

Training Resource Tool For Prosecutors and Judges in combating violence against women and domestic violence



To support the Trainer of Trainers Course
for Prosecutors and Judges



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Training Resource Tool For Prosecutors and Judges in combating violence against women and domestic violence in Kosovo*

**Council of Europe project “Reinforcing the Fight Against Violence
against Women and Domestic Violence in Kosovo * – Phase II”**

Authors:

Eileen Skinnider
International consultant

Ariana Qosaj-Mustafa
International consultant

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The present Trainers Resource Tool is an integral part of the Trainer of Trainers Manual for Prosecutors and Judges in combating violence against women and domestic violence in Kosovo*, and it is designed to better facilitate the trainer's efforts with Justice Academy of Kosovo* in providing the ToT course.

This Trainers Resource Tool was developed in the framework of the project "Reinforcing the fight against violence against women and domestic violence in Kosovo* - Phase II" in cooperation with Kosovo* Justice Academy. The Council of Europe and Kosovo* Justice Academy would like to extend special thanks to Ms Eileen Skinnider, Council of Europe consultant in the project for her assistance in drafting this material.

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Abbreviations and Acronyms

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CSO	Civil Society Organisations
DEVAW	United Nations Declaration on the Elimination of Violence against Women
DV	Domestic Violence
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EPO	Emergency Protection Order
EU	European Union
EVAW	Ending Violence against Women
GR	General Recommendation
LPDV	Law no.03/L-182 on Protection against Domestic Violence
NGO	Non-Governmental Organisation
OHCHR	Office of the High Commission for Human Rights
PO	Protection Order
SDGs	Sustainable Development Goals
SOPs	Standard Operating Procedures
TEPO	Temporary Emergency Protection Orders
ToT	Training of Trainers
UN	United Nations
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
VA	Victim Advocates
VAW	Violence against Women

Glossary of Key Terms

Bail hearing is a judicial proceeding where the court determines if a person charged with a criminal offence should be released on conditions pending trial, including cash bail or securities.

Committal hearing is a hearing where a judge, more specifically the pre-trial judge, decides if the prosecution has enough evidence for a criminal case to go to trial.

Compensation means quantifiable damages resulting from the violence and includes both pecuniary and non-pecuniary remedies, such as an injunction (UN Inter-agency Essential Services Package).

Complainant is a legal term designating a person who has made a complaint of a crime which has not yet proven in court.

Domestic Violence, in this context, refers to “all acts of physical, sexual, psychological and economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim” (Article 3(b), Istanbul Convention). Like the Istanbul Convention, this Manual focuses on the various forms of gendered-based violence committed against women, one of which is domestic violence. Acknowledging that domestic violence affects women disproportionately as well as recognizing that domestic violence can be committed against men and children, this Manual can be applied to all victims of domestic violence but pays particular attention to women victims.

Gender refers to “the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men” (Article 3(c), Istanbul Convention).

Gender-based violence against women refers to “violence that is directed against a woman because she is a woman or that affects women disproportionately” (Article 3(d), Istanbul Convention).

Gender-responsive justice means ensuring that the laws, the justice institutions, the justice processes and the justice outcomes do not discriminate against anyone on the basis of gender. It necessitates taking a gender perspective on the rights themselves, as well as an assessment of access and obstacles to the enjoyment of these rights by women and men and adopting gender-sensitive strategies for protecting and promoting them.

Gender sensitivity refers to the aim of understanding and taking into account the societal and cultural factors involved in gender-based exclusion and discrimination in the diverse spheres of public and private life. It focuses mainly on instances of structural disadvantage in the position and roles of women (European Institute for Gender Equality).

Gender-specific approach, according to the Istanbul Convention, implies recognising that violence against women and domestic violence are rooted in historically unequal power relations between women and men, and that in order to effectively address the problem, all measures taken should be aimed at achieving de jure and de facto equality between women and men.

Myths are widely held but false beliefs or ideas. Myths about gender-based violence against women and girls are based on prejudices and gender stereotyping.

Party to the Proceedings, according to the Kosovo* Criminal Procedure Code, includes the state prosecutor, the defendant and injured party. The defendant is not considered a party according to Article 392 of the Criminal Code of Kosovo*.

Perpetrator In this manual, the term “perpetrator” refers to a person who commits violence against women and domestic violence.

Secondary victimisation is the victimisation that occurs not as a direct result of the criminal act but through the inadequate response of criminal justice institutions and providers to the victim (UN Updated Model Strategies and Practical Measures).

Victim In this manual, the term “victim” refers to the woman who has been subjected to violence against women and domestic violence. This term “victim” designates a legal status in the criminal justice system and is used in order to recognise that women experiencing violence have been subjected to an act of violence and have a right to justice, protection, support and compensation. Using the term “victim” does not mean that victims are seen as passively “enduring” violence; it is important to acknowledge that victims try in many ways to prevent, resist and cope with the violence they experience. Victims are active in the process of prevention and intervention, not just objects of a process; they are “experts by experience” who need to be respected and empowered to be agents of change in their lives.

Victim Compensation Fund, according to the Kosovo* Criminal Procedure Code, it is a fund to which forfeited bail and other authorised assets under the law is deposited. Payments from the victim compensation fund shall be used to compensate crime victims as authorized under the law.

Victim-centred In accordance with the Istanbul Convention, this manual places the needs and rights of victims as the central priority and applies a gender-specific approach, recognising that violence against women and domestic violence constitute a violation of human rights and a form of discrimination, and as such need to systematically be tackled by specific measures.

Violence against women Violence against women is “understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life” (Article 3(a), Istanbul Convention).

Women The term “women” also includes girls under the age of 18 (Article 3(f), Istanbul Convention).

Women’s empowerment means empowering women to participate fully in all sectors of life and is seen as essential to build stronger economies, achieve internationally agreed goals for development and sustainability and improve the quality of life for women, men, families and communities (UN Women).

Vulnerable victim, according to the Kosovo* Criminal Code, is a victim of a crime who is a child, a physically or mentally handicapped person, a person suffering from diminished capacity, a pregnant woman, the elderly or a person whose relationship to and dependence on the offender make them particularly vulnerable to repeat victimisation, intimidation or retaliation.

Introduction

Violence against women and domestic violence in Kosovo* is highly prevalent and widespread reaching pandemic proportions. According to one report, there has been an increase in the reported number of murder cases that have resulted from domestic and gender-related violence in the past decade (Qosaj-Mustafa, A. and Morina, D. 2018). A survey conducted by the Kosova Women's Network in 2014-15 reported that 41% of women stated that they suffered some form of domestic violence, including physical, psychological and/or economic violence in the last 12 months, and 68% of women stated that they had suffered domestic violence in their lifetime (Kosova Women's Network. 2015). Although no official statistics exist, non-governmental survey data (2015) shows that an estimated 64% of women have experienced some form of sexual harassment in their lifetime (Kosova Women's Network. 2016). Police data (in 2016) indicates that women accounted for approximately 80% of domestic violence reported to the police, with the vast majority of perpetrators being current or former male partners and/or spouses (Krol et al, 2017). With this in mind, the majority of violence against women and domestic violence demonstrates the gendered nature of domestic violence.

There are concerns that the criminal justice response to violence against women and domestic violence in Kosovo* is not as effective as it should be. Studies in Kosovo* find that violence against women and domestic violence remains largely under-reported, with one study of 2008 data estimating that 90% of cases go unreported in Kosovo* due to the view that it is a private matter, concerns of social stigma, fear of retaliation, lack of trust in the criminal justice system, and economic dependence on the perpetrator (Krol et al, 2017). Recent police data (2018/2019) reveals an increase in reporting which may indicate a rise in women's confidence in the criminal justice system's ability to respond to such violence; however, further study is needed (Kosovo* police data from 2018/2019). One study found that the rate of dismissed cases of domestic violence remains high, with over half of all criminal charges related to domestic violence being dismissed (51.5%) by Kosovo* courts in 2017, and only 40.4% of cases received guilty verdicts from the period of 2015-2018 (Qosaj-Mustafa, A. and Morina, D. 2018). This results in a profound lack of confidence and trust in the criminal justice institutions, high levels of impunity for the perpetrators and a high percentage of victims whose needs for assistance, protection and redress are neither recognised nor met.

Prosecutors and judges play a critical role in the justice response to violence against women and domestic violence. They are key to ensuring that Kosovo* complies with its international obligation of due diligence to prevent, investigate and punish acts of violence against women. On a practical level, prosecuting and adjudicating gender-based violent crimes can be challenging and presents unique difficulties to prosecutors and judges whether they are new recruits or experienced professionals. Often there are a number of evidentiary challenges due to the nature of the violence (unpredictable, incremental over time, concealed to others). The police investigation may be substandard. Victims can be traumatised, uncooperative, and withdraw or recant their complaints. Criminal justice actors may employ gender bias or common myths surrounding violence against women when examining the credibility of the victim and the facts of the case. It is up to the prosecutors and judges to ensure that relevant criminal laws, including those relating to forms of violence against women and domestic violence are interpreted through the lens of international norms and standards; are effectively enforced; protect women and girls from violence, including from the re-occurrence of further violence; hold perpetrators accountable; provide for effective reparations for victims; and ensure that victims are not subjected to secondary trauma by the justice system.

1.1 Purpose of the Resource Tool for Prosecutors and Judges

The Resource Tool for Prosecutors and Judges has been developed under the framework of the Council of Europe Project “Reinforcing the fight against violence against women and domestic violence in Kosovo* – Phase II”. This resource tool has been specifically developed for the Academy of Justice to be handed out to participants in the training course for prosecutors and judges in combating violence against women and domestic violence in Kosovo*. This training aims to equip individual prosecutors and judges with the skills, knowledge and attitudes to respond to each case of violence against women and domestic violence using a victim-centred approach while holding perpetrators accountable, according with international standards, particularly the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention). The aim of the resource tool is multi-purpose. Firstly, it is to serve as a resource for prosecutors and judges who participate in the training course. Secondly, it is to serve as a practical resource for frontline prosecutors and judges when handling cases involving violence against women and domestic violence.

1.2 Structure of the Resource Tool for Prosecutors and Judges

This resource tool, keeping in mind that it is meant to be practical and firmly grounded on the standards of the Istanbul Convention, is divided into two main parts:

Part 1: Reflections on violence against women and domestic violence.

This part provides essential information for prosecutors and judges in order to have a better understanding of the extent and nature of violence against women and domestic violence; the dynamics of such violence, its root causes and the concepts of gender equality and how to avoid common myths and misconceptions. It also covers the relevant international standards, particularly the Istanbul Convention, and Kosovo* laws.

Part 2: The Role of Prosecutors and Judges in Responding to Violence against Women and Domestic Violence.

This part provides practical tips to prosecutors and judges in how to adopt a victim-centred approach and apply the laws and procedures in a gender-responsive manner, ensuring the protection and safety of women, empowering victims while holding perpetrators accountable as they perform their roles along the justice continuum. It covers protection of the victims, assessment of the evidence in their work, the facilitation of the victim’s testimony and the creation of an enabling courtroom environment, ensure the non-discriminatory application of evidentiary rules; sentencing and remedies, and the appropriateness of using mediation and reconciliation considering the dynamics of violence against women and domestic violence cases.

Part 1

Understanding Violence against Women and Domestic Violence: Requirements of the International Standards Framework

1: Understanding Violence against Women and Domestic Violence

1.1 Definitions of violence against women and domestic violence

As prosecutors and judges working on cases involving violence against women and domestic violence, one needs to have a foundational understanding of gender, gender-based violence and related terminology. The international instruments, including the Istanbul Convention and the UN Declaration of the Elimination of Violence provide the following definitions:

Violence against women is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life (Istanbul Convention).

Gender-based violence against women is violence that is directed against a woman because she is a woman or that affects women disproportionately (Istanbul Convention).

Domestic violence refers to all acts of physical, sexual, psychological and economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim (Istanbul Convention).

Gender means the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men.

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

Gender stereotype is a generalised view or preconception about attributes or characteristics that are or ought to be possessed by, or the roles that are or should be performed by, men and women. Further, gender stereotypes are harmful when it limits women's and men's capacity to develop their personal abilities, pursue their professional careers and make choices about their lives. Harmful stereotypes can be both hostile/negative (e.g., women are irrational) or seemingly benign (e.g., women are nurturing). For example, the fact that child care responsibilities often fall exclusively on women is based on the latter stereotype.

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

Gender equality refers to the equal rights, responsibilities and opportunities of women and men. Equality does not mean that women and men will become the same but that women's and men's rights, responsibilities and opportunities will not depend on whether they are born male or female.

Masculinity describes socially constructed attributes, behaviours and roles that pertain to men.

1.2 Key points for judges and prosecutors to consider

- **The gendered nature of the violence.** Such violence is directed at the victim because she is a woman or is disproportionately perpetuated against women, in a social context of gendered hierarchy.
- **Particular attention to be paid to women victims of domestic violence.** The Istanbul Convention recognises that domestic violence affects women disproportionately. While domestic violence is a broad term involving different social and psychological dynamics and power differentials and covers various forms, such as child abuse, elderly abuse and interpersonal or partner abuse, research has found that that domestic violence against adults is distinctly gendered; victims are disproportionately women whilst men are over-represented as perpetrators (Council of Europe. 2008).
- **Violence against women as a form of discrimination.** The Istanbul Convention recognises the structural nature of violence against women, as both a cause and consequence of unequal power relations between women and men in all spheres. Such violence encompasses a range of acts seeking to exert power and control over women.
- **Gender equality as crucial for the prevention and response to violence.** The Istanbul Convention is firmly based on the premise that only real equality between women and men and a change in power dynamics and attitudes can truly prevent violence against women and form the most effective response to such violence. It is essential that judges and prosecutors understand that entrenched attitudes (e.g. believing women as inferior to men) and traditional cultural assumptions about gender equality and gender roles affect their response to crimes involving violence against women.
- **It is essential to have a solid understanding of concepts related to gender** when responding to gender-based violence. Often there is confusion between the terms “sex” and “gender”. In many languages there is little or no linguistic distinction. See definitions above.
- **Gender roles** are not determined at birth and not unchangeable, but shaped by the education of family, school, society, friends and the surrounding environment. For example, child rearing is often classified as a female role; however, it is a female gender role not a female sex role, as it can be done by both male and female. It is society that ascribes these roles.
- **Gender stereotypes** can reproduce unwanted and harmful practices and make violence against women acceptable. For example, if prosecutors and judges believe in such gender stereotypes, like women should dress modestly or women are sexually passive, then they will believe that immodestly dressed women are responsible for their own rape or women are disposed to submissively surrender to men’s sexual advances and this will have negative impact on how they respond to such cases.
- **Gender-responsive justice system to ensure women’s access to justice.** Appreciating the gendered roles in Kosovo* contributes to judges and prosecutors’ understanding of the risks and victimisation of women, the realities women face in reporting certain crimes, how laws are applied by judges and prosecutors, whether the courts or prosecution agencies replicate gender inequalities or rather promote women’s participation and advancement within the criminal justice system.

1.3 Forms of violence against women and domestic violence

Violence against women and domestic violence is manifested in a continuum of multiple, inter-related and sometimes recurring forms – physical, sexual, psychological and economic harm and suffering – and can happen in a range of settings, from private to public, and transcending national borders. The Istanbul Convention calls for the specific criminalisation of certain forms (Articles 33 to 39).

- **Physical violence** refers to bodily harm suffered as a result of the application of immediate and unlawful physical force. It also includes violence resulting in the death of the victim.
- **Psychological violence** refers to any intentional conduct that seriously impairs another person’s psychological integrity through coercion or threats.
- **Stalking** is any form of direct and indirect control and surveillance of the victim, with or without physical contact. It usually takes place after the end of the relationship, but it can occur while the relationship is still on-going. It can, amongst others, include threats and harassment, online or offline, following the

person, spying causing the victim to fear for her or his safety.

- **Sexual violence**, including rape covers all forms of sexual acts performed on another person without her freely given consent and which are carried out intentionally. It includes non-consensual vaginal, anal or oral penetration of a sexual nature with any bodily part or object; other non-consensual acts of sexual nature; causing another person to engage in non-consensual acts of sexual nature with a third person. Unwanted acts of sexual nature between spouses are also covered.
- **Forced marriage** refers to physical and psychological force exerted on a victim to involuntarily enter into marriage, including luring a person to go abroad with the purpose of forcing this person to enter into marriage.
- **Female genital mutilation** consists of performing, assisting to perform or inciting, coercing or procuring the cutting, stitching or removal of part or all of the female external genital organs for non-therapeutic reasons.
- **Forced abortion and forced sterilisation** refer to the termination of a pregnancy or terminating a woman or girl's capacity to naturally reproduce without her prior and informed consent.
- **Sexual harassment** refers to verbal, non-verbal or physical conduct with a sexual nature and unwanted by the victim. Article 40 of the Istanbul Convention gives states parties the option to apply either criminal law or other sanctions (for instance, penalties under labour law).

The two most common forms of violence experienced by women globally and that tend to be the most common cases seen by prosecutors and judges are intimate partner violence and non-partner sexual violence.

Intimate partner violence (domestic violence)	Non-partner sexual violence (sexual violence)
<p>Includes a range of sexually, psychologically, physically and economically coercive acts used against adult and adolescent women by a current or former intimate partner, without her consent, whether or not the perpetrator shares or has shared the same residence of the victim.</p> <p>Physical and sexual assaults, or threats to commit them, are the most apparent forms of domestic violence and are usually the actions that allow others to become aware of the problem. However, regular use of other abusive behaviours by the perpetrator, when reinforced by one or more acts of physical violence, makes up a larger system of abuse. Although physical assaults may occur only once or occasionally, they instil the threat of future violent attacks and allow the abuser to take control of the woman's life and circumstances. Both economic and psychological violence pose distinct challenges for the legal system due to evidentiary issues.</p>	<p>Refers to violence by a relative, friend, acquaintance, neighbour, work colleague or stranger that includes being forced to perform any unwanted sexual act. It includes sexual harassment and violence perpetrated against women and girls, frequently by an offender known to them, including in public spaces, at school, in the workplace and in the community.</p>

1.4 Understanding the dynamics of gender-based violence against women and the impact of victimisation

There is a lot of misunderstanding and confusion around the behaviour of victims, both towards her reactions to the violence and why she is reluctant to participate in the criminal justice process. This section seeks to provide some answers to common questions you may have as prosecutors and judges.

Q. Aren't victims of gender-based violence against women just like any other victims of crime? Unlike other victims of crime, experiencing gender-based violence is extremely traumatic. A significant portion of these victims suffer from: significant mental trauma, such as post-traumatic stress disorder, depression and anxiety; feelings of being socially isolated; and experiencing low self-esteem. Gender-based violence against women negatively impacts on their sense of privacy, safety and well-being.

Q. Why don't domestic violence victims leave at the first instance of physical violence? Victims of intimate partner violence have often been isolated from family and friends, financially controlled, and experience psychological violence that reduces the woman's confidence and sense of self-worth which makes her feel that something must be wrong with her and not the abuser. By the time the abuser uses physical violence for

the first time, often the victim feels she somehow deserves it. Then, after the violence, the abuser is contrite, apologetic with promises never to do it again. Understanding the cycle of domestic violence can assist prosecutors and judges when assisting the victim.

Diagram: Cycle of violence



There are three phases to intimate partner violence:

1. Tension building phase: begins with anger, blaming and increased tension. Many women learn to recognise this tension building phase and try to control it by becoming nurturing and attempting to keep the peace. Often at this stage incidents are not reported to police or, if reported, the case is minimised. This encourages the abuser to proceed to the next phase.

2. Violence phase: is the explosion of violence from the abuser. For women who have experienced violence before, a threat of violence can be disabling. The victims may be grateful that the violence ends and may consider themselves lucky that it was not worse, no matter how bad their injuries are.

3. Honeymoon phase: is the contrite and loving stage of the cycle. Following the violence, the abuser is loving and calm, and often begs for forgiveness and promises to change.

Source: Lenore Walker. 1970.

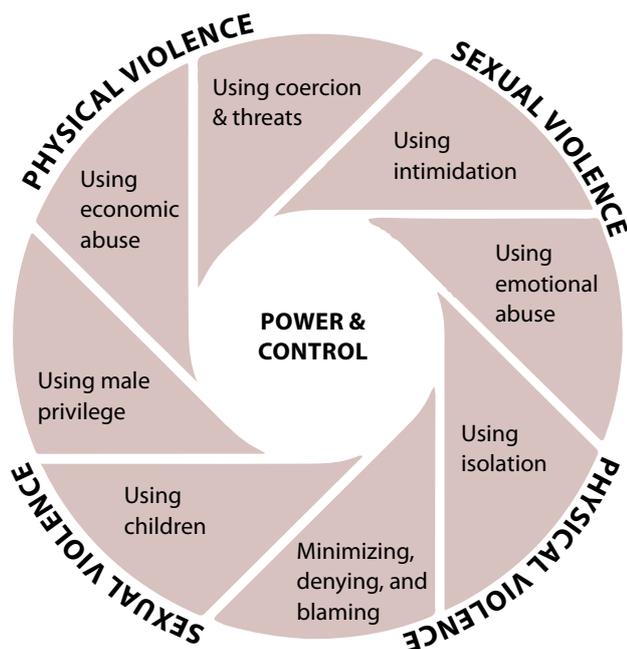
Q. Why do victims stay with the abuser or return after to them they have left? There is a need to stop blaming victims for staying and start asking the question of why men abuse their intimate partners. Different psychological, economic and social factors make it difficult for some women to extricate themselves from violent relationships. Some of the complicated and varied reasons women do not leave their abusers include:

- **Danger and fear.** Women fear they will be subjected to far worse violence if they leave. The risk of intimate partner violence is increased within the context of a separation and that femicide may be triggered by an actual or even anticipated separation.
- **Shame, embarrassment or denial.** Abuser can be well respected in the community which prevents others recognising or minimising the violence. They might be unwilling to reach out and confide in friends, family or the police, either out of shame and humiliation or fear that they will not be believed.
- **Family or societal pressure.** The victim might feel pressure to keep the family together for numerous reasons, including for the sake of children, religious or cultural beliefs.
- **Financial reasons.** Women stay due to lack of independent financial resources, lack of another place to go, or concerned about supporting her children. Women who work typically make less money and hold less prestigious jobs than men and are more responsible for childcare.
- **Fear of losing custody of her children.** Women may fear that her children will be taken away.
- **Love.** Victims often love or care about the people who harm them. They may call in the police to stop the violence rather than wanting the abuser to end up in the criminal justice system.
- **Lack of effective support from justice agencies.** When victims report violence to the police or other justice agencies and they do not receive effective protection and support, they will likely drop or withdraw their case. If the violence continues, they may not report if they do not have any trust that the justice system can help them.

Q: All couples fight sometimes. How can I tell a dispute from intimate partner violence? Intimate partner violence is all about exerting dominance and control over another person. Perpetrators choose this pattern of coercion and violence in order to get what they want and maintain control. It is not just one physical attack and it might not even involve a physical act. It can include repeated use of a number of forms of violence, including physical violence as well as intimidation, threats, economic deprivation, isolation, psychological and

sexual abuse. Perpetrators often make very calculated decisions about when to use violence, how much violence to use and where to use the violence. The power and control wheel illustrates a common pattern of domestic violence.

Diagram: The Wheel of Power and Control



Using intimidation: Making her afraid by using looks, actions, gestures, smashing things, destroying her property, displaying weapons.

Using emotional abuse: Putting her down, making her feel bad about herself, calling her names, making her think she is crazy, playing mind games, humiliating her, making her feel guilty.

Using isolation: Controlling what she does, who she sees and talks to, what she reads, where she goes, limiting her outside involvement, using jealousy to justify actions.

Minimising, denying, blaming: Making light of the abuse and not taking her concerns about it seriously, saying the abuse didn't happen, shifting responsibility for abusive behaviour, saying she caused it.

Using her children: Making her feel guilty about the children, using the children to relay messages, using visitation to harass her, threatening to take children away.

Using male privilege: Treating her like a servant, making all the big decisions, acting like the 'master of the castle', being the one to define men's and women's roles.

Using economic abuse: Preventing her from getting or keeping a job, making her ask for money, giving her an allowance, taking her money, not letting her know about or have access to family income.

Using coercion and threats: Making and/or carrying out threats to hurt her, threatening to leave her, to commit suicide, to report her to welfare, making her drop charges, making her do illegal things.

Source: *The Duluth Model Domestic Violence Intervention Project*

Q. Why don't all domestic violence victims want justice? Some women are looking for protection and an immediate stop to a particular incident of violence. They do not necessarily want to go to criminal court. For others, 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.

Q. Why do domestic violence victims turn reluctant or even hostile in court? It is common for victims of intimate partner violence to refuse to testify or to recant and testify that the incident did not happen. The cycle of violence and power and control wheel diagrams can help prosecutors and judges understand why victims might withdraw their complaints. Victims call the police during the acute phase of the violence, only to withdraw it during the honeymoon phase, and in light of the many psychological and social barriers that prevent women from leaving.

Q How does intimate partner violence impact children? Children who witness domestic violence experience adverse effects on brain development. They have psychosocial maladaptation, such as post-traumatic stress disorder that is associated with demonstrable changes in the anatomic and physiological make up of their central nervous system. Individuals with these changes do not function well in society and have serious

medical, sociological and economic issues in the future.

Q. Why didn't a rape victim fight back? Rape victims make split-second decisions about how to react in order to survive. The part of the brain primarily responsible for detection of, and reaction to, a threat is called the amygdala. The brain's objective is survival and it occurs at a time when the higher brain functions are suppressed. The human system will respond to the perceived threat in one or more of five ways:

- **Fight:** Some victims resist and fight back.
- **Flight:** Some victims are able to flee the violence. This does not minimize the intent of the violence or the trauma experienced by the victim.
- **Freeze:** Some victims experience the psychological phenomenon of dissociation, which is sometimes described as "leaving one's body," while some others describe a state of "frozen fright" in which they become powerless and completely passive. Physical resistance is unlikely in victims who experience dissociation or frozen fright or among victims who were drinking or using drugs before being assaulted.
- **Flop:** Some victims lose musculature tension and both their body and mind become malleable, especially where the victim is physically unable to resist the attacker. The victim believes that if the violence is to occur the likelihood of surviving it will increase if her body yields.
- **Befriend:** – Some victims, such as women being raped by an acquaintance, may ask for a condom to avoid becoming pregnant or contracting sexually transmitted infections.

Q. Why didn't the victim report violence promptly? In addition to the range of reactions victims can have during the violent incident, victims can also react very differently after the violent incident.

- Victims might try to dismiss or ignore what happened and even normalise it by having contact with the perpetrator in the future.
- Victims might only decide to report when supported by a family member or friend confirming that this is not normal behaviour but wrong behaviour. Particularly if the perpetrator is someone they trusted, it can take years for victims to even identify what happened to them as violence.
- Victims, who often experience a profound sense of shame, stigma and violation, might only decide to report when they feel adequately supported.
- Victims might not report at all if they are worried about the negative consequences of reporting, that they will be blamed for the incident or their lives will be open to judgments and criticism.
- Victims will not report if they lack confidence in the criminal justice system.

Q. Why would victims lack confidence in the criminal justice system? People working in the criminal justice system view it as objective and unbiased and can be surprised to hear that many female victims lack confidence in the system. However, victims can feel re-traumatised along the criminal justice process, including:

Interviews by insensitive, indifferent or even hostile criminal justice actors and having to go through multiple interviews.

Lack of legal assistance and knowledge and understanding of their rights.

Lack of interpreters and challenges in communication.

Intrusive forensic testing, often done by male forensic examiners who are not specifically trained in handling such victims.

Onus is often on the victim to initiate the formal report and prosecution.

Emphasis on mediation or informal settlement.

Overreliance on physical evidence and inadequate or insensitive investigation.

Testifying and having to re-testify.

Lack of in-court protection, confrontation with the accused.

Lengthy delays in the process, postponements and continuances.

Decisions based on judicial stereotypes.

Q. Is it really sexual violence if there are no visible injuries? Along with the question of why the victim did not fight back is the belief that if a woman or girl has been the victim of sexual violence, medical evidence of her injuries will be able to conclusively corroborate her statement. This misperception sets an unrealistic standard for both the victim as well as the medical community as this is simply not the case in most incidents of sexual violence. While medical examinations can sometimes confirm sexual violence, it can never exclude it. It is completely possible to be sexually abused and yet have the abuse leave no discernible physical trace on the victim. Some of the common reasons why definitive medical evidence is not forthcoming in the majority of cases:

- Delay in reporting. It is not uncommon for victims to delay disclosing the sexual violence for weeks, months or even years. This means that the medical examination will also be delayed, and any injuries might already be healed and indiscernible.
- The type of violence may be consistent with no medical findings. Unwanted sexual touching, creation of pornography and oral sodomy do not generally result in physical findings. Also, vagina redness or minor abrasions of mucous membranes may not be detectable within minutes or hours, and there may be lack of sperm if the victim has washed, urinated or brushed her teeth.
- Elasticity. The hymen's tissue is elastic and full penetration by an object a finger or even a penis may cause no visible trauma.
- Offender and victim typology. Frequently the perpetrator is known to the victim and force is not generally used.

Q. Can she really be a victim of sexual violence if she doesn't act like one? There is a common misperception that a "real" rape victim will be extremely upset when talking about the rape. It is important for prosecutors and judges to understand that victims behave in a wide variety of ways after the sexual violence. There is no one response to sexual violence.

- Victims may appear calm or flat or distraught or overtly angry.
- Later, victims may react by self-medication, by engaging in high-risk sexual behaviour, by withdrawing from those around them or by attempting to regain control.
- Victims might turn to social media to deal with post-traumatic stress and in an attempt to regain control.
- Victims might also stay friendly with the perpetrator, such as sending friendly text messages to the same man she says sexually assaulted her. Many perpetrators are known to the victims, and these men have worked to gain trust and appear benevolent to the victim. This relationship does not disappear overnight, even after an episode of sexual violence.
- Victims may think it was their fault or they may have little choice but to stay in contact if the offender is a boss, teacher or relative.

Q. Why do victims not recall what happened or appear to change their stories? Traumatizing experiences are often experienced as a sure threat, or a disruption of life and produce such an emotional shock that can modify the brain. When an individual suffers a traumatic experience, her usual balance is altered so decidedly that it must be rebuilt, partly or fully, by incorporating the memory of that traumatic event such as it was or modified. Repetition of trauma has a strong impact on the victim's reaction. An inability to recall timelines and details has been shown by neurobiological research to be not only legitimate but common in victims of trauma. When the brain's defence circuitry is activated, the prefrontal cortex, which normally directs attention, can be rapidly impaired, affecting what information is recorded in memory. So, victims may remember certain things like a clock ticking or carpet colour but not the order of events.

Q. Should I be concerned about high rates of false allegations? There is a persistent misperception that there are high rates of false allegations and that most rape cases are unfounded. This is feed by beliefs that women are fickle and spiteful, women are not particularly credible, women lie to protect their honour, women are vengeful and lie to avenge a perceived wrong; women lie about sexual assaults to perpetrate blackmail, women have overactive imaginations and so on. However, it is important for prosecutors and judges to know that international research does not support this belief as false reporting happens in only 2-8% of reported cases.

Q. What should I do if it looks like the girl is a willing party? Judges and prosecutors need to remember that girls are most often sexually exploited by an adult in a position of power or authority or by someone whom they trust. In the context of sexual relations involving children, any appearance of consent to such conduct is deserving of elevated scrutiny, with particular attention to be paid to the fact that the person giving consent is a child.

Q. What is ‘grooming’? Without an understanding of grooming techniques, prosecutors and judges might view the girl victim as a willing party to the sexual activity or a compliant victim. Grooming is a process by which a person prepares a child, significant adults and the environment for the abuse of this child in order to gain access to the child, gain the child’s compliance and maintain the child’s secrecy to avoid disclosure. The techniques involved in grooming include:

- Identifying the potential victim. They are usually marginalised children who have low self-esteem and feel alienated from their family or community.
- Lowering the sexual inhibitions of a child victim in order to exploit the child sexually. The perpetrator builds trust and breaks down the child’s defences by giving gifts, playing games, pretending to share common interests, use of flattery and reassuring the child’s family.
- Desensitising and normalising adult-child sex. There is a gradual erosion of boundaries, often with escalating physical contact and/or engaging the child in inappropriate behaviour such as drinking alcohol or introducing pornography. This starts with ‘innocent’ touching such as hugs, pats or kisses, tickling or stroking her hair and ‘accidental’ touching, such as brushing against the child’s breasts or genital area before moving to sexual abuse.
- Establishing a bond between the perpetrator and the victim, resulting in the greatly reduced likelihood of the child disclosing the abuse. This includes making the child feel special, sharing secrets and special activities, such as outings together.

1.5 Common myths about violence against women and domestic violence

There are many myths and gender stereotypes about violence against women and domestic violence which can have serious negative impact on the protection and justice provided to victims. Myths can distort perceptions of what occurred in a particular situation of violence or the issues to be determined at trial and focus attention on the victim’s behaviour and personal characteristics rather than the perpetrator’s actions which generally results in suspicion of the victim’s claim of gender-based violence against women. This can affect the vision of who is a “real” victim and influence credibility assessment.

Rape myths and realities

Myth	Reality
Rape is a crime of lust or passion.	Rape is an act of violence and aggression in which the perpetrator uses sex as a weapon to gain power and control over the victim.
Rape happens only to young, pretty or desirable women	There is no “typical” sexual assault victim. Sexual violence can happen to anyone, regardless of sex, race, age, etc
Rape more often involves a stranger, physical force and physical injury.	Rape more often involves someone the victim knows, without visible physical injury.
When a woman’s chastity is threatened, she violently resists, attempts to escape or screams for help.	When a woman is being raped, she may freeze, flop or try to make friends with the rapist.
Some women deserve to be raped; it is their fault. Either they are asking for it (sexy clothes incite men to rape), they wanted it, or they put themselves in dangerous situations (prostitution, drunk).	Women never deserve to be raped.

Women seek to avenge slights or to extort money of-ten fabricate rape charges.	Women do not often falsely report rape.
A victim's inconsistencies mean she is not credible.	Inconsistencies are common and can be explained or avoided through appropriate responses.
A victim will report everything at the first available opportunity.	Victims often need to feel safe and supported before reporting.

Intimate partner violence myths and realities

Myth	Reality
Domestic violence is only perpetrated by a strong man against a weak woman.	Relative physical strength or weakness is not the issue, power and control are.
Domestic violence is caused by alcohol and drug abuse.	Drugs and alcohol are considered risk factors but not the cause of violence.
It cannot be that bad or otherwise she would leave.	There are many practical reasons why women stay in a violent relationship.
Even if acts of violence take place in relationships, these are isolated episodes.	Domestic violence usually involves a pattern of on-going physical, psychological, sexual or economic violence.
Domestic violence is a private issue for families.	Domestic violence is a crime that affects communities and society as a whole.
Men who abuse are violent because they cannot control their anger and frustration.	Abusers are very much in control and use violence to control the victim.
Husbands cannot rape their wives.	Husbands do rape their wives.
There is no point in helping women because they go back to the abuser.	All victims, including those who go back to the abuser require protection, support and justice.
If it was really serious she would come to court to provide evidence.	Many reasons may prevent her from coming to court.

1.6 The situation in Kosovo*

Key statistics on the prevalence, attitudes and attrition of violence against women in Kosovo*

- Women accounted for 80% of 1247 cases of domestic violence reported to the police (Police data. 2016).
- Women's organizations estimate that up to 90% of cases were unreported in 2008 (Krol et al. 2017).
- 64% of women have experienced some form of sexual harassment in their lifetime (Kosova Women's Network. 2016).
- 41% of women stated that they suffered some form of domestic violence, including physical, psychological and/or economic violence in 2014; 68% of women stated that they had suffered domestic violence in their lifetime (Kosova Women's Network. 2015).
- 21% of Kosovars find it acceptable for a husband to sometimes hit his wife, and 32% think that "it is natural that physical violence sometimes happens when a couple argues" (Kosova Women's Network. 2015).
- 74% of Kosovars believe that women bring sexual harassment on themselves by dressing or acting provocatively, and that 41% think that young women like to be harassed (Kosova Women's Network. 2015).
- Over half of all criminal charges dismissed related to domestic violence cases (51.5%) by Kosovo* courts in 2017. During the first six months of 2018, there were total 15.1% cases were dismissed (Qosaj-Mustafa, A. and Morina, D. 2018).
- For the monitored period for 2015-2018, only 40.4% of cases received guilty verdicts (Qosaj-Mustafa, A. and Morina, D. 2018).

1.7 The importance of ensuring a victim-centred, gendered-responsive and perpetrator accountability approach

Prosecutors and judges are called on to apply a victim-centred, gendered-responsive and perpetrator accountability approach, not only to fulfil international obligations, but first and foremost to make sure that victims seeking help feel truly supported by the justice system. The key concepts are defined as:

A victim-centred approach is defined as the systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a non-judgmental manner. The victim's wishes, safety, and well-being take priority in all matters and procedures. In other words, victim safety and well-being are paramount goals of a criminal justice response. A victim-centred approach, as opposed to a system-centred one, puts the needs of the victims at the core of any criminal justice intervention and recognises that they deserve timely, compassionate, respectful and appropriate treatment.

A gender-responsive approach refers to ensuring that the laws, the justice institutions, the justice processes and the justice outcomes do not discriminate against anyone on the basis of gender. It necessitates taking a gender perspective on the rights themselves, as well as an assessment of access and obstacles to the enjoyment of these rights by women and men and adopting gender-sensitive strategies for protecting and promoting them.

A perpetrator accountability approach refers to a criminal justice response that shifts the focus away from discrediting the victims to enhancing evidence-gathering and case-building and ensuring consistency in investigation, prosecution and punishment, while ensuring a fair trial. This means measures that encourage reporting and maximising the victim's cooperation with the criminal justice system; early case building and addressing potential evidential weakness; developing comprehensive prosecutorial strategy; creating an enabling courtroom environment.

2. International, regional and Kosovo* legal frameworks for responding to violence against women and domestic violence

Prosecutors and judges play essential roles in upholding international and regional obligations, norms and standards to effectively prevent and respond to violence against women in the exercise of their duties. Knowledge of international and regional rights and norms is important to assist prosecutors and judges adopt a victim-centred approach, where the paramountcy of safety and dignity for victims and the empowerment of women is core while holding the perpetrators accountable for the violence. This section provides a brief overview of key international, regional and Kosovo* documents.

2.1 International standards

A number of key international instruments have been adopted obliging states to respect, protect and fulfil women's right to a life free of violence:

- Convention on the Elimination of All Forms of Discrimination against Women and the CEDAW General Recommendations No. 19, 33 and 35.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- UN Declaration on the Elimination of Violence against Women
- Beijing Declaration and Platform for Action
- UN Updated Model Strategy and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice
- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

Key concepts from international instruments for prosecutors and judges to keep in mind

- **Due diligence obligation.** This means States are required to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women whether those actions are perpetrated by the state or by private person.
- **Women's access to justice.** Within the broader due diligence standards, prosecutors and judges have a key role to play to ensuring women have access to justice when they are victims of violence. The right of access to justice is multidimensional, and encompasses "justiciability, availability, accessibility, good-quality and accountability of the justice systems and provision of remedies for victims" (CEDAW G.R. No. 33).

2.2 Istanbul Convention

The 2011 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) is the most far-reaching development in the long line of instruments and standards in this field. Its core principles are:

- **The due diligence standard.** For prosecutors and judges this means they are obliged to diligently pre-

vent and investigate acts of violence, to punish violence under national law, and to provide reparations to victims (Article 5).

- **Gender equality as crucial for the elimination of violence against women.** Only real equality between women and men, where women and men have the same rights and responsibilities, the same opportunities and that their contribution to society is equally valued and respected; and a change in power dynamics and attitudes can truly eliminate violence against women. For prosecutors and judges and the justice institutions they represent, the Istanbul Convention aims at changing attitudes and eliminating stereotypes not only at the level of individuals, but also at the level of institutions.
- **Victim-centred approach.** The Istanbul Convention makes it clear that in order for victims to receive the most effective support possible, their rights, needs and safety must be placed at the forefront of all interventions. This means offering protection and support when women at risk need it most, treating them with respect and sensitivity, and empowering them to make informed decisions that best reflect their interests.
- **A gendered understanding of domestic violence.** States need to apply a gender lens when addressing domestic violence as the overwhelming majority of victims of domestic violence are women and girls. This does not mean that men do not experience domestic violence or that they do not need support. The provisions of the Istanbul Convention have been drafted in gender neutral language, meaning that any of its provisions can be implemented with a view to supporting and protecting men and boys as well as women and girls.
- **Addressing the needs of children as victims and witnesses of violence against women, including domestic violence.** While it is important to recognise that most victims of domestic violence are women, it is equally important to recognise that many of these women have children. In some cases, the violence is directed at both, women and children. In other cases, children are not targeted themselves but witness violence against their mothers.
- **Coordinated and multi-agency approach.** Due to the complex nature of violence against women and domestic violence, no single agency or institution can successfully tackle them on its own and isolated policies are not sufficient in responding to such a complex and multi-faceted problem. Prosecutors and judges should join forces with law enforcement authorities, victim support services, child protection agencies, non-governmental organisations and other relevant partners to develop a comprehensive and coordinated response to combating gender-based violence.

2.3 Overview of relevant Kosovo* law

Key laws and policies in Kosovo* relevant to addressing violence against women and domestic violence:

- Kosovo* Criminal Code, 2019
- Kosovo* Criminal Procedure Code, 2013
- Law on Protection Against Domestic Violence, 2010
- Administrative Instruction No. 12/2012 for determining the place and way of psychosocial treatment of perpetrators of domestic violence, 2012
- Administrative Instruction No. 02/2013 on the method of treatment to perpetrators of domestic violence with imposed mandatory medical treatment from alcoholism and addiction to psychotropic substances, 2013
- Kosovo* Strategy on Protection Against Domestic Violence and Action Plan 2016-2020
- Standard Operating Procedures on Protection against Domestic Violence, Government of Kosovo*, 2013
- Standard Operating Procedures for Increasing the Efficacy in the Treatment of Domestic Violence Cases, Kosovo* Prosecutorial Council and State Prosecutor, 2017
- Supreme Court of Kosovo*, Guidance on the Legal Qualification and Treatment of Domestic Violence Cases According to the Criminal Code of Republic of Kosovo*, 11 June 2020

Overview of criminalising violence against women in the Istanbul Convention and Kosovo*

Psychological violence	<p>Article 33, Istanbul Convention: Intentional conduct of seriously impairing a person's psychological integrity through coercion or threats.</p> <p>Offence under Kosovo* Criminal Code: Whoever commits physical, psychological or economic violence or mistreatment with the intent to violate the dignity of another person within a domestic relationship shall be punished by fine and imprisonment of up to three (3) years (Article 248 (1)).</p>
Stalking	<p>Article 34, Istanbul Convention: Intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her to fear for her safety.</p> <p>Offence under Kosovo* Criminal Code: 1. Whoever engages in a pattern of repeated and unwanted attention or communication with the intent to harass, intimidate, injure, damage property or kill another person or his or her children, family, relatives or pets or whoever places another under surveillance with the intent to harass, intimidate, injure, damage property or kill another person or his or her children, family, relatives or pets; and in the course thereof, places that person in reasonable fear of death, grievous bodily injury, serious damage to property or substantial emotional distress shall be punished by a fine or imprisonment up to three (3) years (Article 182(1)).</p> <p>2. When the offense provided for in paragraph 1 of this Article is committed against a former or current domestic partner or a former or current family member, the perpetrator shall be punished by imprisonment of six (6) months to five (5) years (Article 182 (2)).</p>
Physical violence	<p>Article 35, Istanbul Convention: Intentional conduct of committing acts of physical violence against another person.</p> <p>Offence under Kosovo* Criminal Code: 1. Whoever commits physical, psychological or economic violence or mistreatment with the intent to violate the dignity of another person within a domestic relationship shall be punished by fine and imprisonment of up to three (3) years (Article 248(1)).</p> <p>2. When any act in the Criminal Code is committed within a domestic relationship, it will be considered an aggravating circumstance (Article 248(2)).</p> <p>3. Every member of the family who exerts physical, psychological, sexual or economic violence or mistreatment against another member of his/her family, shall be punished by a fine and imprisonment of up to three (3) years (Article 248(3)).</p> <p>Also, under the Criminal Code of Kosovo*, crimes of assault, light bodily injury, grievous bodily injury against a vulnerable victim, various punishments apply (Articles 184,185 and 186).</p> <p>The Criminal Code of Kosovo* considers murder of a pregnant woman, child or family a member as an aggravating murder with a punishment of imprisonment of not less than ten (10) years or of lifelong imprisonment.</p>

Sexual violence, including rape	<p>Article 36, Istanbul Convention: a) Intentional conduct of engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object.</p> <p>b) Intentional conduct of engaging in other non-consensual acts of a sexual nature with a person.</p> <p>c) Intentional conduct causing another person to engage in non-consensual acts of a sexual nature with a third person.</p> <p>Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances.</p> <p>Apply to acts committed against former or current spouses or partners.</p> <p>Offence under Kosovo* Criminal Code: Rape. Whoever subjects another person to a sexual act without such person's consent shall be punished by imprisonment of two (2) to ten (10) years. If the offense provided for in paragraph 1 or 2 of this Article is committed against a person under the age of sixteen (16) years, the perpetrator shall be punished by imprisonment of five (5) to twenty (20) years. Further, if the offense provided for in paragraph 1 or 2 of this Article is committed against a person under the age of fourteen (14) years, the perpetrator shall be punished by imprisonment of at least ten (10) years (Article 227).</p> <p>Sexual assault. Whoever touches a person for a sexual purpose or induces such person to touch the perpetrator or another person for a sexual purpose, without the consent of such person, shall be punished by a fine or by imprisonment of up to one (1) year (Article 229).</p> <p>Degradation of sexual integrity. Whoever induces another person to expose the private parts of such person's body, to masturbate or to commit another act that degrades such person's sexual integrity, without the consent of such person, shall be punished by a fine or by imprisonment of three (3) months to one (1) year (Article 230).</p>
Forced marriage	<p>Article 37, Istanbul Convention: 1. Intentional conduct of forcing an adult or a child to enter into a marriage.</p> <p>2. Intentional conduct of luring an adult or a child to the territory of another State for the purpose of forcing them to enter into a marriage.</p> <p>Offence under Kosovo* Criminal Code: Whoever compels another person to enter into a marriage or enters into a marriage with a person whom he or she knows to be compelled into the marriage shall be punished by imprisonment one (1) to eight (8) years. There are additional aggravating circumstances such as marriage of a child, or child beneath 14 years of age, etc. by a parent, guardian or another person exercising parental authority. In such cases the punishment can go up to minimum 15 years' imprisonment (Article 239)</p>

Female Genital mutilation	<p>Article 38, Istanbul Convention: a. Intentional conducts of excising, infibulating or performing any other mutilations to the whole or any part of a woman's labia, labia minora or clitoris.</p> <p>b. Intentional conducts of coercing or procuring a woman to undergo any of such acts.</p> <p>c. Intentional conducts of inciting, coercing or procuring a girl to undergo any of such acts.</p> <p>Offence under Kosovo* Criminal Code: 1. Whoever, for non-medical reasons, partially or totally removes or permanently alters the external female genitalia, shall be punished by imprisonment from six (6) months to five (5) years (Article 180(1)).</p> <p>2. Whoever incites or assists a female to subject herself to procedures referred to in paragraph 1 of this Article, shall be punished by imprisonment up three (3) years (Article 180(2)).</p> <p>3. Whoever commits the offence referred to in paragraphs 1 or 2 of this Article against a vulnerable victim, shall be punished by imprisonment from one (1) to eight (8) years (Article 180(3)).</p> <p>4. When the offence provided for in paragraphs 1 or 2 of this Article results in the death of the victim, the perpetrator shall be punished by imprisonment of five (5) to fifteen (15) years (Article 180(4)).</p>
Forced abortion and forced sterilisation	<p>Article 39, Istanbul Convention: a. Intentional conduct of performing an abortion on a woman without her prior and informed consent.</p> <p>b. Intentional conduct of performing surgery which has the purpose or effect of terminating a woman's capacity to naturally reproduce without her prior and informed consent or understanding of the procedure.</p> <p>Offence under Kosovo* Criminal Code: Whoever, for non-medical reasons, removes or disables in any manner a person's reproductive organs without that person's consent, with the effect of leading to sterilisation, shall be punished by imprisonment of one (1) to eight (8) years (Article 179(1)).</p> <p>When the offense provided for in paragraph 1 of this Article results in grievous bodily injury, serious impairment to health or the death of the person, the perpetrator shall be punished by imprisonment of five (5) to fifteen (15) years (Article 179(2)).</p>
Sexual harassment*	<p>Article 40, Istanbul Convention: Any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.</p> <p>Offence under Kosovo* Criminal Code: 1. Whoever sexually harasses another person, in particular a person who is vulnerable due to age, illness, disability, addiction, pregnancy, a severe physical or mental disability, shall be punished by a fine or imprisonment of up to three (3) years (Article 183(1)).</p> <p>2. Sexual harassment shall mean any form of unwanted verbal, non-verbal or physical conduct of a sexual nature which aims at or effectively constitutes a violation of the dignity of a person, which creates an intimidating, hostile, degrading or offensive environment (Article 183(2)).</p> <p>3. When the offence provided for in paragraph 1 of this Article is committed by a perpetrator who is a teacher, a religious leader, a health care professional, a person entrusted with such person's upbringing or care or otherwise in a position of authority over the person, the perpetrator shall be punished of imprisonment of six (6) months to three (3) years (Article 183(3)).</p>

*The Istanbul Convention allows for States to take either criminal or other legal sanctions to prevent and respond to sexual harassment.

2.4 Techniques for prosecutors and judges on how to use International and European standards in their work

Kosovo* appears to be a monist state as its constitution allows in principle for the direct incorporation of international norms into domestic law. Both the prosecution and the judiciary are in a position to acknowledge, in principle, the relevance of international standards for interpreting domestic law. They should be taking into account international law where it is necessary to ensure that the state's conduct is consistent with its obligations under international law. It is generally accepted that domestic law should be interpreted as far as possible in a way which conforms to a state's international legal obligations.

Tips for prosecutors in applying international law in their work

- ✓ Ask if it is relevant to consider international law in this matter. Refer to the Constitution, as well as argue that as a member of the international community, Kosovo* subscribes to international customary law and instruments.
- ✓ Argue before the courts that international law is automatically part of domestic law except where it is in conflict with domestic law. And even on the absence of implementing legislation or articulation in the Constitution, international law can be applied by state courts where there is no conflict with existing state law.
- ✓ Argue that Kosovo* has shown a willingness to be bound by the provisions of international law.
- ✓ Since there is that willingness, if an issue comes before this court which is not covered by local legislation but would be covered by such international instrument (e.g. CEDAW, Istanbul Convention), ask the court to take judicial notice of such standards in deciding the case.

Tips for judges in applying international law in their work

- ✓ Determine the meaning and status of relevant international norms; if international norm is relevant and nothing in legislation overrides it, or if inconsistency can be fairly resolved, the court should interpret to preserve the maximum scope for both; but if conflict is unavoidable, then the court must choose the prevailing norm according to the hierarchy of laws applicable to their domestic systems.
- ✓ When faced with a choice between an interpretation of domestic law which would enable the state to comply with international law and one that would place the state in breach of international law, judges have the inherent ability to follow the first choice.
- ✓ Interpret the rights of equality and non-discrimination to the greatest extent possible in ways which facilitate the full protection of all rights for women.
- ✓ Do not apply existing legal provisions that discriminate against women, such as particular provisions that allow, tolerate or condone forms of violence against women and domestic violence.

Use of relevant international jurisprudence

The Kosovo* Constitution stipulates that international human rights standards, such as the European Convention on Human Rights are directly applicable in its territory. The decisions from these bodies can assist prosecutors and judges in applying and interpreting the national laws to ensure compliance with their international obligations. Annex 2 contains brief summaries of some of the key decisions. It is recommended for prosecutors and judges to read the case in full when referring to them in their work.

Part 2

The Role of Prosecutors and Judges in Responding to Violence against Women and Domestic Violence

1. Protection

Prosecutors and judges have responsibility to provide protection for victims that come before them during the criminal proceedings. One of the reasons women victims engage with the criminal justice system is to stop the violence and prevent violence from re-occurring and escalating, as well as prevent threats of violence, intimidation and harassment. Victims frequently face re-traumatisation during criminal proceedings and are at a high risk of facing increased intimidation and violence by the perpetrator while the case is being examined.

1.1. International Standards

The Istanbul Convention provides that it is the state's obligation to ensure the safety of the victim as part of and during criminal proceedings. The failure to do so can cause a violation of the victim's fundamental human rights.

Relevant Articles regarding Protection in the Istanbul Convention

Article	Provision
Article 18 – General obligations under protection and support	<p>1. ... take necessary ... measures to protect all victims from any further acts of violence.</p> <p>3. ... ensure that such measures be: based on a gendered understanding of violence against women and domestic violence; and shall focus on the human rights and safety of the victim; be based on an integrated approach which takes into account the relationship between victims, perpetrators, children and their wider social environment; aim at avoiding secondary victimisation; aim at the empowerment and economic independence of women victims of violence; allow, where appropriate, for a range of protection and support services to be located on the same premises; and address the specific needs of vulnerable persons...</p> <p>4. The provision of services shall not depend on the victim's willingness to press charges or testify against any perpetrator.</p>
Article 50 – Immediate response, prevention and protection	Parties shall take necessary legislative or other measures to ensure that the responsible law enforcement agencies respond to all forms of violence covered by the scope of this Convention promptly and appropriately by offering adequate and immediate protection to victims
Article 51 – risk assessment and risk management	<p>1. ...ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out by all relevant authorities in order to manage the risk and if necessary, to provide coordinated safety and support.</p> <p>2. ... ensure that the assessment duly takes into account, at all stages of the investigation and application of protective measures, the fact that perpetrators of act of violence possess or have access to firearms.</p>

Article 52 - Emergency barring orders (EMOs)	...ensure that the competent authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk. Measures taken pursuant to this article shall give priority to the safety of victims or persons at risk.
Article 53 – Restraining or protection orders (POs)	<p>1. ... ensure that appropriate restraining or protection orders are available to victims of all forms of violence covered....</p> <p>2. ... ensure that the restraining or protection orders are:</p> <p>Available for immediate protection and without undue financial or administrative burdens placed on the victim;</p> <p>Issued for a specified period or until modified or discharged.</p> <p>Where necessary, issued on an <i>ex parte</i> basis which has immediate effect;</p> <p>Available irrespective of, or in addition to, other legal proceedings;</p> <p>Allowed to be introduced in subsequent legal proceedings</p> <p>3. ... ensure that breaches of restraining or protection orders shall be subject to effective, proportionate and dissuasive criminal or other legal sanction.</p>
Article 56 – Measures of protection	<p>1. ... measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings, in particular by</p> <p>a. providing for their protection, as well as that of their families and witnesses, from intimidation, retaliation and repeat victimisation;</p> <p>b. ensuring that victims are informed, at least in cases where the victims and the family might be in danger, when the perpetrator escapes or is released temporarily or definitively;</p> <p>c. informing them... of their rights and the services at their disposal and the follow up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein, as well as the outcome of their case;</p> <p>d. enabling victims ... to be heard, to supply evidence and have their views, needs and concerns presented, directly or through an intermediary, and considered;</p> <p>e. providing victims with appropriate support services so that their rights and interests are duly presented and taken into account;</p> <p>f. ensuring that measures may be adopted to protect the privacy and the image of the victim;</p> <p>g. ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided where possible;</p> <p>h. providing victims with independent and competent interpreters when victims are parties to proceedings or when they are supplying evidence;</p> <p>i. enabling victims to testify ... in the courtroom without being present or at least without the presence of the alleged perpetrator, notably through the use of appropriate communication technologies, where available.</p>

1.2 Kosovo* legal framework

According to Kosovo* Law on Protection against Domestic Violence, there are three kinds of protection orders:

Protection Order (PO)	<ul style="list-style-type: none">Issued only in regular court sessions, provide for a wide number of measures to be issued and last up to 12 months.
Emergency Protection Order (EPO)	<ul style="list-style-type: none">Issued also by courts, may last up to 15 days until the issuance of the regular PO and also courts may issue a number of wide measures.
Temporary Emergency Protection Orders (TEPO).	<ul style="list-style-type: none">Only issued by the police and last until the hours when the courts resume their regular working hours. If the request comes in late Friday, the TEPO may last until the official hours of the courts resume on Monday morning, lasting 48 hours during the weekend.

Prosecutor and judges should consider:

- Breaches of protection orders and also recidivist cases are considered criminal offences and should be *ex officio* prosecuted (Articles 25 and 26, the Law on Protection against Domestic Violence).
- The use of POs does not prevent the courts to also initiate criminal proceedings (Article 26(2), the Law on Protection against Domestic Violence).
- The Kosovo* Judicial Council drafted a decision that required judges to issue protection orders in a timely manner (Decision Nr. 22/2012 of the Kosovo* Judicial Council).
- The Standard Operating Procedures (SOPs) for the Protection from Domestic Violence in Kosovo* include guidance for the police on how to protect the victim throughout the process and respond to threats and acts of domestic violence (including the execution and any violation of the protection orders).
- The police's Basic Data Forms which record the initial interview with the victim could be requested and used by the prosecutorial services to determine the risk assessment levels of the victim.
- The Standard Operating Procedures to Enhance the Efficacy of Prosecutorial Services in responding to Domestic Violence Acts aim to enhance the response and the effective delivery of the prosecutorial services mandate in protecting victims of domestic violence (Nr.763, Kosovo* Prosecutorial Council Regulation, 2017).

1.3 Practical tips for prosecutors when deciding on effective protection measures

Prosecutors need to have all the information regarding potential risks before making any decisions:

- In order to ensure the safety, privacy and dignity of victims and their families at all stages of the criminal justice process, prosecutors must be fully informed with respect to the potential risks and threats.
- Prosecutors need to know whether a risk assessment has already been done (as in many cases the police are responsible for conducting threat assessment and risk analysis or this is done by an inter-agency group). If not done, prosecutors need to know how to conduct a risk assessment that indicates the level or extent of harm a victim may be subjected to, based on her vulnerability, threats, the presence of weapons and other determining factors.
- Risk and danger assessment tools should be used by prosecutors to foster a conversation with the victim, rather than as a checklist or a collection of discrete data. Victims know far more about what they need and the risks they face. However, it is critical to remember that, while victims are accurate reporters of risk factors for lethality, they consistently underestimate their own risk for future assaults.
- Prosecutors should be aware that risk assessment are not static and can change quickly. There are a number of factors or particular circumstances that can raise the level of risk, such as: separation, a court hearing and child contact, among others. Risk assessments must be updated continuously so that the prosecutor can re-assess the changing situation and apply any necessary measures in response.
- Ongoing communication is thus required between police and prosecutors. For example, prosecutors and investigators must be made aware if the victim has requested an emergency intervention or protection order, if the order has been issued and if it has been violated by the perpetrator. This is particularly

important where the breach of a protection order constitutes a criminal offence and should be included among the offences charged.

- Prosecutors should inquire about whether the victim/witness has given consideration to applying for a protection order.
- Prosecutors should have a discussion with the victim which should include reviewing the steps she can take to ensure her safety throughout the legal process, taking into consideration the possibility that the defendant will not be held in custody, or will be released on bail, and they should be careful not to provide information about personal safety plans in open court.

The victim's safety should be central to any decision taken by the prosecutor, particularly as relates to bail or conditional release pending trial:

- Prosecutors should consider the following conditions to a peace bond/criminal protection order or conditions on bail / pre-trial release, depending on the case:
 - No contact provisions (no contact with the victim and any other designated witnesses or persons, such as the victim's children). This can include restriction of movement of the defendant, for example victim's home, work or school.
 - Prohibition of third parties contacting the victim on behalf of the defendant.
 - Refrain from committing any criminal offences.
 - Travel restrictions (e.g. not allowed to leave the jurisdiction of the court without prior court order or required to relinquish passport to court).
 - Have no possession of firearms, ammunition, explosives or weapons.
 - For sexual assault charges, request DNA and/or HIV/STD testing of the defendant.
 - House arrest.
 - Reporting condition (e.g. regularly reporting to probation or a pre-trial service).
 - Maintaining full employment.
 - Refraining from the use of alcohol or illegal substance, attend alcohol treatment programme.
 - Wearing of a Global Positioning System (GPS) monitoring ankle bracelet.
 - Compliance with any civil protection orders.
 - Abstain from driving a car (if one has been used in committing the offence of criminal harassment).
 - If harassment involved the use of computer or other electronic device, consider imposing a condition limiting or prohibiting use or possession.
- In certain cases, prosecutors should be seeking pre-trial detention. Bail should be opposed in cases in which there is a risk of further violence. For example, if there is a pattern of reoffending protection orders, then the prosecutor might consider requesting pre-trial detention.

Steps prosecutors should take when conducting pre-trial release / bail hearings:

1. Seek victim input regarding risk.
2. Check past history of suspect.
3. Prepare relevant and complete material/information for the court pre-trial hearing.
4. Appear and argue at the initial appearance and pre-trial release hearing.
5. Prosecutors should notify the victim if and when the defendant is released and give the victim a copy of the order outlining the conditions of release and information of who to contact if the defendant breaches any condition.

Prosecutors should consider certain factors in cases where the victim requests modification or dropping of conditions:

- Prosecutors need to understand that there could be a number of reasons for the victim to request dropping a no-contact order and be careful in agreeing to lift or modify the non-contact order.
- It is important for prosecutors to speak to the victim and obtain accurate information to determine her motivation in seeking the termination or modification of a no-contact order.

- Prosecutors, while empathising with the victim, should shift the focus onto the perpetrator's responsibility to have done something to justify the lifting of the no contact order. If the perpetrator has done nothing to address his violence since the incident, the prosecutor should point this out to the court.

Considerations when there has been a breach of conditions:

- If the defendant violates a no-contact order or breaches pre-trial release conditions, the prosecutor should consider whether any new offences, in addition to the conditions being breached, have been committed.
- Remember that if there is a condition of no-contact, it does not matter if the victim has agreed to or initiated any contact with the defendant. It is the perpetrator who is subject to the pre-release conditions. The defendant, and not the victim, is responsible for complying with any conditions until released from those conditions by the authorities.
- Violation of criminal no-contact orders, or conditions of release, can be prosecuted as contempt or as additional crimes.
- The prosecutor should also seek pre-trial detention or argue greater restriction upon release.

Considerations when breach of civil protection order:

- While prosecutors are generally not involved in civil protection regimes, a breach of civil protection orders are criminal offences and need to be taken seriously.

1.4 Practical tips for judges when deciding on effective protection measures

Some consideration for criminal court judges during pre-trial hearings

Pre-trial detention and establishing stricter conditions for release are two measures judges can apply to increase the safety of the victim. When balancing between the right of the perpetrator to release on bail and the victim's right to safety, judges should balance the competing interests in favour of the victim's safety:

- Judges need to have as much information as possible regarding the situation and the individuals involved when deciding on which protection measure is appropriate in each case.
- Courts should seek any risk and lethality assessments done. Crucially, the court must be able to access all relevant information from the diverse agencies involved in order to make decisions concerning victim protection. If no risk assessment is done, judges should ensure that they seek such information during the hearing that allows them to make a risk assessment themselves. In some jurisdictions it might be possible to call an expert witness to advice on risk factors.
- The onus is often on the prosecutor to show cause why the defendant should be detained pending trial and the judge must be convince that there are ground that the defendant will not show up to trial or there are concerns that he will commit further violence or intimidate a witness.
- Judges have a duty to be aware of and consider all relevant facts concerning the defendant's risk of violence to the victim. They should always take into consideration any concerns raised by the victim relating to her safety.
- Judges should be aware that defendants charged with minor offences are as likely to be as dangerous as those charged with more serious offences, especially in intimate partner violence and stalking cases.
- Judges should be aware that separation is not a protective factor, rather research shows a significant spike in serious and deadly violence risk during the period of separation, identifying the perpetrators loss of control over their partner as a trigger.
- Pre-trial detention should be imposed when the judge determines there is sufficient risk of violence or concerns that the defendant will not obey imposed release conditions.
- Criminal judges should ensure harmonisation with other non-criminal justice proceedings to allow for effective protection.

Conditions judges can impose to reduce the risk to the victim if the defendant is released pending trial:

- Judges should take into account the victim's views regarding the appropriate conditions. Protection should not be offered in a paternalistic manner but should be viewed as a means to afford women safety so that they can develop their own strengths and strategies for coping with violence.
- Judges may want to ask the victim directly about her fears of future violence and the basis for that fear, as well as her opinion on the likelihood that the defendant will obey the terms of release.
- Range of conditions include:
 - Prohibiting further violence or threats of violence, personally or through another (third party communications).
 - Prohibiting harassing, annoying, telephoning, contacting or any other communication with the victim, directly or indirectly.
 - Barring from the victim's residence, regardless of ownership, and having a police escort when the perpetrator is gathering his personal belongings.
 - Prohibiting further contact with the victim and other affected parties, inside or outside the domicile; stay away from residence, school, place of employment or any other place.
 - Prohibiting possession of firearms or deadly weapon.
 - Requiring perpetrators to undergo intervention programmes (programmes designed to take responsibility for their actions not alcohol or drug abuse programmes).
- Judges could consider monitoring of protection orders through the use of electronic ankle bracelets or requiring defendant to regularly report to law authorities or to attend civil society organisation programmes, where available.

Criminal consequences of breaching criminal and civil protection orders:

- Research shows that men routinely violate such orders, often with serious consequences for the victim but with little or weak legal consequences for the perpetrators.
- Breaches need to be treated seriously. Judges ought to recognize the patterned nature of the coercive and abusive nature of the violence. Remember, breaching a protection order is considered a lethality assessment factor as well as the fact that shows that the perpetrator has failed to comply with a court order.
- Judges ought to consider that the defendant has not only committed a criminal offence of breaching a court protection order, he has also likely committed other criminal offences in doing so, such as committing further violence or uttering threats.
- Be cautious of condoning stereotypes. Judges should question whether they are engaging in victim blaming, believing that the victims themselves are responsible for breaching the civil protection order or enticing the defendant to do so. Protection orders can only be breached by the defendant as he is the one obligated by the order. The victims should not be held responsible for any breaches.

Some considerations for judges issuing civil protection orders

- In assessing a victim's request for a protection order, judges should recall that gender-based violence is not only acts of physical violence but also covers mental or sexual violence.
- Judges should not only focus on the latest incident of violence when deciding whether the violence meets the required threshold. They need to understand the pattern of coercion and control in domestic violence cases and how all forms of violence can violate the integrity of the victim.
- If judges are asked to review emergency protection orders or a condition of the protection order application before them is seeking to have the perpetrator barred from the residence, they should recall that a women's right to be protected from further violence trumps the perpetrator's property rights.

Some considerations for family court judges

- Custody claims are sometimes used as a pretext by abusers in order to get into contact with the victim and/or the children. This can have dire consequences for both. For this reason, incidents involving domestic violence should be taken into account in the determination of custody and visitation rights of children.
- The issuance of an emergency barring order or a protection order should automatically result in an interim determination concerning the custody of children and visitation rights. This means that the perpetrator's custody and/or visitation rights should be automatically suspended upon the issuance of a protection order.
- This is because the exercise of the perpetrator's custody and visitation rights cannot jeopardise the rights and safety of victim and children.
- The need for a protective order and other safety measures must thus be assessed on a regular basis. It is important to remember that there are several situations that can raise the level of risk, such as separation or divorce, a court hearing and child contact, among others.

2. Working with victims as witnesses – Techniques to ensuring a victim-centred approach

Applying a victim-centred approach in practice entails that during all interactions, victims are treated with courtesy, respect, sympathy and sensitivity to the fact that they have experienced violence. Prosecutors and judges should appreciate that very often victims are required to describe incidents of violence a number of times before finally appearing in court, and this process can cause them renewed trauma, embarrassment or frustration; they may forget details over time.

2.1 International standards

	Istanbul Convention	UN Updated Model Strategies
Victim-centred approach	Calls on states to develop measures that take into account and address the specific needs of persons made vulnerable by particular circumstances and place the human rights of all victims at their centre (Article 12(3)).	Guiding principle that all criminal justice responses are to be human rights based, manage risk and promote victim safety and empowerment while ensuring offender accountability (Article 13(a)).
Rights of the victim	Investigations and judicial proceedings are to be carried without undue delay while taking into consideration of the rights of the victim during all stages of the criminal justice proceedings (Article 49(1)).	States are to take into account all relevant international legal instruments including the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Article 18).
Balancing victim's and accused' fair trial rights	In order to ensure effective investigations and prosecution of offences established in accordance with the Convention, law and measures need to be in conformity with fundamental principles of human rights and have regard to the gendered understanding of such violence (Article 49(2)).	
<i>Ex officio</i> prosecution	For certain forms of violence (i.e. physical violence, sexual violence, force marriage, female genital mutilation, forced abortion and forced sterilisation), investigations into or prosecution of such offences shall not be wholly dependent on a report or complaint filed by a victim and that the proceedings may continue even if the victim withdraws her statement or complaint (Article 55).	The primary responsibility for initiating investigations and prosecutions lies with the police and prosecution authorities and does not rest with the women subjected to violence, regardless of the level or form of violence (Article 15(b)).

Support throughout the criminal justice process	Victims, at their request, should have available government and non-government organisations and domestic violence counsellors to assist and support them during the investigations and judicial proceedings (Article 55(2)) as well as legal assistance, including free legal aid for victims who are eligible under domestic law (Article 57).	Comprehensive services are provided and protection measures are taken when necessary to ensure the safety, privacy and dignity of victims and their families at all stages of the criminal justice process, without prejudice to the victim's ability or willingness to participate in an investigation or prosecution (Article 15(i)). To ensure that women subjected to violence have full access to the civil and criminal justice systems, including access to free legal aid, where appropriate, court support and interpretation services (Article 18(h)).
Enabling victims to testify	...protect the rights and interests of victims, including their special needs as witnesses, in particular by: enabling victims to testify, according to the rule provided by their internal law, in the courtroom without being present or at least without the presence of the alleged perpetrator, notably, through the use of appropriate communication technologies, where available (Article 56(i)).	Women subjected to violence are enabled to testify in criminal proceedings through adequate measures that facilitate such testimony by protecting the privacy, identity and dignity of the women; ensure safety during legal proceedings; and avoid secondary victimisation. In jurisdictions where the safety of the victim cannot be guaranteed, refusing to testify should not constitute a criminal or other offence (Article 15(c)).

2.2 Kosovo* legal framework

Victim Advocates (VAs), as part of the State Prosecutor Offices, are tasked with protecting the rights of victims according to Kosovo* laws and ensuring the victim-centred approach in the criminal proceedings involving women as well as during the procedures for the issuance of protection orders. Their responsibilities include:	
	The power to pursue representation in criminal court on behalf of a victim (Article 63 of the Kosovo* Criminal Procedure Code).
	The obligation to pursue criminal charges when the evidence demonstrates the existence of a criminal act and the prosecution fails to pursue an investigation.
	To ensure the considerations on the rights of the victim during all stages of the criminal justice proceedings.
	To ensure that the rights and interests of victims are protected, including their special needs as witnesses. This can be done by enabling victims to testify, in the courtroom without being present or at least without the presence of the alleged perpetrator, notably, through the use of appropriate communication technologies, where available.
	The obligation to advise the victims of their right to apply for damages according to the punitive damages form foreseen under Article 218 of the Criminal Procedure Code of Kosovo*.
	To ensure that the victim is informed of the opportunity of filing in the declaration of damages caused in order to be considered by the court as party in the criminal procedure and that the victim has access to these standard forms. If the victim decides to complete this form, they shall do this within the timeline (from early investigation stages and up to 60 days from the pressing of charges). The victim may be assisted by the authorised representative and the police in completing this form.

2.3 Techniques to ensure a victim-centred approach when engaging with victims

2.3.1 How to communicate with victims to avoid secondary victimisation

Communication that promotes the dignity and respect of victims

All communication with victims should be geared towards empowering them to overcome their traumatic experience with violence and threats of violence and enabling them to endure the legal proceedings.

Pointers to be considered when prosecutors and judges are communicating with victims:

- Ensure all communications with victims are non-judgmental, empathetic and supportive.
- Validate what has happened to the victim throughout the process. It is important the victim feels that her report of violence is taken seriously and that she is treated with respect and as deserving of the best possible response.
- Exercise patience and give the victim time to tell her story in her own words.
- Victims need to have a sense that her voice is being heard. This means she has an opportunity to express her story; be listened to and have her story accurately recorded; have a positive experience with the criminal justice actors; and be able to tell how the violence has impacted her.
- It may be necessary to remind the victim that she is not being blamed for the violence.
- All communications should be done in plain language that is patiently explained.
- It may be necessary to explain why her participation in interviews and as a witness is a critical element of the legal case.
- In cases of domestic violence, it may be useful to speak to the victim about the cycle of violence, how common it is in order to ensure her that she is not the only one experiencing this violence, and the fact that such violence often escalates in severity if nothing is done to hold the abuser accountable and provided with treatment he needs.
- The victim's privacy must be maintained, and all her information should be confidentially maintained as according to the law.

Communication tips for prosecutors when interviewing victim

The testimony of the victim is often the most important piece of evidence in cases of violence against women and domestic violence and remains the central piece of evidence put forth by prosecutors. Due to the nature of these kinds of crimes, the violence often occurs in a private space, there is usually no other witness to the violence. Given the importance of this evidence, care needs to be taken when interviewing victims in a victim-centred approach so as not to cause secondary victimisation as well as in ensuring the perpetrator is held to account.

Prosecutors should meet the victim and her lawyer, if she has one, as early as possible in order for:

1. Case building. Effective communication with the victim at the very start is key to assisting the victim to provide a clear account of what happened. This will enable prosecutors to make better informed decisions about how to proceed with the case.
2. Rapport building with the victim. This will enable the prosecutor to build trust with the victim. The victim needs to know that she is being listened to and that her changing justice needs are being understood and addressed.
3. Empowering the victim. Information and the way it is communicated can empower her to make informed decisions regarding her engagement with the justice system.

Prepare the setting of the interview

- ✓ Chose an appropriate place for the interview. Ideally the interview should take place in a neutral environment, where the victim feels safe and comfortable and should afford privacy. The interview locations should not be in an interrogation room at the police station or where the victim could come into contact with the perpetrator.
- ✓ Make arrangements for the victim's comfort. Provide tissues, drinking water, etc.
- ✓ If necessary, select an independent and competent interpreter. Interpreters that are independent and competent are crucial for prosecutors dealing with victims whose language differs. Flawed interpretations can easily lead to confusion, misunderstandings and unjustified concerns about witness credibility.
- ✓ If possible, make arrangements for any children that may accompany the victim.
- ✓ Organise a team interview. If at all possible, the prosecutor and a victim advocate should conduct the interview together. The victim advocate will provide support as she goes through the trauma of recounting the violation.
- ✓ Consider allowing the victim to be accompanied to meetings by a lawyer and/ or support person. In allowing for a support person that is a relative or friend, consider whether the presence of such a person could be considered harmful.
- ✓ Consider making recordings of the interview with the victim (audio and visual if possible), not only because it could be potential evidence of the victim's psychological state but also to reduce the need for additional interviews.
- ✓ Consider whether the prosecution agency can accommodate a victim's request to speak to a prosecutor of a specific gender.

When interacting with the victim

- ✓ It is important that you put the victim at ease by using safe and supportive language.
- ✓ Listen carefully to the victim. Give her time to tell you what happened.
- ✓ Victims might need to be reminded that the violence was not her fault.
- ✓ Permit free narrative by the victim. Give the victim time to tell you what happened in her own words (i.e. unstructured interview). Then when there are things left out of what you wanted to explore you can always come back to them with open ended questions. When you ask a question, allow silence in the conversation for the victim to compose her thoughts.
- ✓ Ask questions clearly and in a non-judgmental or accusatory way.
- ✓ Do not use technical legal language.
- ✓ While it is important to show compassion during the interview do not become over emotional. You want to ensure that the victim has control over the flow of information and avoid the risk of imposing your own personal views of what the victim means to say.
- ✓ Do not express frustration or annoyance if the victim has difficulty recalling facts or providing clear answers. Keep in mind both what you say and what you communicate through body language.
- ✓ Pay attention to signs of trauma, anxiety, or stress and offer reassurance when needed.
- ✓ Never ask her to repeat her story unnecessarily or ask unnecessary questions. Unfortunately, victims are often asked to repeat their story over and over again – to the police, doctor, psycho-social worker, and judges. Telling her story can be traumatic. Wherever possible, limit the number of times she is forced to recount the events of the crime.
- ✓ Do not make promises that you cannot keep. The victim might seek reassurances from you that you cannot provide. For example, she might not want you to share parts of the report to others, but you

will be required legally to provide the statement to others, such as the defence.

- ✓ Be honest about the challenges of the legal process. Prosecuting a case can take a long time and this can be difficult for a victim. If she testifies (and in most cases you will need her testimony), she will likely be subject to an unpleasant cross-examination. However, prosecutors should be sensitive to the fact that the victim might feel she is being discouraged to continue with the case.
- ✓ Try to understand the victim's challenges. Victims might have multiple problems, as perpetrators often choose victims that are already vulnerable. They might have difficulties making choices about being a witness. They may have low self-esteem or may be reliving the past. They may be experiencing anxiety or aggression. They may feel isolated. They may be unable to express their needs or unable to plan for the future. They may be trying to please everyone. Be patient and take the time with them.
- ✓ Always ask the victim about safety concerns. Establish the risk or immediate threat of violence and obtain the victim's input as to any conditions of pre-trial release or protection measures required.
- ✓ Be prepared to provide information or referrals to support services. Make a directory with local resources for the victim.
- ✓ In concluding the interview, ensure the victim is aware of your approachability.

Essential information to provide

- ✓ Explain the victim's role in the legal process, including the stages of the criminal trial, the timing, what she will be expected to do as a witness, and whether any special procedures will be used (e.g. video testimony, screens). A victim is most likely to be unfamiliar with the legal system. Let her know that there may be a considerable period of time between the present interview and the court appearance. Explain how her statement will be used in the court process and that the defence will get a copy of it.
- ✓ It is important to patiently explain why she has been called for the interview. Consider that by the time you meet with her, she may already be frustrated by how many individuals have asked very personal questions.
- ✓ Explain the role of the prosecutor during the criminal proceeding, including how she or he will inform the victim about the status of the case, about sentencing, possible appeals and parole hearings.
- ✓ Explain the role of the defence counsel and the kinds of questions that the victim may be asked at trial. This prepares the victim for challenging cross examinations. Solicit information that can help the prosecution prepare to respond to defence arguments. Prosecutors should not discuss the evidence of the case with the victim as there may be objections raised by defence as to "coaching the witness". However, it is good practice to review the victim's statement with her in order to refresh her memory.
- ✓ Explain the role of the other courtroom actors, such as the judge, the court clerk, etc.
- ✓ Explain the victim's rights and options.

Communication tips for judges when interacting with victim

Judges' interactions with victims are generally limited to witness testimony in court (during pre-trial hearings or at trial). Judges may question witnesses, and they also have power to control the type of questioning that is posed. All judges should be keep in mind that the victim/witness may have had earlier interactions in court (e.g. at the indictment, bail hearing, or in concurrent civil cases) and so should be prepared to clearly explain the legal process that is happening at the moment, the possible outcomes, and the consequences for the victim. When engaging and interacting with victims, judges need to understand that the women have been victims of gender-based violence as well as frequently victims of secondary victimisation. Most victims of gender-based violence suffer devastating trauma caused by the violence itself, feelings of shame, humiliation and powerlessness. Unfortunately, many victims have also experienced their participation in criminal proceedings as a 'second assault', leading to re-traumatisation. All judges play a critical role in minimising the factors that contribute to secondary victimisation and re-traumatisation. This can be done by incorporating a gender-sensitive and victim-centred approach in their engagement/interactions with victims.

Pointers for judges when communicating with victims

- ✓ Promoting the victims' voice. For many victims of intimate partner violence who have long been silenced by their abusive partners or for victims of sexual violence who have been silenced by feelings of shame, the possibility of putting into words their own experiences can lead them to start leaving behind the subordination and violence they have been subjected.
- ✓ Listen carefully to the victim.
- ✓ Be proactive in asking about specific details. A victim can act complacent in the courtroom, or accept responsibility for violence, even when she does not agree.
- ✓ Do not ask unjustly intrusive questions, embarrassing, or overtly repetitive questions.
- ✓ Understanding the feelings of shame. Victims of violence against women and domestic violence are more likely to experience feelings of embarrassment and shame than victims of other violent offences. Shame can be a particularly debilitating emotion – one that diminishes an individual's sense of self-worth and increases feelings of powerlessness. Judges should not add to these feelings of shame.

Demeanour in the courtroom

- ✓ Treat victims with dignity and respect. It is the judge who sets the tone and creates the environment for a fair trial in his or her court.
- ✓ Do not express frustration or annoyance if the victim appears to be not cooperative. Keep in mind both what you say and what you communicate through body language.
- ✓ Be sensitive to the language that you use and what it conveys to victims and the perpetrators, especially when making rulings.
- ✓ Ensure that statements made from the bench and courtroom demeanour (non-verbal communication) demonstrates that the court take violence against women and domestic violence cases seriously.

Essential information to provide

- ✓ Explain the victim's rights and options.
- ✓ Explain the purpose of the particular hearing and the process.
- ✓ When concluding, inquire about whether the victim would like an escort to ensure safety when leaving the court.

Ensuring confidentiality

- ✓ Keep personal information about the victim completely confidential. Redact personal information (such as the address of the victim) from any court documents that will be filed and made public. Only share information about the offence when it is necessary to provide assistance and intervention (such as a referral), and even then, only with the written permission of the victim.

2.3.2 Informing the victim of her rights

Victim's rights and empowerment should be at the centre of all measures adopted by prosecutors and judges. Prosecutors and judges should keep in mind that the victims may not have received any professional advice or information about the law or about the kinds of legal services that are available to them, and should, therefore, be prepared to provide relevant information about her rights, remedies and how to access legal assistance.

Prosecutors and judges should check to see if any women's organisations in Kosovo* have developed "know your rights" brochures, leaflets or educational videos. They could then coordinate with such organisations to

make these materials available to victims that come into the prosecution office and courts. A good practice is to explain to the victim her rights in person and to provide written material that the victim can consult later.

Information about victim's rights includes the following:

- ✓ The right to be treated with compassion and respect for their dignity.
- ✓ The right to access the criminal justice system and have prompt redress.
- ✓ The right to fair restitution and compensation, including making a claim for compensation for damage in criminal cases.
- ✓ The right to express their views and concerns and to have them presented and considered at appropriate stages of the criminal case, including: making proposals concerning the evidence; reviewing records and becoming familiar with them and making proposals for further investigations; and to be heard in preliminary hearings, the main hearing and making a concluding speech.
- ✓ The right to have proper assistance throughout the legal process, including legal aid if the victim meets the eligibility requirements.
- ✓ The right to information about their rights, their role and the scope, timing and progress of their case and the disposition of their case, including information about release of the accused/convicted person from custody or escape from custody; the status of their complaint, the progress of investigations or proceedings, their role in the proceedings and the outcome of the case.
- ✓ The right to safety, including the right to apply for protection measures.
- ✓ The right to support, including the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.

2.3.3 Protecting, supporting and assisting the victim

Prosecutors and judges need to be aware that victims will have both immediate support needs as well as longer-term ones. They will need assistance in going through the criminal justice system, as well as assessing other services, which might include shelter, health care, social services, counselling, education and job care. A victim who feels well supported will likely be more engaged in the criminal case than a non-supported victim and this will improve outcomes in legal proceedings. However, it is important to remember that the provision of services should not be dependent upon the victim's willingness to press charges or to testify, and the services must be able to address the needs of vulnerable persons, including child victims.

Prosecutors and judges should:

- Never assume that the police have already informed victims about the support and assistance resources available to them in their community.
- Arrange to make informational brochures from local service providers available in their prosecution offices and in the court buildings. Ideally in safe locations, such as women's toilets.
- Make referrals to non-justice sector support services provided by local organisations, either government agencies or NGOs that are specialised in violence against women, such as shelters and crisis centres.
- Develop independent relationships with victim assistance organisations in the community.
- If possible, participate in many forms of community outreach and education in order to increase public confidence in the legal system and encourage reporting.

2.4 Managing reluctant witnesses

A common challenge for prosecutors and judges is that victims of violence against women and domestic violence can seem extremely reluctant to be witnesses during the criminal case and sometimes can become even hostile witnesses. Victims who are supported and treated in a respectful and compassionate manner and empowered by skilled professionals are not only less likely to withdraw support from the process at a later date, but also more likely to feel able to tell what they know in a clear and coherent manner. Prosecutors should not allow victim opposition to automatically stop them from prosecuting cases. They should appreciate that the more prosecution-related burdens are placed on victims, the less likely they are to cooperate. Conversely, the more victims are supported and protected, and the reduction of victim vulnerability pending trial, the more cooperative victims were.

Tips for prosecutors in managing reluctant victims

In addition to the earlier points regarding the need for sensitive communication, providing the victim with information, protection and support, below are some more tips on how to manage a reluctant victim:

- Understand the victim's reluctance and try to address it, if possible.
- Recognise that victim recantation and refusal to cooperate are often the outcome of threats by the abuser.
- Communicate to her that you both share the same goal, that of ending the violence in her life. Ensure her that you do not expect her to leave the abuser, as that is her decision, not yours.
- Explain how it is the court that can hold him accountable and offer him court ordered programmes to provide him opportunity to change.
- Consider whether you should call an expert witness at the trial to explain the reason why the victim is uncooperative at court, recants her statement or fails to appear.
- Do not react by threatening to prosecute or by prosecuting the victim.
- Consider subpoenaing the victim to testify in the case. Subpoenas are useful because they shield the victim from pressure from the abuser; she can tell him that it is not her decision to testify. However, it should be noted that not all victims will comply with the subpoena and forcing a victim to comply with a subpoena is not advisable as a general rule.
- Consider submitting the victim's testimony transcript taken by a preservative measure as evidence.
- Explain to the victim that you can seek measures to facilitate her testimony in the court, such as CCTV or screens so she does not have to face the accused.
- Prepare to proceed with the case without victim testimony. Prosecutors and police should build their cases so that they can be proved without the testimony of the victim (e.g. prior statements, emergency communications such as emergency call records, photos of the victim, the defendant and the scene of the crime).
- Continuity of the prosecutor and meeting the victim in person.

Tips for judges in managing reluctant victims

- Create a sense of safety for the victim during the trial.
- Allow the victim's testimony transcript taken in the presence of a judge and the defence counsel, in such a way as can be admitted as evidence later in the court even without the victim's trial testimony or against the victim's will.
- Allow for special measures that facilitate the victim's testimony in court.
- Recognise that there are powerful reasons why victims of intimate partner violence might provide a retraction statement containing untruths. In appropriate circumstances, dismiss as unreliable the contents of a retraction statement.
- Allow admission of original 'truthful' accounts from victims as evidence in the case.
- Consider evidence available from other sources to corroborate these original 'truthful' accounts, including emergency call recordings; police body worn videos; comprehensive statements from all first response officers; accounts from witnesses.

2.5 Creating an enabling courtroom environment

Trial and trial-related practices often discourage victims from testifying and re-traumatise those who choose to do so. It is important for prosecutors and judges to consider what steps they can take to minimise the negative impact for the victim in having to go to court. Creating an enabling courtroom environment will ensure that a victim feels safe and supported and this can contribute to the facilitating the victim's testimony at trial.

Prosecutors and judges should consider the following:

Safe and friendly court room environment

- Permit a support person such as family member, friend or professional support person to be with the victim during the trial process. In the case of the girl victim, measures should be taken to appoint specialists and family members to accompany the girl, and a guardian to protect the girl's legal interests.
- Provide for user friendly and fit-for-purpose court environments, including waiting areas.
- Remove all unnecessary persons, including the alleged offender, whilst the victim gives her evidence.
- Take appropriate measures to ensure no direct contact between victim and accused, using court-ordered restraining orders or ordering pre-trial detention.
- Notify appropriate authorities in the case of or suspicion of the victim being harmed or at risk of being harmed during the trial or hearing process.

Protection of privacy, integrity and dignity

- Apply for available measures that can protect the victim's privacy, integrity and dignity, including limit or ban public present at the trial, for example, in-camera trials or closed trials and limit or restrict media publishing of personal information of victims.
- Object to or disallow any misstatements or attempts to intrude too far on the witnesses' safety (such as matters that could tend to reveal the witnesses' identity).
- Remove any identifying information such as names and addresses from court's public record or use a pseudonym for the victim.
- In the case of the girl victim take appropriate measures to maintain confidentiality and restrict disclosure of information relating to the girl's identity and involvement in the process; and exclude public and media from courtroom during the girl's testimony, where permitted by national law.

Opportunity for full participation

- Apply for and/or where possible allow for available measures that can facilitate the victim's testimony in trial/hearing: measures that permit the victim to testify in a manner that allows her to avoid seeing the accused, for example screens, behind closed doors, closed circuit television (CCTV).
- Adopt case management approaches that ensure the victim has an opportunity to fully participate in the proceedings with the least amount of secondary victimisation: reduce unnecessary delays; and promote practices that issues not in dispute are agreed upon and admitted at the start of the trial/hearing.
- Undertake approaches and ways to reduce the victim's stress: limit her evidence to relevant evidence; allow for short recess when she is too distressed to proceed; identify options to avoid or minimise direct examination of the victim by the defendant, where possible; if allowed, have the examination conducted through an intermediary; if allowed, use video-recorded interview as evidence in chief.
- In the case of the girl victim, use child-sensitive procedures, including interview rooms, modified court environments and take measures to ensure hearings and interviews are limited and are scheduled at times of the day appropriate to the age of the girl and separate from the accused.

Ensuring the quality of the victim's evidence

There are numerous factors that influence the quality and quantity of evidence provided by victims as witnesses. Prosecutors and judges should consider the following pointers to enhance the victim's ability to tell her story in court:

- ✓ Asking open questions and avoiding leading or suggestive questions.

- ✓ Controlling inappropriate questioning, as this reduces the quality of evidence heard.
- ✓ Being aware that the demeanour of the person asking the questions - more authoritative demeanours make vulnerable witnesses less able to recall accurate information and less willing to disclose information.
- ✓ Use of pre-recorded video evidence, while arguably more compatible with inquisitorial than adversarial approaches to testimony, is found in some adversarial jurisdictions.
- ✓ Makes trials more about conversations than battles and allows greater reliance on written evidence gained pretrial.
- ✓ Allowing the victim her own lawyer. The duties could range from acting as an intermediary during questioning to, at least partially, address manipulation to providing advocacy and representation throughout the whole legal process, including sentencing and compensation decisions.

Strategies for limiting aggressive questioning and improper questioning based on myths and gender stereotypes

Questioning techniques by defence, such as extensive repetition, frequent interruption, closed questions, and demanding precise recollection of peripheral details, are common defence tactics in cases involving violence against women and domestic violence. Prosecutors and judges should be mindful of defence tactics to intimidate or humiliate the victim, such as using unfair, unnecessary, repetitive, aggressive and discriminatory questioning. They both have a role to play to decisively stop such behaviour, by raising objections (by prosecutors) or issuing warnings or disallowing that line of questioning (by judges).

Prosecutors and judges should consider the following:

- Understand how violence against women and domestic violence is different from other offences, including appreciating the stereotypes surrounding these cases and the challenges victims face in accessing justice in these cases.
- Balance the victim's right to equal protection before the law and privacy with the defendant's right to full answer and defence. While the defence has the right to test the case for inaccuracies and inconsistencies that could render the testimony unreliable, such right is not absolute and does not give defence the right to use gender stereotyping to malign her behaviour, her dress and her character.
- Argue that all lawyers have an ethical duty not to discriminate, advocate in good faith and not mislead the court. While not introducing false evidence, defence lawyers who uses harassing and improper questioning to put forward a defence grounded in stereotypes is misleading.

Prosecutors and judges should also refrain from making inappropriate comments based on myths and gender stereotyping.

3. Assessing and evaluating the evidence

Prosecutors, and to a certain extent judges, have a role in ensuring that the investigators are abiding by the standards for evidence collection. Each profession must then assess the collected evidence in the performance of their duty, whether this is in the decision to prosecute and the selection of charges by prosecutors or in the judicial assessment of the facts in accordance with the law, legal reasoning and crafting judicial decisions by the judges.

3.1 International standards

Istanbul Convention	
Article 49(2)	Parties shall take the necessary legislative or other measures, in conformity with the fundamental principles of human rights and having regard to the gendered understanding of violence, to ensure the effective investigation and prosecution of offences established in accordance with this Convention.
Explanatory Note	This means, for example, establishing the relevant facts, interviewing all available witnesses, and conducting forensic examinations, based on a multi-disciplinary approach and using state-of-the-art criminal investigative methodology to ensure a comprehensive analysis of the case.

UN Updated Model Strategies and Practical Measures	
Collection of evidence	To develop and implement policies and appropriate responses regarding the investigation and collection of evidence that take into account the unique needs and perspectives of victims of violence, respect their dignity and integrity and minimise intrusion into their lives while abiding by standards for the collection of evidence (Article 16(e)).
Assessing credibility	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 (Article 15(e)).
Evidence of prior acts of violence	Evidence of prior acts of violence, abuse, stalking and exploitation by the perpetrator is considered during court proceedings, in accordance with the principles of national criminal law (Article 15(g)).
Use of alcohol	People who perpetrate acts of violence against women while voluntarily under the influence of alcohol, drugs or other substances are not exempted from criminal responsibility (Article 15(f)).

3.2 Kosovo* legal framework

<p>Regulation Nr. 763 of the Kosovo* Prosecutorial Council and State Prosecutors Office, on increasing efficacy in handling domestic violence cases</p>	<ul style="list-style-type: none"> ▪ These investigations should be treated with priority. ▪ In cases when domestic violence is reported after working hours, on-call prosecutors should be appointed for each Basic Prosecution Courts. ▪ The interviews of witnesses are conducted by the specialised prosecutors, who undertake the necessary risk assessments and evaluation jointly with the police and follow the relevant policies and procedures for cases of recidivisms as well as violations of protection orders. ▪ Jointly with the Victim Advocates, the specialised prosecutors should also ensure that the victims are informed of their right to file for declaration of damages, in order for victims to be eligible for state compensation in case the damages are not decided in the initial criminal proceedings.
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3.3 Ensuring a comprehensive investigation and collection of all relevant evidence

Prosecutors, more so than judges, have a role in ensuring comprehensive investigations and collection of relevant evidence. They perform an active role in scrutinising the lawfulness and propriety of investigations and the gathering of evidence, at least in deciding if a prosecution should commence or continue. Judges may also have some role to play during the investigative stage when asked to order search warrants, or production of documents. Ensuring that all available evidence has been collected can mean that the prosecutors and the judges can reduce their reliance on the victim's testimony, reduce her risk of retaliation by the perpetrator and increase the likelihood of a successful prosecution.

Types of possible evidence				
Statements	Photographs	Medical/Forensic	Observation / documentation	Other evidence
Victim	Victim's injuries, with victim's consent	Top to toe examination of victim for injuries, evidence of force	Utterance of suspect	Cell phone calls
Neighbour	Suspect's injuries, if any (e.g. offensive injuries or injuries inflicted in self-defence by victim)	Swabs of potential areas of physical contact	Victim's demeanour	Any previous history that can be relied upon as bad character including in relation to other partners
Eyewitnesses	Scene of the crime (disrupted or destroyed objects, blood stains)	Body examination of suspect	Suspect's demeanour	Emergency call recordings
Witnesses as to how victim is behaving before/ after the incident (e.g. capable of consenting)		Crime scene evidence forensic examination (fingerprints, body fluids, footprints)	Torn clothing	Cell phone mapping
Teachers		Hospital/emergency room records	Smeared makeup	Voice message tapes

Colleagues at work		Toxicology (alcohol levels) including back calculation	Disarray in house	Letter or Email correspondence; change in behaviour/mood
Friends at school		Victim's spontaneous utterances made to medical staff	Victim's injuries (using diagram)	Social network
				CCTV evidence
				Weapons
				Family court files

Source: Skinnider, E. 2014. Handbook on effective prosecution responses to violence against women and girls. UNODC, p. 73.

3.4 Pointers in assessing evidence

3.4.1 Assessing the credibility of the victim

It is not unusual that in cases involving violence against women and domestic violence there may be little physical evidence to connect the suspect to the crime or no witnesses that can corroborate the victim's testimony. Often the likelihood of conviction depends primarily on the victim's ability to articulate what happened and to convince the prosecutor to proceed with the prosecution and the judge to convict.

Be aware of how myths and stereotypes inform credibility assessments

- Myths and stereotypes continue to inform credibility assessments of the victim, from whether she behaved 'rationally' at the time of the violence to how she comports herself during the criminal trial.
- Prosecutors and judges need to be aware how they characterise the complainant's behaviour as "good choices" and how these are often based on a construction of the "ideal victim".
- They need to appreciate how they are evaluating what the complainant is telling them by the manner in which they give it. The complainant's attributes, decisions and comportment when she is on the stand might not fall into their views as to what a "good" witness or "credible" witness would say or not.

The challenge in dealing with inconsistent statements

- One of the main challenges heard from many prosecutors and judges is that they are often faced with considering the issue of inconsistent statements of the complainant.
- The violence can impact the victims' ability to coherently or fully recount her experience or emotional numbness can complicate responsiveness to questioning.
- Victims often have to provide various statements to a number of authorities before speaking to prosecutors or before appearing before the judge at trial.
- Statements might be taken by untrained officers, in places where she might not feel safe or supported, not be recorded properly or in a coherent or comprehensive manner. For instance, if the victim has been questioned by a male police officer, she might feel uncomfortable and this can affect her ability to recount her experience.
- Victims might have given her statement in one language but was translated into another language which might not accurately transcript which she said or paraphrased her story incorrectly.
- There could be a time lag between any of her statements, e.g. from the first statement and the criminal trial. It is not uncommon for victims to attempt to manage their lives by not revisiting the trauma.
- Inconsistencies in a statement should not automatically undermine the victim's allegations or suggest that she is unreliable or dishonest. In fact, inconsistencies are to be expected.
- In assessing inconsistencies, prosecutors and judges should be cautious about placing too much weight and importance on the contradictions between what a witness says in court and previous statements. They should adopt a culture of believing the victims, unless the contrary is clearly indicated.

Shift the focus to assessing the facts of the violent incident

- The inordinate focus on the conduct of the victim when assessing the evidence, when deciding to prosecute or not, or to convict or not, results in shifting the focus away from assessing the facts around the violence incident itself and the conduct of the defendant.
- The result is to downplay the defendant's conduct and responsibility while shifting the blame towards the victim.

3.4.2 Forensic evidence issues

The fact that some forms of violence against women and domestic violence usually leave physical evidence can be both a benefit (corroborate victim's account; identify perpetrator) and a challenge (not always available or collected, delayed reporting, compromised, lack of capacity of forensic examiner). Any decision not to proceed is not based solely on the fact that there is no medico-legal report or that the report is inconclusive. The reason for this is that there can be a number of challenges related to forensic evidence:

Tendency for overreliance. The overreliance on forensic evidence is based on the assumption that there was a single "truth" to be uncovered and that scientific evidence is the most legitimate method of finding it. This does not fit well if the form of violence is psychological violence which may not produce forensic evidence.

Wrong interpretation in the absence of forensic evidence. There are numerous reasons why there has been no forensic evidence. This includes both the situation where the forensic exam was done (e.g. delayed reporting; untimely exam; victim might have washed or gone to toilet, compromising the evidence; insensitive or non-age appropriate exam; state does not have the capacity to collect and/or analyse) and where there was no forensic exam done (e.g. difficulties in accessing; refusal of the victim to undergo an intrusive forensic exam).

Lack of certainty. There is a spectrum of physical findings produced by violence. Some physical findings are quite specific for abuse, while other findings are nonspecific and can vary due to so many factors, such as type of object or body part used, amount of force, use of lubricants, time elapsed before the exam, etc. The forensic examiners might not be trained to perform gender-based violence against women exams; the collection of evidence might not be done correctly or completely.

Interpreting forensic evidence based on myths and gender stereotypes. Placing reliance on forensic evidence is based on the presumption that women will fight back when faced with any form of violence and as a result there will be evidence of physical force or a struggle. Forensic evidence that shows that the victim was previously sexually active can undermine her credibility and be used to argue that the violence did not occur.

Prosecutors and judges should be aware that the forensic reports should not conclude whether rape has occurred, but rather describe the examination. Remember rape is not a medical condition, it is a legal definition. They need to know how to interpret the forensic report. Some considerations:

- ✓ Be sensitive to the many reasons why victims might not undergo forensic examination.
- ✓ A lack of physical injuries does not mean that no violence has occurred.
- ✓ Not to see forensic evidence as indispensable to conviction.

3.5 Specific considerations for prosecutors when assessing evidence

3.5.1 Exercising prosecutorial decisions

Determining the adequacy of the evidence for a case. Prosecutors should base their judgment on the strength of the evidence and not be swayed by other extraneous and irrelevant factors. Do not include in your assessment irrelevant characteristics of the complainant and the suspect.

Likelihood of conviction. Prosecutors' assessments of convictability are based primarily on legal factors: the seriousness of the offence; the strength of evidence in the case; and the culpability of the suspect.

Public interest factors. Once the evidential stage is evaluated, then the prosecutor is called on to look at

whether prosecution is required in the public interest. Given the prevalence of violence against women and domestic violence and the harmful effects it has on the individual, the family and the community, the prevailing approach should be to always find a public interest in prosecuting such cases.

While it is important to involve the victim in the decision whether or not to prosecute, there is a need to balance victim's agency with removing the need for victims to initiate prosecution and to prevent the abuser from using violence or threats to pressure the victim to halt the prosecution. Prosecutors should always inform the victim of their decision whether to prosecute or not.

3.5.2 Selecting appropriate charge

Prosecutors should consider the following when determining the appropriate charge:

- Charges should reflect the seriousness of what took place, any element of premeditation or persistence in the suspect's behaviour, the provable intent of the suspect and the severity of injury (physical and psychological) suffered by the victim.
- Bear in mind that different charges may provide the court with the power to impose pre-trial detention as well as impose a suitable sentence.
- Consider all charges that could result from a patterned use of intimidation, coercion and violence (the perpetrator might have committed more than one offence). Consideration should be given to what other crimes may be charged along with the main offence.
- Consider adding the charge of violating a court order in situations where there was a protection order or restraining order in effect at the time of the offence.
- Seek out other information on the suspect's history and use it in charging decisions. Prior violations against the same victim, if probable and within the statute of limitations, may be charged as separate counts.
- Charge the case as an aggravated assault by a trusted person in cases of intimate partner violence or non-stranger sexual assault.
- Consider whether stalking charges are available if there is a history of patterned use of intimidation.
- Consider whether other charges should be included that stem from a defendant's action after police arrival on the scene, such as obstruction of justice, disorderly conduct, or assault of a police officer.
- Consider whether the defendant's behaviour after the initial criminal charges have been filed result in new charges, such as witness tampering or witness intimidation.

3.5.3 Proceeding with the prosecution *ex officio*

Prosecutors should consider the following factors in deciding to proceed with an *ex officio* prosecution after the withdrawal of complaints by the victim:

- the seriousness of the offence;
- whether the victim's injuries are physical or psychological;
- if the defendant used a weapon;
- if the defendant has made any threats since the attack;
- if the defendant planned the attack;
- the effect (including psychological) on any children living in the household;
- the chances of the defendant offending again;
- the continuing threat to the health and safety of the victim or anyone else who was, or could become, involved;
- the current state of the victim's relationship with the defendant and the effect on that relationship of continuing with the prosecution against the victim's wishes;
- the history of the relationship, particularly if there had been any other violence in the past; and
- the defendant's criminal history, particularly any previous violence.

3.6 Specific considerations for judges when assessing evidence

Incorporating a gender perspective in judicial decision making requires the judge's assessment of the facts in accordance with a careful understanding of the law, free from any gender biases and gender stereotyping influences. This not only applies to the decision itself but also to the process by which the decision is made, including when assessing the evidence.

3.6.1 Fact determination and interpreting the evidence

Judges need to examine the context in which the facts took place. They should:

- Consider the dynamics of the form of violence: intimate partner violence; sexual violence; stalking; honour-related violence.
- Identify situations of power between the parties and ask whether there is a power imbalance.
- Avoid shifting from a focus on the actions and state of mind of the accused to an interrogation of the victim's state of mind and what she did and did not do during the incident.
- In assessing the credibility of the victim, have an understanding of the victims of gender-based violence against women, the effects of trauma and the power dynamics that characterise such violence.
- If possible, judges should assess the gaps in the evidence needed for a comprehensive fact assessment and if they have the power, order the prosecutor to produce further evidence.

3.6.2 Applying and interpreting the law

Part of assessing the evidence is that it is done in conjunction with applying and interpreting the law. The judges need to question whether the legal provisions reflect any myths or stereotypes about violence against women and domestic violence. Judges ought to be aware that they should not apply existing legal provisions that discriminate against women or provisions that allow, tolerate or condone forms of gender-based violence against women.

Keep in mind:

- With respect to sexual violence offences, many commonly accepted rape myths lead to narrow interpretations of what counts as sexual offences and elements of the crime, irrespective how the crime has been defined. When the sexual violence offence is based on lack of consent, this provides the potential for a contextual analysis of the power relations within which sexual interactions unfold. Judges should look for agreement rather than relying upon acquiescence. Be careful of how myths, such as the myth that women who have previous sexual experience are more likely to have consent, influence the judges' assessment of the evidence and the application of the law.
- Regarding intimate partner violence, when there is no specific criminal offence for domestic violence, the general criminal code provisions such as physical assault, threats, or sexual offences are applied. The challenge for judges is that these offences generally focus on the latest single incident rather than encompassing the typical pattern of coercion and control.

When interpreting and applying the law, they should be guided by:

- An interpretation that promotes, rather than harms, the values of gender equality, autonomy and security of the person.
- Discount myths and stereotypes about women and violence against women and domestic violence.
- Be guided by international law and domestic laws which incorporate international obligations.

3.6.3 Incorporating a gender perspective in the judicial reasoning and crafting of the judgment

Judges are to apply an interpretation of the law that promotes substantive equality and one that is not based on myths or gender stereotypes. Judges should consider:

- Understanding that although 'beyond reasonable doubt' is a high standard of proof, it only requires the absence of 'reasonable' doubt and does not mean the absence of any doubt at all, and the presumption of innocence does not mean that doubt about the defendant should be ignored.
- Identifying and avoiding judicial reasoning which is based on stereotypes.
- Focusing on proven facts rather than inferences by way of a generalisation.
- Before inferences are drawn, "the question should be whether the underlying generalisation is misleading, discriminatory, and one that should be eliminated from the fact determination process.
- Crafting gender-sensitive judicial decisions, which are those framed in terms of women's equality, security interests and affirming women's autonomy and dignity.
- Avoid language that use or rely on stereotypes when crafting the judgment and use inclusive language.

4. Combating the discriminatory use of evidentiary rules

Prosecutors and judges play an essential role in ensuring the non-discriminatory interpretation and application of evidentiary rules.

4.1 International standards

	Istanbul Convention	UN Updated Model Strategies
Evidentiary rules are non-discriminatory and allow for all relevant evidence to be before court	... ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion, tradition or so-called "honour" shall not be regarded as justification for such acts. This cover, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour (Article 42.1)	Evidence rules are non-discriminatory; all relevant evidence can be brought before the court; rules and principles of defence do not discriminate against women; and 'honour' or 'provocation' cannot be invoked by perpetrators of violence against women to escape criminal responsibility (Article 15(d)).
Complainant's sexual history	... ensure that, in any civil or criminal proceedings, evidence relating to the sexual history and conduct of the victim shall be permitted only when it is relevant and necessary (Article 54).	The introduction of the complainant's sexual history in both civil and criminal proceedings is prohibited when it is unrelated to the case (Article 15(e)).
No adverse inference		No adverse inference is drawn solely from a delay of any length between the alleged commission of a sexual offence and the reporting thereof (Article 15(e)).

4.2 Kosovo* legal framework

Criminal Procedure Code Article 62	The victim has specific rights guaranteed during criminal proceedings. <ul style="list-style-type: none"> ▪ to be treated with respect by the police, state prosecutors, judges or other body conducting the criminal proceedings; ▪ to be contacted in a reasonable manner and be informed that they are an injured party; ▪ has the status of a party to the criminal proceeding; ▪ to a reasonable, court-ordered restitution from a defendant or defendants who have admitted to or been adjudged to be guilty for the financial, physical and emotional harm caused by the commission of a criminal offence for which the defendant or defendants have been adjudged guilty.
Criminal Procedure Code Article 63	The victim may be represented by a victim advocate.
Criminal Procedure Code Article 119	During the investigation, the victim may request the state prosecutor to take or preserve evidence that may or could be reasonably expected to demonstrate the harm caused by the criminal offence, the pain and suffering by the victim, or other costs associated with the criminal offence. The state prosecutor shall lawfully obtain all tangible evidence, if possible, prior to taking relevant pretrial testimonial.
Criminal Procedure Code Article 122	The victim, victim's representative or victim advocate may request the state prosecutor to take or preserve pretrial testimony that may or could be reasonably expected to demonstrate the harm caused by the criminal offence, the pain and suffering by the victim, or other costs associated with the criminal offence
Criminal Procedure Code Article 138	Allowance for expert analysis where the victim or victim advocate may request the state prosecutor to take expert testimony.

4.3 Non-discriminatory interpretation and application of evidentiary rules

Prosecutors and judges have a role in ensuring that all relevant evidence is brought before the court, as well as objective to or disallowing irrelevant evidence being brought before the court.

4.3.1 Considerations regarding relevancy

For evidence to be admissible it must be relevant (i.e. when it has any tendency in reason to make the fact that it is offered to prove or disprove either more or less probable), material (i.e. if it is offered to prove a fact that is at issue in the case) and competent (i.e. if it meets requirements of reliability). Because a common defence tactic is to focus on irrelevant and peripheral details, relying on myths and gender stereotypes to attack the victim's credibility, prosecutors and judges need to:

- Recognise common myths and gender stereotyping in defence's line of questioning that attempt to cast doubt on the victim's credibility merely by focusing on behaviour that is viewed as 'morally suspicious', such as walking along late at night; dressing provocatively, drinking alcohol.
- Understand the distorting effect of evidence grounded in myths and gender stereotypes. Examine the prejudicial effects of evidentiary rules and the ways in which this type of evidence reinforces gender inequalities. For instance, evidence introduce to prove that the complainant is sexual promiscuous in order to suggest that she is more likely to make a false allegation and is generally less trustworthy or evidence that she is dressed a certain way to suggest that she is more likely to consent to the sexual act.
- Query the relevancy of this line of questioning during the trial and stop prejudicial defence questioning. Ask if the evidence's probative value is substantially outweighed by a danger of unfair prejudice, confusing the issue, misleading the trier of fact, or wasting time?
- If the line of questioning has been allowed, then assess whether the evidence is relevant and explicitly call out the use of myths and gender stereotypes.

4.3.2 Considerations regarding the admissibility of sexual history evidence

Another common strategy for defence counsel is to introduce evidence concerning the victim's sexual history. Defence lawyer's direct and indirect use of sexual history evidence remains a powerful tool to undermine the credibility of the prosecution's chief and often the only witness, the complainant. Allowing such evidence based on the myth that unchaste women are less worthy of belief (that they are less credible) and unchaste women are more likely than chaste women to consent (that they have consented to the sex).

Prosecutors and judges should consider:

- Intervening to prevent the introduction of inadmissible evidence on the victim's prior sexual conduct and consent.
- Seeking to hold closed hearings in the event that there are questions about the admissibility of sexual history evidence.
- Avoid the use of myths and gender stereotyping in arguing or determining admissibility.
- Provide detail legal reasoning as to why sexual history evidence is not relevant, connecting this issue with gendered inequality or the prejudicial effects of sexual history evidence.

4.3.3 Considerations regarding prompt complaint requirements or practices

Prompt complaint requirements are procedural or evidentiary rules or practices that refer to the timeframe between the incident of violence and when the report is made. Sometimes statute of limitations provisions require the victim to report the crime within a set number of days, weeks or months or else prosecution will be barred by law. Other provisions may include a rule where an adverse inference can be made as a result of delay on the part of the victim in making a report. Even when there is no explicit rule, defence lawyers and even judges continue to make reference to the delay in reporting and how this is a factor for consideration of a complainant's credibility. There is no evidence that delayed reports are somehow less truthful.

Prosecutors and judges should consider:

- Intervening to prevent cross-examination about the victim's credibility based on the introduction of delayed reporting.
- Avoiding the use of myths and gender stereotyping in assessing the lack of physical evidence due to late reporting is fatal to the case.
- Avoiding using language in judgments that implies the victim is blamed for delayed reporting.
- Providing detail legal reasoning as to why no adverse inference should be drawn solely from a delay in reporting.

4.3.4 Considerations regarding corroboration requirements or practices

Corroboration requirements are provisions or practices that prohibit convictions solely on the basis of a victim's testimony and require corroborating evidence such as physical, medical or forensic evidence or the testimony of additional witnesses that supports the victim's testimony. This is linked to the cautionary rule which requires courts to treat the evidence of a victim of sexual violence with special caution and to take special care if grounding a conviction on the basis of such evidence alone. In cases tried by juries, the court provides a cautionary instruction to the jury. Traditionally corroboration requirements and cautionary rules where they existed only related to sexual violence offences. Even where a country has removed the rule regarding corroboration requirements, as required by international law, a common practice by defence is to frame the question of how to apply reasonable doubt in 'he said/ she said' cases as weighing in favour of the defendant, no matter the assessment of the credibility of the incident based on the victim's testimony. Courts should not remain reluctant to convict solely on the basis of the victim's testimony.

Prosecutors and judges should consider:

- Intervening to prevent cross-examination about the victim's credibility based on the lack of corroborating evidence.
- Avoiding the use of myths and gender stereotyping in assessing the lack of physical evidence.
- Appreciating that there is no need for corroborating evidence when objectively determining credibility

issues. Medical evidence is not required as corroboration.

- Not dismissing victim's testimony as not credible unless the contrary is clearly indicated.
- Understanding that there is no need for a medical examination.
- Stop analysing whether the victim could have fought back in arguments or judgments.

4.3.5 Considerations regarding propensity evidence of defendant

Propensity evidence, sometimes referred to as evidence of the defendant's bad character, is usually only admitted if determined to be relevant. It might be excluded if its probative value is outweighed by its prejudicial risk.

Prosecutors and judges should consider:

- Submitting or admitting propensity evidence where it has sufficiently high probative value to outweigh its prejudicial risk.
- Balancing between the risk that the fact finder, hearing that the defendant has committed other misconduct, will be unduly influenced by the propensity evidence, will give it too much weight, and be too ready to convict versus the relevancy and probative evidence that if kept out might risk the perpetrator going free.

4.3.6 Considerations regarding the use of expert witnesses

Expert evidence can assist prosecutors and judges in providing context for a better understanding of the dynamics of gender-based violence, why the victims behaved in certain ways, and the myths and gender stereotypes around these cases. The general rule regarding expert witnesses is that they can only be called to give evidence of issues that are outside the expertise of the court. They cannot be used to bolster a case that is already weak. Each case must be taken on its own merits and an expert should only be called where they can legally assist the court.

Prosecutors and judges should consider whether the use of an expert witness:

- Will inform the court of commonly known characteristics of abuse victims so that they can compare the behaviour of the victim to that profile.
- Will reduce the likelihood that the court will develop negative feelings against the victim based on myths and gender stereotyping.
- Will enable the court to examine the facts without interference of bias or emotion.
- Challenge the plausibility of the victim's account at trial, not to bolster the victim's own personal qualities of truth-telling or falsehood.
- Explain why victims retract and give the court reason to assess in-court retractions.
- Assist the court in evaluating credibility, not enhancing that credibility.

4.4 Special considerations for prosecutors

4.4.1 Developing a prosecution strategy and preparing for trial

Prosecuting cases involving violence against women and domestic violence requires special approaches at each stage of the criminal justice process – from developing a strategy to post-conviction monitoring. These cases also require prosecutors to take a proactive approach to ensuring for comprehensive investigations and the collection of evidence as well as being preparing a strategy for presenting evidence at trial. One of the main challenges to building a strong case for trial in these cases is the fact that in a large number of cases, the victim ends up not supporting the prosecution. As previously discussed, this is due to a number of very good reasons.

An important aspect of case preparation is to anticipate and plan for the possible introduction of prejudicial, embarrassing or harmful evidence by the defence. Particular attention should be paid to evidence that may be damaging to the witness, but which is not relevant or has no probative value in the case (for example, ev-

idence of past sexual conduct, reputation, of substance abuse, etc.) Very often, intrusive questioning in cases of violence against women is used in order to present evidence based on stereotypes and assumptions about women's behaviour, dress and private life. Prosecutors must be ready to object to, and shield victims/witnesses from, negative character evidence that may be prejudicial and unrelated to the incident(s) being prosecuted.

Prosecutors need to consider the following when developing a strategy for trial:

- These cases should proceed on a timely basis. Delays and protected criminal proceedings have a negative impact on victims, can increase the risk of retaliation, contribute to long-term mental suffering as well as make her feel disconnected to with the criminal case. This might contribute to the victim's reluctance to continue with the criminal case.
- While the decision to prosecute *ex officio* is an option, prosecutors need to be supportive to the victims who fear or mistrust the criminal justice system. They need to take the time to explain the criminal justice process, including evidentiary rules in order to encourage them to continue their participation.
- Prosecutors need to have a plan on how they will oppose potential use of discriminatory defence tactics, using the research and knowledge about the dynamics of gender-based violence against women and common myths and gender stereotyping.
- Prosecutors need to be creative about other sources of evidence, particularly if they are concerned that the victim might withdraw. For example, evidence from other corroborating witnesses, independent medical evidence, photographic evidence and evidence of police officers who attend the scene.

4.5 Special consideration for judges

4.5.1 Efficient court case management

Judges should monitor the proceedings and intervene if the attention shifts toward questioning the victim's character and credibility, rather than establishing the guilt or innocence of the accused. Indeed, a case based on evidence beyond the statements of the victim is less vulnerable to challenges concerning her credibility.

Judges should consider:

- Be aware that as a judge, the manner in which you express your views in courtrooms can shape expectations for justice held by victims, perpetrators, court personnel and other actors involved in investigations and legal proceedings.
- Make sure that decisions and statements from the bench and courtroom demeanour demonstrates that the court take violence against women and domestic violence seriously.
- Treat victims with courtesy, compassion, dignity and sensitivity, even if they are not present.
- Consider the victim and her family's safety and her needs for support at all levels, at all times.
- Develop clear and written protocols detailing the procedure to handle a case.
- Mitigate the harmful effects of a forensic system, limiting the number of times the victim has to repeat her account.
- Admitting the testimony of the victim as sufficient evidence.

5. Sentencing and remedies

5.1 International standards

	Istanbul Convention	UN Updated Model Strategies
Sanctions	<p>Article 45 (1) ... ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness. These sanctions shall include, where appropriate, sentences involving the deprivation of liberty which can give rise to extradition.</p> <p>Article 45(2) Parties may adopt other measures in relation to perpetrators, such as:</p> <p>Monitoring or supervision of convicted persons;</p> <p>Withdrawal of parental rights, if the best interests of the child, which may include the safety of the victim, cannot be guaranteed in any other way.</p>	<p>Article 17 (a) ensure sentencing policies:</p> <p>hold offenders accountable for their acts related to violence against women;</p> <p>denounce and deter such violence;</p> <p>stop violent behaviour;</p> <p>promote victim and community safety, including by separating the offender from the victim, as well as from society where necessary;</p> <p>take into account the impact on victims and their family members of sentences imposed on perpetrators;</p> <p>provide sanctions that ensure that the perpetrators are sentenced in a manner commensurate with the severity of the offence;</p> <p>provide reparations for harms caused as a result of the violence;</p> <p>and</p> <p>promote the rehabilitation of the perpetrator, including a sense of responsibility in offenders and where appropriate, reintegration of the perpetrator into the community.</p>

Aggravating factors	<p>Article 46 ... ensure that the following circumstances, insofar as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration as aggravating circumstances in the determination of the sentence:</p> <p>the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority;</p> <p>the offence, or related offences, were committed repeatedly;</p> <p>the offence was committed against a person made vulnerable by particular circumstances;</p> <p>the offence was committed against or in the presence of a child;</p> <p>the offence was committed by two or more people acting together;</p> <p>the offence was preceded or accompanied by extreme levels of violence;</p> <p>the offence was committed with the use or threat of a weapon; the offence resulted in severe physical or psychological harm for the victim;</p> <p>the perpetrator had previously been convicted of offences of a similar nature.</p>	<p>Article 17(b) To ensure that their national laws take into account specific circumstances as aggravating factors for sentencing purposes, include for example, repeated violent acts, abuse of a position of trust or authority, perpetration of violence against a spouse or a person in a close relationship with the perpetrator, perpetration of violence against a person under 18 years of age.</p>
Notification	<p>Article 56.b ensuring that victims are informed, at least in cases where the victims and the family might be in danger, when the perpetrator escapes or is released temporarily or definitively.</p>	<p>Article 17(c): ensure the right of a victim of violence to be notified of the offender's release from detention or imprisonment.</p>
Taking into account victimisation		<p>Article 17(d): take into account, in the sentencing process, the severity of the physical and psychological harm and the impact of victimisation, including through victim impact statements.</p>
Full range of sentencing		<p>Article 17(e): make available to the courts, through legislation, a full range of sentencing dispositions to protect the victim, other affected persons and society from further violence, and to rehabilitate the perpetrator, as appropriate.</p>
Perpetrator treatment programmes	<p>Article 16 ... to set up or support programmes aimed at teaching perpetrators of domestic violence to adopt non-violent behaviour in interpersonal relationships with a view to preventing further violence and changing violent behaviour patterns.</p> <p>Article 16.2 to set up or support treatment programmes aimed at preventing perpetrators, in particular sex offenders, from re-offending.</p>	<p>Article 17(f and g): develop and evaluate treatment and reintegration / rehabilitation programmes for perpetrators of different types of violence against women that prioritise the safety of the victims; and ensure that judicial and correctional authorities, as appropriate, monitor perpetrators' compliance with any treatment ordered.</p>

Compensation	<p>Article 30(1) ... ensure that victims have the right to claim compensation from perpetrators for any of the offences established in accordance with this Convention.</p> <p>(2) Adequate state compensation shall be awarded to those who have sustained serious bodily injury or impairment of health, to the extent that the damage is not covered by other sources such as the perpetrator, insurance or state-funded health and social provisions. This does not preclude parties from claiming regress for compensation awarded from the perpetrator as long as due regard is paid to the victim's safety.</p>	Article 17(a) provide reparations for harms caused as a result of the violence;
Civil remedies	<p>Article 29(1) ... provide victims with adequate civil remedies against the perpetrator.</p> <p>(2) ... to provide victims with adequate civil remedies against state authorities that have failed in their duty to take the necessary preventive or protective measures within the scope of their powers.</p>	

5.2 Kosovo* Legal Framework

Aggravating factors	<ul style="list-style-type: none"> ▪ Any case of murder in cases affecting vulnerable victims including, children, pregnant women or family members, are considered as cases of aggravated murder (Article 173) ▪ Any person committing physical, psychological or economic violence or mistreatment with the intent to violate the dignity of another person within a domestic relationship shall be punished by fine and imprisonment of up to three (3) years. If such acts in the Criminal Code are committed within a domestic relationship, it will be considered as an aggravating circumstance (Article 248).
Victim compensation	<ul style="list-style-type: none"> ▪ Law 05/L-036 on Crime Victim Compensation contains concrete steps to compensate victims of crime. ▪ The SOPs for Victim Protection and Assistance within the State Prosecutor's Office strengthen the basis for victim compensation.

5.3 Some considerations for prosecutors

While sentencing is a decision for the court, generally prosecutors have a duty to offer assistance to the sentencing court in reaching its decision as to the appropriate sentence. Prosecutors should consider:

- Requesting a sentencing hearing and ensuring that the court has all the information it needs to sentence appropriately. Prosecutors have a duty to ensure that the court has proper information for sentencing and also to provide advice and recommendations, which could include information about aggravating factors or a victim impact statement.
- Ensuring that the court considers a risk-assessment of offender dangerousness at the time of sentencing. Prosecutors should ensure that when making recommendations, they consider offering information about the results of a risk assessment. Prosecutors should ensure that they apply for appropriate ancillary orders which need to take into account the victim's needs, including their future protection.
- Ensuring that the court hears from the victim at the time of sentencing. Prosecutors should prepare the victim for a sentencing hearing and explain her options for providing input. The victim should describe, whether in a victim impact statement or other means, her opinion for sentencing of the perpetrator, describe how she and her family and friends have been affected by the crime and raise any other concerns that she believes are relevant to sentencing or in need of public expression (e.g. if she believes there

is continued risk). There might be a variety of ways available to the victim to discuss the impact of the violence on her life including: orally addressing the court; writing a letter to the judge; submitting a victim impact statement; having family, friends and members of the community address the court (orally or in writing); or cooperating with the probation officer or court appointed officer who is conducting a pre-sentence report. Victim impact statements can be useful tools to re-focus a judge's attention on the harm caused to the victim and to the community at the time of sentencing. Having the opportunity to express herself might assist in the victim's recovery.

- Recommending a sentence that considers the nature and gravity of the offense, the history of sexual and physical abuse, previous efforts at rehabilitation, the defendant's character and current rehabilitative needs as well as the interests of the community in protection and punishment. Prosecutors should be prepared to supply the court with relevant authorities, precedent cases, or drawing attention to sentencing guidelines.
- Being alert to arguments in mitigation that detract from the character of a witness and be ready to challenge anything which is misleading, untrue or unfair. Prosecutors should be prepared to challenge arguments made by defence counsel for reducing sentencing for "honour-related" crimes, or where the victims are viewed as particular "types", such as sex workers or a non-virgin.

5.4 Some considerations for judges

It is the responsibility of judges to determine the appropriate sentencing for cases involving violence against women and domestic violence. Judges should consider the following when dealing with cases involving violence against women and domestic violence:

- In determining the offence category, consider which categories of harm and culpability the offence falls into – and the category range of sentences prescribed. This includes considering the harm (e.g. severity of the psychological or physical harm; additional degradation; vulnerable victim) and the culpability (e.g. previous violence against the victim, abuse of trust, recording of the offence, offence motivated by the gender of the victim).
- Recognising biases when considering aggravating factors and mitigating factors. For example, practices show existing bias behind the practice of considering violent crimes committed by strangers as being more reprehensible than violence crimes committed by persons known to the victim or where repeated incidents of intimate partner violence are seen as common and the court applies the same penalty for each assault without considering the deterrent effect in applying increased sanctions for repeated incidents. In terms of mitigating factors, judges should be careful to consider the usual factors such as no previous conviction or previous good character as this does not reflect the reality of violence against women and domestic violence.
- In determining a sentence in respect of the offence of rape, the judge should not consider the following to justify a lesser sentence: the complainant's previous sexual history; an apparent lack of physical injury to the complainant; or any relationship between the accused person and the complainant prior to the offence being committed.
- Determining if there is a need to consider making additional orders, such as orders for rehabilitation or intervention treatment programmes. Such treatment or rehabilitation programmes may be part of sentencing, and be in addition to other penalties, including imprisonment or probation. Such orders recognise that simply removing a perpetrator from a situation does not ameliorate the real issue of re-victimisation, whether it is victimising the same victim or finding someone new to victimise. These types of orders as part of sentences focus on the changing of the behaviour of the perpetrator through rehabilitation which seeks to prevent him from repeating violent behaviour.
- In considering whether a rehabilitation or intervention treatment programme is appropriate, judges should consider such an order be part of a conviction rather than an alternative to a sentence that would be entered into the criminal record; require court supervision and court sanction if offenders do not satisfactorily complete the programme; programmes commit to working within a gendered structural analysis of violence against women as opposed to a simplistic or individualised anger management or alcohol/drug abuse paradigm, and accredited with an organisation that supports victim feedback as to whether the violence continues; such programme must prioritise victim safety.
- In ordering the sentence, judges should formulate clear reasons as to why such a sentence is effective, proportionate and dissuasive.

5.5 Some considerations when considering effective, proportionate and dissuasive sanctions

- Favour more intrusive dispositions. Research shows that more intrusive sentences (such as incarceration, work release, electronic monitoring and conditioned probation) significantly reduced re-arrest for domestic violence over the less intrusive sentences of fines or suspended sentences without probation.
- Take into account the whole prior criminal record. When considering the appropriate sentence, consider both the history of violence against women and domestic violence and the entire criminal history, as both indicate risk of re-abuse as well as general criminality. Some disposition studies reflect that domestic violence dispositions differ from standard sentencing patterns in that they often only focus on whether there is an abusive history and tend to disregard prior criminal history that are not domestic violence related. However, research suggests that both the domestic violence history and non-related criminal histories indicate risk of re-abuse as well as general criminality.
- Take into account “failure to appear”. Studies indicate that perpetrators who do not show up for court appearance are more at risk for re-abuse than those who do show.
- Exercise caution in recommending conditional discharges for “first” offenders. There are some studies that show that a minimum of a quarter of “first” offenders who are diverted or given dispositions without guilty findings will re-abuse or violate the terms of their conditional release.
- Register sex offenders, where available registry meets human rights standards and provides for individualised assessments.
- Consider the negative impact of fines on the victim. Imposing fines on a convicted perpetrator may interfere with their obligation to pay child support to the victim.
- Consider whether there are aggravating factors. Aggravating factors should enhance sentences.
- Any offender treatment/rehabilitation programmes that is part of a sentence needs to be closely monitored and enforced. Offenders ordered to treatment should be subject to court supervision and court sanctions if they do not satisfactorily complete treatment programmes. These programmes need to therefore have adequate funding and resources to ensure timely monitoring and immediate enforcement. To increase programme participation, consider post-dispositional compliance hearings as well as the placement of offenders on supervised probation.
- Consider the effectiveness of offender treatment/rehabilitation programmes. Research indicates programmes that incorporate alcohol and/or drug treatment adds to the likelihood of reduction in re-abuse as many perpetrators abuse alcohol and drugs. According to some studies, there is no evidence that anger management or couples counselling programmes effectively prevent court mandated offenders from re-abusing or committing new offences after treatment. Longer programmes are considered more effective than shorter programmes. However, some research suggests that treatment programmes as such are not likely to protect most victims from further harm from higher risk abusers.
- Restitution and reparations. Where the internal legal system permits the victims can file an application for reparations within a trial procedure on criminal matters, include an order of restitution to the victim who suffered loss as a proximate result of the perpetrator’s criminal conduct.

6. Mediation and reconciliation

It is important to understanding the terminology regarding alternative dispute resolution processes that can be found in family law system as well as the criminal justice system.

Alternative dispute resolution is understood as methods of resolving disputes alternative to judicial decisions (paragraph 251 of the Explanatory Report of the Istanbul Convention).

Mediation is a form of alternative dispute resolution, where typically an impartial third party, the mediator, assists the parties to negotiate a settlement.

Conciliation is a form of alternative dispute resolution, where a third party, who is usually but not necessarily neutral, meets with the parties both separately and together in an attempt to settle their disputes.

Diversion means any action that suspends criminal justice case processing of the charge, with one or more of the following results: no charges filed, charges dismissed, or charges expunged. The diversion decision can be taken by the police, prosecutors or courts. Diversionary programmes are also known as ‘alternative measures’ or ‘extra-judicial measures’.

Restorative justice recognises how crime affects the victim and community and focuses on repairing the damage caused by the offence and making reparations to the community and to the victim and returning the offender to a productive place in the community.

6.1 International Standards

Article 48, Istanbul Convention	Prohibits mandatory alternative dispute resolution processes, including mediation and reconciliation, in relation to cases of violence against women
Explanatory Report to the Istanbul Convention	Victims of domestic violence can never enter the alternative dispute resolution processes on a level equal to that of the perpetrator. Mediation and reconciliation practices assume that the parties approach the process with equal resources and power. Cases of violence against women, especially domestic violence, involve unequal power relationships based on acts of assault, violent intimidation, and/or controlling, abusive or humiliating behaviour. As a result of these concerns, in many parts of the world mediation practices have been prohibited in cases of intimate partner violence.
CEDAW’s General Recommendation No. 33 on women’s access to justice	States are to ensure that cases of violence against women, including domestic violence, are under no circumstances referred to any alternative dispute resolution procedures. Alternative dispute settlement procedures do not restrict access by women to judicial and other remedies in all areas of law, and does not lead to further violation of their rights.

6.2 Kosovo* Legal Framework

Law No. 06/L-009 on Mediation, 2018	Mediation in cases of domestic violence is strictly prohibited
Office of the State Chief Prosecutor, Guideline 360/16, June 2016	Prohibits the use of alternative measures such as reconciliation in domestic violence cases. The guidelines contain an explanation as to why reconciliation should not be used, using the cyclical patterns of domestic violence perpetrators as justification.

6.3 Some considerations for prosecutors and judges

It is not clear how prosecutors and judges should apply non-mandatory alternative measures in cases involving other forms of violence against women.

Considerations for prosecutors and judges regarding when to use non-mandatory alternative measures in these cases

- The starting position is that alternative measures, including diversion, are NOT appropriate in these cases.
- If it is to be allowed, it should be done in only extraordinary circumstances and with extreme caution.
- Alternative practices can be detrimental because of the power imbalance and safety risks for women interacting with perpetrators during face to face meetings.
- Violence against women cases need to be taken seriously and being mindful of the traditionally weak responses by the criminal justice system to this violence.
- Mediation should never be considered if there is a big gap in power between the victim and the perpetrator.
- There is a need to be very aware of the dynamics of domestic violence, particularly the history of power and control in intimate partner violence situations, where the victim is not only in an unequal position of power but has been traumatised, including psychologically.
- The main concern is for the safety of the victim, particularly in a situation of power imbalance. This unequal situation puts pressure on the victim who may fear worse if she does not go along with the abuser's suggestion to mediate.
- Another concern is that mediation is seen as a soft option which continues the historical trivialisation of intimate partner violence by the criminal justice system.

Guidelines if alternative measures, such as diversion or restorative justice, are to be used in criminal cases

- Any alternative measures used must be premised on an acknowledgement of responsibility for the offence.
- An agreement to make amends for the crime, such as compensating the victim.
- Consider agreeing only if the accused agrees to attend a diversion or treatment programme that encourages the accused to take responsibility of their action and examine the accused's attitudes and beliefs towards women.
- If diversion or rehabilitation/treatment programmes exist, then prosecutors and judges should only refer them if operators of such programmes work with victim services to enable feedback from the victim on recurrence of violence and only if justice officials provide continuous monitoring of compliance with regular, formal reviews and immediate reports to probation offices and police if violence reoccurs.
- The alternative measure must be grounded in an understanding of the context and complexities of violence against women and pay particular attention to the safety and needs of the victim.

Minimum criteria for referring to restorative justice:

- 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 (e.g. the prosecutor or judge) approves.
- The mediators are trained and qualified.
- A validated risk assessment has determined that the woman is not at high risk.
- The victim is fully informed of the process and she approves of the mediation.
- The victim freely consents to participate.

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Annex 2: Relevant jurisprudence at the International and European level

Relevant jurisprudence from the European Court of Human Rights

Opuz v. Turkey Application No. 33401/02, 2009

Domestic violence is a form of gender-based violence and constitutes a form of discrimination. The due diligence principle is upheld.

Facts: The applicant and her mother were assaulted and threatened over many years by the applicant's husband H.O., at various points leaving both women with life-threatening injuries. With only one exception, no prosecution was brought against him on the grounds that both women had withdrawn their complaints, despite their explanations that H.O. had harassed them into doing so, threatening to kill them. He subsequently stabbed his wife seven times and was given a fine equivalent to about 385 euros, payable in instalments. The two women filed numerous complaints, claiming their lives were in danger. H.O. was questioned and released. Finally, when the two women were trying to move away, H.O. shot dead his mother-in-law, arguing that his honour had been at stake. He was convicted for murder and sentenced to life imprisonment but released pending his appeal, whereupon his wife claimed he continued to threaten her.

Decision: The ECtHR found a violation of Article 2 (right to life) concerning the murder of H.O.'s mother-in-law and a violation of Article 3 (prohibition of inhuman or degrading treatment) concerning the state's failure to protect his wife. Turkey had failed to set up and implement a system for punishing domestic violence and protecting victims. The authorities had not even used the protective measures available and had discontinued proceedings as a "family matter" ignoring why the complaints had been withdrawn. There should have been a legal framework allowing criminal proceedings to be brought irrespective of whether the complaints had been withdrawn. The ECtHR also found – for the first time in a domestic violence case - violations of Article 14 (prohibition of discrimination), in conjunction with Articles 2 and 3, as the violence suffered by the two women was gender-based; domestic violence mainly affected women and it was encouraged by discriminatory judicial passivity. Despite reforms in the field (Law no. 4320), the unresponsiveness of the judicial system and impunity enjoyed by aggressors indicated that Turkey was not committed to tackling the problem: police officers tried to persuade women to drop their complaints, delays were frequent and courts mitigated sentences on the grounds of honour or tradition.

Kontrová v. Slovakia, Application No. 7510/04, 2005

Police's failure to launch a proper investigation based on victim's declaration and the action of a police officer who assisted her in modifying her complaint so that it could be treated as a minor offence.

Facts: On 2 November 2002 the applicant filed a criminal complaint against her husband for assaulting her and beating her with an electric cable, providing a medical certificate documenting that her injuries left her unfit to work for 6 days. She later returned to the police station with her husband to withdraw the complaint. The police reduced the criminal charge to a minor offence. The following month a relative of the victim called the police to indicate that the husband had locked himself into the apartment with a shotgun and threatened to kill himself and their two children. The victim also called the police. When the police arrived the perpetrator

had already left the scene. The applicant filed a complaint the next day. A few days later, the husband shot their two children and himself. The applicant received no compensation.

Decision: The ECtHR found a violation of Article 2 (right to life) of the European Convention on Human Rights, concerning the authorities' failure to protect the children's lives, and a violation of Article 13 (right to an effective remedy) of the Convention, concerning the impossibility for their mother to obtain compensation.

Bevacqua and S. v. Bulgaria, Application No. 71127/01, 2008

Recognised and advanced the due diligence standard when finding the authorities failed in their duty when considering domestic violence to be a "private matter".

Facts: The applicant, who claimed she was regularly battered by her husband, left him and filed for divorce, taking their three-year-old son (also an applicant) with her. However, she maintained that her husband continued to beat her. She spent four days in a shelter for abused women with her son but was allegedly warned that she could face prosecution for abducting the boy, leading to a court order for shared custody, which, she stated, her husband did not respect. Pressing charges against her husband for assault allegedly provoked further violence. Her requests for interim custody measures were not treated as priority and she finally obtained custody only when her divorce was pronounced more than a year later. The following year she was again battered by her ex-husband and her requests for a criminal prosecution were rejected on the ground that it was a "private matter" requiring a private prosecution.

Decisions: The ECtHR found a violation of Article 8 (right to respect for family life) given the Bulgarian authorities' failure to adopt the measures necessary to punish and control the applicant's husband. The ECtHR also stressed that considering the dispute to be a "private matter" was incompatible with the authorities' obligation to protect the applicants' family life.

Branko Tomašić and Others v. Croatia, Application No. 46598/06, 2009

The government failed to demonstrate that "the compulsory psychiatric treatment ordered in respect of M.M. during his prison term was actually and properly administered".

Facts: The applicants are the relatives of a baby and mother whose husband/father killed both them and himself one month after being released from prison, where he had been held for making those same death threats. He was originally ordered to undergo compulsory psychiatric treatment while in prison and after his release, as necessary, but the appeal court ordered that his treatment be stopped on his release.

Decision: The ECtHR found a violation of Article 2 (right to life) concerning the deaths of the mother and child: the Croatian authorities had not followed the order for continued psychiatric treatment; the government had failed to show that the husband had even received psychiatric treatment in prison; and, he did not undergo a psychiatric assessment prior to his release. The ECtHR also found that the state had failed to conduct a thorough investigation into the possible responsibility of their agents for the deaths.

Aydın v. Turkey, Application No. 23178/94, 1997

The state failed to conduct an effective investigation, in part, due to the appearance that the prosecutor's primary concern in ordering three medical examinations in rapid succession was to establish whether the applicant had lost her virginity, rather than on whether the applicant was a rape victim.

Facts: The applicant, a young Turkish woman of Kurdish origin (aged 17 at the relevant time) was arrested without explanation and taken, along with two other members of her family, into detention. She was blindfolded, beaten, stripped naked, placed in a tire and hosed with pressurised water before being raped by a member of the security forces and then again beaten for about an hour by several people. The day after being released, the victim, her father and sister went to the public prosecutor's office where they filed a complaint. They were sent to the state hospital for forensic tests, where the victim was subjected to a virginity test. The doctor confirmed that the hymen had been torn and that the victim had bruising on her inner thighs. The next day public prosecutor sent the victim to a second hospital to determine when she had lost her virginity; the doctor had estimated a week before the examination. No swab was taken. Neither of the forensic doctors were sufficiently qualified experts. A month later, the prosecutor took a second statement from the victim and sent her for a third examination of her virginity. The date of the torn hymen could not be determined. The victim received a letter that the investigation had produced no evidence of the rape. She further claimed that the family was

intimidated and harassed by the authorities to coerce them into withdrawing their complaint before the European Court of Human Rights.

Decision: The ECtHR stressed that the rape of a detainee by a state official had to be considered an especially grave and abhorrent form of ill-treatment which left deep psychological scars on the victim. The applicant must have felt debased and violated both physically and emotionally as a result of the sexual assault. The ECtHR found that both the accumulation of acts of physical and mental violence inflicted on the applicant and the especially cruel act of rape to which she was subjected amounted to torture, in violation of Article 3 (prohibition of torture). In addition, an allegation of rape by an official in custody required that the victim be examined with all appropriate sensitivity by independent doctors with the relevant expertise. That did not occur, rendering the investigation deficient and denying the applicant access to compensation, in violation of Article 13 (right to an effective remedy).

E.S. and Others v. Slovakia, Application No. 8227/04, 2009

A restraining order, as opposed to a barring order, did not provide the applicants with adequate protection and therefore did not amount to an effective domestic remedy.

Facts: In 2001 the applicant left her husband and lodged a criminal complaint against him for ill-treating her and her children and sexually abusing one of their daughters. He was convicted of violence and sexual abuse two years later and sentenced to 4 years imprisonment. Her request for her husband to be ordered to leave their home, a council flat of which they were joint tenants, was dismissed, however, the court finding that it did not have the power to restrict her husband's access to the property (she could only end the tenancy when divorced). They suggested she could apply for a restraining order. The applicant and her children were therefore forced to move away from their friends and family.

Decision: The ECtHR found that Slovakia had failed to provide the applicant and her children with the immediate protection required against her husband's violence, in violation of Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private and family life). Execution of this judgment is ongoing.

X and Y v. the Netherlands, Application No. 8978/80, 1985

State's positive obligation to interfere when it comes to effective protection and respect the right for private or family life.

Facts: A girl with a mental handicap was raped, in the home for children with mental disabilities where she lived, the day after her sixteenth birthday (which was the age of consent for sexual intercourse in the Netherlands) by a relative of the person in charge. She was traumatised by the experience but deemed unfit to sign an official complaint given her low mental age. Her father signed in her place, but proceedings were not brought against the perpetrator because the girl had to make the complaint herself.

Decision: The ECtHR recognised that there was a gap in the law. The ECtHR found a violation of Article 8 (right to respect for private life), emphasising that it was "indispensable" for the Netherlands criminal legal system to provide an effective deterrent in such cases.

M.C. v. Bulgaria, Application No. 39272/98, 2003

Obligation to effectively prosecute any non-consensual sexual acts, even where the victim has not physically resisted. It held that an essential element in rape/sexual abuse is lack of consent.

Facts: The applicant, aged 14 (which was the age of consent for sexual intercourse in Bulgaria), was raped by two men; she cried during and after being raped and was later taken to hospital by her mother, where it was found that her hymen had been torn. Because it could not be established that she had resisted or called for help, the perpetrators were not prosecuted.

Decision: The ECtHR found violations of Articles 3 (prohibition of degrading treatment) and 8 (right to respect for private life), noting the universal trend towards recognising lack of consent as the essential element in determining rape and sexual abuse. Victims of sexual abuse, especially young girls, often failed to resist for psychological reasons (either submitting passively or dissociating themselves from the rape) or for fear of further violence. Stressing that states had an obligation to prosecute any non-consensual sexual act, even where the victim had not resisted physically, the ECtHR found both the investigation in the case and Bulgaria law to be defective.

Y. v. Slovenia, Application No. 41107, 2015

The interests of the defence are to be balanced against those of witnesses or victims called upon to testify.

Facts: This case involved the alleged sexual assault of a fourteen-year-old girl by a family friend, aged 55. Reported to the police by a priest with whom the victim's mother spoke, the police first questioned Y in July 2002. The applicant alleged that X had attempted to have sexual intercourse with her various times, including while she was sleeping, that he had groped her, had performed oral sex on her and had forced her to do the same to him. Gynecological evidence regarding the applicant did not show conclusively that she had had sexual relations with Y; however, psychological examinations showed that she exhibited symptoms consistent with sexual victimisation. Criminal proceedings were begun against X and 12 hearings were held at first instance in the case. At one of these hearings, X cross-examined Y. He personally asked her over one hundred questions, including asking her to confirm that she could cry on cue, that she had actively sought his company and that she had confided in him that she wished to dominate men sexually. X frequently repeated his questions and disputed the accuracy and credibility of the answers provided by Y. The applicant grew agitated and cried, wherefore three recesses were ordered by the court. After one of these recesses, X asked the applicant whether she would feel better if they just went out to dinner. Ultimately, X was acquitted – in application of the *'in dubio pro reo'* principle – on the basis of medical evidence that contradicted Y's account of events. The symptoms of trauma exhibited by the applicant, the first-instance court furthermore held, could have stemmed from another source, such as the inappropriate behaviour of her former stepfather.

Decision: The ECtHR held that the duty to investigate requires authorities who are capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, such as witness testimony and forensic evidence, and a requirement of promptness and reasonable expedition is implicit in this context. While the ECtHR recognised national courts were faced with the difficult task of having to decide such cases on the basis of irreconcilable statements and without any physical evidence supporting either side's version of events, it found a violation based on the unexplainable and lengthy "periods of complete inactivity". As regards the conflicts between the interests of the defence and those of witnesses in criminal proceedings, the ECtHR has already held on several occasions that criminal proceedings should be organised in such a way as not to unjustifiably imperil the life, liberty or security of witnesses, and in particular those of victims called upon to testify, or their interests coming generally within the ambit of Article 8 of the Convention. Thus, the interests of the defence are to be balanced against those of witnesses or victims called upon to testify.

CEDAW jurisprudence

The CEDAW Committee has also addressed cases involving domestic and sexual violence, for those States that have ratified the Optional Protocol. These include, inter alia:

A.T. v. Hungary, Communication No. 2/2003, CEDAW/C/36/D/2/2003

Facts: The author alleged that she had been subjected to regular severe domestic violence and treatment by her common law husband and the father of her two children (L.F.) from 1998 onwards, even after he left the couple's family home. Although L.F. had allegedly threatened to kill the author and rape the children, the author did not go to a shelter because one of her children is severely brain-damaged and reportedly no shelter in the country is equipped to take in a fully disabled child together with their mother and sister. The author reported several incidents when she was beaten severely, leading to 10 medical certificates including one incident after which she was hospitalised for one week. In proceedings regarding L.F.'s access to the family home, following the author's decision to change the locks to prevent him from gaining access, the Court found in his favour, and the decision was upheld by the regional court when she appealed. She filed for division of the jointly owned property and instituted criminal proceedings against L.F. but these lasted years, failed to issue a protection order or detain the perpetrator were still pending by the date of her initial submission on 10 October 2003. As a victim in the proceedings she had no access to the relevant court documents. No assistance was provided from child protection authorities, despite her requests by phone, letter and in person.

Decision. The CEDAW Committee found that the State party had failed to meet its obligations under the Convention to protect the petitioner against domestic violence on the basis that Hungary's legal and institutional arrangements fell short of international standards, and available domestic remedies were ineffective to pro-

tect her against her violent former partner. The Committee opined that a delay of over three years in legal proceedings from the dates of the incidents in question amounted to an unreasonably prolonged delay, particularly considering that the author has been at risk of irreparable harm and received threats to her life during that period. With regard to the civil proceedings, it stated: "Women's human rights to life and to physical and mental integrity cannot be superseded by other rights, including the right to property and the right to privacy." It also observed the "persistence of entrenched traditional stereotypes regarding the role and responsibilities of women and men in the family". It also condemned the low priority afforded by national courts to domestic violence cases.

V.K. v. Bulgaria, Communication No. 20/2008, CEDAW/C/49/D/20/2008

Facts: The perpetrator only provided the victim with enough money for the family's basic needs. As they were living in Poland for his job, she could not work and thus was economically dependent. She was treated like a housekeeper, was not allowed to communicate freely with her friends and family. For years, she felt humiliated and depressed. When she insisted on returning to work, her husband ceased their financial maintenance "in an attempt to make her 'behave' and 'obey'". After numerous violent incidents, including against a women's centre staff member assisting the victim when she tried to contact her son, whom the husband had locked at home, the victim returned with her children to Bulgaria where she applied for a protection order. An emergency order was applied but the protection order was denied after a hearing because no violent incidents had occurred within the month preceding the application.

Decisions: The CEDAW Committee found that the state had required too high a level of violence to be proved before issuing an order. The Committee decided that when assessing whether a protection order should be granted, national courts should take account of all forms of gender-based violence affecting an applicant, not just life-threatening violence. Courts should also be aware that many forms of violence, particularly domestic violence, are courses of conduct which take place over time. Failure to take this into account violates women's rights not to be subjected to gender stereotyping.

Karen Tayag Vertido v. The Philippines, Communication No. 18/2008, UN Doc. CEDAW/ C/46/D/18/2008

Facts: The author, the Executive Director of the Davao City Chamber of Commerce and Industry in Davao City, was raped in a hotel room by a senior professional colleague, the 60-year-old president of the Chamber of Commerce, who she thought had a gun. The judge in the case acquitted the accused, finding that the victim should have should have fought off the accused once she had regained consciousness and while he was raping her, and therefore must have consented to sexual contact. She also doubted the victim's account of events, disbelieving that the accused would have able to proceed to the point of ejaculation as he was in his 60s. The victim claimed that she had suffered re-victimisation by the state after she was raped. The author made a strong and detailed case outlining the many "rape myths" that were included in this trial process.

Decision: CEDAW Committee determined that the Philippines had failed to comply with its obligation to ensure Ms Tayag Vertido's right to an effective remedy. In finding violations of articles 2(f) and 5(a), the Committee affirmed that CEDAW requires states parties to 'take appropriate measures to modify or abolish not only existing laws and regulations, but also customs and practices that constitute discrimination against women'. It also stressed that: "...stereotyping affects women's right to a fair and just trial and that the judiciary must take caution not to create inflexible standards of what women or girls should be or... have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim...". The CEDAW Committee found that the trial judge's decision contained 'several references to stereotypes about male and female sexuality being more supportive for the credibility of the alleged perpetrator than for the creditability of the victim' and many of the judge's comments focused on the personality and behaviour of the author, even though these issues are not part of the definition of the crime of rape. It concluded that Ms. Tayag Vertido suffered "re-victimisation through the stereotypes and gender-based myths relied upon in the judgement".

Yildirim (deceased v Austria and Goekce (deceased) v Austria, Communication No. 6/2005, UN Doc. CEDAW/C/39/D/6/2005 and Communication No. 5/2005, UN Doc. CEDAW/C/39/D/5/2005

Facts: Both applicants were murdered by their husbands after suffering prolonged domestic violence, including threats to kill. In both cases, the state took some action against the perpetrators, but it was not sufficient to prevent them murdering the applicants.

Decision: The CEDAW Committee expanded on the content of the standard of positive action required by the state's duty of due diligence for the actions of non-state actors. The CEDAW Committee noted that Austria had "established a comprehensive model to address domestic violence that includes legislation, criminal and civil-law remedies, awareness raising, education and training, shelters, counselling for victims of violence and work with perpetrators." These formal measures, while necessary, were nonetheless found to be insufficient by themselves when the political will they expressed, was not supported by state actors in adherence to Austria's due diligence obligations. *...in order for the individual woman victim of domestic violence to enjoy the practical realization of the principle of equality of men and women and of her human rights and fundamental freedoms, the political will that is expressed in the aforementioned [model]... must be supported by state actors, who adhere to the state party's due diligence obligations.* Paragraph 12.1.2 (common to both cases).

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