the criminal justice sector when women report sexual violence. This is often reflected in the laws, making rape a crime subject to unique evidential requirements.⁶⁷ Even when the laws have changed, their legacies remain: burden of proof / limited evidence / lack of evidence; unwillingness / victim withdrawal; undermining credibility of victim / victim blaming; difficulties for victims dealing with the criminal justice system; lack of services for victims; difficulty of assessing victims credibility / testimony; delay in reporting to police, including loss of evidence; and lengthy delays in court proceedings.

International standards are clear that the primary responsibility for initiating prosecutions lies with the prosecution authorities and does not rest with the victim, regardless of the level or form of violence. This means that the authorities do not require an official complaint to be filed by the victim of violence. This should also mean that investigations seek to build / develop evidence and support complaints rather than looking at what undermines it. There is a need to balance between ensuring the prosecutor has the responsibility to initiate a criminal case and at the same time ensuring actions support and empower victims so that they can make informed decisions with regards to their interactions with the criminal justice system. The essential justice services, to the extent possible, are not to place the responsibility for the process on the vulnerable and often disempowered women survivor while at the same time ensure victim's views are given due weight and that she has an opportunity to participate fully in any judicial and administrative proceedings.

Pro-prosecution policies and mandatory or no-drop policies have been introduced in various countries to combat long standing and globally prevalent prosecutorial attitudes of this violence and high attrition rates. A pro-prosecution policy means that the prosecution is likely but not mandatory, where there is probable cause to believe that a crime has occurred. Mandatory prosecution, or no drop prosecution policies restricts the prosecutor's discretion in gender based cases and the prosecution is to proceed even without the agreement of the victim. Both types of policies want to remove the need for victims to initiate prosecutions and are designed to prevent the abuser from using violence or threats to pressure the victim to halt the prosecution. However, any policy needs to have flexibility to allow for victim agency, which recognizes that the victim herself is competent to decide what is best for her or her children and make her own risk assessment. There is potential for conflict between a victim's interest in protection and the state's interest in holding the offender accountable for his violent actions and deterring others. There is need to ensure that the victim's decision not to participate in the criminal justice system is due to her assessment of what is best for her and her family's protection and not in response to the prosecutor's noncooperation with her plan for securing herself from continuing violence. Pro-prosecutorial policies are seen to be more flexible, allowing for the use of prosecutorial discretion but with oversight mechanism, such as written explanation when and why the prosecution was dropped or approval from the chief prosecutor. There is a need to ensure prosecution restores a sense of dignity and control to the victims of violence rather than seeing her as a passive participant which disempowers her.

⁶⁷ For further detail, see [Kelly, L and Regan L (2003) Rape still forgotten issue]

Different justice sector agencies may be involved in the selection of criminal charges, the approval of charges or conducting committal hearings or preliminary hearings that act as gatekeepers to the criminal courts. Judicial officials reviewing the police case files and assessing evidence should ensure such procedures do not re-traumatize victims or reflect gender biases. For example, in South Africa prosecutors are to regard all complaints of sexual violence as credible and valid unless the contrary is clearly indicated.⁶⁸ English prosecutors are to engage in early and meaningful case building with police in cases of domestic violence and should prepare their cases on the assumption that the victim may in the end not support the prosecution.⁶⁹

Research on attrition in rape cases found that the closer the assault and the suspect were to stereotypes of rape ('real rape' and 'ideal victim'), the more likely they were to proceed through the system.⁷⁰ This study's findings suggest that it is vital that prosecutors undertake, with an open mind, as complete and thorough an investigation and review of police file as possible before any decisions are made as to the veracity or prosecutability of any case.⁷¹ Another study suggests that states need to prosecute on the basis of all available evidence, including but not restricted to victims' testimony.⁷²

There are a number of key challenges that need to be met if this minimum standard is to be achieved: (i) improving the identification of strangers and recent acquaintances; (ii) ensuring that high quality forensic examinations are conducted in all cases where evidence might be gathered; (iii) enabling victims to stay with the process, and especially addressing safety concerns where the suspect is a current / ex-partner; and (iv) ensuring that rape is prosecuted 'ex officio' (meaning that the state takes responsibility for the prosecution). Interestingly, this study which reviewed both adversarial and inquisitorial criminal justice systems in Europe, found that where prosecutors took control of the investigation and made most decisions about whether cases proceeded there were higher rates of conviction.⁷³

Research on intimate partner violence shows low convictions, despite increased focus and law reforms.⁷⁴ This leaves the woman who found the courage to report the violence possibly even more at risk than before. This study suggests that domestic violence must be seen as a public interest crime. Research shows that cases were usually dropped when a victim was unwilling to testify. Some countries have adopted policies for dealing with evidence-based prosecutions or what are also called 'absent victim' prosecutions. By relying primarily on the evidence collected by the police rather than the victim's

⁶⁸ South Africa National Prosecution Authority Policy Directive Part 27: Sexual Offences.

⁶⁹ Joint Crown Prosecution Service (CPS) and Association of Chief Police Officers Evidence Checklist.

⁷⁰ Lovett and Kelly, *supra* note 22 at p 112. Their research on attrition in Europe found that while stranger rape cases were often discontinued because the suspect was never identified, if they were identified these cases were more likely to proceed and result in convictions. The study found that reported rapes are diverse, with few fitting the stereotype of 'real rape' – committed by a stranger, outside and involving weapons. In fact injury was more likely where the perpetrator was a current/ex-partner. Yet the closer assaults were to the stereotypes of rape and rapists the more likely they were to result in conviction.

⁷¹ *Ibid.*

⁷² Hagemann-White and Bohn, *supra* note 50.

⁷³ Lovett and Kelly, *supra* note 22. The study on attrition in Europe found that while reporting rates and wider criminal definitions undoubtedly change the profile of cases seen by the criminal justice system personnel, these alone do not explain low and falling conviction rates. Factors which were more common in the low conviction rate samples included: failures in investigation to interview victim and/or suspect and high rates of victim withdrawal. Interestingly, they found that samples with higher conviction rates had neither of these and were systems where prosecutors took control of the investigation and made most decisions about whether cases proceeded (p 111.)

⁷⁴ Hagemann-White and Bohn, *supra* note 50 and UNODC research, *supra* note 18.

testimony, prosecution services can reduce the risk of retaliation by the abuser and increase the likelihood of conviction even in the event the woman is not able to testify.

In response to overburdened justice systems, many states are focusing on ways to divert cases from the formal justice system, for example, plea bargaining, diversion, and restorative justice. In cases involving intimate partner violence and sexual violence, particularly the seriousness of the violence and the traditionally weak response by the justice system, states should be cautious when considering diverting cases away from the formal courts. International guidelines are clear (CSW57) that compulsory / forced alternative dispute resolution, mediation and conciliation are prohibited in violence against women cases. This is supported by research that indicates that conflict mediation with couples can be very dangerous when there has been violence.⁷⁵ Mediation is founded on the concept that both parties have an equal right to speak out and negotiate an acceptable solution.

Women who proceed by way of civil law, such as separation or divorce proceedings, as a response to intimate partner violence, engage in the civil justice system as a private party in a system that can be expensive, lengthy and complicated. Civil justice services need to ensure they are able to screen family law cases with domestic violence, and provide legal aid to women, prioritize these cases, fast track these cases.

There also needs to be close coordination (perhaps integration) between family courts and criminal courts where the survivor is involved in both justice systems. Some countries have responded to the unique justice needs of survivors of intimate partner violence by establishing domestic violence courts. There are different models but common features include: expedited court processing; specialized prosecutors, judges and court staff and women's advocacy programmes; specialized court room designs; abusers fast track to treatment. Some models also provide for the issuance of orders regarding child custody, access and support orders. Evaluations of three models in Canada found⁷⁶: increase in guilty pleas; faster resolutions; increased victim cooperation; early interventions; better retention in spousal abuse treatment programmes. One concern is overall access to the courts, particularly those in rural and remote areas. Perhaps consider rotating or mobile courts.

Possible core elements for access to gender-responsive justice (pre-trial issues):

Access to criminal justice

- i. Upholding primary responsibility for initiating prosecution lies with the prosecution authorities
- ii. Exercising fair burden of proof and evidentiary standards by justice sector personnel in approving criminal charges without delay
- iii. Ensuring victim empowerment and perpetrator accountability when considering resolutions of charges prior to trial
- iv. Developing efficient case management of pre-trial process

⁷⁵ Research cited in UN Women (2010) *Handbook for Legislation on Violence against Women* (New York: United Nations).

⁷⁶ Comparison of Specialized Domestic Violence Courts in Canada: Winnipeg; Ontario; Yukon: briefing paper.

Access to civil justice

- v. Providing affordable and simplified civil law procedures
- vi. Ensuring fast track cases involving violence against women
- vii. No forced mediation, alternative dispute resolution allowed in cases involving VAW

Coordination of criminal and civil law matters

- viii. Coordinating integrated approaches to criminal and civil (ie family law, child protection) cases (criminal and civil)

4. Victim / survivor sensitive trials (courtroom environment and procedures)

In identifying essential justice sector services for victims involved at the trial stages in criminal and civil justice processes, survivors of violence who are witnesses in criminal cases, plaintiffs in civil law cases or girl survivors involved in child protection hearings are vulnerable and in need of special assistance and support in order to prevent further hardship and trauma that may result from attending court. It should be recognized it is often necessary for victims of violence to participate in the criminal justice process, and that in some jurisdictions, victims can be required or compelled to testify.

The reality for many victims of gender based violence is that they are frequently viewed as less credible witnesses. Women testifying have been required to submit to psychological examination of their credibility, used for no other adult witness to a crime. Research on rape illustrates how victims' testimony is called into doubt in specific ways unique to the crime. In some countries, judges habitually warn the jury that a woman claiming to be raped is often lying, even after legal reform tried to eliminate the custom.⁷⁷ This traditionally resulted in strict and biased interpretation of evidentiary requirements.⁷⁸ For example, in rape cases, one aspect of which has been the use by the defence of previous sexual history to impugn the credibility of the complainant. Attempts to control its use have been made in many common law jurisdictions. However research reveals that the intention of legislation was rapidly undermined in legal practice.⁷⁹ One finding: sexual history evidence was raised in some cases involving minors, raising concerns that irrespective of the exploitative nature of the past events, children were more often represented as sexually active rather than sexually vulnerable. Victims said that they weighed up the issue of whether sexual history evidence would be raised in court in deciding whether to report the matter to the police and subsequently in deciding whether to withdraw the allegation. Furthermore, the research finds that both defence and prosecution share stereotypical assumptions about 'appropriate' female behaviour and that those continue to play a part when issues of credibility are addressed in rape cases.

Protecting the victim's privacy is of prime importance. She should be protected from undue exposure to the public. This could include by excluding the public and the media from the courtroom during the victim's testimony, and to protect information relating to the victim's involvement in the justice process

⁷⁷ Hagemann-White and Bohn, *supra* note 50.

⁷⁸ Kelly, L., Temkin, J., and Griffiths, S. (2006) *Section 41: an evaluation of new legislation limiting sexual history evidence in rape trials* (Home Office Online Report 20/06).

⁷⁹ *Ibid.*

by maintaining confidentiality and restricting disclosure of information that may lead to identification of the victim.⁸⁰ Give due consideration to the need to protect the victim from any publicity which will unduly affect his private life or dignity.⁸¹ If the type of offence or the particular status or personal situation and safety of the victim make such special protection necessary, either the trial before the judgment should be held in camera or disclosure or publication of personal information should be restricted to whatever extent is appropriate.

It is important to enable the victim's continued cooperation and reduce the trauma. Victim-sensitive procedures⁸², including interview rooms designed for victims, interdisciplinary services for victims integrated within the same location, modified court environments that take witnesses into consideration, an appropriate notification system to ensure that the victim goes to court only when necessary and other appropriate measures to facilitate the testimony such as preventing direct contact between victim and accused if victim may be subject of intimidation, threats or harm.

Evidentiary rules should not be used in a discriminatory manner. There must be no requirement that the victim's evidence must be corroborated by other evidence; no use of the "cautionary rule" (which requires judges to warn juries that complainants may be motivated to lie about the case, are prone to exaggeration or fantasy, or that their evidence may therefore be unreliable; no inference that a woman who was under the influence of alcohol or drugs (even minimally) at the time of the offence against her is responsible for the violence; no inference that a woman is to blame because of how she was dressed, no inference that a woman is to blame because of where she was. Sex workers or women in the entertainment business should not be subjected to disparate treatment because of their employment. Furthermore, there should be a strong presumption that evidence of sexual history should not be introduced into the trial, in order to avoid discriminatory inferences being made about a complainant's credibility, character or predisposition to sexual availability.

Rules of procedure need to prevent unwarranted and/or humiliating questioning for the victims taking into due consideration the trauma that they have suffered in order to avoid further trauma.⁸³ There should be measures to ensure that authorities question victims only insofar as necessary for the purpose of criminal proceedings.⁸⁴ In some jurisdictions, there has been a trend to promote alternatives to victims testifying in court. If effects of giving evidence in open court cause trauma, victims may, by decision taken by the court, be entitled to testify in a manner which will enable this objective to be achieved, by any appropriate means compatible with its basic legal principles.⁸⁵

A court environment and court procedures must also take into account the age and circumstances of the survivor and be appropriate for her individual circumstances. So for example, court procedures in child protection hearings need to promote the physical and psychological recovery and social reintegration of

⁸⁰ Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice.

⁸¹ Council of Europe Recommendation No. R (85) 11 on the Position of the Victim in the Framework of Criminal Law and Procedures (June 1985) found at www.copii.ro/files2/30_RecomandareaCE_11_1985.pdf.

⁸² These are elaborated in MSPM on VAC, *supra* note 80.

⁸³ Council of Europe Recommendation Rec (2002) 5 of the Committee of Ministers on the protection of women against violence.

⁸⁴ Council of European Union Council Framework Decision of 2001/220/JHA on the standing of victims in criminal proceedings (Official Journal L 082, 22/03/2001 P.0001-0004).

⁸⁵ *Ibid.*

victims of violence. Also the court should ensure that the language used in court is conducted in a language that is age appropriate, and comprehensible to the victim, and that interpretation into language that the victim understands is available. For girls who are victims, she should be treated as a capable witness and that her testimony is not presumed to be invalid or untrustworthy by reason of relationship with accused or age of victim. That she is able to testify through adequate measures and child-friendly practices that facilitate such testimony by protecting their privacy, identity and dignity, ensuring their safety before, during and after legal proceedings, avoiding secondary victimization and respecting their need and legal right to be heard while recognizing the legal rights of the accused.

Possible core elements for victim / survivor sensitive trials:

- i. Ensuring evidentiary rules are not used in a discriminatory manner (criminal and civil)
- ii. Protecting victim's / survivor's privacy, integrity and dignity
- iii. Facilitating victim's / survivor's testimony (criminal and civil)
- iv. Providing a friendly court room environment (criminal and civil)

5. Punishment

Holding perpetrators accountable for VAW is fundamental to the principle of punishment. Some women are looking for more than stopping the violence. They are seeking accountability and redress. One study found that some women discussed their need to confront their perpetrator in a public setting, having the perpetrator brought to justice and convicted of a crime to provide closure and a sense of finality to their experience.⁸⁶ Punishment creates a level of certainty and sends a strong message to the community that VAW will not be tolerated. Implementing appropriate and effective punishment can be a challenge, and the widespread practice in some countries of sentencing offenders to a fine is usually inadequate and often does not address safety issues. Deterrence can only be effective if it also provides for the safety of those harmed by the abuse.⁸⁷

International standards provide guidance for states to ensure that punishments are commensurate with the severity of these crimes. Section IV Sentencing and Corrections in the Updated MSPM on VAW calls on states to review, evaluate and update sentencing policies and procedures in order to ensure that they:

- Hold offenders accountable for their acts related to VAW
- Denounce and deter VAW
- Stop violent behaviour
- Promote victim and community safety, including by separating the offender from the victim and, if necessary, from society
- Take into account the impact on victims and their family members of sentences impose on perpetrator

⁸⁶ Bluett-Boyd, Nicole and Fileborn, Bianca (2014) "Victim / survivor-focused justice responses and reforms to criminal court practice: Implementation, current practice and future directions" (April 2014).

⁸⁷ Hagemann-White and Bohn, *supra* note 50.

- Provide sanctions that ensure that perpetrators of VAW are sentenced in a manner commensurate with the severity of the offence
- Provider reparations for harm caused as a result of the violence
- Promote the rehabilitation of the perpetrator, including by promoting a sense of responsibility in offenders and, where appropriate, reintegrating perpetrators into the community.

The international standards also call on states to take into account specific circumstances that should be seen as aggravating.

While victims' participation at the sentencing hearing can vary from state to state, research indicates the importance of ensuring that the victim can voice how the violence has impacted on her life.⁸⁸ The procedure for taking into account the impact on the victim needs to be simple, accessible, and not contribute to re-victimization. The victim should have a choice from a broad possible range of methods to participate: including submission of victim impact statements, orally addressing the court, writing a letter to the judge, having family, friends or others address the court, and work with justice providers to prepare a pre-sentence report.

The justice system plays an important role in deterring future violence, both as sending a strong message to the community that gender based violence will not be tolerated but also in its role in rehabilitation of offenders and reducing recidivism. Some states have established intervention programmes designed to encourage perpetrators of violence to adapt a violence-free pattern of behaviour by helping them to become aware of their acts and recognize their responsibility.⁸⁹ Victims of intimate partner violence may want this as redress to their harm rather than incarceration as a punishment especially when continuing to live with offender. There are guidelines for effectively designing rehabilitation / intervention programmes found in the UN Women Handbook on National Action Plans and which are further articulated in the next section. A further issue for discussion at the consultation could be how to deal with alternatives to imprisonment in cases of VAW. While this continues to be debated, some groups have developed recommendations for restorative justice in such cases.⁹⁰

Possible core elements for punishment:

- i. Ensuring appropriate punishment that holds offenders accountable
- ii. Allowing victims to participate at the sentencing hearing in manner appropriate to them
- iii. Promoting rehabilitation of perpetrator, as appropriate

6. Reparations and redress

Reparations is an obligation of a wrongdoing party to provides redress for the damage caused to the injured party and implies any form of remedy or compensation. Under international law, "reparation must, as far as possible wipe out all the consequences of the illegal act and re-establish the situation

⁸⁸ Miller, K. (2007) *Investigating the Victim Impact Statement in the Cases of Sexual Assault in Nova Scotia: Notes on Methods and some Preliminary Observations* (JustResearch no 14: Department of Justice Canada) retrieved at www.justice.gc.ca/eng/rp-pr/jr/jr14/p5.html.

⁸⁹ Council of Europe Rec (2002)5, *supra* note 83.

⁹⁰ The Canadian Working Group for Restorative Justice in Violence against Women Cases, retrieved from the Virtual Knowledge Center.

which would, in all probability, have existed if that act had not been committed”.⁹¹ There are many forms of reparations. These include:

- Restitution. This seeks to restore the victim to the situation that would have existed had the crime not happened.
- Compensation. Means quantifiable damages resulting from the crime / harm. It can include physical or mental harm, including pain and suffering and emotional distress, lost opportunities, including education, material damages and loss of earnings, including loss of earning potential; harm to reputation or dignity; and costs required for legal or expert assistance, medicines and medical services, and psychological and social services.⁹²
- Public acknowledgement of the facts and acceptance of responsibility
- Prosecution of perpetrators
- Restoration of the dignity of victim through various efforts.

A vital service that the justice sector delivers to survivors of violence is ensuring redress, accountability, compensation and restoration. In many states, it is possible for a criminal court to order compensation by the offender to the victim in addition to a penal sanction.⁹³ Such an order should not place the onus on the victim to make a specific application. She should be assisted by the court in providing all relevant information concerning the injuries and losses suffered by her. Compensation orders can be made by the courts and ordering the offender to pay the victim within a specific amount of time. In other states, the law provides that compensation can be awarded in another manner.⁹⁴ There has been little action, but some serious consideration of state compensation for damages suffered by victims of rape, sexual assault or domestic violence.⁹⁵ Such payments may be means-tested and subject to the condition that the victim did not provoke the crime.

Survivors of violence, who do not choose to go through the criminal justice process, also need to have access to other justice avenues for redress. This includes pursuing a claim against the abuser, through civil remedies and/or seeking compensation by the state, for example state funded compensation schemes. Some states provide a state funded criminal injuries compensation fund which are not linked to a criminal case and can be applied to without the need to proceed through the criminal justice process.

Survivors of violence should also have access to redress for any harm caused by the justice system itself. This includes complaint mechanisms, internal and external accountability mechanisms and will be discussed in the next section in more detail.

⁹¹ See Permanent Court of Arbitration, Chorzow Factory Case (Ger. V. Pol) (1928) P.C.I.J. Sr. A. No. 17 at 29.

⁹² Rome Statute of the International Criminal Court, par 20 (A/CONF.183/9 of 17 July 1998).

⁹³ Council of Europe Recommendation No. R (85) 11, *supra* note 81.

⁹⁴ Council of European Union Council Framework Decision of 2001/220/JHA, *supra* note 84.

⁹⁵ Hagemann-White and Bohn, *supra* note 50.

Possible core elements for reparations and redress:

- i. Ensuring availability of and accessibility to a broad range of forms of reparations, whether or not through the criminal justice process
- ii. Ensuring reparations cover all consequences and harm suffered by victim / survivor
- iii. Providing redress if access to essential justice services are undermined, delayed or denied

7. Justice services for women who are defendants/offenders within the criminal justice system

Given the complex nature of VAW cases, particularly involving intimate partner violence, the justice sector providers might come across cases where the female accused or offender is a victim of VAW. For example, women victims of domestic violence may be charged with assault or murder as a result of hitting back in retaliation or in self-defence causing injury or death to the abuser. In jurisdictions where there are mandatory / pro-arrest and prosecution policies, there may be a dual arrest case where the victim has defended herself and fought back. The challenge is that research shows that a substantial number of victims will not self-disclose their victimization.⁹⁶ This can mean determining the primary or predominant aggressor is not easy or may not be self-evident. Treating victims of VAW as offenders can have devastating consequences for the victim. The justice sector must minimize such negative consequences.

The international standards, the Updated MSPM on VAW, recognize the need for the justice sector to take into account the claims of self-defence by women who have been victims of violence in the investigation, prosecution and sentencing. The case of battered women syndrome is specifically mentioned in the Updated MSPM but there have been many other approaches taken to respond to this issue including where a broader range of evidence on VAW is allowed to be taken into account during trials. Furthermore international standards call for states to take into account the special needs and vulnerabilities of women within the criminal justice system, especially women in detention, pregnant inmates and women with children born in detention.

Possible core elements for justice services for women who are defendants / offenders:

- i. Providing services for victims of VAW who have been accused and/or convicted of criminal offence
- ii. Ensuring services in place to respond to and prevent VAW who are detained for any reason

⁹⁶ Research cited in J.P. Greipp, T.G. Meisner, and D.J. Miles (2010) *Intimate Partner Violence Victims Charged with Crimes: Justice and Accountability for Victims of Battering Who Use Violence against their Batterers* (Aequitas).

PART 3: QUALITY STANDARDS AND GUIDELINES FOR THE DELIVERY OF JUSTICE SECTOR SERVICES

1. Overall standards and guidelines for a women-centered justice sector response

1.1 Women-centered / gender sensitive response

All justice service providers must

- Be non-judgmental and supportive
- Validate what has happened to the victim / survivor throughout the process
 - Being believed
 - For her reporting to be taken seriously
 - Being treated as deserving of the best response possible
- Treat all women victims / survivors of VAW respectfully
 - Including with a view of preventing secondary victimization
 - Including age appropriately
- Take action that takes into account the unique needs and perspectives of victims/survivors, respect their dignity and integrity and minimize intrusion into their lives
- Ensure the victim / survivor's privacy, and maintain confidentiality of information provided

1.2 Empowering victims / survivors (right to participate in the justice process)

All justice service providers must:

- Ensure that victims / survivors have a sense that their voices are being heard. They must ensure she has an opportunity to:
 - Express her story
 - Be listened to and have her story accurately recorded
 - Have a positive experience when providing testimony
 - Be able to tell how the violence has impacted her
- Ensure the victim / survivor has control to:
 - Decide whether to engage in the justice process
 - Have the option of withdrawing from the justice process
 - Be provided with information to make informed decisions

1.3 Accessibility

All services must be accessible to all victims, irrespective of her socio-economic characteristics without undue financial or administrative burdens placed on the victim , irrespective of her socio-economic status, where she lives (urban, rural, remote areas or outer islands) or other factors such as literacy (legal or otherwise), whether indigent or lacking ability to access family income.

All justice services must be:

- Affordability. All justice services need to be affordable for victims/survivors of violence and in some cases, they need to be free of charge (such as information, support, legal advice)
- Geographically accessible (rural, remote)
- User friendly and simplified procedures
- In an accessible language

1.4 Timeliness of justice response

- Prioritize cases involving VAW (both criminal and civil law cases)

1.5 Tailored to the individual specific needs of the victim / survivor

- Services need to be tailored to address needs of a diverse group of victims / survivors, with specific attention paid to services for vulnerable groups

1.6 Services delivered by capable / trained personnel

All justice service providers should

- Receive mandatory training on:
 - Cross-cultural gender and child sensitivity on the unacceptability of all forms of VAW and on the harmful impact and consequences on all those who experience such violence
 - All relevant national laws, policies and programmes, as well as international legal instruments related to VAW
 - Identifying and responding appropriately to the specific needs of women victims of violence; receiving and treating all victims respectfully with a view to avoiding secondary victimization; handling complaints confidentially; conducting safety assessments and risk management; and using and enforcing protection orders
 - Providing information on appropriate ways to deal with girls (all children), the stages of child development, the process of cognitive development, the dynamics and nature of VAW, their specific needs
- All justice agencies should
 - Promote the development and use of specialized expertise including the establishment of specialized units and specialized personnel
 - Specialization should not be in lieu of regular and institutionalized training of all justice providers to build their capacity with regard to responding to VAW
 - Promote female justice service providers, ensuring appropriate representation of female officers at all levels and in all functional areas

1.7 Transparent guidelines

All standards and guidelines for the justice sector should be:

- Transparent and readily available to the public
- Disseminated widely (i.e. internet)

- Use non-legal language

1.8 Supervision and accountability

All justice service providers should be monitored and held accountable for their conduct and responses to VAW.

- Ensure internal supervision and oversight procedures are established and implemented for responding to victims / survivors
- Ensure internal victim complaint mechanisms:
 - Complaint mechanism need to be accessible and transparent
 - Provided free of charge
 - Ensure a complaint will not hinder her access to justice service
 - Complaints must be dealt with in a timely manner
- Ensure external victim complaint mechanisms:
 - Independent or arms-length body to be responsible for handling complaints
- Promote monitoring of justice services by civil society and the media

All relevant professional associations should develop enforceable standards of practice and behaviour and codes of conduct that promote justice and gender equality

- Including safe complaint and referral procedures

1.9 Coordinated and integrated approach

All justice services must be:

- Coordinated amongst justice sector agencies
- Coordinated within a multi-sector response to VAW (non-justice sectors and civil society)

In any integrated and coordinated justice response, consider the following elements:

- Consistent and shared understanding of violence against women
- Shared philosophical framework on violence against women response amongst multi-agencies involved
- Accountability of all agencies involved
- Broad stakeholder involvement
- Have clear targets and indicators for on-going monitoring and assessing impact.
- Develop methods for sharing information, within the privacy and confidentiality legal requirements, such as protocols

2. Specific standards and guidelines for the different essential services

In addition to the general standards and guidelines mentioned above, these ones are specific to each of the essential service and core elements.

2.1 Safety and protection

Ensuring availability of and accessibility to a broad range of immediate, urgent and long term protection / preventive measures, both criminal and civil law measures:

- Ensure procedures are accessible to all victims / survivors
 - Available free of charge
 - Procedures are user friendly and ensure simple application (ie Luxembourg, victim files a simple paper request with the court clerk and the matter is adjudicated urgently, with hearings even being held on holidays)
 - Justice service providers (police, prosecutor, court staff) are obligated to assist in filing the application
 - Available under both criminal and civil law procedures
- Ensure procedures are implemented to promote timeliness
 - There is fast track / rapid access to appropriate courts
 - Courts are accessible after hours
 - Ex parte orders are allowed, where necessary
- Ensure protection is specifically tailored to individual's assessment of the threat
 - Courts to ensure that they have before them all relevant information relating to safety, including risk assessment, either prepared by police or justice provider (i.e. prosecutor, court staff) (guidelines for risk assessments below)
 - Justice service providers are able to assist in safety planning with victim
- Ensure a broad range of conditions available so that the protection order can be tailored to the needs of the woman, her family and their situation
 - Courts are able to order a broad range of conditions to ensure physical, emotional and financial safety of the victim
 - Examples of available conditions to include: removal or barring orders; no contact / restraining orders, etc.
 - Conditions can apply against someone who lives in same house as well as those who do not
 - The scope of the order can include survivor of violence, her family and other relevant persons
- Ensure that protection measures are not dependent on initiation of criminal or civil law proceedings
 - Available without police intervention
 - Available regardless of victim/survivor's ability or willingness to participate in criminal case or child protection case.
- Ensure fair burden of proof and evidentiary standards for different types of protection orders

- Emergency protection orders to be accessible without the need to rely on identifiable criminal act
- Protection measures to be available even when the probability of a conviction is low
- State officials should have clear onus for serving protection orders
 - Service is to be prompt,
 - Court clerks to send notice of order to the parties, as well as copy to the police
- Ensure there are clear roles for monitoring and enforcement
 - Protection orders are to be effective immediately
 - Copy of protection orders are to be sent by courts to police
 - Breaches of orders are to be taken seriously, charged criminally, and appropriately sanctioned by the courts
 - Victim / survivors are never held in breach of protection orders, as it is the perpetrator who is the subject of the order.
- Ensure clear guidelines for modifying protection orders
 - Court must require that the victim / survivor be heard before modifying any order
 - Judge needs to understand dynamics of intimate partner violence

Conducting or ensuring a risk assessment has been conducted

- If a risk assessment has been conducted by the police, ensure that justice service providers receive a copy
- If a risk assessment has not been conducted, justice service providers are to conduct one and consider at a minimum:
 - Include an assessment of lethality risk and risk of repeated violence
 - Consider level or extent of harm based on the victim's vulnerability, the threats to which she is exposed, presence of any weapons and other determining factors (develop a simple check list)
 - Consider the following categories of questions to include in the assessment: prior victimization; abuser's drug and alcohol problems, obsessive – possessive behaviour and excessive jealousy, mental health history; threats to kill victim or her children; abuser's use of violence in setting outside the home; evidence of escalating violence or intimidation; abuser's possession of, access to, familiarity with and degree of fascination with gun; abuser's proclivity to respect court orders; the status of the relationship.
- Develop a common tool to assist in a coordinated practice of risk assessment among police, justice service providers, and other relevant stakeholders
- Ensure information can be exchanged legally and safely, protecting confidentiality of the victim / survivor

Prioritizing safety concerns in all decisions relating to release of suspects or offenders

- Justice service providers are to ensure that they have all the necessary information, including the risk assessment, before making any decisions pertaining to the arrest, detention, terms of release, probation, or parole, of the perpetrator. Relevant information includes:

- Whether there is a history of violence
- Victim's fear of future violence and the basis for that fear
- Victim's opinion on the likelihood that the abuser will obey the terms of release
- Any threats of and / or escalation of violence
- Any decision concerning the release of the suspect or offender must take into account the risk to victim and consider her safety
- Where it is determined that there is sufficient risk of violence or concerns that the abuser will not obey imposed release conditions, justice providers should consider detention pending trial.
- Justice providers need to consider a broad range of conditions for release that will ensure safety of victim, her family and other relevant persons.
- In cases where the victim requests modification of pre-trial release conditions, courts should hear from victim herself.
- Victims are to be notified of suspect / offender's release from detention or imprisonment if they so wish

Ensuring safety and protection concerns during trials, both criminal and civil law trials

- See essential services no. 5 on victim / survivor sensitive trials

Coordinating of all protection measures

- Where other justice proceedings have been initiated, protection measures need to be coordinated between criminal, civil and family proceedings.
- Create a registration system for protection orders and ensure all justice service providers have quick access to the system
- Protection needs to be part of a holistic and comprehensive approach for women who have experienced violence.⁹⁷

Coordinating of protection measures with support measures and services

- Ensure that protection measures include support measures such as child support or alimony to ensure that interventions for protection can be sustained and assist survivor to rebuild her life in safety
- Justice providers are to facilitate access for victim / survivor to support services⁹⁸
- Justice providers should involve appropriate victim assistance groups when developing safety plans or making appropriate referrals.

⁹⁷ An early evaluation of the Austrian law showed the importance of monitoring the police actions and dispositions of the courts as well as that without specific training on how to respond to domestic violence, justice service providers tend to be satisfied with one intervention only, either protection or prosecution. See Hagemann-White and Bohn, *supra* note 50.

⁹⁸ For example, see Austrian example where police to inform intervention center immediately who proactively contacts each victim.

2.2 Women-centered assistance and support

Providing practical, accurate and comprehensive information (criminal and civil)

- Ensure adequate and timely information in accessible language and format
 - Information needs to be provided in an appropriate manner depending on target group (non-legalize, easy to understand, accessible to illiterate)
 - Information should be in languages commonly understood, as far as possible
- Ensure a broad range of information. This should include, at a minimum:
 - A clear understanding of the justice process
 - Relevant information on rights, remedies and victim support services and how to obtain them
 - Information regarding her opportunities of obtaining restitution and compensation, legal assistance and advice
 - Information about the types of services or organizations to which they can turn for support and how to obtain them
 - How and under what conditions they can obtain protection
 - Information about the specific case (her role and opportunities for participating in the proceedings; the scheduling, progress and ultimate disposition of the proceedings, as well as any orders against the perpetrator)
- Ensure that signs at courthouses and justice sector offices be accessible to all women (including illiterate, immigrants, etc)

Providing legal assistance to victims and witnesses (criminal and civil)

- Ensure legal assistance is affordable
- Provide for a broad range of legal assistance (from legal information, legal advice, legal representation)
- Ensure that the administrative processes to obtain legal assistance are accessible.
- Provide for a gender sensitive and expansive understanding of eligibility for legal aid

Ensuring availability of victim advocacy or support person (therapeutic support to assist participation in any justice process) (criminal and civil)

- Ensure support services are accessible
 - Provide support service free of charge
 - Provide for a sufficient geographical network across the country covering rural and remote areas (might be done by using different forms of communication)
- Ensure a broad range of support services. Such services should include:
 - Information and advice
 - Emotional and psychological support
 - Practical assistance
- Ensure timely provision of support services

- Provide support services from the earliest possible moment after the violence has been committed, irrespective of whether it has been reported
- Continue the support for an appropriate time depending on victim's individual needs
- Ensure support services are tailored to individual victim's needs
 - Conduct a needs assessment
 - Provide culturally appropriate support services
- Provide for victim advocate or support persons
 - Support persons should be professional or well trained volunteers
 - They need to have training to ensure that they are knowledgeable in the complexity of VAW and justice systems

Providing referrals to non-justice sector support (criminal and civil)

- Ensure clear protocols on sharing information (confidentiality considerations)
- Provide for clear referral pathways
- Ensure support services include specialized immediate and appropriate longer-term geographically distributed victim support services in accordance with their needs⁹⁹

2.3 Access to gender responsive justice (pre-trial issues)

Access to criminal justice

Upholding primary responsibility for initiating prosecution lies with the prosecution authorities

- Ensure prosecution policies allow for victim agency
 - The victim should be informed of the final decision concerning prosecution, unless she indicates that she does not want this information
 - The victim should have the right to ask for a review by a competent authority of a decision not to prosecute, or the right to institute private proceedings
- Consider pro-prosecution policies
- Reduce barriers that place undue pressure on victim to withdraw charges
 - Appreciate and respond to the potential conflict between goals of the criminal justice systems and the wishes of victim. (So for example, this could include standards as to how to deal with victim withdrawal at the various stages of the criminal justice process.)
 - Ensure victims' views are given substantial weight in criminal proceedings.

Exercising fair burden of proof and evidentiary standards by justice sector personnel in approving criminal charges without delay

- Ensure justice providers apply fair burden and evidentiary standards
- Ensure the completion of all basic evidence collection before any decisions are made about the case

⁹⁹ Directive 2012/29/EU.

- Prosecutors / investigative judges should ensure that they have as clear and complete a statement from the victim as possible
- Prosecutors / investigative judges should review all other evidence
- Regard VAW as an aggravating or decisive factor in deciding whether or not to prosecute in the public interest
- Reduce delay at all stages of the decision-making by the prosecutor
 - Limit the number of case continuances
 - Allow only reasonable delays, taking into account the impact on the victim

Ensuring victim empowerment and perpetrator accountability when considering resolutions of charges prior to trial

- Ensure prosecutors have to make all discontinuing decisions
- Victims are to have the right to challenge discontinuances
- Victims are to be able to express their opinion with respect to any early resolution decisions
- Victims are provided with legal advice and support throughout the process

Developing efficient case management of pre-trial process

- Develop fast track procedures that can identify cases involving VAW and prioritize them in court dockets
- In cases of girl victims, trials are to take place as soon as practical, unless delays are in the child's best interest

Access to civil justice

Providing affordable and simplified civil law procedures

- Ensure accessibility of civil law procedures (family court, tort claims, pre-trial discovery procedure). At a minimum this means:
 - Civil justice is affordable
 - Expansive interpretation of eligibility regarding legal aid (legal representation, legal advice, legal information)
 - Simplified procedures (issues of simplified court processes for unrepresented women)
 - Gender and survivor sensitive procedures (ie not allowing unrepresented abuser to question survivor plaintiff in examination for discoveries)
- Ensure that all family law cases are scanned for domestic violence concerns

Ensuring fast track cases involving violence against women

- Ensure timeliness of civil procedures
 - Cases involving violence against women need to be fast tracked
 - Prioritize court dockets

No forced mediation, alternative dispute resolution allowed in cases involving VAW

- Only allow mediation or restorative justice where there are procedures to guarantee that it is not forced. Minimum requirements include:
 - The process must offer the same or greater measures of protection of the victim's safety as does the criminal justice process
 - The perpetrator has accepted responsibility
 - The justice service provider approves
 - The mediators are trained and qualified
 - A validated risk assessment has determined that the case is not high risk
 - The victim / survivor is fully informed of the process and her wishes taken into consideration
 - The victim / survivor consents to participate

Coordination of criminal and civil law matters

Coordinating integrated approaches to criminal and civil (ie family law, child protection) cases (criminal and civil)

- Ensure that the courts pro-actively seek information as to whether any other justice procedure (criminal, civil, family) is on-going.
- Ensure the court staff checks for any outstanding protection and support orders and provides such information to the judge.

4. Victim / survivor sensitive trials (courtroom environment and procedures)

Ensuring evidentiary rules are not used in a discriminatory manner (criminal and civil)

- Ensure all relevant evidence is brought before the court
 - If allowed by the legal framework, consider allowing expert witnesses to provide information about the dynamics of VAW
- Ensure that the credibility of a complainant in a sexual violence case is understood to be the same as that of a complainant in any other criminal proceeding (i.e. complaint should be regarded as credible and valid unless contrary is clearly indicated)
- Limit discriminatory questioning of the victim / survivor during the trial
 - Oppose any unfair, unnecessarily repetitive, aggressive and discriminatory questioning by defence
 - Oppose any questioning that relies on myths and stereotyping
 - Oppose questions about the victim /survivor's sexual history when it is unrelated to the case
- Do not draw any adverse inference drawn solely from a delay in reporting
- If the defence applies to introduce what appears to be discriminatory evidence, ensure the following steps are taken:
 - Request the defence's application to be made in writing;

- Ensure such request is made at pre-trial and only allowed during trial if defence can show exceptional circumstances (such as they had not been aware of the information until trial);
- Provide the victim opportunity through representation to voice her concerns and arguments against the discriminatory evidence

Protecting the victim's / survivor's privacy, integrity and dignity (criminal and civil)

- Apply for available measures that can protect woman's privacy, integrity and dignity
 - Limit or ban public present at trial, for example, in-camera trials, closed trials
 - Limit or restrict media publishing of personal information of victims / survivors
- Oppose any misstatements or attempts to intrude too far on the witnesses safety (such as matters that could tend to reveal the witnesses' identity)
- Remove any identifying information such as names and addresses from court's public record or using a pseudonym for the victim

Facilitating victim's / survivor's testimony (criminal and civil)

- Apply for available measures that can facilitate woman's testimony in trial
 - Measures that permit the victim to testify in a manner that allows her to avoid seeing the accused (i.e. screens, behind closed doors, CCTV)
- Resolve any outstanding disclosure, scheduling and other procedural issues before the victim / survivor appears to limit her time at court
- Undertake approaches and ways to reduce victim's / survivor's stress
 - Limit her evidence to relevant evidence
 - Allow for short recess when witness is too distressed to proceed
 - Not allow unrepresented defendant to cross examine victim / survivor
 - If allowed, have the examination through an intermediary
 - If allowed, use video-recorded interview as evidence in chief
 - Removal of all unnecessary persons, including the alleged offender, whilst the victim/witness gives their evidence

Providing a friendly court room environment (criminal and civil)

- Permit a support person such as family member or friend to attend trial with victim
- Provide for user friendly and fit for purpose court environments include waiting areas
- Remove all unnecessary persons, including the alleged offender, whilst the victim/witness gives their evidence

5. Punishment: victim participation in sentencing

Ensuring appropriate punishment that holds offenders accountable

- Ensure that the punishment is commensurate with the gravity of VAW

- Provide for sentencing policies that ensure consistent sentences and meet the goals of:
 - Denouncing and deterring VAW
 - Stopping violence behaviour
 - Promoting victim and community safety
 - Taking into account impact on victims and family
- Consider aggravating factors
- Ensure discriminatory mitigations to criminal liability or defences are not used
- Consider more intrusive dispositions (incarceration, work release, electronic monitoring and conditioned probation) rather than less intrusive sentences of fines or suspended sentences without probation.
- Inform victims of any release of the offender

Allowing victims to participate at the sentencing hearing in manner appropriate to them

- Provide the opportunity for victims to tell the court the physical and psychological harm and the impact of victimization at the sentencing hearing
- Allow victims a role in sentencing through a broad range of methods that suit individual victims.
- Ensure procedures are simple, accessible and free.

Promoting the rehabilitation of perpetrator, as appropriate

- Ensure the courts can order an appropriate suitability assessment of the offender prior to the acceptance on a programme with on-going risk assessments
 - Always prioritize the safety of victims
- Ensure that rehabilitation should be part of a conviction rather than alternative to criminal record
- Court should be involved in the supervision of rehabilitation programmes and sanction the offender if he does not satisfactorily complete the programme
- Courts should consider when ordering treatment or rehabilitation programmes as part of the sentence when the rehabilitation programme:
 - Are adequately funded
 - Have trained staff to ensure timely monitoring and immediate enforcement
 - Accredited with an organization that supports victim feedback as to whether the violence continues
 - Committed to working within a gendered structural analysis of VAW, as opposed to a simplistic or individualized anger management paradigm
 - Committed not to engage in any relationship counseling or mediation
 - Prioritize the safety of victims

6. Redress and reparations

Ensuring availability to and accessibility to broad range of forms of reparations, whether or not through the criminal justice process

- Ensure reparation considerations are made in criminal cases
 - Restitution should be considered part of the sentencing hearing
 - Ensure restitution is prioritized ahead of court costs, fines and penalties
- Provide for compensation by the state, independent of any criminal process. The compensation scheme needs to ensure:
 - Timeliness of compensation to the victim
 - Simple application procedures
 - No fee is charged to apply for compensation
- Ensure affordable and accessible civil law remedies (i.e. damages in sexual assault tort cases)
 - The forms to commence a civil suit should be simplified and easy to use, particularly for survivors who may be unrepresented
 - Legal aid should be available, in appropriate cases

Ensuring reparations cover all consequences and harm suffered by victim / survivor

- Ensure that the calculation of the victim's actual damage and costs incurred as a result of the violence is as expansively defined as possible. Consider:
 - Assessing physical and mental damage, including pain and suffering and emotional distress
 - Lost opportunities including employment, education and social benefits, including loss of earning potential
 - Material and moral damages, including harm to reputation or dignity
 - Measures of rehabilitation, including medical and psychological expenses
 - Legal and social services

Ensuring redress if access to essential justice services are undermined, delayed or denied

7. Justice services for women who are defendants/offenders within the criminal justice system

Providing services for victims of VAW who have been accused and/or convicted of criminal offence

- Conduct a contextual analysis on cases where the justice provider suspects that the victim of VAW is presenting as defendant, and particularly when faced with dual charges (both parties are charged with a crime)
 - Examine the entire relationship between accused and complainant
 - Conduct an informed predominant aggressor analysis
- Ensure the court has all relevant information, including any claims of self-defence by women who have been victims of violence, particularly in cases of battered woman syndrome

Ensuring services in place to respond to and prevent VAW who are detained for any reason

- Identify and prevent further victimization of female prisoners during visits by abusive intimate or former intimate partners
- Ensure preventive measures by correctional authorities

- Periodic inspections of prisons carried out by arms-length body which should include women members
- Personal searches of female inmates to be carried out only by female staff
- Facilitate contact with outside world
- Segregation of prison population based on sex and adult / juveniles
- Ensure accessible support and measures for redress for violence occurring during detention
 - Information about her right to make a complaint and the steps and procedures to be taken
 - Access to legal assistance
 - Immediate and long term protection from any form of retaliation
 - Access to psychological support or counseling
 - Investigating all reports of violence by prisoners by competent and independent authorities, with full respect for the principle of confidentiality

PART 4: ADDITIONAL INSTITUTIONAL / ORGANIZATIONAL FACTORS THAT ARE NECESSARY FOR EFFECTIVE JUSTICE RESPONSE

1. Gender equality and women’s empowerment mainstreamed into policies, practices and resource allocations

Understanding the interrelationship between gender and justice is vital to the overall effectiveness of any justice sector response, but particularly the response to violence against women. Women and men are impacted differently by violence and have different experiences going through justice systems. Women and men often have different levels of access to participation, information or justice and face different constraints in their efforts to improve their security or social condition. Underlying a quality delivery of essential justice sector services is the need for all justice institutions to actively and visibly mainstream a gender perspective in all its practices, policies, and resource allocations. Gender mainstreaming is a strategy for making women’s and men’s concerns and experiences an integral dimension in the design, implementation, monitoring and evaluation of policies and programmes in all spheres, including the justice sphere, so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.¹⁰⁰

In addition, gender mainstreaming needs to be done into the justice institutional structure itself. For an effective operationalizing of policies on violence against women, gender mainstreaming must also be done throughout the institutional environment as this is where the policies and practices are developed and implemented. The working environment in justice institutions need to be gender-sensitive, guaranteeing equal opportunities and treatment to both women and men. It is also important to include activities, such as affirmative action in recruitment into justice institutions, in order to address past discrimination or disadvantaged positions of women.

¹⁰⁰ ECOSOC Resolution 1997/2 defines gender mainstreaming: “Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetrated. The ultimate goal is to achieve gender equality.”

2. Developing policies and protocols to ensure comprehensive and coordinated response

Policies and protocols need to be developed by justice institutions internally as well as part of a comprehensive and coordinated justice sector response to VAW. Justice interventions on behalf of victims and survivors are most successful when they are integrated with other legal interventions (i.e. civil protection order) as well as with non-legal, community resources (shelter, health care, counseling, education and employment assistance, etc). This calls for coordination among justice agencies, as well as with outside agencies and civil society.

The overarching strategy of any policies and protocols should prioritize the victim's / survivor's safety with accountability to the perpetrator. It is also important to incorporate knowledge of VAW as a gender-based crime into policies and protocols and to promote changes to justice practices that may reflect traditional cultures and gender stereotyping. Policies are to build justice institutions internal capacity to respond to VAW and should cover training for all personnel, committing financial and personnel resources, working with other justice agencies, inter-sectoral agencies and civil society and mainstreaming gender in the justice institution. Developing policies and protocols can be a critical part of efforts to ensure quality delivery of essential justice sector services on behalf of all justice institutions that are responsible for these services to victims and survivors of gender based violence. The focus should be on policies that work best for the survivors and victims, rather than making the law work better. Policies and protocols should be available to the public and written in a format that is public friendly and understandable (non-legal language). Monitoring of the policy should include developing a system that measures victims' safety and satisfaction.

3. Resources

To ensure quality of justice sector services, such services need to have committed adequate and sustained resources. Responding to deeply entrenched nature of VAW cannot be effectively addressed by short term funding but rather funding that ensures sustainability of services. In addition, such services need to be delivered by a staff of justice sector personnel that reflects the demographics of the community it serves. This includes promoting gender parity in staff as well as ethnicity.

Rural communities often experience a lack of justice and support services, such as legal aid, prosecutors, courts, and victim advocacy services. Communities that are geographically isolated and economically challenged with sparse population areas make it more difficult for women victims of violence to report in a confidential and safe manner. Travelling to larger centre might be challenging for victims due to cost or available transport. Human resource managers need to consider how to provide justice services to these communities. Some jurisdictions have small rural office which requires sustainable and adequate funding, however these often lack specialized service providers. In these cases, there needs to be focus on collaborative efforts with local civil society groups that can provide victim advocacy and support services. Other jurisdictions have developed outreach mobile justice services, such as mobile court structures. Specialized and trained personal assist the criminal justice system respond to VAW in remote areas.

4. Training and workforce development

All justice sector personnel should have the capacity to delivery justice services in an appropriate and gender sensitive manner. Capacity development includes developing specialized services and the capacity for the victims to have the choice of speaking to a female official. However every justice official's capacities should be developed to ensure that they are non-judgmental and respectful towards victims. Women remain severely underrepresented in most of the justice professions in many countries. It is important to not assume that the presence of women within the law enforcement and justice sector will necessarily result in institutions that are more gender responsive.

Training for all justice personnel on VAW should be regular, updated and institutionalized. It should include:

- Basic knowledge on the forms of VAW and the harmful impact and consequences to victims, families and society.
- All relevant laws, policies and programmes. When new legislation is enacted or policies developed, there should be specific training on this.
- Effective justice strategies and approaches that support victim safety, such as how to conduct standardized safety assessments and risk management tools, the use of and enforcement of protection orders, and issues of confidentiality.
- Effective justice strategies to avoid secondary victimization during the justice system.
- Gender sensitivity training, including cross-culture gender and child sensitivity training.

Studies indicate that training which is mandated by law and developed in close cooperation with women rights groups, civil society organizations, and services providers for victims are more effective. Training that is supported by comprehensive protocols and guides promote a consistent and uniform approach to victim safety and offender accountability. It is suggested that this training be mandatory training in order to send the message that violence against women cases are part of the core justice service work, not something extraneous or special.

5. Infrastructure and specialization

Over the last two decades, the United Nations and regional organizations have recognized that using specialized expertise at various stages of the criminal justice system to respond to VAW is a good practice. Specialized units or dedicated justice personnel have become the trend in many states. Whatever structure the specialized unit takes, the main purpose is to improve general efficiency in the justice system of such cases and improve the experience of the victim. Generally these units can fast track cases, thereby shortening any delays, and improve coordination with other justice officials. Some of the structures ensure gender balance within justice sector personnel while others increase the team with women officials.

Evaluations of specialized programmes have shown that these specialized programmes appear to work well on a number of levels. However the evaluations note that results vary as structures and resources vary. If adequately funded, and particularly those associated with other specialized justice units, increase prosecutions and convictions, victim cooperation, satisfaction and safety. Other benefits include: increases efficiency of case management; increased expertise. Not only do they receive specific

training but they also with practice develop expertise. Facilitates training and fosters expertise in the dynamics of violence against women; increased quality of services to victims which has resulted more generally with higher victim participation in the criminal justice process as well as higher levels of satisfaction by the victims; increased prosecution and conviction rates; provide continuity which ensures that the victim is not required to repeat her statement unnecessarily and thus reduce the chances of re-victimization.

In some countries, specialized units experience marginalization within the justice agency and thus marginalizing the issue of violence against women. Another challenge for victims is that often these specialized units are only found in urban areas or regions where there have been documented many cases of violence against women. Such units require a reasonably high caseload to justify the allocated resources. Therefore such services are lacking for victims in rural or remote areas. When establishing specialized units is not feasible, using specially designated justice officials is a good alternative.

While specialization has been seen as a good practice, it is also recognized that such services need to complement the approach of ensuring that all justice service providers are non-judgmental and respectful towards victims. Justice service providers working on VAW cases can also be vulnerable to emotional stress. The Updated MSPM on VAW call for States to ensure that there is adequate psychological support available to all justice service providers to prevent their vicarious victimization.

6. Oversight and accountability¹⁰¹

Justice providers should be monitored and held accountable for their conduct with regard to VAW. Oversight can take a number of forms: by the professional society; by government review mechanisms. For example, domestic homicide or fatality review committees are established by local government to review cases of VAW which results in death; by civil society. Oversight should be arms-length, independent, accessible to the public and victims / survivors.

When victims believe that the justice officials are mishandling their case or treating them in a discriminatory manner, victims should be able to initiate a complaint against a prosecutor, both internally and externally. This will be covered in more detail in the UNDP's paper.

7. Monitoring and evaluation

Accountability also includes monitoring and evaluation. This begins with the development of relevant indicators, the collection of baseline data, and continues with regular monitoring. Reliable and regular data collection, both quantitative and qualitative, is crucial for developing effective justice policies and practices and quality service delivery.

Careful and regular monitoring is critical to ensuring an effective justice response to violence against women. Monitoring is most effective when the government mechanism is supported by the involvement with civil society as well as input of the victims / survivors. The issue of measurement will also be covered in more detail in the paper presented by UNDP.

¹⁰¹ UNDP will be preparing a paper on accountability and oversight for this consultation meeting.