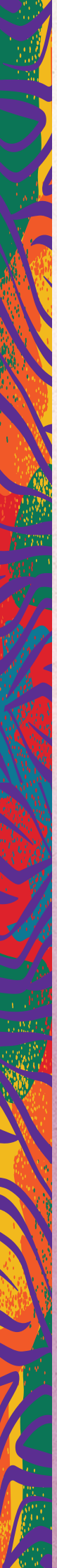


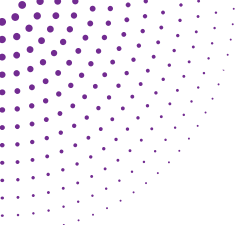
Pro Bono Lawyers Training Guide

— on Sexual & —
Gender-Based Violence



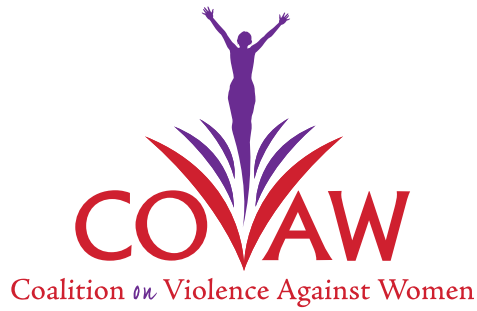
*Enhancing Access to Justice for Sexual and Gender-Based
Violence Victims with Intellectual Disabilities.*





With support from African Women Development Fund



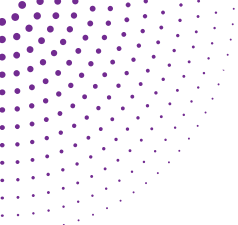


Pro Bono Lawyers Training Guide

on Sexual & Gender-Based Violence



*Enhancing Access to Justice for Sexual and Gender-Based
Violence Victims with Intellectual Disabilities.*



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Design & Layout: James Chunguli

Acknowledgments



round the world, different stakeholders such as Government Agencies, Development Agencies, and Local Civil Society Organizations are working to end sexual and gender-based violence. It is in the pursuit of that goal that hundreds of Professionals and Agencies have developed an extensive collection of resources on the issue. These persons have identified innovative and forward-thinking solutions to eliminate violence against women and girls. The development of this Guide relied on the knowledge, experiences, and activities contained within these resources. COVAW appreciates the contribution of its Pro bono Lawyers in reviewing the content of this training guide. Special thanks goes to Wairimu Munyinyi-Wahome, the Executive Director of COVAW and the Programme Team comprising of Eva Ruria (Programme Manager) Kwamboka Oseko (Legal Associate) Mercy Opiyo and Maurine Khabuchi (Programme Associates) for their leadership and contribution to the development of the training guide in collaboration with Prudence Mutiso, the Legal Consultant.

Preface



he Coalition on Violence Against Women (“COVAW”) is a Kenyan non-profit women’s rights organization that exists to champion the rights of women and girls to be free from all forms of violations. The COVAW projects fall under five (5) strategic focus areas, namely, Access to Comprehensive Sexual and Gender-Based Violence (SGBV) and Sexual and Reproductive Health Rights Services (SRHR) Services; Women’s Economic Empowerment; Women’s Leadership Development; Access to Justice; and Institutional Development. Accessing justice in Kenya is costly, especially for excluded, vulnerable, and marginalized groups. To support litigation, COVAW has a Pro Bono Lawyers’ Scheme from which it draws legal representation for SGBV cases affecting Intellectually Challenged Women and Girls (ICWGs).

Due to the existing gap in the provision of legal services, the development of the Pro bono Lawyers Training Guide was initiated by COVAW to support the capacity enhancement of the lawyers in addressing the gaps under the project *Enhancing Access to Justice for Sexual and Gender-Based Violence Victims with Intellectual Disabilities* supported by the African Women’s Development Fund (“AWDF”)

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Acronyms

ACHPR	African Charter on Human and People's Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AWDF	African Women's Development Fund
C.A.K	Court of Appeal Kenya
CA	Children's Act
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
COVAW	Coalition on Violence Against Women
CSEC	Commercial Sexual Exploitation of Children
CTIP	Counter-Trafficking in Persons Act
GOK	Government of Kenya
H.C.K	High Court of Kenya
I.O.	Investigating Officer
IASC	Inter-Agency Standing Committee
IAU	Internal Affairs Unit
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, Cultural Rights
ICWG	Intellectually Challenged Women and Girls
IQ	Intelligent Quotient
LSK	Law Society of Kenya
MTD	Multi-Disciplinary
NEP	Narrative Event Practice
NPS	National Police Service
ODPP	Office of The Director of Public Prosecution
PADVA	Protection Against Domestic Violence Act
PAFGM	Prohibition of Female Genital Mutilation Act
SCOK	Supreme Court of Kenya
SGBV	Sexual and Gender-Based Violence
SIDA	Swedish International Development Agency
SOA	Sexual Offences Act
SRHR	Sexual and Reproductive Health Rights
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
VPA	Victim Protection Act
WHO	World Health Organization
WPA	Witness Protection Act/Agency

Introduction

During the introductory session, the facilitator should orient the participants to the training objectives, logistics, and begin to build relationships with each other.



Course Objectives

1. Increase participant's awareness of sexual and gender-based violence ("SGBV") and its impact on the elderly and intellectually challenged women and girls.
2. Increase the participant's capacity to identify, prioritize, and develop targeted legal solutions to SGBV.
3. Enhance participant's knowledge of the best practices to support effective Prosecution of SGBV.

Module 1- The Reporting and Referral Mechanism in Sexual and Gender-Based Violence

The module equips learners with the knowledge to identify vulnerable survivors of SGBV, such as the intellectually challenged women and girls. Through this module, participants gain insight on how to use their legal skills to support SGBV cases through the reporting and referral mechanism.

Module 2- The Kenya Sexual and Gender-Based Legal framework

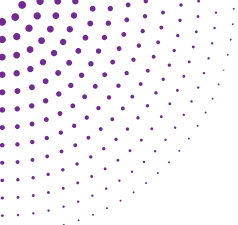
Through this module, the participants gain an understanding of SGBV and types of SGBV. Additionally, the participants critically examine the international, regional, and domestic legal framework on SGBV, including the remedies available for vulnerable victims.

Module 3- Victim Centered Approach

This module provides participants with a deeper understanding of a victim-centered approach through the provisions of the Victim Protection Act. The participants also learn ways to enhance the victim's participation in the trial process while minimizing the victim's re-traumatization.

Module 4- Client Care

This module provides insight into the meaning of trauma, the impact of SGBV on vulnerable survivors, and the importance of adopting a trauma-focused approach while dealing with SGBV survivors.



The module also outlines the meaning and significance of psychosocial support to SGBV survivors. Further, the module provides learners with guidelines on SGBV related media engagement.



How Does it Work?

The Guide consists of Four (4) training modules of forty minutes to three hours, each covering different thematic areas. The facilitator should select the appropriate topic(s) to the learning needs of the group, read the recommended training materials, and deliver the training. **Please, note that the indicated time for each Activity is a brief guide. The facilitator should time each event as appropriate and ensure that the training provides a practical and case-based study.**

The Contents of Each Module

Each module contains the following components: a summary with objectives and instructions for the facilitator, sessions with key messages, group activities, and additional reading resources listed in the Annexure.

Handout: These accompany each module. The facilitator should make copies for all participants before the training and distribute them when necessary.

Pre-Training and Post-Training Assessment: The Guide contains a test sheet with multiple-choice questions for participants, as well as an answer sheet. The trainer should ask participants to take the test before (pre-test) and after (post-test) the training to help determine the increase or change in knowledge.

Training Style: The facilitator is required to adopt lectures, group discussions, stories, short films and the Socratic method to facilitate the training. As a facilitator, you are encouraged to make the training highly interactive. The facilitator should prepare a highly engaging PowerPoint presentation to deliver the training.

Making the Introduction

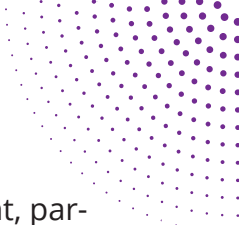
Icebreaker: A Penny for Your Thoughts (15 Minutes)

See Activity Sheet for Activity 1 for the Ice Breaker



Facilitator Note:

- **Ground rules:** As the workshop begins, have participants set the ground rules (turn off mobile phones, respect confidentiality, respect other participants' contributions, avoid using identifying information about survivors).



Communicate to participants that even in a safe learning environment, participants may recall stressful work or personal experiences. Remind participants that the facilitators are there to help participants learn, so questions are always welcome.

- **Managing discussions:** The subject of SGBV stimulates many questions and debates. Useful learning can come out of such talks, but sometimes it is necessary to move the session along and save items until a time designated for questions and answers.
- **“Parking”:** The facilitator should inform the participants of the need to park questions for later. Post a flipchart on the wall for parking the questions.
- **Group work:** During group work, the facilitator should circulate among the groups to make sure that they have understood the exercise. Make sure participants take turns chairing and presenting the group work.
- **Location:** Where is the training taking place?
- **Share Training Agenda and Logistics:** What materials are available (computer, projector)? Share the room set up, the length of training, including the duration of the training. This training should ideally take place over a one-and-a-half-day period.
- **Manage Expectations:** Have the participants state their expectations for the training and post it on a flipchart. Make sure to review the expectations at the end of the training and record the feedback from participants.
- **Distribute the Pre-Test (15 Minutes)**

Module I:

The Reporting and Referral Mechanism on Sexual and Gender Based-Violence



Time: 2 Hours

Summary: This module provides participants with an in-depth understanding of the sexual and gender-based violence (“SGBV”) guidelines for cases affecting Intellectually Challenged Women and Girls (“ICWGs”). Participants also gain an understanding of the referral mechanism to ensure round support for SGBV survivors.



Learning Objectives

1. Increase knowledge on the importance of victim counsel assisted investigations, in SGBV cases affecting ICWGs.
2. Create awareness of the national referral mechanism.
3. Increase knowledge of the role of Lawyers at the reporting and referral stage.



Required:

Flip Charts and Marker Pens



Key Messages

- The Lawyer has the responsibility to develop a sound understanding of the types of intellectual disabilities affecting women and girls in Kenya
- A Lawyer should actively liaise with the Investigating Officer (“I.O”) or the In-Charge to ensure fast-tracking of the investigations
- A Lawyer should recognize a client’s understanding varies from time to time and should take steps to accommodate the client needs at each stage of the investigation process
- The Lawyer should ensure that the client or the caregiver collects the necessary documentation for the Prosecution of the case



Facilitator's Note:

For purposes of this Guide, vulnerable victims refer to women and girls living with intellectual disabilities ("ICWGs") and the elderly. The terms "client" and "vulnerable victims" are used interchangeably.

Session 1: Understanding the Reporting and Referral Mechanism



Time: 1 hour

During this session, participants learn the importance of a multidisciplinary approach to SGBV, including the specific responsibility of Lawyers handling cases affecting vulnerable victims.



Key Messages


- Upon receiving a client referral, a Lawyer should take steps to interview the client and determine the course of action
- Legal support, medical and psychosocial support are critical response services
- A Lawyer should adopt a multidisciplinary approach to SGBV cases.
- Encourage clients to observe the seventy-two ("72") hour rule in reporting of SGBV cases to assist in timely access of the support services and collection of evidence
- Support services should provide an environment where SGBV survivors can confidentially report incidents and have appropriate and non-discriminatory access to services

What You Need to Know About Intellectual Disability

Intellectual disability involves problems with general mental abilities that affect functioning in two areas:

- Intellectual functioning (such as learning, problem-solving, judgment)
- Adaptive functioning (activities of daily life, such as communication and independent living).¹

¹ Rana Parekh, *What is Intellectual Disability* (2017), <https://www.psychiatry.org/patients-families/intellectual-disability/what-is-intellectual-disability> (last accessed on 30th March 2020).



Diagnosing Intellectual disability: a doctor's exam and standardized testing assess the intellectual functioning of a person. While diagnosing does not require a specific full-scale IQ test score, the mental health experts use a standardized test as part of diagnosing the condition. A score of around seventy (70 to 75) seventy-five indicates a significant limitation in intellectual functioning.²



Facilitator's Note:

To learn more about the types, causes, and treatment for intellectual disability refer to the Diagnostic & Statistical Manual on Mental Disorders, 5th Edition (DSM-5). COVAW to provide a copy of the Book. Research global and local statistics of persons living with intellectual disabilities.

Risks Associated with Intellectually Challenged Women and Girls

- ICWGs face the risk of SGBV due to their vulnerability that predisposes them to abuse as perpetrators view them as “easy prey.”
- Attitudes and beliefs about disability differ within communities and families, but in many cases are affected by socio-cultural norms, including myths that lead to increased violence
- The stigma associated with these beliefs causes families to hide their children with disabilities or to exclude them from school and their communities.
- Stigma contributes to silence when violations happen

What is the Responsibility of a Lawyer in Addressing Violence against Intellectually Challenged Women and Girls?

A Lawyer must have:

1. The basic knowledge of the forms of violence against women and girls and the harmful impact of violence on victims;
2. The knowledge of all relevant laws, policies, and programs that assist in the Prosecution of the violence.
3. The skills to identify and make responses appropriate to the specific needs of vulnerable victims.
4. The knowledge to identify active investigation and prosecution strategies to avoid secondary victimization of vulnerable victims during all stages of the criminal trial process.

² Rana Parekh, *What is Intellectual Disability* (2017), <https://www.psychiatry.org/patients-families/intellectual-disability/what-is-intellectual-disability> (last accessed on 30th March 2020).

Adopting A Multidisciplinary Approach in Responding to Sexual and Gender-Based Violence

A multidisciplinary (“MTD”) approach recognizes the limitation of one justice actor responding to a case. The MTD approach acknowledges the need for different service providers to work together to achieve the best outcome for the client.³ The approach ensures that professionals of diverse backgrounds work together to support a victim of SGBV and address any needs arising.

In Kenya, the approach has worked in prosecuting sexual violence cases and ensuring the protection of vulnerable victims. Lawyers should work with an Investigator and consult with the Prosecution Counsel whenever representing a vulnerable victim.

What is the Role of the Lawyer at the Investigations Stage?

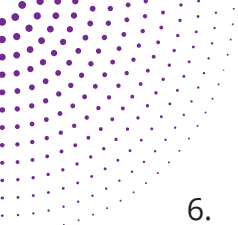


Facilitator’s Note:

For purposes of this Guide, the reporting stage refers to the time when a Lawyer or Kenya Police take up a case affecting a vulnerable victim.

1. A Lawyer should interview the client in the presence of a caregiver and establish how far the case has progressed in investigations. The presence of the caregiver ensures that the client communicates and fosters a mutual understanding.
2. Ensure the client provides you with the occurrence book number (“OB”) and all supporting documentation for the case. The supporting documentation includes a birth certificate or Identity Card (this includes identity cards issued by the National Council of Persons with Disabilities), charge sheet, witness statements, and medical reports.
3. Many times, Investigators show reluctance in investigating cases affecting ICWG. The Investigator may also decline to engage with you or share any information affecting your client’s case. As a Lawyer, you should write to the Officer Commanding Station (“OCS”) to establish the status of the case and, if need be, escalate it to the Officer Commanding Police Division (“OCPD”) or the Internal Affairs Unit (“IAU”) of the Kenya Police.
4. Conduct follow-up interviews for additional information with the client.
5. The Lawyer should ensure that Investigators understand the relevant laws on violence against ICWGs, including the elements of the offense and special criminal procedures applicable to these offenses.

³ UN Kenya, *Gender-Based Violence Training Resource Pack: A Standardized Training Tool For Duty Bearers, Stakeholders, & Rights Holders* (2019), <https://www.genderinkkenya.org/wp-content/uploads/2019/11/GBV-Resource-Pack-13-Sept-w-3mm-bleed.pdf> (last accessed on 29th March 2020).

- 
6. The Lawyer should follow up to ensure there is no inordinate delay in the investigations, the arrest of the perpetrator, and subsequent institution of the case in court.
 7. Caution your clients and their caregivers against attempting an “out of court settlement,” with regards to sexual violence cases.
 8. Manage the client’s expectations, especially in the criminal trial process, so they are aware of what to expect at each stage. Inform them not all cases result in conviction of the accused persons.
 9. If the Investigator is open to receiving guidance, the Lawyer should review the investigation file and recommend strategies to address the evidentiary gaps in prosecuting sexual violence.⁴
 10. Whenever making visits to the police station, always carry a copy of the Law Society of Kenya (“LSK”) Identity card.



Wrap-Up (10 Minutes)

- Ask participants to share key takeaways and lessons

Session 2: The Sexual and Gender-Based Violence Referral Pathway



Time: 1 Hour

In the referral pathway, legal services provide critical support in access to justice for vulnerable victims. This session looks at ways in which a Lawyer can make use of the multidisciplinary SGBV pathway to secure and advance the rights of ICWGs towards perpetrator accountability.



Facilitator’s Note:

Refer to Handout Module 1 for the role of each actor at the referral stage. Research contacts of local organizations supporting IGWGs and victims of SGBV.

⁴ UNODC, *Handbook on Effective Prosecution of Violence against Women and Girls* (2014), https://www.unodc.org/documents/justice-and-prison-reform/Handbook_on_effective_prosecution_responses_to_violence_against_women_and_girls.pdf (last accessed 2nd April 2020).



Key Messages

- A multidisciplinary approach in responding to SGBV is about different actors working together to establish a coordinated inter-agency response, to prevent and respond to such cases
- A Lawyer should use the referral mechanisms to connect clients to appropriate services in a timely and safe manner
- A Lawyer should identify local networks that provide support to ICWGs within their area of practice. For example, the Kenyatta National Hospital Mental Health Department or call hotlines such as Child Helpline 116 and the GBV Hotline 1195

The Role of Lawyers at the Referral Stage

The Lawyer should confirm that:

1. The victims receive assistance from support persons, such as child specialists and psychologists, starting from the initial report and continuing until the support is no longer needed.⁵
2. The victim gains access to the relevant services, including health services, for their treatment and the police, to collect evidence for the Prosecution of the case.
3. The client is accorded the necessary protection measures such as placement in shelter or place of safety if needed.
4. The Investigating Officer ("I.O") facilitates the collection of any forensic evidence such as DNA, to support the Prosecution of the case.
5. As a Victim Counsel, critically examine witness statements for any information left out and advise the IO to record a further statement as per the Service Standing Orders.⁶
6. As a Victim Counsel, liaise with IO and Office of the Director of Public Prosecution ("ODPP") to ensure the proper drafting of the charge sheet.
7. The Investigators and other key justice actors involved, correctly record the account of events through proper filing of critical evidentiary documents such as the P3 and Post-Rape Care ("PRC") forms for purposes of having credible documentary evidence.

⁵ UNODC-UNICEF, *Handbook for Professionals and Policymakers on Justice in Matters Involving Child Victims and Witnesses of Crime*, (2009), available at https://www.unodc.org/documents/justice-and-prison-reform/hb_justice_in_matters_professionals.pdf (last accessed 30th March 2020).

⁶ UNODC-UNICEF, *Handbook for Professionals and Policymakers on Justice in Matters Involving Child Victims and Witnesses of Crime*, (2009), available at https://www.unodc.org/documents/justice-and-prison-reform/hb_justice_in_matters_professionals.pdf (last accessed 30th March 2020).



Group Activity (20 Minutes)

- Divide the participants into three groups and distribute Activity 2
- Ask the participants to read the Activity carefully and answer the following questions:
 1. Identify the role of Lawyers in reporting the cases as identified in the Activity.
 2. Describe the referral pathway for the victims in the case study
 3. Identify local agencies that can help the victims
- Review the questions one by one and ask a group to give a summary of their discussions
- Ask the other groups to make any additional points
- At the end of the discussion, answer any questions and share Module Handout 1 with the participants



Facilitator's note:

Refer to Handout Module 1 for more information on the government of Kenya approved SGBV referral pathway, including the role of each actor and the examination done and documentation collected at each stage. Provide a list of contacts for local organizations that support SGBV victims.



Wrap Up (10 Minutes)

- Ask participants to share key takeaways
- Upon reporting of a case, a Lawyer should ensure clients receive the appropriate counseling and medical services
- A Lawyer should ensure coordination with appropriate service providers such as Investigators, Counsellors to support the client during the reporting stage, including the arrest and arraignment of the suspect in court
- For victim counsel assisted investigations, a Lawyer should take steps to review and analyze the Investigation file for evidentiary gaps and make appropriate recommendations through case analysis

Module II:

The Kenya Sexual and Gender-Based Violence Legal Framework



Time: 3 Hours

Summary:

The module provides participants with an understanding of SGBV through a detailed overview of Kenya's SGBV legal framework. Also, the module examines ways to formulate strategies for the effective Prosecution of SGBV cases involving vulnerable victims, including identifying the elements of key offenses under the law and ways to prove each element during a trial.

Session I: Understanding SGBV and types of SGBV

Session II: The International, Regional and National Legal Framework

Session III: Effective Prosecution of SGBV cases affecting Vulnerable Victims



Learning Objectives

After this module engagement, participants should:

1. Define and demonstrate an understanding of SGBV
2. Describe the legal framework protecting vulnerable victims from SGBV
3. Identify the legal remedies available to vulnerable victims



Required:

- Flip Charts & Marker Pens
- Share copies of the Sexual Offences Act, 2006 and other relevant statutes



Key Messages

- SGBV disproportionately harms women and girls especially ICWGs
- A Lawyer should adopt a multidisciplinary approach in the Prosecution of SGBV cases
- A Lawyer should develop knowledge on the laws and elements required to prove each case and ensure the evidence collected supports the Prosecution of the case
- A Lawyer should take cognizance of laws that perpetuate discrimination against ICWGs and challenge discriminatory laws
- A Lawyer should empower vulnerable victims to navigate the criminal justice system



Facilitator's Note:

- *Research Global and local statistics of SGBV and its impact on ICWGs and the elderly*

Session 1: Understanding Sexual and Gender-Based Violence



Time: 1 Hour



Key Messages

- SGBV negatively affects vulnerable victims regardless of their geographical location, socio-economic background, race, religion, sexuality, or gender identity
- ICWGs and the elderly are at higher risk of being victims of SGBV
- SGBV causes serious repercussions such as physical, mental, economic, and social issues
- The lack of access to justice, unavailability of resources including economic opportunities, perpetuates the cycle of violence leading to a survivor- abuser dependency

Defining Sexual and Gender-Based Violence

The Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”) General Recommendation Number 19 defines SGBV as encompassing the following:

- (a) Physical, sexual and psychological violence occurring in the family; including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.
- (b) CEDAW also defines violence as physical, sexual, and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment, and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.⁷

What is Sexual Violence: The World Health Organization (“WHO”) defines sexual violence as any sexual act, attempt to obtain a sexual act, unwanted sexual comments, and advances. Sexual violence also includes acts to traffic directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.⁸

Types of Sexual and Gender-Based Violence Affecting Vulnerable Victims

1. **Sexual violence**
2. **Physical violence:** involves the unlawful use of force through bodily contact
3. **Emotional/Psychological Violence:** consists of any act or treatment which may diminish the sense of identity, dignity, and self-worth of a person. It also means a pattern of degrading or humiliating conduct towards a person.
4. **Economic violence:** occurs mostly in a domestic relationship through the control of access to financial resources, diminishing the victim’s capacity to support themselves, forcing them to depend on the perpetrator.
5. **Domestic violence:** refers to abuse and intimidation between people in an intimate relationship or family relationship. The perpetrator uses force to control and dominate the other person. The use of force causes fear, physical harm, and psychological harm.
6. **Harmful traditional practices:** this form of violence is committed primarily against women and girls in specific communities as part of accepted cultural practice.

⁷ CEDAW General Recommendation 19, (1992) [https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm; CEDAW General Recommendation 35 \(2017\), https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf](https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm; CEDAW General Recommendation 35 (2017), https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf) (last accessed 30th March 2020).

⁸ WHO, *Global Campaign for Violence Prevention* (2014), https://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf (last accessed 12th May 2020).



Facilitator's Note:

See Handout Module 2 for the definition of *Trafficking in Persons*, *Commercial Sexual Exploitation of Children ("CSEC")*, *Child Marriage*, *Female Genital Mutilation/Cutting ("FGM/Cutting")* and other related definitions.



Wrap Up (10 Minutes)

- Ask participants to share key takeaways
- A Lawyer should develop knowledge on the disproportionate effects of violence on vulnerable victims by reading the CEDAW General Recommendation 19 and the updated version captured under the CEDAW General Recommendation 35
- A Lawyer should assess the vulnerability of clients to the different forms of SGBV and take appropriate responsive measures

Session 2: Understanding Kenya's Sexual and Gender-Based Violence Legal Framework



Time: 2 Hours



Key Messages

- Kenya has a comprehensive SGBV legal framework that has incorporated regional and international standards
- A Lawyer should develop a sound understanding of the fundamental laws, substantive laws, procedural laws, and supporting legislation for the effective Prosecution of SGBV cases affecting vulnerable victims.
- Conversely, the Kenyan legal framework does not adequately protect the rights of ICWGs, and the Lawyers have a responsibility to push for policies and laws that safeguard the rights of ICWGs. *For example, Section 146 of the Penal Code and Section 125 (2) of the Evidence Act uses derogatory terms against persons with mental disorders*
- The Lawyer has the responsibility to analyze the SGBV Case File to ensure the evidence on record meets the evidentiary test

⁹ UNHCR, *Strategic Litigation For SGBV: Lessons Learned* (2019), <https://www.ohchr.org/Documents/Issues/Women/WRGS/OHCHR-StrategicLitigationforSV-workshopreport-web.pdf> (last accessed 29th March 2020).

- Strategic SGBV litigation has excellent potential to enhance victims' access to justice and can contribute to legislative or societal transformation.⁹ The benefits include enforcing existing legislation or clarifying its meaning, reviewing or amending laws, regulations or policies, developing jurisprudence, raising awareness at the national or international level, combating stigma, or addressing the consequences of sexual violence on victims.
- On strategic litigation, Lawyers should take advantage of regional and international enforcement mechanisms should they exhaust domestic remedies.¹⁰

Disability Rights Framework in Kenya

Persons with mental and intellectual disabilities are among the most marginalized, vulnerable, and excluded groups in society. According to the Kenya Association for the Intellectually Handicap ("KAIH"), women and girls with intellectual disabilities face numerous challenges in accessing justice.¹¹ Such challenges include instances when police and health service providers fail to take the cases seriously and even lack the technical know-how to communicate effectively to provide the required services and support. Discrimination against persons with mental and intellectual disabilities persists through institutional structures and practices, resulting in systematic violations of human rights and exclusion.

The government of Kenya has taken several legislative and policy steps that indicate a commitment to advancing the rights of persons with disabilities. Kenya has signed and ratified international and regional treaties that provide unique protection to persons with disabilities. Further, the government has enacted a national legal framework that accords special protection to persons with disabilities.¹² The treaties ratified by Kenya protect persons with disabilities through the rights to fair treatment, appropriate care, inclusion, and full participation in society.

The International and Regional Framework



Facilitator's Note:

Indicate the year of Kenya's signing & ratification of international & Regional Treaties; Refer to Handout Module 3.

¹⁰ *Id.*

¹¹ SIDA, *Disability Rights in Kenya* (2014), <https://www.sida.se/globalassets/sida/eng/partners/human-rights-based-approach/disability/rights-of-persons-with-disabilities-kenya.pdf> (last accessed 12th May 2020).

¹² *Id.*



United Nations Convention on Rights of Persons with Disabilities (“UNCRPD”): The law provides for the full and equal enjoyment of all human rights and fundamental freedoms of persons with disabilities, including ICWGs. The issue of legal capacity remains a challenge to some persons with disabilities, particularly to those with mental and cognitive disabilities, where people make decisions on their behalf without consulting them.



Facilitator’s Note:

Refer to the UNCRPD Article 12 on the legal capacity of persons with intellectual disabilities and Article 13 on access to justice. For more information on Kenya’s compliance with the UNCRPD and legal capacity, refer to the Kenya National Commission on Human Rights report.¹³

Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”): Is often described as an international bill of rights for women. The treaty requires States to protect women, including women with disabilities from all forms of violence. **CEDAW General Recommendation 19 and 35 on violence against women** requires States such as Kenya to end customs allowing violence against women. The Recommendation also requires the elimination of stereotyped roles that perpetuate widespread violent practices (family violence, forced marriage, dowry deaths, acid attacks, and female circumcision).

International Covenant on Civil and Political Rights (“ICCPR”): The treaty provides for the inclusion of all persons in the enjoyment of civil and political rights. The treaty also supports efforts to combat FGM in that it prohibits torture or cruel, inhuman, or degrading treatment or punishment. Refer to *Human Rights Committee General Comment 20*.

The Regional Legal Framework

African Charter Human and Peoples Rights (“ACHPR”): Requires states which have ratified the treaty to ensure equal protection of all persons and to respect for personal integrity, human dignity. The treaty prohibits torture and cruel, inhuman, or degrading treatment.

Protocol to the ACHPR on the Rights of Women in Africa (Maputo Protocol): This is a binding legal framework that holds African governments to account for the violation of the rights of women and girls in Africa, including women and girls with disabilities.

Protocol to the ACHPR on the Rights of Persons with Disabilities: Provides for the rights of persons with disabilities, including intellectual disabilities. The Government of Kenya has not ratified this Protocol; therefore, it does not form part of the Laws of Kenya.

¹³ KNCHR, *International Obligations Report on CRPD* (2016) <http://www.knchr.org/Portals/0/InternationalObligationsReports/CRPD%20REPORT%20A4.pdf?ver=2016-08> (last accessed 26th March 2020).

The National Legal Framework

The Constitution: Prohibits discrimination based on disability and provides for the equality and non-discrimination of all persons under the law. The Constitution guarantees the right to access to justice for all persons and guarantees that if any fee is required, then the same should be reasonable and shall not impede access to justice. Article 53 requires the promotion of the best interests of the child, while Article 54 requires the dignified treatment and respect of persons with disabilities, including ICWGs.¹⁴

Persons with Disability Act ("PWDA"): The Law recognizes the rights of persons with disabilities, including the right to be free from all forms of violence.

The Protection against Domestic Violence Act ("PADVA"): Provides for the protection and relief to domestic violence victims, including **persons with disabilities** such as **ICWGs** or **older persons**. Under this law, **domestic violence includes** child marriage, female genital mutilation, forced marriage, forced wife inheritance, interference from in-laws, sexual abuse within a marriage, virginity testing, and widow cleansing.

The Sexual Offences Act ("SOA"): Extends protection to persons living with disabilities to include a caregiver or a person reporting on their behalf. The law under section 31 provides for vulnerable witnesses such as **ICWGs** and **older persons** and the role of an intermediary in assisting them during a court hearing. The statute also recognizes that children and persons with intellectual challenges cannot give consent.

The Penal Code: The law provides for offenses against the person, including the offense of "common assault" or "assault causing bodily harm." Section 146 provides for the offense of defilement of persons with intellectual challenges. The provision is, however, derogatory and refers to persons with intellectual challenges as "idiots and imbeciles." The enactment of the SOA repealed most sections relating to sexual violence.

The Prohibition of Female Genital Mutilation Act ("PFGM"): This law prohibits the practice of female genital mutilation and safeguards against violation of a person's mental or physical integrity through the practice of female genital mutilation. See section 19 to section 25.

The Victim Protection Act ("VPA"): This Law provides for the rights of victims of crime, including SGBV victims, during the pre-trial, the trial, and post-trial phase. See section 4 to section 26.

The Counter-Trafficking in Persons Act ("CTIP"): Provides for the offense of trafficking in persons including for purposes of sexual exploitation. See section 2 to section 15.

¹⁴ The Constitution art.53; art.54 (Kenya) (2010) available at www.kenyalaw.org.

The Children's Act ("CA"): Sets out the rights of children, prohibits discrimination on the grounds of disability, and provides for the procedure of safeguarding children. The best interest of the child is paramount in all matters concerning a child. See section 119.

The Witness Protection Act ("WPA"): This Law provides for the protection of witnesses in criminal cases and other proceedings. Through the Office of the Director of Public Prosecutions ("ODPP") and the Kenya Police and SGBV victim or witness can apply for protection to the agency.

The Criminal Procedure Code ("CPC") and the Evidence Act ("EA"): Provides for the criminal procedures and the rules of submitting evidence in court.¹⁵



Facilitator's Note:

Refer to Handout Module 3 for other laws related to SGBV prosecution

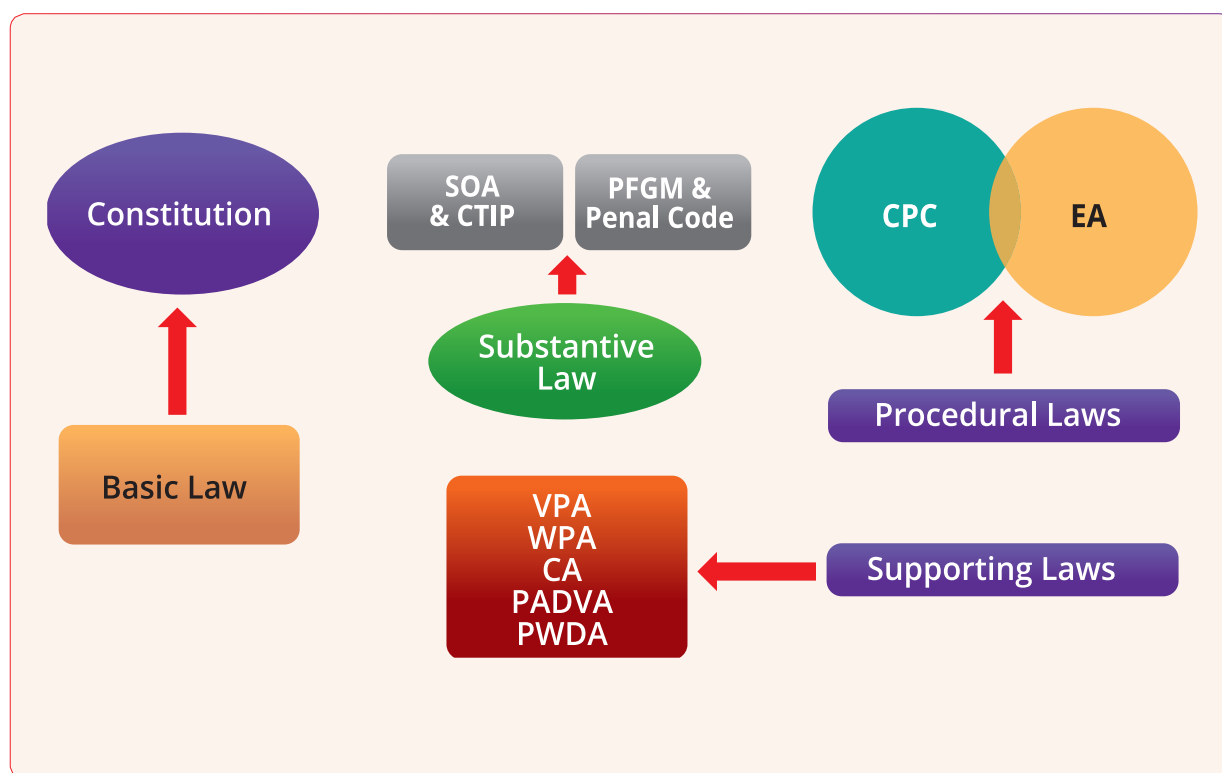


Figure 1: Kenya's SGBV Legal Framework

¹⁵ The Sexual Offences Act (2006); The Counter-Trafficking in Persons Act (2010); The Prohibition of Female Genital Mutilation (2011) available at www.kenyalaw.org.

Group Discussion (20 Minutes)


- Divide the participants into three groups
- Ask the participants to discuss the following issues:
 1. Identify the barriers that ICWGs and the elderly face in accessing justice
 2. Identify the challenges Lawyers face in representing ICWGs
 3. Suggest innovative ways in which Lawyers can overcome the challenges identified above
- Review the questions one by one and ask one group to share a summary of their discussion
- Other groups can make additional points
- Use the notes below to discuss ways to overcome the barriers and challenges using the legal framework

Challenges in Representing Intellectually Challenged Women and Girls

1. Courts, in most cases, find it challenging to convict suspects in cases where the victim or witness did not positively identify the suspect, thus making their evidence weak, leading to the dismissal of cases. Ensure that the Prosecution relies on other means to prove identification.
2. Victims may decide to drop out of the litigation process. The Lawyer should take steps to find out the reasons and identify ways to mitigate them. Remember to respect the victim's choices and wishes.
3. Conflicts may arise between the Victim Counsel and the Prosecutor. Ensure that all strategies promote the best interests of the victim.
4. Victims may not attend court due to the distance involved. When victims live far from the court station, for instance, in remote areas, ensure that during the hearing, you make an application for witnesses' expenses to the court. Identify other local organizations that can provide support with witness expenses.
5. Courts and other justice actors may fail to take note that an ICWG or the elderly are vulnerable witnesses and that the special protective orders should apply. Ensure that you move the court to enforce protective measures such as testifying through an intermediary and fast-tracking of cases.

Common Elements of Sexual Offences

In line with the legal framework, a Lawyer should undertake a case analysis of the SGBV file to determine whether the evidence on record sufficiently supports each element of the offense. The figures below represent common sexual offenses elements and corresponding evidence. The discussion includes two critical elements in sexual violence cases affecting vulnerable victims.



Rape	Attempted Rape	Defilement	Attempted Defilement	Sexual Assault
<ol style="list-style-type: none"> 1. Lack of Consent 2. Identification 3. Act that Causes Penetration 4. Knowledge of the absence of Consent 	<ol style="list-style-type: none"> 1. Lack of Consent 2. Identification 3. Act that Causes Attempted Penetration 	<ol style="list-style-type: none"> 1. Age 2. Identification 3. Act that Causes Penetration 	<ol style="list-style-type: none"> 1. Identification 2. Age 3. Act that Causes Attempted Penetration 	<ol style="list-style-type: none"> 1. Body contact 2. Genital contact 3. Object 4. Identification

Figure 2: Elements of Sexual Offences

Age	Identification	Act Causing Penetration
<ul style="list-style-type: none"> • Oral Evidence • Church Records e.g. Baptismal Card • Expert Witness • Government Issued Documents 	<ul style="list-style-type: none"> • Eye-witness account • Single Witness (Section 124 of the Evidence Act) • Identification parade • Forensic Identification through DNA • Recognition 	<ul style="list-style-type: none"> • Complainant's Testimony • Medical forensic examination • DNA analysis • Production of medical reports

Figure 3: Evidentiary Test

How do you Prove identification?

There are **five** different ways in which a Lawyer can **PROVE** identification in a court of law.

1. **Eyewitness identification:** In criminal law, it is evidence received from a witness "who has actually seen an event and can so testify in court; Direct testimony of a witness who saw the perpetrator in the act.
2. **Single witness:** Section 124 of the Evidence Act provides that in a criminal case if the only evidence is that of the victim, the court proceeds to hear that evidence and can use it to convict the accused person.

Rebuttal: If the accused person adduces evidence in his defense introducing a new matter which the Prosecutor could not by the exercise of reasonable diligence have foreseen, the court may allow the Prosecutor to adduce evidence in reply to rebut that matter. Prosecutors rely on Section 212 of the CPC to rebut such evidence.

- 3. Identification Parade:** If the identity of the perpetrator is in dispute, a dock identification is generally worthless, and the court does not place much reliance on it unless a properly conducted parade has preceded this. Police Service Standing Orders regulate identification parade procedures.¹⁶ A witness should describe the accused, and the police should then arrange a fair identification parade. The Parade should consist of at least eight persons.¹⁷ In the case of ICWGs, identification parades may conclusively prove the identification of the perpetrator.
- 4. Forensic identification:** Includes medico-legal evidence such as Fingerprints or DNA evidence. Section 36 of the SOA provides that the court may direct for collection of appropriate accused person's sample or samples for forensic and another scientific testing, including a DNA test. The DNA results confirm the culpability of the accused person.



Facilitator Note:

DNA evidence is not a prerequisite to the Prosecution of sexual offenses

- 5. Identification v. Recognition:** For vulnerable witnesses such as ICWGs, children, and the elderly, the Prosecution Counsel can use the five senses to prove identification. Section 63 (2) (c) of the Evidence Act refers to a fact which could be perceived by any other sense or in any different manner, the evidence of a witness who says they recognized it by that sense or in that manner such as touch, smell, taste, hearing or sight.

How Do You Prove Consent?



Short Film: (10 Minutes)

Consent is Simple as a Cup of Tea: <https://www.youtube.com/watch?v=fGoWLWS4-kU>.¹⁸

If you are still struggling with consent, just imagine instead of initiating sex, you are making them a cup of tea.

- Play the short film above
- Ask participants to share their reaction to the film
- Discuss the importance of consent in proving a sexual offense
- Refer to Section 42 to Section 45 of the SOA for more information on consent.

¹⁶ *Boniface Mwololo v Republic* (2017) (H.C.K) eKLR; Section 122A-122D Penal Code, cap 63 Laws of Kenya.

¹⁷ *National Police Service Standing Orders*, Chapter 42 Section 7 <http://www.nationalpolice.go.ke/downloads/category/5-acts.html?download=45:national-police-service-standing-orders> (last accessed on 12th May 2020).

¹⁸ Thames Valley Police Station, *Consent is Everything*, <https://www.thamesvalley.police.uk/police-forces/thames-valley-police/areas/c/2017/consent-is-everything/> (last accessed 12th May 2020).



Facilitator's Note:

Note that Consent is **FRIES**.

- Freely given
- Reversible
- Informed
- Enthusiastic
- Specific

The Black's Law Dictionary defines consent as “**a concurrence of informed and freely given will which is not obtained by coercion or undue influence.**”¹⁹ In the case of a sexual offense, consent does not merely mean yes or no. **Informed consent**, therefore, entails having the right information and ability to understand the consequences of giving such consent. **The law recognizes a child and ICWGs as incapable of giving consent to sexual acts.** A person consents if he or she agrees by choice and has the freedom and capacity to make that choice. For example, if the victim says she was intoxicated, check to see if there is a toxicology report available.



Wrap up (10 Minutes)

- Ask participants to share key takeaways
- As a Lawyer, remain **ALERT** throughout the trial process to avoid any surprises from the **DEFENCE** that may affect the effective Prosecution of the case
- Ensure that you liaise with the Prosecution during every hearing for effective coordination
- As a Lawyer, you can identify patterns of abuse or discriminatory provisions within the law and institute Strategic or Public Interest Litigation on behalf of SGBV Survivors/ICWGs. For example, to repeal the provisions of Section 146 of the Penal Code and amendment of Section 125 (2) of the Evidence Act
- A Lawyer can use the test provided in the **United States v. Virginia Military Institute** to test discriminatory provisions

¹⁹ *COI & another v Chief Magistrate Ukunda Law Courts & 4 others* (2018) (C.A.K.) eKLR, <http://kenyalaw.org/caselaw/cases/view/171200/> (last accessed on 29th March 2020).

Module III:

Victim-Centered Approach: The Role of a Lawyer



Time: 2 Hours

Summary: This module provides participants with a deeper understanding of a victim-centered approach through the provisions of the Victim Protection Act. The participants also learn ways to enhance the victim's participation in the trial process while minimizing the victim's re-traumatization.



Learning Objectives

1. Create awareness on the rights of victims.
2. Enhance knowledge on the role of a victim counsel in SGBV Prosecution.
3. Identify ways to empower survivors in the trial process.



Required:

- Flip Charts and Marker Pens
- Share copies of the Victim Protection Act ("VPA")



Key Messages

- A victim-centered approach seeks to minimize the trauma associated with the criminal justice process
- The role of a Victim's Lawyer has evolved from just "**Watching Brief**" to a "**Victim Counsel**" who can actively participate in the proceedings under the provisions of the VPA
- Avoid the usage of the term "*I am Watching Brief for the Complainant*" instead say that "*You Appear for the Victim*" or "*You Represent the Victim.*"
- In a victim-centered approach, the victim's wishes, safety, and wellbeing take priority
- ICWGs, children and the elderly are vulnerable victims within the meaning of the VPA
- Under the VPA, a victim can actively participate in the criminal trial through their Lawyer



Facilitators Note:

The term “**victim**” has **legal implications** within the criminal justice process and refers to an individual who suffered harm because of criminal conduct. The laws that give individuals rights and legal standing within the criminal justice system use the term “**victim**.” On the other hand, “**Survivor**” is a term used widely in-service, providing organizations to **recognize the strength and courage** it takes to overcome victimization. Refer to Sections 2, 17, and 18 of VPA.

Fundamental Supporting Laws: The Victim Protection Act, the Sexual Offences Act, the Children’s Act, Witness Protection Act. Compare Section 17 of the VPA on rights of vulnerable witnesses to Section 31 of the SOA. What are the key differences between the two? (Refer to Handout Module 3).

The Role of Victim Counsel during the Trial of Cases Affecting Vulnerable Victims

The criminal trial process of SGBV cases consists of four phases. Namely, Pre-trial, Hearing, Judgement, and Post-Judgment Phases.²⁰ The following section discusses the role of a victim counsel at each stage.

Pre-Trial Phase:

1. Ensure that the client’s file has all documentary evidence such as the Birth Certificate, P3 Form, PRC form, Original Treatment Notes, Intellectual medical diagnostic report, Government Chemist Report, Charge Sheet, and Witness statements.
2. Review the charge sheet to ensure that it captures the correct statement and particulars of the offense. Note that, the particulars of the offense should show that a victim is a person with an intellectual disability.
3. Ensure to meet the victim as early as possible to establish rapport with the victim.
4. At **Plea-taking**, explain to the victim or caregiver that the court may release the accused person on bond or bail terms to avoid misinformation. Ensure that you also confer with the victim or caregiver to establish the objections they might have to have the accused person released on bail. If concerns arise, the Lawyer should object to the release of the accused person pending the testimony of the victim.
5. **Court Pre-trials:** to avoid delays during the trial, make sure to attend mentions of the case when preliminary issues are canvassed, such as review of bail or bond terms, the supply of witness statements and other documentary evidence to the accused person.

²⁰ UNODC, *Handbook on Effective Prosecution of Violence against Women and Girls* (2014), https://www.unodc.org/documents/justice-and-prison-reform/Handbook_on_effective_prosecution_responses_to_violence_against_women_and_girls.pdf (last accessed 2nd April 2020); Refer to the CPC, Cap 75, Laws of Kenya.

6. Notify the victim as soon as the trial date is set and schedule an appointment to review witness statements and conduct trial preparation.

Hearing Phase:

1. **Case Conference:** In the presence of a caregiver, familiarize the victim with the courtroom setting, courtroom officials, and all aspects of the court proceedings, and the roles of the various officials. Victim witnesses should be fully alerted to the harsh nature of cross-examination by defense counsel or accused person.
2. Before every hearing, call the IO and remind them to avail the Police File in court and to ensure the bonding of witnesses.
3. Remind the Prosecution to **make an application to declare the victim, a vulnerable witness. Upon making the application**, the court may declare the victim vulnerable and appoint an intermediary on their behalf. For an intermediary, recommend persons in close contact with the victim, such as the Counsellor.
4. In dealing with uncooperative victims or recanting witnesses, understand that supported and empowered victims are not only less likely to withdraw support from the process later but also more likely to tell their story clearly and coherently. Ensure a professional counselor supports the client.
5. The slow progress of Prosecution can cause fear and frustration among victims. Ensure to adapt strategies that expedite cases.
6. Call Expert Witness on issues relating to the victim's perplexing behavior (i.e., behavior caused by post-traumatic stress disorder, dynamics of domestic violence, or sexual abuse).
7. **Filing of Submissions:** Make sure you record the testimony of the witnesses for purposes of having a record and preparing submissions at the close of the Prosecution or defense case.
8. **Adverse Defence Applications:** research on case law and promote the best interests of the victim at every stage of the trial to avoid secondary trauma and inordinate delays in the case. For example, assess the **best interests** of the victim vis a vis **frequent adjournment**, de *novi*, and **recall for further cross-examination applications**.²¹
9. Upon delivery of an unfavorable ruling, the victim counsel can apply to the High Court for a **Review** or **Revision** of such orders under **Section 362** of the CPC.

²¹ The Criminal Procedure (Code Cap. 75) Section 150 & Section 200(3); Evidence Act, Section 146 (Cap 80) Laws of Kenya.



Judgment Phase:

1. Once Judgement is delivered, ensure that you reach out to the client to conduct a debrief on the contents of the judgment. Ensure that the debrief happens in a comfortable environment and in the presence of a trusted caregiver.
2. Ensure that you note down the wishes of the victim and address any concerns they might have.
3. Sentencing: If the accused person is convicted, refer the victim to a counselor to draft a **Victim Impact Statement** for filing before sentencing. The sentencing submissions should touch on the impact of the case on the victim's social wellbeing; the trauma suffered, economic impact, and the complex recovery process.
4. Following the wishes of the victim, ensure to ask for the maximum sentence provided for under the law.

Post-Judgement Phase:

1. Victim Counsel should explain to the victims, the perpetrator's post-conviction rights, including the availability of appeals. Where the perpetrator appeals the conviction, it is essential to notify the victim of the motion to appeal and any other post-conviction matters. Victims, who may have initially felt a sense of closure upon the conviction and sentencing of the perpetrator, can become unnerved upon the filing of an appeal.
2. Note that **victims do not have a right of appeal**. If the court acquits the accused person, analyze the Judgement to identify any possible **grounds of appeal** and write to the ODPP recommending filing of an Appeal. Note that as a Victim Counsel, a victim has the right to participate in the Appeal hearing subject to the directions of the court.²²
3. Discuss with the victim the possible legal issues of an appeal, including the acquittal of the accused person and possible **Retrial**. Notify the victims that in the event of a retrial, the IO may reach out to them for purposes of the court hearing their testimony again.²³



Facilitator's Note:

Read the interpretation of the **Muruatetu decision** in **Simon Kipkurui Kimori v. Republic (2019) eKLR** and the Sentencing Guidelines under the Judicial Service Act. *More information on domestic violence cases & sexual violence cases.*²⁴

²² See *IP Veronica Gitahi v Republic* (2017) eKLR on the limits of victim counsel participation on appeal.

²³ See *Kelvin Ochieng Tom v Republic* (2018) (H.C.K) eKLR on reasons for retrial; *Abdi Adan Mohammed v. Republic* (2017) (C.A.K) eKLR on possible reasons for de novo.

²⁴ UNODC, *Handbook on Effective Prosecution of Violence against Women and Girls* (2014), https://www.unodc.org/documents/justice-and-prison-reform/Handbook_on_effective_prosecution_responses_to_violence_against_women_and_girls.pdf.

Case Study (30 Minutes)

- Divide the participants into three groups and redistribute the Malkia Case Study under Activity II
- Ask the participants to read the case study carefully and answer the following questions:
 1. Identify the offenses against the clients and issues likely to arise during the trial including issues affecting the vulnerable victims
 2. Using the problems identified, formulate mitigation strategies at each phase of the trial
- Review the questions one by one and ask each group to give a summary of their discussion. Groups can also make additional points
- Answer any questions
- Discuss the ramifications of the SCOK **Francis Muruatetu decision** on sentencing and its impact on the minimum and mandatory sentences provided for under the SOA.²⁵



Facilitator Note:

Refer to Handout Module 3 for citations to cases on victim counsel participation & sentencing

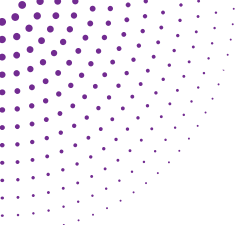
- *The law is silent on the victim's right to appeal*
- *Under Section 362 to Section 364 of the CPC, a Victim can apply for revision to the High Court on matters directly affecting the victim. See **Boniface Kyalo Mwololo v Republic (2016) eKLR**.*
- *The case presents physical, psychological, sexual, and economic violence under the PADVA, PAFGM, SOA, Marriage Act, MPA, Children's Act*
- *The clients have numerous legal remedies. They include Prosecution of the perpetrator under the SOA, Protection Orders, Separation & Divorce Proceedings, Application for maintenance & custody of the children, application for division of the matrimonial properties*



Wrap up (10 Minutes)

- Ask participants to share key takeaways
- Ensure that the court accords necessary support to the ICWG or the elderly victim to give their evidence

²⁵ Francis Karioko Muruatetu & another v. Republic (2016) (S.C.K) eKLR.

- 
- The Lawyer should research to keep abreast with the current developments in the law as a way of preparing for each hearing
 - The Lawyer should assess each case and object to *de novo* and *further cross-examination* applications as a way of safeguarding the best interests of vulnerable victims
 - If necessary, a Lawyer should make an application for cross-examination of **defense witnesses, prosecution expert witnesses,** and the **IO** to bring out any evidence left out
 - As the law on victim representation develops, Lawyers should take an opportunity to assist courts in advancing the jurisprudence in the area

Module IV:

Client Care



Time: 2 Hours

Summary: This module provides insight into the meaning of trauma, the impact of SGBV on vulnerable survivors, and the importance of adopting a trauma-focused approach while dealing with SGBV survivors. The module also outlines the meaning and significance of psychosocial support to SGBV survivors. Further, the module provides learners with guidelines on SGBV related media engagement.

Session 1: Adopting a Trauma-Focused Approach to SGBV Cases

Session 2: The Importance of Psychosocial Support to ICWGs

Session 3: Media Protocol on SGBV Cases



Learning Objectives

1. Create awareness on the importance of adopting a trauma-focused approach in prosecuting SGBV cases.
2. Increase knowledge on the importance of psychosocial support to vulnerable victims such as ICWGs and the elderly.
3. Enhance awareness of ethical ways to safeguard survivor's interest in the media.



Required:

Flip Charts & Marker Pens



Key Messages

- A Lawyer should always practice sensitivity to the client's needs
- A Lawyer should ensure that SGBV cases, particularly against ICWGs, are heard in camera to protect the privacy of the victims
- Ensure that victims continue to seek appropriate support services such as counseling through trial
- A Lawyer should seek the consent of the survivor and COVAW before addressing the media
- If the client is unable to testify, the Lawyer should adopt trauma-focused approaches such as a proposal to adjourn a case to ensure the client is in good shape before the testimony

Session 1: Adopting a Trauma-Focused Approach in Sexual and Gender-Based Violence



Time: 1 Hour



Key Messages

- The Lawyer should understand that **client sensitivity** focuses on the **three E's of Trauma**: Events, Experiences, and Effects.
- Client sensitivity also focuses on the **four R's**:- Realization, Recognize, Respond, Resist Re-traumatization.



Facilitator's Note:

Refer to Module Handout 4 for more information on client sensitivity

Trauma: The American Psychological Association (APA) defines trauma as the emotional responses towards an extremely adverse event. The severity of the trauma can cause interference with an individual's ability to live a healthy life. In such cases, survivors should address the dysfunction to restore the individual to a state of emotional wellbeing.²⁶

The Impact of Sexual and Gender-Based Violence on Vulnerable Victims

- A significant portion of SGBV victims suffer from trauma, such as post-traumatic stress disorder, depression, and anxiety
- Victims can feel socially isolated and have low self-esteem and experience a profound sense of shame and violation
- Violence can result in significant mental trauma. Such trauma might affect the victim's ability to recount experiences coherently or fully
- Sometimes victims may struggle to remember precise details of the violence or experience negative feelings when doing so.²⁷

²⁶ APA, *Trauma & Shock*, <https://www.apa.org/topics/trauma/> (last accessed 2nd April 2020).

²⁷ UNODC, *Handbook on Effective Prosecution of Violence against Women and Girls* (2014), https://www.unodc.org/documents/justice-and-prison-reform/Handbook_on_effective_prosecution_responses_to_violence_against_women_and_girls.pdf.

- Lawyers should assist and support such victims and make the appropriate referrals to other service providers.²⁸
- Keeping victims informed of the progress of their case, alleviates mistrust and fear in the system as well as ensuring timeliness in the criminal proceedings



Facilitator's note:


When dealing with clients, it is essential to look out for the signs of trauma. If you note such signs, ensure you refer the client to the appropriate service provider. During a pre-trial conference or the hearing, look out for the following signs. If you notice such concerns, make appropriate referrals.

During Pre-trial or the Hearing, the Lawyer should look for the following signs of trauma:

1. A child witness may experience shock from the sight of the accused person and break down, to mitigate, ask the court to block the view of the accused person from the child. Sometimes, the witness protection boxes provided in court may not support the child's state of mental health due to their closed nature.²⁹
2. During examination in chief, the victim may overlook the sequence of events as recorded. For example, they may omit the description of the act of penetration in sexual offenses. Victim Counsel should confer with Prosecution Counsel to keep the questions short and clear using the **5W's (What, When, Where, Who, Which) and 1H (How)** sequence of questioning.
3. During cross-examination, the victim may deny that the events in court occurred. Ensure that during re-examination, the Prosecutor asks the victim to confirm the circumstances.
4. The victim may display signs of fear and go numb, and the Lawyer can apply to the court for an adjournment to enable the victim to seek appropriate support.
5. The incidents of breaking down and confusion may occur severally through trial, ensure that a Counsellor supports the victim always.

²⁸ The UN, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power <https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx>; The UN, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (2005), <https://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf> (last accessed 12th May 2020).

²⁹ UNICEF Namibia, *The Child Witness: A Training Manual*, (2018), https://www.unicef.org/namibia/na.Child_Witness_Manual_Web_version.pdf (last accessed 31st March 2020).



Responding to Trauma in Court: when dealing with ICWGs, ensure that a ***Certified Counsellor files a report*** in court on the victim's readiness to testify. As a Lawyer, ***recognize*** and ***respond to situations to avoid re-traumatizing*** the clients during trial. Seek appropriate remedies such as adjournments, court breaks, or as advised by the Counsellor.

The Forensic Interview of Children

Forensic Interview of Children is a non-leading, victim sensitive, neutral, and developmentally appropriate investigative interview that helps determine whether a crime occurred and what happened. The goals of a forensic interview are to minimize any potential trauma to the victim, maximize the information obtained from victims and witnesses, reduce contamination of the victim's memory of the alleged event(s), and maintain the integrity of the investigative and judicial process.³⁰ Refer to the UNICEF Training Manual on Child Witness as provided in the additional reading resources.



Facilitator's Note: See Handout Module 4 for tips on conducting a trauma-focused interview. Display the two illustrations below to demonstrate the concept of the trauma-focused interview



Brainstorming Session: (15 Minutes)

- Display illustration 1
- Assume the child has intellectual disabilities
- Ask participants whether the environment is right for the interview
- Ask the participants to provide a narration of the correct environment to conduct an interview
- Display illustration 2

³⁰ UNICEF Namibia, *The Child Witness: A Training Manual*, (2018), https://www.unicef.org/namibia/na.Child_Witness_Manual_Web_version.pdf (last accessed 31st March 2020).



Illustration 1: The Incorrect Mode of Interview in a Lawyer's Office. A caregiver is absent, the child seems uncomfortable, and the office set-up appears intimidating to a vulnerable victim



Illustration 2: The Correct Mode of Interview. A caregiver is present, and the office set up looks friendly to ensure maximum comfort for the vulnerable victim.

- Ask the participants to share thoughts on the comparison between illustration 1 and illustration 2
- Illustration 1 shows the incorrect way of interviewing, which shows a closed door, a shut window, and an intimidating office set up, creating an uncomfortable interview environment. On the other hand, Illustration 2 shows the correct version of interviewing with an open window, the presence of a caregiver, and the child in the room, seated on the same level, therefore creating a comfortable environment for the vulnerable victim



Role Play (30 Minutes)

- Divide the participants into two groups and redistribute the case study in Activity II
- Ask the groups to discuss the following issues:
 1. Each group to nominate three people to play the Riziki, Malkia, and the Lawyer
 2. Each group to discuss strategies to conduct the interview and proceed to conduct the interview
- Time the role plays for 7-10 minutes
- Take notes as the groups present to ensure that participants make correct observations
- After the role-play, ask the participants to share the do's and don'ts during the interview
- During the discussion, refer to Handout Module 4 on techniques to use during an interview



Facilitator's Note:

Refer to Handout Module 4 and the UNICEF guide on child witnesses in the additional reading resources on techniques to observe & share during the role play.

Session 2: Importance of Psychosocial support



Time: 1 Hour



Key Messages

- Psychosocial support helps vulnerable victims recover from traumatic events
- Psychosocial support helps change individuals into active survivors rather than passive victims
- Lawyers should ensure that their clients access adequate and timely psychosocial support especially before litigation

Psychosocial support: '**Psychosocial**' refers to the dynamic relationship between the psychological dimension of a person and their social aspect.³¹ The **psychological** dimension of a person includes emotional and thought processes, feelings, and reactions. The **social** dimension covers relationships, family and communal networks, social values, and cultural practices.

- '**Psychosocial Support**' addresses both the psychological and social needs of individuals, families, and communities. (Psychosocial interventions. A Handbook, page 25).³²
- Experts define psychosocial support as both **preventive** and **curative**. The preventive aspect **decreases the risk** of developing mental health problems, while the **curative** aspect helps individuals and communities deal with psychosocial issues. (Psychosocial interventions. A Handbook, page 25-26).

Importance of Psychosocial support to Vulnerable Victims

1. A counseled victim makes a better witness in court. Survivors who have in-depth counseling before, during, and after trial can effectively give their evidence in court.
2. Psychosocial support prevents the severity increase in distress and the suffering of the survivor. It discourages the "victim blame" mentality.

³¹ Papyrus Project, *What is Psychosocial Support*, <https://papyrus-project.org/what-is-psychosocial-support/> (last accessed on 29th March 2020).

³² International Federation of Red Cross and Red Crescent Societies, *Psychosocial interventions: A Handbook* (2009).

3. It is a powerful tool in effectively dealing with the trauma that victims undergo after the abuse.
4. Assists the victims to begin the journey towards recovery and contributes to a healthy mental lifestyle



Brainstorming session (5 Minutes):

- Ask participants to state the reasons vulnerable victims need psychosocial support
- Record the answers on a flip chart



Wrap up (10 Minutes)

- Ask participants to share key takeaways

Session 3: Media Protocol on Sexual and Gender-Based Violence Cases



Time: 1 Hour



Key Messages

- Survivors best interests are a priority during a potential media engagement
- Due to the possible reprisals on survivor safety, security, and psychological wellbeing, Lawyers should not facilitate individual interviews between journalists and SGBV survivors

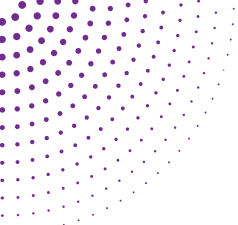


Facilitator's Note:

Refer to Handout Module 4 for Media Guidelines and the link provided in additional resources.

The Role of the Lawyer in Media Engagement

1. Use the media to educate the public on the impact of SGBV cases on vulnerable victims. Make contacts to appear on radio and television morning shows.
2. Use the media to challenge the myths and stereotypes surrounding ICWGs.

- 
3. **Remember the Core Principles for Media Engagement:** every media engagement should prioritize the survivors' right to **privacy**, their safety and **security**, and the preservation of their dignity.
 4. Remember the *Sub Judice* "under a Judge" rule (*public statements on ongoing legal proceedings*) in discussing matters pending before the court.
 5. Obtain **informed** and written consent from the survivor or their caregivers.
 6. Seek consent from COVAW on any case referred with regards to possible media interviews.
 7. Remove all client identifying information to protect privacy.
 8. Focus on the survivor. The interests of family members and caregivers may or may not link to the will and preferences of the survivor.³³
 9. Maintain confidentiality. If the survivor discloses information they do not wish to share with their caregiver/ family members, you must respect and maintain the survivor's confidentiality.³⁴
 10. Do not use the case stories for exploitation and personal benefit.
 11. Use non- judgmental language when dealing with SGBV survivors and avoid blaming the victim/survivor for the abuse. Avoid the idea of a "good versus bad victim."



Wrap up (10 Minutes)

- Ask participants to share key takeaways
- Consult SGBV experts familiar with the context such as COVAW representatives
- During media interviews, provide information on local support services and organizations addressing SGBV and giving support to ICWGs
- In media interviews, always obtain written and informed consent from the survivors and their caregivers.
- Always ensure that the client's privacy is protected in all media interviews to avoid endangering their lives.



Facilitator's Note:

Conduct the Post-Training Assessment (15 Minutes).

-END-

³³ UN Agencies, *GBV Case Management Guidelines*, http://www.gbvims.com/wp/wp-content/uploads/Interagency-GBV-Case-Management-Guidelines_Final_2017.pdf (last accessed on 29th March 2020).

³⁴ *Id.*

Appendix I

Handout Module 1: Reporting & Referral Mechanism

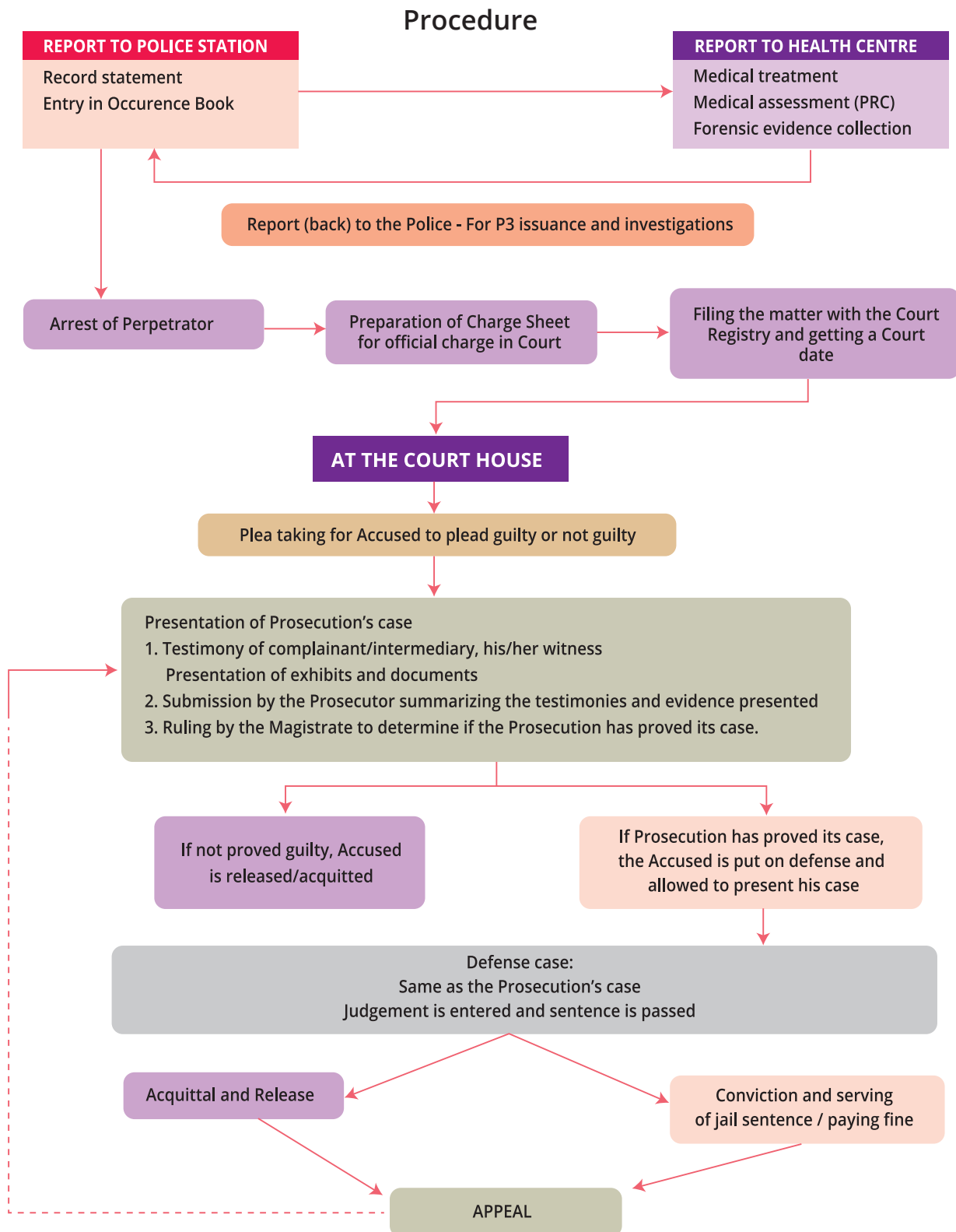


Figure 4: Formal Justice Actors Flow Chart

Handout Module 2: The Legal Framework

Definitions of Sexual and Gender-Based Violence Offences

1. Refer to the Sexual Offences Act ("SOA") section 2 to section 24 for definitions of the complainant, rape, attempted rape, defilement, attempted defilement, child sex tourism, sexual assault, indecent act, and other sexual offenses and penalties
2. Refer to Section 2 Victim Protection Act ("VPA") on the definition of the complainant, victim.
3. Refer to Section 2 Protection Against Domestic Violence Act ("PADVA") on the definition of domestic violence and Section 4 on the definition of a domestic relationship.
4. Refer to Section 2 of the Prohibition of Female Genital Mutilation ("PFGM") on the definition of female genital mutilation
5. Refer to Section 2 and Section 3 of the Counter-Trafficking in Persons Act ("CTIP") for trafficking in person definitions.
6. Refer to Physical, Emotional/Psychological, Economic and Sexual violence definitions under the PADVA

Life Cycle of Sexual and Gender-Based Violence

It is a fact that sexual and gender-based violence can occur throughout an individual's life: pre-birth, infancy, childhood, adolescence, reproductive age, older age.

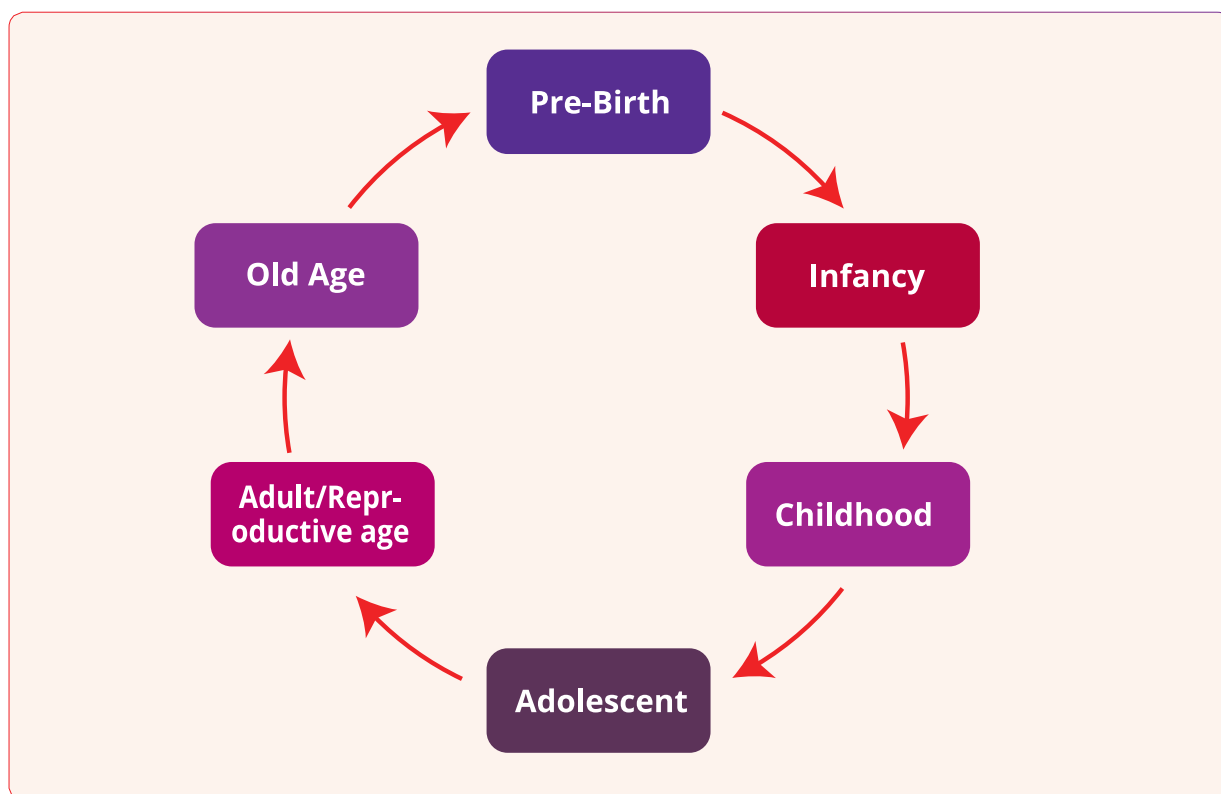


Figure 5: Life Cycle of SGBV

Handout Module 3: Victim Centered Approach

Vulnerable victim: This means a victim who, due to age, gender, disability, or other special characteristics, requires the provision of special justice and support under the VPA. ICWG and the Elderly. See Section 17 and Section 18.

The **VPA** became law in 2014, providing for victim protection from Section 4, Section 9, Section 13, up to section 24. The VPA enumerates victim's rights with guidance from international standards, and that victims should be enabled to testify through measures that protect their privacy, identity, and dignity while ensuring their safety and avoiding secondary victimization. See **Section 4 VPA** on the rights of victims and Section 17 on the rights of **vulnerable victims** such as **ICWG** or **older persons**.

The **WPA** enacted in 2006 and revised in 2012; provides for the protection of witnesses in criminal cases and other proceedings. The law defines a witness as a person who needs protection from a threat or risk which exists on account of them being a crucial witness. Where a person has not been offered protection under the program, a written request for his inclusion in the program may be made to the Director by — (a) the witness; or (b) a law enforcement agency (c) public prosecutor; or (d) a legal representative or any other intermediary. The Investigator (use statement) writes to the ODPP recommending witness protection; The WPA in consultation with the ODPP gives the go-ahead for placement in witness protection.

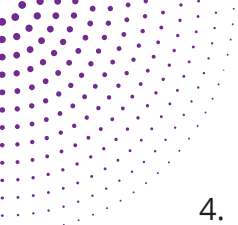
The **Children's Act** provides under Section 119 for children in need of care and protection, including a sexually abused or exploited or likely to). Section 120 provides for proceedings in respect of children in need of care and protection (report to the nearest authorized officer; a children officer; place child in a place of safety but separate from child offender facilities).

The **SOA**, which became law in 2006, provides for the protection of vulnerable witnesses under Section 31. These vulnerable witnesses include **ICWG** and **older persons**. The court may appoint an intermediary to support the witness in court. Under section 31, a court may declare a witness vulnerable if such witness is — the alleged victim in the case before the court is a child or a person with mental disabilities.

The Role of a Victim Counsel

The role of a victim counsel remains the same as indicated during the criminal trial process. It is essential to note the following:

1. Art. 50 (7) of the Constitution, Section 4, Section 9 of the VPA, supports the Victim Counsel's application for participation in criminal cases
2. Due to the novelty of the VPA, a victim counsel may face opposition from other parties.
3. To advance victim rights during the trial, ***ensure that you make an application for participation in the trial using the provisions above.***

- 
4. If the trial court issues unfavorable orders against the Victim Counsel's participation, remember you have recourse to the High Court under Section 362-364 of the CPC.
 5. Under section 26 of the VPA, victims have a right to compensation or restitution from the offender. The Lawyer can make such an application after the conviction of the accused person.
 6. Encourage victims to file Victim Impact Statements under Section 12 of the VPA.
 7. Subject to the trial court's guidance, a victim counsel can adduce evidence ***left out during the trial through cross-examination of defense and prosecution witnesses***. The best practice in cross-examination is for the Lawyer to ask questions that the prosecution has not touched on.

For cases that support victim participation in criminal cases, refer to the following:

1. Mary Kinga Rukwaru -v- Ragunathan Santosh & Another (2014) eKLR,
2. Gideon Mwitwa Iria -v- Director of Public Prosecutions & 7 others (2015) eKLR
3. Leonard Maina Mwangi -v- Director of Public Prosecutions & 2 others (2017) eKLR
4. Joseph Lendrix Waswa -v- Republic (2019) eKLR
5. Republic -v- Veronica Gitahi & PC Isaa Mzee – Mombasa Criminal Case No. 4 of 2014 (2015) eKLR
6. Criminal Appeal No. 23 of 2016 – IP Veronica Gitahi & Another -v- Republic (2016) eKLR
7. Simon Kipkurui -v- Republic (2019) eKLR
8. Francis Karioko Muruatetu & another -v- Republic (2016) eKLR

Handout Module 4: Client Care

Trauma-Focused Interview:

For purposes of conducting a trauma-focused interview, a lawyer should do the following:

1. Building rapport is the first step. Make introductions and explain their role at the beginning of every interview. Ensure that victims, especially ICWGs, are accompanied by guardians whom they trust and feel comfortable with to make the process easier for them. Where possible, ensure consistency with the person interviewing them.
2. Pay attention to how the individual wishes to communicate, especially concerning ICWGs whose communication could be through gestures or sometimes emotions. If unable to understand the client's preferred way of communication, get a counselor or caregiver but do not force the client to communicate differently than their preference.
3. During the interview, a victim's reality is your reality. Survivors always need to feel safe. Be empathetic to survivors and avoid being judgmental. Communicate directly to ICWG survivors, even in instances where their caregivers are present. Avoid interrogation methods and refrain from physical contact with victims.
4. Allow enough time for victims/clients to express their stories. ICWGs especially may need time due to the preexisting communication barriers. Where possible, make use of play art therapy that has proven useful.
5. Use plain simple language that the survivor understands and is most comfortable with. Lawyers especially should refrain from using jargon when dealing with ICWGs and their caregivers.
6. Be sure the victim has some control in the situation (breaks, water, seating placement).
7. Seek survivor's consent before sharing any confidential information, even with their caregivers/guardians.
8. Do not cross-examine the survivor. Remember that open-ended questions may elicit more information from victims than yes or no questions.
9. Inform the survivor's next steps and timeline. The client should be involved in all decisions and actions regarding their case.
10. All communication with the client should be confidential. Ensure the files are safely stored away from prying eyes. Seek consent of the guardians/caregivers before you disclose their information to a third party.



The Purpose of a forensic Interview

1. To obtain information from a child that may be helpful in a criminal investigation or judicial process
2. To assess the safety of the child's living arrangements.
3. To obtain information that will either corroborate or refute allegations or suspicions of abuse and neglect.
4. To assess the need for medical treatment and psychological care.

How to undertake a forensic interview

- **Give three interview instructions:** First, "Correct me if I make a mistake"; Two, "Say I don't know and don't guess" and Three, "Say I don't understand." Let the child know that it's okay for them to correct you if you are wrong. They should also understand that it is okay for them not to know the answer as well as not understand and can seek clarification anytime.
- **Use Narrative Event Practice ("NEP"):** At the core of a successful forensic interview is Narrative Event Practice. NEP makes the most significant difference in determining if a child is competent. It demonstrates three elements of competency. NEP also teaches kids how to communicate and makes them the expert in telling their situations. NEP is an interviewing tool that allows the interviewer to practice asking questions with the child before an actual forensic interview.
- **Focus on Who, What, and Where questions:** use the "5 W's and 1 H" to ask for detailed information that most children can handle. Younger children, especially, are concrete and literal.

Appendix II

Activity Sheet

Activity 1: Penny for Your Thoughts

First, write down different years on pieces of paper ranging between 2000 to 2020 or years of choice. Fold the pieces of paper and ask the participants to each pick a piece of paper. Ask the participants to look at the year on their piece of paper. Let them take a minute to think about what they were doing during that particular year. School going? A child? Were they working? Were they Married? What was the music of the day? The goal is to pair up the participants and share the happenings in their life. Each partner can then introduce the other to the rest of the team.

Activity 2: Case Study

Malkia is married to Fadhili, and together they have three beautiful children aged eight, ten, and twelve years old. In the last twenty years, Malkia stayed home to take care of the children and support her husband's business interests. Due to Malkia's family connections and support, Fadhili became one of the leading businessmen in the country. The couple amassed much wealth with vast business interests in real estate and the oil and gas industry. The couple's net assets are valued close to ten million Kenya shillings. Over the years, Malkia let her husband control the business and the finances, while she hosted networking functions for her husband and business associates.

Despite the glossy family picture, Malkia has endured years of suffering behind closed doors. On numerous occasions, Fadhili punched and hurled insults at Malkia, in the presence of their children. One of the couple's children, Riziki, the firstborn, developed cognitive and adaptability challenges a few years after birth. In July last year, after a drunken episode, Fadhili arrived home to find Malkia asleep and demanded to have sex. Malkia declined, and Fadhili could hear none of it. Despite her struggles, he forced himself on her. Malkia sought the intervention of her in-laws and her parents, but they told her to keep her eye on the future, due to Fadhili's political aspirations. Upon learning that Malkia spoke to their parents about their marital issues, Fadhili blocked Malkia's credit cards, leaving her destitute. Being the only girl, Riziki sleeps in her room, and Malkia has witnessed Fadhili leaving the room only in his towel. For the last few months, Malkia has begged money from Fadhili, who only gives the money when he feels like it.

In the last two months, Fadhili has hosted parties in the couple's matrimonial home, at one point, placing Riziki, at risk of sexual violence. Upon asking Fadhili to stop with the parties, Malkia endured a night of punching and kicking. Recently, Riziki confided in her mother that "baba did bad manners to her." Malkia is now staying at a friend's house, and she has no money to support the children, and Fadhili keeps sending her threatening messages. She reaches out to you as a COVAW Pro bono Lawyer. Advise Malkia.

PRO BONO LAWYERS PRE- AND POST-TRAINING ASSESSMENT

Date:/...../.....

Pre and Post Training Assessment

Section A: Introduction

Gender (tick one)	a) Female	
	b) Male	

Section B: Sexual and Gender-Based Violence Protection

Questions	Response
Module 1: The Reporting and Referral Mechanism	
B.1 Which of the following is a type of intellectual disability affecting women and girls? (Circle)	a) Fragile X syndrome b) Down syndrome c) Prader-Willi Syndrome (PWS) d) Fetal alcohol spectrum disorder (FASD) e) All the above
B.2 Which of the following best describes the role of a Lawyer upon getting a case referral? (Circle)	a) Offering psychological and social support to the client b) Approaching an investigator to collaborate on the prosecution of the case and review evidence gaps c) Client interview and referral to appropriate support services and conducting follow-ups for intervention d) Combining professional specializations such as Investigators, Social Workers, Counselors, Victim Counsel, Prosecutors, HealthCare in responding to the victim's needs e) All the above
B.3 Identify the best practice in investigating sexual and gender-based violence cases (Circle)	a) The facts and evidence collected should be relevant to the case b) The evidence should connect the crime scene, victim and perpetrator c) Confirm the authenticity of documentary evidence d) Ensure the integrity of the chain of custody e) All the above

Questions	Response
Topic: Module 2: Sexual and Gender-Based Legal Protection Framework	
B.4 Mark the following statements as either True or False .	<ul style="list-style-type: none"> a) Rape cannot occur in marriage because consent to the Kenya Sexual Offences Act does not recognize consent in marriage. [(a) True and (b) false] b) Women and girls with intellectual disabilities do not make credible witnesses [(a) True and (b) false] c) The Criminal Procedure Code, Cap 75 & the Evidence Act, Cap 80, provide for the procedure in court [(a) True and (b) false] d) The Penal Code, Cap 63 & the Evidence Act, Cap 80, has discriminatory provisions against persons with intellectual disabilities [(a) True and (b) false] e) Lack of Consent is an element in an attempted rape. [(a) True and (b) false]
B.5 The following are ways to prove Identification in the prosecution of sexual and gender-based violence. Which one is NOT? (Circle)	<ul style="list-style-type: none"> a) Eyewitness account b) Through evidence of Single Witness under Section 124 of the Evidence Act c) Identification parade d) Forensic Evidence e) Through Hearsay evidence
Module 3: Victim Centered Approach	
B.6 The following statutory provisions support the rights of vulnerable witnesses during the trial process. Which one does NOT? (Circle)	<ul style="list-style-type: none"> a) Section 31 of the Sexual Offences Act, 2006 b) Section 150 of the Criminal Procedure Code, cap 75 c) Section 7 of the Sexual Offences Act, 2006 d) Section 17 of the Victim Protection Act, 2014 e) Section 10 of the Protection against Domestic Violence Act, 2015
B.7 In representing women and girls with intellectual disabilities, a victim counsel can do the following. Select TRUE statements	<ul style="list-style-type: none"> a) A Victim Counsel can make applications during bail, sentencing, power of mercy proceedings b) A Victim Counsel can conduct examination-in-chief for both prosecution and defense witnesses, subject to the trial court's guidance c) Ask questions that the prosecution has not touched on d) Appeal the judgment or sentence passed by the trial court e) Apply to the High Court or even the Court of Appeal for revision of the trial court ruling

Questions	Response
Module 4: Client Care	
<p>B.8 Which one of the following phases reflects the correct process of Interviewing intellectually challenged women and girls?</p> <p><i>Circle)</i></p>	<ul style="list-style-type: none"> a) Ensure the presence of the caregiver, secure a comfortable room, Introduction, Rapport building, Free narrative, Clarification, and Closing b) Introduction, Free narrative, Clarification, Rapport building, and Closing by inviting the caregiver c) Introduction, Clarification, Free narrative, Rapport building, and Closing d) Invite s social worker, Rapport building, Introduction, Free Narrative, Clarification and Closing e) Secure a comfortable room, Rapport building, Introduction, Free Narrative, Clarification and Closing
<p>B.9 In exercising a trauma-focused approach in court for women and girls with intellectual disabilities, a victim counsel can do the following.</p> <p>select TRUE statements</p>	<ul style="list-style-type: none"> a) A lawyer should not lookout for signs of trauma as it is not their expertise b) A lawyer should ensure that cases are heard in camera to protect the privacy of the victims c) Ensure that victims continue to seek appropriate support services such as counseling d) A lawyer should feel free to discuss the client's case with the court clerk as they understand cases better e) If the client is unable to testify, the Lawyer should propose adjourning the case to ensure the client is in excellent shape before the testimony
<p>B.10 The following are core principles for media engagement on sexual and gender-based violence cases. Which is NOT?</p> <p><i>(Circle)</i></p>	<ul style="list-style-type: none"> a) Secure informed and written consent from the survivor or caregiver for all interviews b) Seek consent from COVAW on any case referred to you c) Remove identifying information to protect client privacy d) Use the case stories to grow the Lawyer's brand and bring attention to the case e) Ensure the client's dignity is maintained during questioning

PRO BONO LAWYERS PRE- AND POST-TRAINING ASSESSMENT ANSWER SHEET

Section B: Sexual and Gender-Based Violence Protection

Questions	Response (Correct Answers are in Bold Font)
Module 1: The Reporting and Referral Mechanism	
B.1 Which of the following is a type of intellectual disability affecting women and girls? (Circle)	a) Fragile X syndrome b) Down syndrome c) Prader-Willi Syndrome (PWS) d) Fetal alcohol spectrum disorder (FASD) e) All the above
B.2 Which of the following best describes the role of a Lawyer upon getting a case referral? (Circle)	a) Offering psychological and social support to the client b) Approaching an investigator to collaborate on the prosecution of the case and review evidence gaps c) Client interview and referral to appropriate support services and conducting follow-ups for intervention d) Combining professional specializations such as Investigators, Social Workers, Counselors, Victim Counsel, Prosecutors, HealthCare in responding to the victim's needs e) All the above
B.3 Identify the best practice in investigating sexual and gender-based violence cases (Circle)	a) The facts and evidence collected should be relevant to the case b) The evidence should connect the crime scene, victim and perpetrator c) Confirm the authenticity of documentary evidence d) Ensure the integrity of the chain of custody e) All the above
Topic: Module 2: Sexual and Gender-Based Legal Protection Framework	
B.4 Mark the following statements as either True or False .	a) Rape cannot occur in marriage because consent to the Kenya Sexual Offences Act does not recognize consent in marriage. [(a) True and (b) false] b) Women and girls with intellectual disabilities do not make credible witnesses [(a) True and (b) false] c) The Criminal Procedure Code, Cap 75 & the Evidence Act, Cap 80, provide for the procedure in court [(a) True and (b) false] d) The Penal Code, Cap 63 & the Evidence Act, Cap 80, has discriminatory provisions against persons with intellectual disabilities [(a) True and (b) false] e) Lack of Consent is an element in an attempted rape. [(a) True and (b) false]

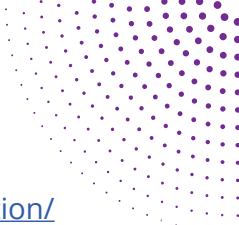
Questions	Response (Correct Answers are in Bold Font)
<p>B.5 The following are ways to prove Identification in the prosecution of sexual and gender-based violence. Which one is NOT? (Circle)</p>	<p>a) Eyewitness account</p> <p>b) Through evidence of Single Witness under Section 124 of the Evidence Act</p> <p>c) Identification parade</p> <p>d) Forensic Evidence</p> <p>e) Through Hearsay evidence</p>
Module 3- Victim Centered Approach	
<p>B.6 The following statutory provisions support the rights of vulnerable witnesses during the trial process. Which one does NOT? (Circle)</p>	<p>a) Section 31 of the Sexual Offences Act, 2006</p> <p>b) Section 150 of the Criminal Procedure Code, cap 75</p> <p>c) Section 7 of the Sexual Offences Act, 2006</p> <p>d) Section 17 of the Victim Protection Act, 2014</p> <p>e) Section 10 of the Protection against Domestic Violence Act, 2015</p>
<p>B.7 In representing women and girls with intellectual disabilities, a victim counsel can do the following.</p> <p>Select TRUE statements</p>	<p>a) A Victim Counsel can make applications during bail, sentencing, power of mercy proceedings</p> <p>b) A Victim Counsel can conduct examination-in-chief for both prosecution and defense witnesses, subject to the trial court's guidance</p> <p>c) Ask questions that the prosecution has not touched on</p> <p>d) Appeal the judgment or sentence passed by the trial court</p> <p>e) Apply to the High Court or even the Court of Appeal for revision of the trial court ruling</p>
Module 4: Client Care	
<p>B.8 Which one of the following phases reflects the correct process of Interviewing intellectually challenged women and girls?</p> <p>(Circle)</p>	<p>a) Ensure the presence of the caregiver, secure a comfortable room, Introduction, Rapport building, Free narrative, Clarification, and Closing</p> <p>b) Introduction, Free narrative, Clarification, Rapport building, and Closing by inviting the caregiver</p> <p>c) Introduction, Clarification, Free narrative, Rapport building, and Closing</p> <p>d) Invite s social worker, Rapport building, Introduction, Free Narrative, Clarification and Closing</p> <p>e) Secure a comfortable room, Rapport building, Introduction, Free Narrative, Clarification and Closing</p>

Questions	Response (Correct Answers are in Bold Font)
<p>B.9 In exercising a trauma-focused approach in court for women and girls with intellectual disabilities, a victim counsel can do the following.</p> <p>select TRUE statements</p>	<p>a) A lawyer should not lookout for signs of trauma as it is not their expertise</p> <p>b) A lawyer should ensure that cases are heard in camera to protect the privacy of the victims</p> <p>c) Ensure that victims continue to seek appropriate support services such as counseling</p> <p>d) A lawyer should feel free to discuss the client's case with the court clerk as they understand cases better</p> <p>e) If the client is unable to testify, the Lawyer should propose adjourning the case to ensure the client is in excellent shape before the testimony</p>
<p>B.10 The following are core principles for media engagement on sexual and gender-based violence cases. Which is NOT?</p> <p>(Circle)</p>	<p>a) Secure informed and written consent from the survivor or caregiver for all interviews</p> <p>b) Seek consent from COVAW on any case referred to you</p> <p>c) Remove identifying information to protect client privacy</p> <p>d) Use the case stories to grow the Lawyer's brand and bring attention to the case</p> <p>e) Ensure the client's dignity is maintained during questioning</p>



Additional Reading Resources

1. American Bar, *Representing Child Abuse Victims: Forensic Interviewing Tips* (2017), https://www.americanbar.org/groups/public_interest/child_law/resources/videos/representing-child-abuse-victims--forensic-interviewing-tips/ (last accessed on 29th March 2020).
2. American Psychiatric Association, *Diagnostic & Statistical Manual (DSM-5) of Mental Disorders*, 5th Edition (2013).
3. CEDAW *General Recommendation 35* (2017), https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf (last accessed 30th March 2020).
4. CEDAW, *General Recommendation 19 on Violence against Women*, <https://oursplatform.org/wp-content/uploads/CEDAW-Committee-General-Recommendation-19-Violence-against-Women.pdf>, (last accessed 2nd April 2020).
5. Erin Mahone, *The 4 R's of Anxiety Management*, <https://www.psychologytoday.com/us/blog/cutting-edge-leadership/201807/the-4-r-s-managing-anxiety> (last accessed 1st April 2020).
6. Human Rights Committee, *General Comment 20*, <https://www.refworld.org/docid/453883fb0.html> (last accessed 12th May 2020).
7. Ministry of Health, *National Guidelines on Management of Sexual Offences in Kenya* (2009), (www.endvawnow.org/uploads/browser/files/national_guidelines.pdf) (last accessed on 29th March 2020).
8. Ministry of Gender & Social Services, *National Plan of Action on Commercial Sexual Exploitation of Children* (2018-2022), <http://www.anppcan.org/wp-content/uploads/2014/11/NPA-against-SEC-Kenya-2018-2022.pdf> (last accessed on 29th March 2020).
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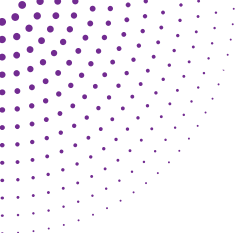


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-Thank You-





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