

HANDBOOK FOR
Court Support and Preparation
Officers (CSPOs)

**Preparing and Supporting Witnesses
of Gender-Based Violence in Court**



UNODC

United Nations Office on Drugs and Crime

Handbook for Court Support and Preparation Officers (CSPOs)

Supporting Court Witnesses of Gender-Based Violence



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Terms and Acronyms

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Criminal Justice System (CJS)
- Court Support and Preparation Officer (CSPO)
- Declaration on the Elimination of Violence Against Women (DEVAW)
- Gender-based violence (GBV)
- Gender-based Violence against Women (GBVAW)
- Human Immunodeficiency Virus (HIV)
- Human Rights-Based Approach (HRBA)
- Institute for Gender Studies (IGS)
- Office of the Prosecutor General (OPG)
- Post traumatic Stress Disorder (PTSD)
- Sexual and Gender-based violence (SGBV)
- UN High Commissioner for Refugees (UNHCR)
- United Nations International Children’s Emergency Fund (UNICEF)
- United Nations Office on Drugs and Crime (UNODC)
- United Nations Population Fund (formerly the United Nations Fund for Population Activities) (UNFPA)
- University of South Africa (UNISA)
- World Health Organization (WHO)

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Definitions

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

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

Court staff includes the personal staff of the judge, including law clerks.

Criminal justice refers to a system that is derived from criminal law and focuses on concepts such as accountability of the person who commits a crime or offends public order/violates the rights of another; protection and compensation/redress of the victims; and fairness in terms of all parties. Criminal justice also refers to a mechanism for administering criminal justice that can provide a fair outcome and has appropriate capacity and authority.

Criminal Justice System (CJS) refers to a set of agencies and processes that governments establish to control crime and impose penalties on those who violate criminal laws.

De facto equality (substantive equality) consists of ensuring “equality of results” for women, which means that progress towards equality must bring about concrete outcomes or long-term changes in gender relations.

De jure equality (formal equality) requires that men and women must receive equal protection of their rights and be guaranteed equality of opportunity where they are situated. Equality of opportunity means that everyone should, at the outset, have the same opportunities so that they can realise their capabilities and participate in all areas of economic, social, political and cultural life as equals.

Discrimination is a difference in treatment based on certain grounds such as race, colour, language, religion, belief, caste, employment, political opinion, nationality, social origin, disability, age, location, region, indigenous and minority status, sex, gender, sexual orientation, gender identity, or other status, which has the purpose or effect of nullifying or impairing the enjoyment or exercise of rights. Discrimination may be direct (differentiated

treatment, which adversely affects the enjoyment of rights of one group in particular), or indirect (treatment that seems to be neutral, but whose consequences adversely affect the enjoyment of rights of one or more groups in particular).

Formal justice systems refer to justice systems that are the responsibility of the state and its agents. They include government-supported laws, institutions such as police, prosecution services, courts as well as prisons that are responsible for enforcing and applying the laws of the state and administering sanctions imposed for law violations.

Gender refers to the roles, behaviours, activities and attributes that a given society at a given time considers appropriate for men and women. In addition, “gender” refers to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys. These attributes, opportunities and relationships are socially constructed and are learned through socialisation processes. They are context- and/or time-specific and changeable. Gender determines what is expected, allowed and valued in a woman or a man in a given context. In most societies, there are differences and inequalities between women and men in assigned responsibilities, activities they undertake as well as access to, and control over resources and decision-making opportunities. Gender is part of the broader socio-cultural context, as are other important criteria for socio-cultural analysis such as class, race, poverty level, ethnic group, sexual orientation and age.

Gender-based violence is “any act of violence that is directed against a woman because she is a woman or that affects women disproportionately” (Article 3(d) of CEDAW (UN General Assembly, 1979, General Recommendation).

Human Rights: These are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include civil, political, social and economic rights and everyone is entitled to these rights without discrimination. Examples include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more.

Human Rights-Based Approach (HRBA) focuses on how human rights issues affect individuals differently and how power relations and gender-based discrimination affect the enjoyment of rights by all human beings.

Intimate partner violence is the most common form of violence that women experience globally. It includes a range of sexually, psychologically, physically and economically coercive and harmful acts used against adult women and adolescent girls by a current or former intimate partner without her consent. **Physical** violence involves intentionally using physical force, strength or a weapon to harm or injure the woman. **Sexual** violence includes abusive sexual contact, making a woman engage in a sexual act without her consent, and attempted or completed sex acts with a woman who is ill, disabled, under pressure or under the influence of alcohol or other drugs. **Psychological** violence includes controlling or isolating the woman, humiliating or embarrassing her, or ensuring that she is in a constant state of fear, hyper vigilance or insecurity. **Economic** violence includes denying a woman access to and basic control over economic resources, including access to employment, such that she is controlled by, or becomes dependent on her intimate partner.

Judge means any person exercising judicial power, however designated.

Judiciary refers to: (1) the branch of authority in a country which is concerned with law and the legal system; (2) the system of courts of justice in a country; and (3) judges collectively.

Judicial stereotyping is the practice of judges ascribing specific attributes, characteristics or roles to an individual by reason only of her or his membership in a particular social group and perpetuating harmful stereotypes through their failure to challenge those stereotypes.

Myths are widely held, but false beliefs or ideas. Myths about GBVAW are based on prejudices and harmful gender stereotyping.

Non-partner sexual violence refers to violence by a relative, friend, acquaintance, neighbour, work colleague or stranger. It includes being forced to perform any unwanted sexual act, sexual harassment and violence perpetrated against women and girls frequently by an offender known

by them, including in public spaces, schools, workplaces and in the community.

Perpetrator refers to a person who has committed gender-based violence against women (GBVAW).

Recidivism refers to a situation in which a person who is the object of a criminal justice intervention (sanction) re-offends and commits a new criminal offence.

Secondary victimisation is the victimisation that occurs not as a direct result of the criminal act but through the inadequate response of criminal justice institutions and providers to the victim.

Sex refers to anatomical sex characteristics, reproductive organs, hormonal and/or chromosomal patterns. While “sex” is often understood as a binary concept of either male or female, advancements in the study of genetics have revealed a contemporary understanding of sex that indicates the natural occurrence of a considerable variability in sex characteristics (sometimes referred to as intersex).

Patriarchy is a social system in which men hold primary power and dominate in roles of political leadership, moral authority, social privilege and control of property.

Prosecute means to lay a charge in a criminal matter and to prepare and conduct legal proceedings against a person charged with a crime.

Rights-based approach refers to the delivery of quality services recognising that states have a primary responsibility to respect, protect and fulfil the rights of women and girls. Violence against women and girls is a fundamental breach of women and girls’ human rights, particularly their right to a life free from fear and violence.

Secondary victimisation means victimisation that occurs not as a direct result of a criminal act but through the response of institutions and individuals to the victim/survivor.

Sexual gender-based violence refers to any sexual act or unwanted sexual comments or advances using coercion, threats of harm or physical force, by any person regardless of their relationship to the survivor, in any setting. It is usually driven by power differences and perceived gender norms.

It includes forced sex, sexual coercion and rape of adult and adolescent men and women, and child sexual abuse and rape.

Support person means a specially trained person designated to assist a witness throughout the justice process in order to prevent the risk of duress, re-victimisation or secondary victimisation.

Subpoena refers to an order of the court that instructs a person to appear in court and give evidence.

Victim/witness refers to a person who is a victim of, or witness to a crime. **Victim** refers to a woman or a girl impacted by violence against women or against whom violence has been committed. The term victim rather than “survivor” is used since this handbook focuses on the criminal justice process where this term designates a legal status. **Victims/survivors** refer to women and girls who have experienced or are experiencing gender-based violence to reflect both the terminology used in the legal process and the agency or active role of these women and girls play in making decisions to seek essential services. (UN Secretary-General’s Study), supra note 1, notes the ongoing debate on the terms victim and survivor. Some suggest that the term “victim” should be avoided because it implies passivity, weakness and inherent vulnerability and fails to recognise the reality of women’s resilience and agency.

For others, the term “survivor” is problematic because it denies the sense of victimisation for a woman that has been the target of violent crime. Therefore, this handbook uses the term “victim/survivor.”

Victim-centred: A victim-centred approach is the systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a non-judgmental manner. It seeks to minimise traumatisation associated with criminal justice processes by providing support of victim advocates and service providers, empowering survivors as engaged participants in the process, and providing survivors an opportunity to play a role in seeing their offenders brought to justice (Office of Justice Programs, n.d.).

Violence against Women: Any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. (UN General Assembly, 1993). It refers to violence directed at a woman because she is a woman and that affects her disproportionately. It takes a range of forms including but not limited to: intimate partner violence; non-partner sexual assault; trafficking; so-called honour crimes; sexual harassment and exploitation; stalking; witchcraft-related violence and gender-related killings (UN General Assembly, 2017).

Foreword



Gender-based violence is a worrying phenomenon in Namibia and the rest of the world. Women constitute the majority of victims of these offences. A large number of these offences are committed within homes by intimate partners and family members.

These dynamics, as well as societal and cultural pressures create a huge barrier in the efforts by the Criminal Justice system to fight these crimes. A number of victims suffer in silence and do not report these crimes. For those who report, it becomes a challenge for them to appear in court and testify against their perpetrators and this results in withdrawal of cases from the Courts.

In some cases, fear of the perpetrator, financial dependence by the victim on the perpetrator and pressure from family members weigh heavily on most victims. For the ones who are courageous enough to go all the way to Court, the intimidating nature of the Court atmosphere compromises their ability to give good evidence and often results in the acquittal of perpetrators.

The laws in Namibia are progressive in protecting the vulnerable but laws alone cannot offer adequate protection to victims.

Preparation of victims for Court and supporting them throughout the process are critical for the successful prosecution of these matters and the attainment of justice for victims of these serious offences.

It is the burning desire to have justice done in these matters in accordance with the available laws, that my office requested assistance from the United Nations Office on Drugs and Crime (UNODC) to train a pool of persons who would be available to prepare and support victims. A successful training based on this handbook was conducted, and Namibia now has a pool of Court Support and Preparation Officers whose support is contributing positively to the criminal justice system.

This handbook is a critical tool in building the capacity to offer support to victims as well as providing the victims with knowledge and accurate information on the criminal justice system including court processes, court infrastructure as well as responsibilities of different stakeholders. It is an important point of reference for those that were trained and will also guide future trainings. It covers important topics to assist the user to understand Gender-based violence; dignity; the legal framework and supporting witnesses in Court.

An understanding of these topics is key for every Court Support and Preparation Officer.

I wish to express my profound gratitude to the contributors of this rich and informative handbook for their invaluable work.

Without the generous financial assistance of UNODC and the tireless work done by Dr Linda Naidoo, this handbook would not have come into fruition and my office is eternally grateful for your assistance in ensuring justice for victims of gender-based violence in Namibia.

Overview of the Handbook

The intention of this handbook is to equip Court Support and Preparation Officers (CSPOs) with the knowledge, skills and attitudes essential to deliver a vital service to vulnerable witnesses of gender-based violence who participate in the criminal justice process in Namibia.

This basis for developing the handbook was to provide guidelines for the role of the CSPO, who will function under the auspices of the Namibian Office of the Prosecutor General. It contains knowledge-based course material, tests competencies and provides a logbook in which CSPOs can record their reflections.

The handbook comprises two sections:

- a) **Part 1** contains information based on five sections that will upscale CSPOs to provide an essential service in court support and preparation of witnesses.

In addition to notes on the above themes, the handbook provides references to additional reading material. The purpose of these additional references is to offer participants an opportunity to broaden their knowledge on the subject and encourage individual introspection and insight.

- b) **Part 2** of the handbook contains various annexures on practical activities that trainers can use to facilitate the training process and assess their knowledge in this field.

Purpose and Scope of the Handbook

The overall purpose of this handbook is to build the capacity of CSPOs to offer a relevant service to GBVAW court witnesses. They do this by:

- a) Preparing witnesses for court through an educational programme that will enable them to be well informed of the court process;
- b) Offering debriefing and support to enable witnesses to provide optimal, credible evidence during the trial process; and
- c) Offering debriefing and support to the family members of witnesses.

The handbook will not just provide CSPOs with the necessary knowledge. It also seeks to introduce them to the requisite skills while providing opportunities for them to reflect on their own attitudes, mindset, values and stereotypes. In addition, the content of the handbook takes into account the principles of gender mainstreaming and gender sensitivity.

Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation so that women and men benefit equally and inequality is not perpetrated. The ultimate goal is to achieve gender equality (Economic and Social Council agreed conclusions 1997/2).

Learning Approach of the Handbook

This handbook is designed to assist Court Support and Preparation Officers (CSPOs) to introspect, develop insight and interact with the content. As such, the learning approach enables participants to actively question the usual norm and emphatically examine their own experiences and mindset through critical reflection.

Furthermore, it recognises and validates real experiences of CSPOs and combines them with new findings and restructured concepts.

This handbook aligns itself with two distinct perspectives, namely, one focusing on human rights and the other on a survivor-centred approach.

A Human Rights Perspective

Violence against women is a persistent and universal problem occurring in every culture and social group. Worldwide, at least one in every three women has been beaten, coerced into sex or otherwise abused in her lifetime – most often by someone she knows, including a member of her own family, an employer or a work colleague. Accordingly, gender-based violence against women is universally prevalent and constitutes one of the most severe human rights violations in the world.

Gender-based violence against women is universally prevalent and constitutes one of the most severe human rights violations in the world

Women are entitled to equal enjoyment and protection of all human rights and fundamental freedoms, which include among others:

- The right to life;
- The right to equality;
- The right to liberty and security of person;
- The right to equal protection under the law;
- The right to be free from all forms of discrimination;
- The right to the highest attainable standard of physical and mental health; and
- The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.

It has taken decades of struggle by women's rights movements to persuade the international community to view GBVAW as a human rights concern and not just as a private matter, in which the state should not interfere.

GBVAW is unquestionably a human rights violation as stipulated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as well as in other international and regional human rights instruments.

In this context, approaching gender-based violence against women from a human rights perspective requires addressing gender inequality as a root cause, and upholding women's rights and freedoms vis-à-vis CEDAW. States are obliged to promote and protect these human rights; all interventions should therefore be designed and implemented with this understanding.

A human rights-based approach requires developing the capacities of the "duty-bearers" or those responsible for implementing the law (e.g. justice, security/police, health and education personnel, among others) on human rights and gender. They need to understand the meaning of these terms and how to apply them in the context of violence against women.

Translated into practice, this approach implies:

- a) Ensuring that justice procedures (e.g. the type of evidence that is or is not allowed in cases of sexual abuse) take into account the gendered nature of such crimes and the fact that female victims/survivors face stigma and discrimination that may deter them from reporting or filing a case immediately; and
- b) Ensuring women's safety, confidentiality and anonymity at all times.

A human rights-based approach also requires developing the capacities of "rights holders" (i.e. women and girls), so they can avail themselves of the rights to which they are entitled. In practical terms, examples include:

- a) Ensuring services are available and accessible and that women and girls know about them; and
- b) Providing legal rights training for women and girls.

"The human rights response (to GBVAW) is based on States' obligations to exercise due diligence in the prevention, protection and prosecution of all forms of violence against women in a criminal justice system. States are responsible for creating a legal and policy framework in which everyone's human rights can be enjoyed and exercised, including protecting women from such violence and treating them with dignity and respect throughout the criminal justice process, as well as ensuring defendants' right to a fair trial." (UNODC, 2014)

A Victim/Survivor's perspective

A victim/survivor-centred approach focuses on putting the needs and rights of a victim/survivor first. In this regard, victims/witnesses of gender-based violence have special rights, namely:

- a) To be treated with dignity and compassion;
- b) To be protected from discrimination;
- c) To be informed;
- d) To be heard and to express views and concerns;
- e) To have access to effective assistance;
- f) To privacy;
- g) Be provided with protection from hardship during the justice process;
- h) To safety; and
- i) To reparation.

"A victim-centred approach, as opposed to a system-centered one, puts the needs of the victims at the core of any intervention.....victim-centred approaches shift the focus to assisting victims in their engagement with the criminal justice process rather than holding them responsible for their often well-justified 'reluctance' to cooperate..." (UNODC, 2014)



Learning Outcomes

The handbook intends to achieve the following learning goals:

| KNOWLEDGE | SKILLS | ATTITUDES |
|---|---|--|
| Understand the criminal justice system in Namibia and the role of the victim/witness in the system. | Empathise with a witness who is a victim/survivor of gender-based violence. | Appreciate the challenges that GBVAW survivors face as witnesses in a formal criminal justice system. |
| Understand the onset of trauma resulting from GBV and recognise how the formal justice system can expose a victim/witness to secondary victimisation. | Interact with a GBVAW victim/survivor according to recognised good practices, and based on international standards and norms. | Equip CSPOs to reflect on their own biases and prejudices to deliver a non-judgemental and non-discriminatory service. |
| Recognise the extent of GBVAW in Namibia and the severe consequences on individuals and society at large. | Communicate effectively with a witness and her/his family. | |
| Understand the root causes of GBVAW in Namibia. | Provide information about the court process to a witness and her/his family. | |
| | Use a variety of techniques to provide an individualised court preparation programme. | |
| | Liaise with other service providers to develop an inter-sectoral response for victims/witnesses. | |
| | Offer emotional support to victims/witnesses; inform them about relaxation and techniques that reduce stress/alleviate anxiety. | |

Part 1

Thematic Learning Areas: Court Support and Preparation

Section 1: Gender-based Violence

Learning objectives

By the end of this section, CSPOs will be able to:

- *Understand the concepts of violence in global terms;*
- *Analyse the concept of power and relate it to patriarchy and GBVAW;*
- *Define and differentiate between sex and gender and other key concepts;*
- *Understand what is meant by the term gender-based violence against women (GBVAW);*
- *Recognise other terms associated with GBVAW; and*
- *Analyse the root causes and contributing factors.*

1.1 Defining Gender-based violence (GBV)

Aside from definitions featured earlier in this handbook, Bloom (2008, p.14) refers to Gender-Based Violence (GBV) as a general term to capture violence that occurs as a result of the normative role expectations associated with each gender, along with the unequal power relationships between the two genders, within the context of a specific society.

Gender-based violence includes physical, sexual, verbal, emotional, and psychological abuse or threats of such acts or abuse, coercion, and economic or educational deprivation, whether occurring in public or private life, in peacetime and during armed or other forms of conflict, and may cause physical, sexual, psychological, emotional or economic harm.

When expanding on international definitions of GBV, it is useful to note that:

- a) Violence against women is gender-based; it does not occur to women randomly.
- b) Such violence is perpetuated by harmful social and cultural expectations about gender roles typically associated with being a woman or being a man, a girl or a boy.
- c) Gender-based violence is deeply embedded in unequal power relationships between men and women.
- d) In many societies, prevailing attitudes subordinate women to men and entitle men to use violence to control women. These attitudes serve to justify, tolerate or condone violence against women. This is patriarchy.
- e) GBV serves as a device for enforcing and sustaining gender inequality.
- f) The terms gender-based violence and violence against women are often used interchangeably as it has been widely acknowledged that most gender-based violence is inflicted on women and girls, by men and boys. This is not to say that gender-based violence against men does not exist. For instance, men can become targets of physical or verbal attacks for transgressing predominant concepts of masculinity, for example, because they have sex with men. Men can also become victims of violence in the family – by partners or children (Bloom, 2008, p. 14).
- g) Gender-based violence is a violation of women's human rights and a form of discrimination against women.
- h) Gender-based violence encompasses a range of harmful acts:
 - Physical violence;
 - Sexual violence;
 - Psychological violence; and
 - Economic violence.

As indicated in the 1993 United Nations Declaration on the Elimination of Violence against Women, violence against women means “...any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life ...” (UN General Assembly 48/104, 20 December 1993).

The UN Resolution on the Elimination of Domestic Violence against Women (UN General Assembly, 2003) elaborated on domestic violence as a specific form of gender-based violence, recognising that domestic violence is violence that:

- Occurs within the private sphere, generally between individuals who are related through blood or intimacy;
- Is one of the most common and least visible forms of violence against women and that its consequences affect many areas of the lives of victims;
- Can take many different forms, including physical, psychological and sexual violence; and

- Can include economic deprivation and isolation and that such conduct may cause imminent harm to the safety, health or wellbeing of women.

1.1.1 Types of violence

The WHO (2002) further divides the general definition of violence into three sub-types according to the victim-perpetrator relationship: self-directed violence, interpersonal violence and collective violence.

- Self-directed** violence refers to violence in which the perpetrator and the victim are the same individual; it is subdivided into self-abuse and suicide.
- Interpersonal** violence refers to violence between individuals and is subdivided into violence involving the family and/or intimate partner as well as the community.
- Collective** violence refers to violence committed by larger groups of individuals and can be subdivided into social, political and economic violence.

Figure 1 (below) provides a visual presentation of interpersonal violence:

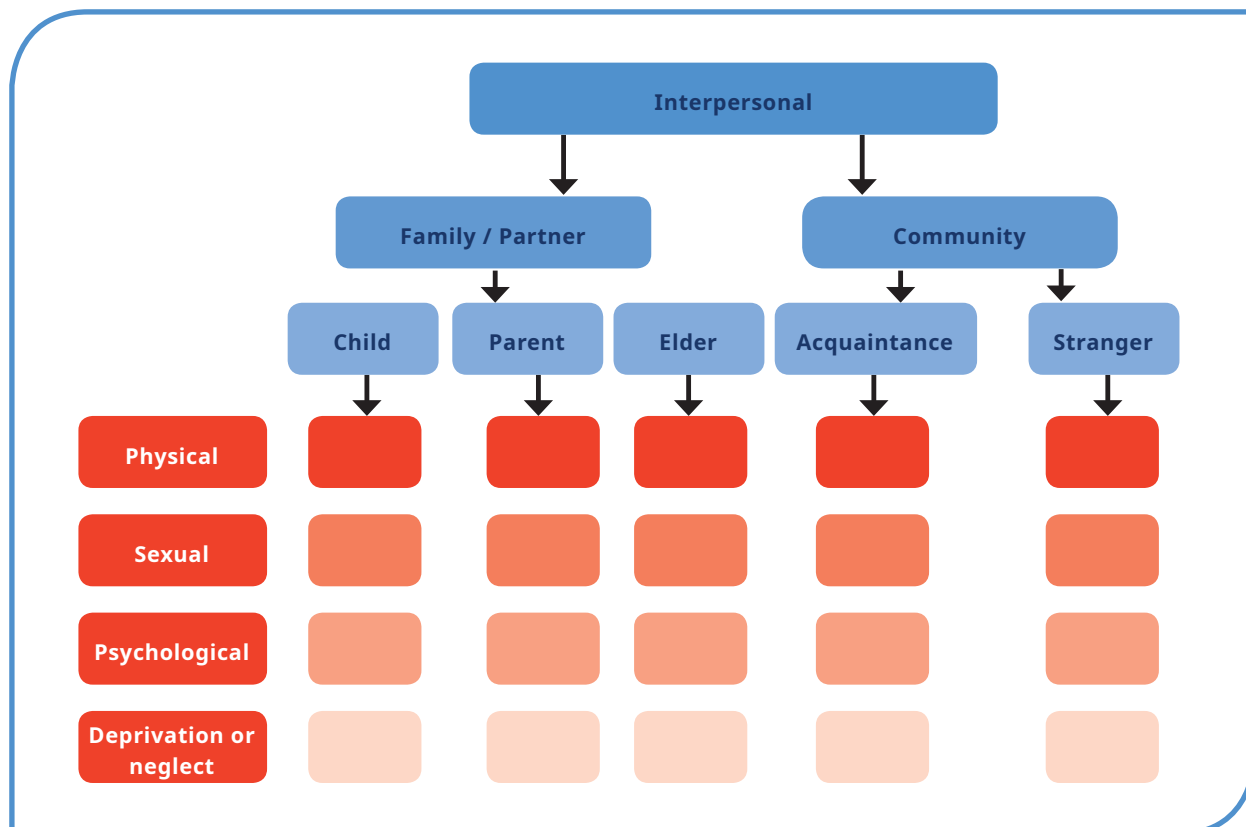


Figure 1: Typology of violence (WHO, 2002)

As depicted in Figure 1, the family/ intimate partner category includes child maltreatment, intimate partner violence and elder abuse.

The community category is broken down into acquaintance and stranger violence and includes youth violence, assault by strangers, violence related to property crimes and violence in workplaces and other institutions.

1.1.2 Power and its relationship to gender-based violence

The Declaration on the Elimination of Violence against Women clearly states that violence against women is:

“A manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women” (UN General Assembly 48/104, 20 December 1993).

Interpersonal violence represents an abuse of power. Perpetrators use domestic violence as a way to exert dominance and control over victims and their children. Perpetrators believe that they are “entitled” to certain things within the relationship; they use violence to get them and maintain the relationship the way they want it to be.

Most communities have a patriarchal system. Patriarchal structures promote a hierarchy, with men in a superior position to women and children. It is within this structure that men’s power is created in the family. Furthermore, this structure enables men to demonstrate and reinforce their dominance, which, in turn, legitimises violence as a form of control over “subordinate” family members. Indeed, patriarchal structures can create perceptions of ownership of the entire family or of the children, leading to the dehumanised status of the subordinate family members (Boonzaier & De la Rey, 2004).

Patriarchal family structures create an environment that normalises violence and thereby reinforces women and children’s subordination. Women’s rights activists and researchers have long noted that patriarchal systems shape social expectations in order to uphold male superiority over women (Boonzaier & De la Rey, 2004).

Additional reading

Naidu-Hoffmeester’s article (n.d.), *Study Explores Power Relations and Domestic Violence in Mamelodi*, describes a study conducted by Prof Nokuthula Mazibuko, Head of the Institute for Gender Studies (IGS) at the University of South Africa (UNISA). Mazibuko’s study *Checkmating the Mate: Power Relations and Domestic Violence in a South African Township* explores how South African women understand and mediate power and control between themselves and within their relationships with their partners.

“There is no question that in South Africa, violence against women is widespread. The forms of violence include slapping, tearing hair, pushing and pulling, kicking, hitting with an object, attempting to strangle, threatening, verbal abuse, sarcastic remarks in the presence of outsiders, imposing severe restrictions on freedom of movement, totally ignoring the wife in decision-making processes, and making frequent complaints against her to her parents, friends, neighbours and kin, sexual violence, which includes forced sexual intercourse and other forms of sexual coercion.”

Expanding on the issue of domestic violence, Mazibuko noted it is a pattern of behaviour used to establish power and control over another person with whom an intimate relationship is, or has been shared. The perpetrator does this through fear and intimidation, often including the threat or use of violence.

“The control motives of the violent member, in this case the husband, are identified operationally by patterns of controlling behaviour that indicate an attempt to exercise general control over the wife.” She added that according to a 2009 study, the rate of femicide (where a woman or girl is killed by a man because of her gender) in South Africa, stood at one woman being killed by her intimate male partner every eight hours.

Exploring these two concepts of power – residual and active power – and how exercise or non-exercise of these forms of power

structures affect intimate relationships, Mazibuko commented that her findings in Mamelodi indicate that the ideas of ownership, control and love among people in intimate relationships are often woven into the discourse of power relations.

“There were dominant narratives that the women discussed about their male partners, namely, control, isolation from family members and friends, constantly checking the women’s cell phones, and keeping their bank cards. These women’s experiences were strongly patterned, suggesting that the findings are likely to be valid representations of their experiences on domestic violence.”

She continued: “In this culture, a man owns his family and this sense of ownership results in control – erroneously seen as love for family. For those who subscribe to this notion of relationship, the concept of partner-abuse hardly exists – in fact; it is constructed within the gamut of discipline, love and care.”

Mazibuko said the women interviewed had experienced emotional, verbal, financial, sexual and physical violence in their intimate relationships. The majority of women also had high school education and university degrees. All were employed in secure jobs as educators in high, primary or pre-primary institutions, nurses, social workers or office workers in government. Most of the women were married, while a few were widowed or unmarried.

She listed patriarchy (a system of male domination and female subordination in economy, society and culture), as a reason for this form of control and power. “Patriarchy is a system of government in which men rule communities through their position as heads of households, and through a system of social structures and practices in which men dominate, oppress and exploit women.”

The perception and understanding of masculinity is another contributing factor, according to Mazibuko. “Masculinity is a set of characteristics that our community often associates with men. And when the exercising of power by men is challenged, it can be perceived by such men as threats to their masculine identity. This inability to meet social expectations of successful manhood can trigger a crisis in male identity.”

“Therefore,” she continued, “violence against women is not seen as an expression of male powerfulness and dominance over women, but rather as being rooted in male vulnerability or powerlessness. Domestic violence on women is an expression of power by men that is otherwise denied.” Domestic violence is also related to a women’s status; power she can attain from sources such as education, income and community roles. However, that power is often perceived negatively, explains Mazibuko, adding that violence within relationships results in power imbalances between the victim and the perpetrator.

“There are estimates that indicate domestic violence occurs in as much as 60% of marital relationships, particularly when there is conflict over resources and decision-making power. Challenges to the exercise of power by men can be perceived by them as threats to their masculine identity; feelings of losing a gendered power advantage and an inability to meet social expectations of successful manhood.”

Upon analysing the women’s responses, Mazibuko remarked that domestic violence, as a social phenomenon is clearly complex and multidimensional, just like any other social phenomena. “However, a shift needs to continuously happen in public thinking and domestic violence needs to be viewed as unacceptable behaviour as it is a gross violation of human rights.”

1.2 Other Terminology

- **Sex** refers to anatomical sex characteristics, reproductive organs, hormonal and/or chromosomal patterns. While “sex” is often understood as a binary concept of either male or female, contemporary understanding of sex, informed by advancements in the study of genetics, reveals the natural occurrence of considerable variability in sex characteristics (sometimes referred to as intersex).
- **Sexuality** refers to the cultural notions of pleasure and social and bodily interchanges ranging from eroticism, affection, to notions relating to health, reproduction, the use of technologies and the exercising of power in society. It includes sexual behaviours,

sexual relationships and intimacy and how we choose to express ourselves as males and females.

- **Sexual orientation** is the capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals or a different sex/gender or the same sex/gender or more than one sex/gender.
- **Gender** refers to the roles, behaviours, activities, and attributes that a given society at a given time considers appropriate for men and women. “Masculine” and “feminine” are gender categories. These attributes, opportunities and relationships are socially constructed and are learned through socialisation processes. They are context- and/or time-specific and changeable. Gender determines what is expected, allowed and valued in a woman or a man in a given context. In most societies, there are differences and inequalities between women and men in responsibilities assigned, activities undertaken and access to and control over resources and decision-making opportunities. Gender is part of the broader socio-cultural context, as are other important criteria for socio-cultural analysis, such as class, race, poverty level, ethnic group, sexual orientation and age.
- **Gender identity** refers to a person’s deeply felt psychological identification as man, woman, or other which may or may not correspond to the person’s physiology or designated sex at birth.
- **Gender roles** refer to the different socially ascribed attitudes, behaviours, work or responsibilities assigned to men and women, boys and girls, and third-gender or transgender persons.
- **Gender diversity** is a term that recognises that many preferences and self-expression fall outside commonly understood gender norms.
- **Gender relations** describe the social relations between women and men, including how power, access to and control over resources are distributed between the sexes.

Cultural and social norms generally assign lower value to aptitudes, abilities and roles conventionally associated with women or with those perceived in violating traditional sex/gender norms. This results in hierarchical, unequal gender relations.

- **Gender norms** are ideas about how men and women should look, be and act. Norms refer to the accepted attributes and characteristics associated with each gender at a particular point in time for a specific society or community. They are the standards and expectations to which gender identity generally conforms, within a range that defines a particular society, culture and community at that point in time. Internalised early in life, gender norms can establish a life cycle of gender socialisation and stereotyping.

1.3 The Consequences of Gender Norms

Gender affects all aspects of our lives – our behaviour, roles and personality. It is important to see how we have experienced discrimination in our own lives because of these restrictive gender roles. (See Activity 2: “Act Like a Woman, Be a Man” in Part 2 of this handbook).

Socialisation is a process of informal education, which imparts certain values, attitudes and behavioural codes to individuals. These behavioural codes are different for men and women. In most societies, these codes often put greater restrictions on the freedom of choice, expression and movement for women in comparison to men. Socialisation is a continuous process, which several institutions facilitate at the outset with the family into which a child is born. We learn gender-based behaviours from various sources, including family, friends, tribes, peer groups, society, religion, culture, traditions, schools, customs, proverbs, media, legal provisions, etc.

Since socialisation is a life-long process, there is no exact period or phase when we learn these behaviours. These types of socialisation exert such a powerful influence in our lives that we perform the roles ascribed to us almost automatically. Consequently, we begin to judge others by how accurately they perform these roles, without realising the far-reaching consequences these prescribed roles and norms have on the ability of individuals to realise their full potential.

Across the life cycle, gender norms determine how each society divides work among men and women, boys and girls, according to socially established gender roles or what is considered suitable and valuable for each sex. This phenomenon is called the Gender Division of Labour. Gender inequalities arise from the lesser social and monetary value that cultural and social norms assign to the kinds of work, aptitudes and abilities usually performed by women and girls.

Differences between men and women are important and we need to respect them. However, they need to be challenged when used as a basis for discrimination. It is important to note that discrimination takes several forms. These include restrictive dress codes, mobility, access to and control over resources as well as freedom to pursue education, profession or a partner of choice. Gender-based discrimination also results in a gross violation of the basic human right of living with dignity and security, in the form of violent abuse. Any act that violates the rights of individuals to enjoy equal opportunities and realise their full human potential, amounts to discrimination.

1.3.1 Additional reading

The following article *Gender-Based Violence: From Seeds to Solutions* was published in The Namibian on 18 March 2011 ("Gender-based violence", 2011).

Gender-Based Violence: From Seeds to Solutions

MONSTER. Animal. Demon. Beast. These, and far less publishable epithets, are hurled at criminals who abuse and murder women and girls.

The grim reality though is these criminals are in fact not monsters or animals. They are human beings just like the women and girls they hurt. They are sons, brothers, fathers and even husbands. At one stage, they were children full of innocence and curiosity. Someone out there surely loves or loved them.

Before you accuse me of undue sympathy for perpetrators of such heinous crimes as rape, torture and murder, first take a moment to consider what if one of these criminals were your son or your brother. Maybe you noticed a destructive pattern in his behaviour as a child or witnessed moments where he could have been subjected to abuse. Perhaps he was naughty in school and eventually dropped out. Maybe he was popular with the girls. Maybe he spent hours glued to the television.

My point here is that men who commit violent crimes against women were not born criminals. Yes, the law must hold them responsible for their actions, and yes, those actions are abhorrent in every way imaginable. However, to overly demonise these criminals (in understandable outrage) and then stop for the day does not address the true societal problem or promote a solution.

In fact, it further victimises survivors of violence, painting women as passive sufferers of animalistic, demonic attacks. For example, the woman who was able to free herself from the tree her captor tied her to and run to safety should be heralded for her strength and perseverance instead of quoted about the intense fear she felt. Of course, she was scared! Who wouldn't be? But not every person has the ability or opportunity to be her own hero!

What is far worse than these crimes is the fact that humans (and not animals) commit them. Brothers, sons and fathers commit them. We live and actively partake in a society that continues to produce men who brutalise women. This is the problem we must address. In order to do so, we must examine how boys and girls are raised. To use a sports analogy, boys are generally raised on the offence – to manoeuvre and pursue potential rewards, to ward off, prevent and protect. As children grow up, it is always seen as the girl's responsibility to avoid male attention, while boys are encouraged to actively seek girls. While girls are encouraged to show their feelings, aggression becomes the acceptable only way for young men to express a range of emotions, from jealousy and dominance to frustration and hopelessness.

Whether or not you believe there are evolutionary instincts at play here, we can clearly see where the seeds of potential violence and abuse are planted. Cultural norms and expectations further intensify how boys and girls, men and women become conditioned. Then the destructive influences of media, alcohol abuse and poverty need no further elaboration. The problem is much deeper than it being the men's fault. What we realise is that any truly meaningful societal problem is not only complicated, but also more importantly interrelated. We need to start examining all these seemingly distinct problems more holistically in order to begin to create effective solutions.

I wish to conclude with again recognising the strength and heroism of the woman who was able to be her own saviour and to acknowledge those men who actively stand up against misogynistic mentalities and behaviours.

1.4 Prevalence of Gender-based Violence in Namibia

Although there has been very little recent research conducted on gender-based violence or violence against women in Namibia, it is generally understood that the prevalence of GBV and GBVAW is at epidemic levels. Since Namibia's independence in 1990, people have admired the country both at home and abroad as a beacon of stability, peace, and security.

It is therefore regrettable that hardly a day passes without reports of murder, rape, beatings, or other forms of violence against women and girls at the hands of men. These sickening acts are taking place in all parts of the country, involving perpetrators and victims of all ages (Conteh & Sikume, 2014).

Namibian definition of gender-based violence (GBV)

In the National Gender Plan of Action: 2010-2020 (Ministry of Gender Equality and Child Welfare, 2013) GBV "refers to all forms of violence that happen to women, girls, men and boys because of the unequal power relations between them."

The definition of GBV in the Namibian context allows for a wide variety of violence, such as:

- Domestic violence;
- Rape;
- Sexual abuse and violence;
- Sexual harassment;
- Some forms of trafficking;
- Forced prostitution;
- Early and forced marriages;
- Intimidation;
- Verbal abuse;
- Economic violence;
- Physical violence; and
- Psychological violence.

The National Gender Plan of Action: 2010-2020 (Ministry of Gender Equality and Child Welfare, 2013) is inclusive of domestic violence in its definition of GBV. It states:

"All acts perpetrated against women, men, girls and boys on the basis of their sex, which causes or

could cause them physical, sexual, psychological, emotional or economic harm, including the threat to take such acts, or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace-time and during situations of armed or other forms of conflict or in situations of natural disasters, that cause displacement of people."

Thus, Namibia's policy environment is consistent with international definitions acknowledging that GBV - including domestic violence and rape - disproportionately affects more Namibian women than men.

The small amount of data available does not reflect the true situation and prevalence of GBV in Namibia. Individuals very rarely report rape or domestic violence due to fear of reprisal from the perpetrator, family pressure, self-blame and/or societal stigma and discrimination. Nevertheless, the most recent study conducted by UNIADS (2013) revealed the following:

- 1075 reported cases of rape nationwide for each year between 2009-2012;
- 92% of complainants are women and girls;
- One third of rape victims are below the age of 18; and
- At least 30% of young women report their early sexual experiences prior to age 15 as forced.

The root causes of all forms of GBV lie in a society's attitudes towards and practices of gender discrimination

A 2005 study (Multi-country Study on Women's Health and Domestic Violence against Women) by the World Health Organization (WHO) found that over one third of ever-partnered women in Namibia reported having experienced physical or sexual violence at the hands of an intimate partner at some time, with 31% reporting physical violence and 17% reporting sexual violence (WHO, 2005).

One out of three women in Namibia has experienced, or will experience GBV in their lifetime. The study further indicated that 19% of respondents had experienced physical violence by a non-partner since the age of 15, while 6% reported sexual violence by a non-partner (WHO, 2005).

The perpetrators of physical violence were found to be:

- Teachers (26%)
- Boyfriends (28%)
- Fathers (19%), and
- Female family members (19%).

In 2016, Deputy Commissioner Johanna Situde, Head of the Namibian Police's GBV division, revealed the following statistics ("50 000 gender crimes", 2016) while attending a WHO workshop addressing the health of women subjected to GBV.

In the period 2012-2015, police statistics on GBV in Namibia indicated that:

50 000 crimes related to GBV were reported

45 GBV-related crimes occurred every day

22 175 assaults with intent to harm

18 054 common assaults

2 839 rapes

1 138 attempted murders

1 734 murders – one every two days

The principal characteristic of GBVAW is that it occurs against women precisely because of their gender. GBV involves power imbalances where, most often, men are the perpetrators and women the victims.

The root causes of all forms of GBV lie in a society's attitudes towards and practices of gender discrimination – the roles, responsibilities,

limitations, privileges, and opportunities afforded to an individual according to gender.

Contributing factors are factors that perpetuate GBV or increase the risk of GBV; they also influence the type and extent of GBV in any setting. While contributing factors do not cause GBV, they are associated with some acts of GBV. For example:

- Alcohol/drug abuse is a contributing factor, however, not all alcoholics/drug addicts beat their wives or rape women;
- Poverty is a contributing factor; however, not all poor women are victimised by forced prostitution or sexual exploitation.

In Namibia, the root causes of GBV reflect the following:

- Male and/or societal attitudes of disrespect or disregard towards women;
- Lack of belief in equality of human rights for all;
- Cultural/social norms of gender inequality;
- Lack of value of women and/or women's work;
- Violence accepted as a social norm;
- Legal justice system and laws silently condone gender violence;
- Loss of male power/role in the family and community (seeking to assert power); and
- Witchcraft.

Points for participant introspection

- *What are some of your experiences with traumatised witnesses? How did they present emotionally and psychologically?*
- *How can you respond to court witnesses in an empathetic way?*

Section 2: Dignity and Trauma

Learning objectives

By the end of this section, CSPOs will be able to:

- Define dignity in relation to working with vulnerable witnesses;
- Understand how an individual's dignity and sense of self can be affected by life's events;
- Respect and uphold the dignity of individuals when supporting and preparing them for court;
- Recognise the impact of personal attitudes, values and beliefs on the victim/survivor's dignity;
- Empathise with the experiences of vulnerable witnesses;
- Identify the skills and values required to maintain the dignity of vulnerable witnesses; and
- Understand trauma and its effects on GBV victims/survivors.

2.1 Defining Human Dignity

Throughout the world, millions of woman and children continue to face exploitation, violence, abuse and neglect. Women constitute an oppressed group and are not being accorded their basic human rights. One of these rights is "inherent dignity." This handbook explains the term and its importance, together with international definitions of dignity. There are different definitions of human dignity, as viewed in different fields including human rights, law and politics. They are all relevant when dealing with the issue of gender-based violence.

2.1.1 A human rights perspective

Article 1 of the European Union (EU) Charter of Fundamental Rights (2012) states that:

"Human dignity is inviolable. It must be respected and protected. The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights."

This principle is also enshrined in the preamble to the Universal Declaration of Human Rights (UN General Assembly, 1948) as follows:

"Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

2.1.2 The Legal definition of human dignity

Duhaime's law dictionary (2000) defines human dignity as:

"An individual or group's sense of self-respect and self-worth, physical and psychological integrity and empowerment."

2.1.3 The Political definition of human dignity

Hawthorne (2011) provides the following political definition:

"The (recent) pre-eminence of human dignity can be viewed as a reaction against the politics of the past, but in essence it reflects the fact that human dignity is the most important human right from which all other fundamental rights derive..."

2.1.4 Human rights and the Namibian Constitution

Article 8 of the Constitution of the Republic of Namibia (1990) states the following in terms of respect for human dignity:

- (1) The dignity of all persons shall be inviolable.
- (2) (a) In any judicial proceedings or in other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed.

- (b) No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

Therefore, dignity is our inherent value and worth as human beings; it is innate and everyone is born with it. Respect, on the other hand, is earned through one's actions.

Relevance of Dignity to Survivors

Dignity is *violated* by:

- a) **Denial of "humanness"** of other people. An example of this is objectification. This refers to treating a person as a thing or object and not as a human. Advertising, news and media articles commonly depict how men use and regard women as objects based on their sexual attributes.
- b) **Humiliation:** This can result from a loss of self-respect, dignity, pride or the painful feeling arising from something dishonourable.
- c) **Degradation** is the third violation of human dignity and refers to the act of treating someone or something poorly as if he/she does not matter.

Human dignity is *harmed* by:

- a) Individuals being treated badly due to their personal traits or circumstances, such as gender, ethnicity, race religion, economic status and age; and
- b) Situations in which individuals and groups are marginalised ignored or devalued.

2.2 Ten Elements of Treating People with Dignity

In her book *Leading with Dignity: How to Create a Culture that Brings out the Best in People*, Donna Hicks (2018) recognises ten important elements of human dignity:

- Acceptance of identity;
- Recognition;
- Acknowledgement;
- Inclusion;
- Safety;
- Fairness;
- Independence;
- Understanding;
- Benefit of the doubt (trust); and
- Accountability.

Understanding the concept of dignity and ensuring its application in the process of supporting court witnesses, is integral to the work of CPSOs.



2.3 Trauma: The Consequences of Gender-Based Violence

The gender perspective on violence against women indicates that the root cause of violence lies in the unequal power relations between women and men. This characteristic of human societies throughout the world ensures male dominance over women. "Women and girls who are subjected to violence receive the message that they are worth less than others and that they do not have control over their own lives and bodies. This has direct consequences with respect to their health, employment and participation in social and political life" (UNFPA & WAVE, 2014).

2.3.1 Primary consequences of gender-based violence (GBV)

Gender-based violence has a variety of consequences on the victim/survivor. Primary consequences are as follows:

Emotional consequences: Anxiety, fear, insecurity, anger, shame, self-hate, self-blame, withdrawal and hopelessness.

Cognitive consequences: Concentration difficulties, hyper-vigilance (e.g. when an individual feels constantly alert to what is happening around him/her) and repeatedly experiencing a traumatic event through flashbacks as well as nightmares or intrusive memories, which can be triggered by many different factors.

Behavioural consequences: Inability to sleep, avoidance (e.g. some survivors tend to avoid certain situations that remind them of the traumatic event), social isolation, withdrawal, changes in eating behaviour or alcohol/drug abuse.

Psychological/mental health consequences: These include depression, post traumatic stress disorder (PTSD), psychosomatic conditions, mistrust of others, inability to concentrate, loneliness, anxiety disorder, eating disorders and substance abuse.

Physical consequences: These can include sexually transmitted diseases (e.g. HIV), physical injuries and increased risk of suicide.

Social consequences: These vary and depend on the cultural context of the area in which GBV occurs. In many cultures, victims/survivors of GBV are:

- Stigmatised and isolated;
- Often blamed for the incident rather than the perpetrator;
- Rejected by partners/families/communities;
- Separated from children;
- Made functionless in society; and
- Subject to being unemployed and without an income.

Victims/survivors may also have difficulties in continuing sexual relationships with their partners. This can create tension and challenges within the relationship, especially if survivors decide not to disclose the incident of violence to their partners.

Consequences specific to female survivors

It is important to note that the consequences of sexual and gender-based violence (SGBV) may be different for male and female survivors. For example:

- Female survivors (i.e. women and girls) may face falling pregnant and having to carry the perpetrator's child to term;
- Be forced to marry the perpetrator to maintain the family's honour;
- Risk further violence;
- Not find a partner; and
- Experience difficulties in making a living.

Women and girls who are victims of violence suffer specific consequences because of gender discrimination. Because of gender discrimination and their lower socio-economic status, women have fewer options and fewer resources at their disposal to avoid or escape abusive situations and to seek justice. They also suffer consequences on their sexual and reproductive health, including forced and unwanted pregnancies, unsafe abortions and resulting deaths, traumatic fistula and higher risks of sexually transmitted infections (STIs) and HIV.

Consequences specific to male survivors

Male survivors face similar consequences to female survivors. However, men and boys affected by GBV may struggle in terms of their self-image and social identity because of the following:

- GBV challenges the common view of masculinity, i.e. that men and boys should be strong, dominant and in control. Perpetrators often use male-directed sexual violence to turn the person into a weak, vulnerable, helpless victim – characteristics that are unfortunately commonly associated with being a woman. This is extremely difficult in terms of the predominant view that women have a lower status.
- Being forced into sexual acts with another male directly challenges a man's sexual status. It makes survivors question their sexual orientation, which is especially difficult in cultures where homosexuality is taboo or prohibited by law.
- Depending on the cultural context, men may be extremely reluctant to talk about being victimised. They feel ashamed, weak and guilty. They are afraid of being labelled as homosexual or bisexual, particularly in societies where sexual contact of any kind between two men is taboo. They are therefore, likely to stay silent on the issue and remain isolated.

Extended consequences

While women are usually the immediate victims of gender violence, the consequences of gender violence extend beyond the victim/survivor to the society as a whole. Gender violence threatens family structures. This means that children could suffer emotional damage when they watch their mothers and sisters being battered.

Furthermore, two-parent homes may break up, leaving the new female heads of household to struggle against increased poverty and negative social repercussions. Psychological scars that victims/survivors of GBV experience often impede their ability to establish healthy and rewarding relationships in the future. For example, such victims/survivors may vent their frustrations on their children and others, thereby transmitting and intensifying the negative experiences of those around them. Children, on the other hand, may come to accept violence as another means of conflict resolution.

2.4 Understanding the Trauma that GBV Victims/Witnesses Experience

Since victims of violence experience significant trauma, it is essential that criminal justice role players are conversant with the physical, behavioural and psychological symptoms of trauma. Otherwise, this will impact on their ability to take statements (police); assess credibility of statements (prosecutor) and weigh evidence (judges). There is ample research on the dynamics of violence and its effects on a victim/survivor's ability to provide complete and accurate information about the violence, and especially when testifying as a court witness.

The composite of a traumatic experience is the occurrence of an event outside normal human experience. Traumatic experiences are defined by their often sudden, horrifying and unexpected nature, so their relation to Post Traumatic Stress Disorder (PTSD) is not surprising.

Post Traumatic Stress Disorder is a common mental disorder that incurs significant psychosocial dysfunction and substantial social and economic costs to societies worldwide

According to the Diagnostic and Statistical Manual (DSM) of the American Psychiatric Association, PTSD is defined as a response to an event that is threatening to the life or physical integrity of the self or close others, and to which the survivor exhibits an acute psychological response (horror, fear, helplessness).

PTSD symptoms generally persist for at least a month and cause significant psychosocial dysfunction. Moreover, this common and disabling mental disorder incurs substantial social and economic costs to societies worldwide.

A PTSD diagnosis indicates that the person manifests three domains of symptoms, namely:

- Re-experiencing trauma memories (e.g. flashbacks and nightmares);
- Avoiding reminders of the event and emotional numbing; and
- Heightened physiological arousal and reactivity.

PTSD occurs twice as commonly among women as compared to its occurrence in men.

Two common domains of trauma, namely network trauma and gender-based violence (GBV) may contribute to the gender difference in PTSD rates.

Such PTSD experiences can be categorised as those that occur as a single event (e.g. rape, assault or an accident), or those that are prolonged, as in war or abuse over an extended period.

Trauma is an elastic term and the level of trauma an individual experiences depends on her/his personal coping methods, as well as the systems such as the family system and social system within which she/he operates.

It is necessary, therefore, to take into account the individual characteristics of each victim of trauma when determining her/his level of PTSD and the impact of a violent experience on coping abilities. Remember that responses to trauma vary from individual to individuals and will affect a person's ability to function effectively (Silove et al., 2017).

There is ample research that argues that court involvement further traumatises the victim/survivor.

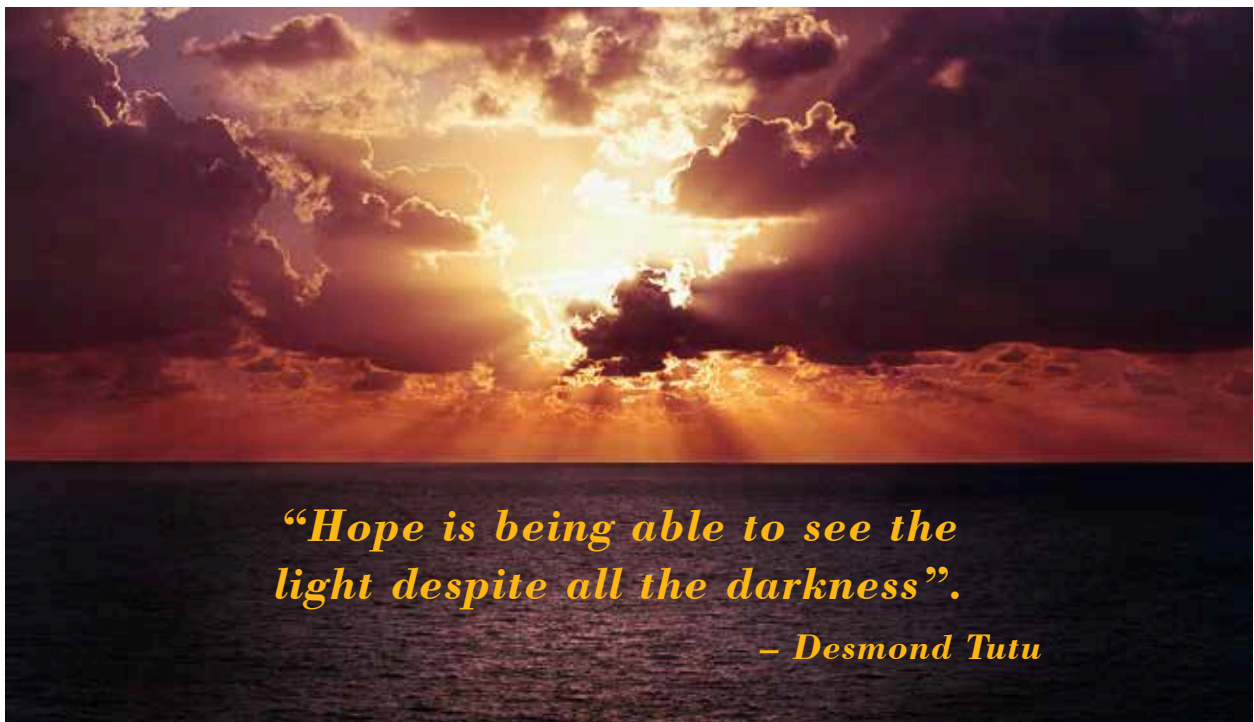
According to one victim/witness:

“There is no difference between being raped and giving evidence as a key witness at the trial of your alleged rapist, except that this time it happens in front of a crowd” (Stuart, 1993).

Some victims have even surmised that this ‘second rape’ is more traumatic than the first. Hence, the victim/witness needs to be protected from secondary victimisation, which occurs not as a direct result of a criminal act, but through the inadequate response of institutions and individuals to the victim.

It is not only GBV that causes psychological damage; it also results from being forced to testify in open court in the presence of the accused as well as family members. Research indicates that testifying in court has a negative effect on an individual. However, there is also strong support for the argument that going through the criminal justice system can be beneficial as it may serve to empower the victim/survivor and provide a sense of closure. Moreover, it provides victims/witnesses an opportunity to be heard, validated and protected.

However, the survivor needs to be adequately supported during the process of the trial.



“Hope is being able to see the light despite all the darkness”.

– Desmond Tutu

Section 3: Legal Framework

Learning objectives

At the end of this section, CSPOs should be able to:

- *Describe Namibian legislation that addresses GBV and GBVAW;*
- *Understand that myths about GBV/GBVAW that perpetuate prejudice and stigmatisation of victims/survivors of GBV;*
- *Reflect on their own attitudes and values around GBV; and*
- *Address the challenges that victims/survivors of GBV/GBVAW face in the criminal justice system when preparing them for court.*

3.1 National Legal Framework in Namibia

The Constitution of the Republic of Namibia (1990) affirms the rights of everyone to:

- The protection of life (Article 7);
- The protection of liberty (Article 8);
- Freedom from slavery and forced labour (Article 9); and
- Equality and freedom from discrimination (Article 10).

In addition, the Government has introduced several pieces of legislation to curb violence against women and children. These include:

- The Combating of Domestic Violence Act (No. 4 of 2003);
- The Combating of Rape Act (No. 8 of 2000);
- The Combating of Immoral Practices Act (No. 7 of 2000), which is an amendment to the Combating of Immoral Practices Act (No. 21 of 1980); and
- The Criminal Procedure Amendment Act (No. 24 of 2003).

The Combating of Rape Act (No. 8 of 2000) is recognised globally as being a progressive law on rape. According to the UN Women Global Database on Violence against Women (2016), “the Act gives greater protection to young girls and boys against rape, provides for stiffer minimum sentences for rapists, and defines marital rape as an offence in the eyes of the law.”

The Combating of Domestic Violence Act (No. 4 of 2003) also has reference to domestic violence in other policies and laws.

Additional Namibian policies and laws relevant to GBV are:

- Namibia Vision 2030 (2004);
- National Policy on Orphans and Vulnerable Children (2004);
- Third National Development Plan (2008);
- Education Sector Policy for the Prevention and Management of Learner Pregnancy (2009);
- National Gender Policy (2010-2020) and accompanying Plan of Action (2011);
- The Child Care and Protection Act (No. 3 of 2015) (child protection);
- Marriage Act (No. 25 of 1961); and
- Labour Act (No. 11 of 2007) (sexual harassment).

3.2 International Framework Relevant to GBV and GBVAW

Global and regional standards and norms on violence against women generally aim at its prevention, elimination and redress. The full realisation of women’s rights as provided for by international law, constitutions, legislation and policy will require an effective and systematic application of such standards and norms across the justice chain. Access to justice is both a basic human right and a means of implementation of other human rights. Women who seek justice are confronted by a complex landscape of institutions as well as numerous laws and systems.

Some examples of these are:

- UN Convention on the Elimination of all Forms of Discrimination against Women;
- UN Convention on the Rights of the Child;
- UN Convention on the Rights of Persons with Disabilities;
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;
- African Charter on the Rights and Welfare of the Child;
- Protocol to the Convention Against Transnational Organised Crime to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;
- SADC Protocol on Gender and Development; and
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

3.3 Accessing Justice for Survivors of GBV and GBVAW

Justice and access to justice may mean different things to different people. Some believe that justice means the perpetrator serves time in prison or has gone through the formal justice system. Others believe that traditional authorities should dispense justice.

Yet many victims/survivors of GBV/GBVAW and others still believe that justice entails being believed, letting truth prevail and ensuring that abuse and victimisation stop.

For most women in Namibia, their first step does not entail approaching the formal justice system. GBV survivors mostly seek solutions in the community. For example, they may first approach their family, then speak to a pastor or friend and thereafter go to a traditional leader and so on.

3.4 Gender-based Violence: Myths and Facts

Myths on GBV inform society about who is considered worthy of protection from violence and who is not. In addition, myths place blame on those who have experienced harm by suggesting that it is their fault, that they could have or should have done something to prevent the violence from occurring, or by minimising the impacts of violence. In reality, myths about violence maintain silence and protect those who do harm.

Furthermore, they reinforce stereotypes and contribute to creating barriers to justice by:

- Making someone who has experienced violence feel isolated, wrong, unsure or unworthy;
- Preventing people from accessing support, reporting violence or speaking up in the face of violence;
- Maintaining a culture of violence and placing responsibility for violence on the people who have experienced it instead of those who commit violent acts;
- Normalising oppression and inequality by suggesting that individuals deserve the oppression they experience;
- Dividing people in society into those who are seen as deserving of experiencing violence and those who are seen as deserving of freedom from violence. More often than not, such divisions are along gender, race and class lines and suggest divisions of power, namely, who has power and privilege and who does not;
- Encouraging violence against people who are depicted as being less than deserving of freedom from violence; and
- Having the effect of being dangerous, damaging and dehumanising.

Common misconceptions about gender-based violence persist; they result in stigmatising victims/survivors and undermining efforts to keep people safe. They can prevent service providers such as police officers, health care workers and social workers working in the judicial system from providing care and support free of bias and discrimination.

The impact of these myths may also prevent court support and preparation officers from offering the best service.

It is essential that CSPOs should:

- *Understand the difference between myth and fact;*
- *Always maintain a professional and impartial attitude; and*
- *Avoid any behaviour that could lead to secondary traumatisation.*

When responding to, and supporting GBV survivors, it is very important for CSPOs to develop self-awareness about their personal assumptions and knowledge of cultural norms relating to sexuality and sexual violence. Sexual violence can happen to anyone, anywhere in the world; it happens to men and women, boys and girls. People sometimes mistakenly believe that rape is something that happens to people with a lower moral status (“bad girls”) or that people with a higher moral status (“good girls”) will not experience sexual violence.

The implication is that survivors are in some way responsible for the assault themselves. For example, women are also often blamed for the clothes they wear or the way they talk to men. It is essential to avoid blaming survivors for being abused. Remember that sexual violence is always a misuse of power by a perpetrator towards the person being assaulted.

1

MYTH:

Women allow intimate partners to commit violence against them; if they really want to, they can leave their abusive partners

FACTS: In no case does a woman deserve to be abused. The international community has recognised violence against women as a human rights violation that cannot be justified. Furthermore, it requires a comprehensive state response. Perpetrators use a combination of tactics of control and abuse that makes it very difficult for women to escape the violence. It is also important to understand that women who have experienced violence from an intimate partner and seek to leave the relationship in order to ensure their own and their children’s safety paradoxically face an increased risk of repeated and even escalating violence.

Women are also prevented from leaving violent relationships due to feelings of shame and guilt, lack of safe housing or the belief that divorce is wrong for children (adapted from Edleson, Mbilinyi, Beeman & Hagemester, 2003).

2

MYTH:

Conflicts and discord are a normal part of any relationship

FACTS: A commonly used excuse to justify intimate partner violence is that “everybody can lose control.” However, violence is not about “losing” control – rather, it is about “gaining” control using threats, intimidation and violence. Violence in a relationship is not normal – it is a manifestation of historically unequal power relations between men and women. (UN General Assembly 1993).

3

MYTH:

Men and women are equally violent to each other

FACTS: The majority of those affected by GBV, in particular intimate partner violence, are women and girls. Worldwide, almost half (47%) of all female victims of homicide in 2012 were killed by their intimate partners or family members, compared to less than 6% of male homicide victims (UNODC, 2013). According to EU-wide data, 67% of physical violence and 97% of sexual violence perpetrated against women is committed by men (UN Human Rights Council, 2009).

4

MYTH:

Domestic violence happens only to a certain type of person

FACTS: GBV is a global problem of pandemic proportions. According to the WHO, 35% of all women worldwide have experienced either physical and/or sexual violence from an intimate partner or sexual violence from a non-partner (WHO, Department of Reproductive Health and Research, London School of Hygiene and Tropical Medicine & South African Medical Research Council, 2013).

While a number of factors may increase the risk of women experiencing GBV, domestic violence affects all women, irrespective of socio-economic status, educational achievements, ethnic origin, religion or sexual orientation (IGWG, n.d.). Although some studies have found that women living in poverty are disproportionately affected by intimate partner violence and sexual violence, it has not been clearly established whether it is poverty as such, which increases the risk of violence or rather other factors accompanying poverty.

5

MYTH:

The complainant provokes rape

FACTS: Rape is a violent attack using sex as the weapon. All kinds of people are raped in every type of situation. A person does not ask for rape by accepting a date, by being polite or friendly or by dressing or walking in a way that society determines is attractive or provocative.

6

MYTH:

Addressing gender-based violence means imposing ideas and values onto other cultures

FACTS: Gender-based violence exists in every country, culture and community. It is the most widespread, yet least reported human rights abuse in the world, affecting an estimated 35% of women (WHO et al., 2013). Men and boys also experience gender-based violence. As a result, this violence is almost universally recognised as unacceptable and wrong. Governments around the world have outlawed most, though not all acts of gender-based violence. A wide range of international instruments and conventions also recognise gender-based violence as a human rights violation.

7

MYTH:

Strangers usually commit rapes. People who avoid strangers will be safe

FACTS: According to the Namibian police, most rapes in Namibia involve people who know each other, by a family member, a friend or someone the family knows. Many rapes are not reported to the police, and the police believe that many of these rapes go unreported because they involve acquaintances.

8

MYTH:

Anyone who really tries to resist rape can prevent it from happening, as it is impossible to rape a person against her/his will

FACTS: Rapists often threaten to kill the person they are raping if they encounter any attempted resistance. In Namibia, rapists often use knives to threaten rape complainants. Most rapes are committed by men against women; moreover, men are often stronger than women are. This means that rapists can often overpower people without a weapon, especially in situations involving young children. Even if a rape complainant does not sustain any injuries, she/he may have had a very real fear of injury or death.

9

MYTH:

Rape is an impulsive, uncontrollable act of sexual gratification. It usually takes place when a sexually frustrated man sees an attractive young woman and “just can’t control himself”

FACTS: Rape is a crime of power, which uses sex as a weapon. Rapists themselves describe their motivation as being anger, hatred, conquest, humiliation or degradation – and not sexual gratification. Most crimes are not motivated by lust or sexual gratification, but to satisfy the need for power and control.

10

MYTH:

People, particularly women, often lay false charges of rape with the police

FACTS: The incidence of false reports of rape is the same as for all other serious crimes – about 2%. For example, information from the Namibian police indicates that only about 1% of all rape reports are unfounded.

11

MYTH:

If the rapist is found not guilty in court, the rape complainant must have been lying

FACTS: It is difficult to prove rape cases because they usually occur in a place where there are no witnesses and because the medical evidence is sometimes not collected properly. In addition, the court may not have enough evidence to find the accused “guilty” even in cases where a rape really occurred.

12

MYTH:

Domestic violence is a private family matter in which the state has no right to intervene. How a man treats his partner is a private matter

FACTS: Violence against women is a human rights violation, regardless of whether it occurs in the family or in the public sphere.

13

MYTH:

A man cannot rape his wife

FACTS: Rape is defined by an action and not by the identity of the perpetrator or the survivor. Accordingly, any forced sexual intercourse is rape, irrespective of whether the victim/survivor is married to the perpetrator or not. This statement is also grounded in international human rights law definitions, which encompass all forms of physical, sexual, psychological or economic violence against women.

14

MYTH:

Sex with a virgin may cure chronic illnesses

FACTS: One of the apparent reasons why some male perpetrators that are infected with HIV/Aids engage in unlawful sexual intercourse with girls or young women that are not yet sexually active is the unfounded belief that having sex with virgins is a way to cure the disease.

15

MYTH:

Sex workers cannot experience rape

FACTS: International definitions of rape and other forms of sexual assault focus on the type of violent acts committed, without consideration of who is the perpetrator or the survivor. Accordingly, any man who forces a woman into a sexual act against her will is committing rape, whatever her profession.

3.5 The Criminal Justice System and its impact on Witnesses

Basic knowledge of the Criminal Justice System (CJS) is essential for anybody working within this system so that they are able to understand the processes and navigate their way through the structure.

In order to ascertain the impact of the criminal justice system on witnesses, it is important to first define it and examine its components. Moreover, knowledge of the role players in the criminal justice system, the process of the criminal justice, bail and trial processes will enable CSPOs to better serve their clients.

Knowledge about the CJS is important to assist CSPOs to:

- Perform their own tasks effectively by understanding the system in which they work;
- Guide victims/witnesses through the system; and

- Answer questions and concerns that victims/witnesses may have about the legal process.

3.5.1 Definition of a criminal justice system

A criminal justice system refers to a set of agencies and processes established by governments to control crime and impose penalties on those who violate criminal laws.

Otherwise defined, a criminal justice system:

“A criminal justice system is a set of legal and social institutions for enforcing the criminal law in accordance with a defined set of procedural rules and limitations” (Fraser & Weidner, 2019).

“The (criminal) justice process encompasses detection of the crime, making of the complaint, investigation, prosecution and trial and post-trial procedures, regardless of whether the case is handled in a national, international or regional criminal justice system for adults or juveniles, or in a customary or informal system of justice” (UN Economic and Social Council, 2005).

3.5.2 How the criminal justice system works

The goals of a Criminal Justice System are to:

- Ensure the overall safety and well-being of society; and
- Provide accessible, efficient and fair justice which balances the needs of victims, offenders and communities.

The criminal justice system centres on human rights and victims and should thus ensure the accountability of perpetrators.

i) **A human rights-based approach refers to:**

- A balance between the rights of victims/survivors (e.g. freedom from violence, access to justice and being treated with dignity and respect) and the rights of the accused (e.g. fair trial); and
- Addressing the wider dynamics of gender inequality and countering harmful gender stereotyping.

ii) **A victim-centered approach refers to:**

- Placing the needs of women at the core of any criminal justice intervention;
- Empowering women;
- Prioritising issues of the victim/survivor's physical and psychological safety; and
- Reducing the experience of re-victimisation.

iii) **Offender accountability is ensured by:**

- Penalising the perpetrators;
- Encouraging reporting of offences;

- Maximising the victim/survivor's cooperation with the criminal justice system (CJS); and
- Placing the primary onus on the police and the prosecutor.

3.5.3 Role players in the criminal justice system

Most criminal justice systems have several components that comprise important role players. Each of these perform tasks specific to their particular mandates, namely:

- Police (law enforcement);
- Prosecution services;
- Lawyers (for defence and victims/witnesses);
- Social workers fulfil the crucial role of providing psychosocial services, which form an integral part of effectively dealing with vulnerable victims/witnesses;
- The courts, which include the legal system (judiciary); and
- Correctional services, including prisons.

Other important role players include:

- Legislature
- Forensic examiners
- Victim services
- Various stakeholders, service providers and community groups
- Social support systems (such as housing, health care, education, employment and child protection).

3.5.4 Stages in the criminal justice continuum

There are eight stages in the criminal justice continuum (Figure 2). All gender-responsive, victim-centred services should entrench this continuum, namely:

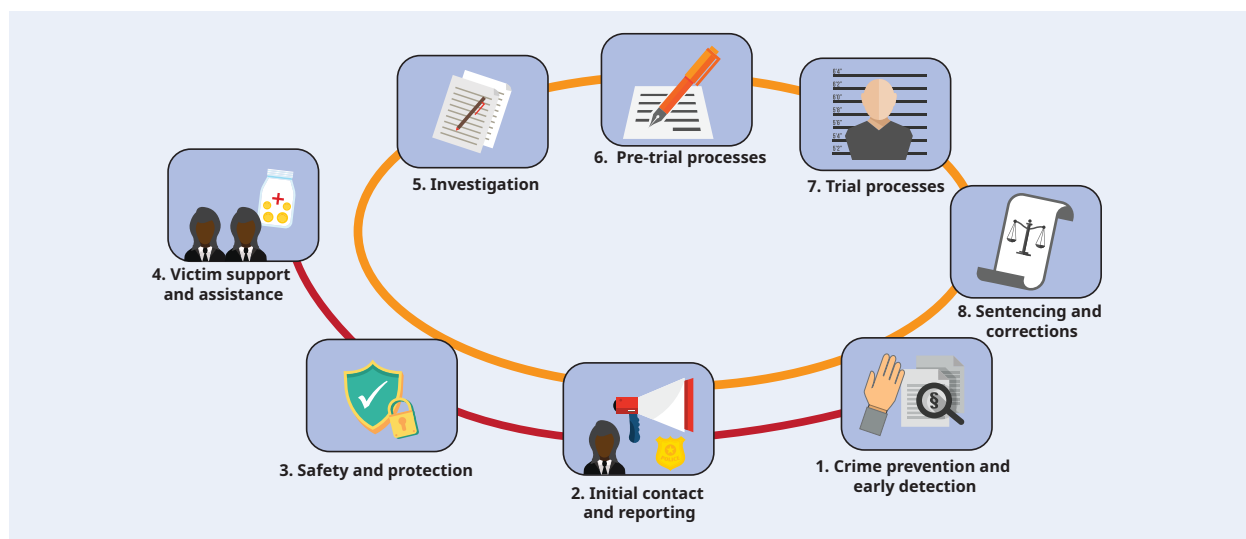


Figure 2 - Stages in the criminal justice continuum

3.5.5 Outlining tasks within the criminal justice system

What does a police officer do?

Of all the institutions that make up the criminal justice system in Namibia, the police are most likely to be the first point of entry when a GBV survivor is seeking justice from the formal legal system. Police officers compile reports on crimes that happen in their areas. They also investigate crimes as well as gather and protect evidence. Police officers may arrest offenders, give testimony during the court process and conduct follow-up investigations if needed.

What does a judge or magistrate do?

The judge is a public official appointed to decide cases in a court of law. As the person in charge of the Court, the judge listens to what is said in court and decides if the accused person is guilty or not.

Judges or magistrates run courts; their role is to ensure the law is followed and oversee what happens in court. In addition, these court officials administer trials and sentence convicted offenders.

What does a defence attorney do?

A defence attorney (also known as a lawyer in other countries) is a qualified legal practitioner who has been granted the right of appearance in court to represent a person charged with a criminal offence. The defence attorney's job is to defend an accused against the state's case. They, therefore, ensure that the rights of the accused are protected throughout the criminal process.

Accused persons can hire their own defence attorneys. Alternatively, if they cannot afford one, the court will refer them to a state-funded attorney through the Legal Aid Directorate.

What is the role of a witness?

The testimony of a victim/witness is a very important part of the criminal justice process. All the facts and evidence in a case must be presented to the Court. To ensure this, witnesses and victims may receive a subpoena to testify in court. A subpoena is an order of the Court that orders a person to appear in court and give evidence. It is important for witnesses and victims to read the subpoena carefully.

What does a prosecutor do?

Prosecutors are government attorneys who represent the state throughout the court process – from the first appearance of the accused in court, until the accused is acquitted or sentenced.

It is important to note that in the context of Namibia's CJS, while it indeed becomes the state's case, the central contention is that the rights of the complainant (victim/survivor) have been infringed upon and that prosecutors act in the best interests of the victim/witness throughout the case.

A prosecutor presents evidence in court and questions witnesses. In this regard, he/she has great discretion or freedom to make choices about how to prosecute a case. Prosecutors review the evidence they receive from police officials to decide whether to file charges or drop the case.

The term **prosecute** means to lay a charge in a criminal matter and to prepare and conduct legal proceedings against a person charged with a crime.

Victims/witnesses may contact the prosecutor's office to find out which prosecutor is in charge of their case and to seek other information about the case.

What does a prison officer do?

Prison officers (also called correctional staff), supervise convicted offenders in various situations, namely when they are in jail, in prison and on probation or parole in the community. Prison officers are tasked with overseeing the day-to-day custody of inmates in a correctional facility. They are responsible for ensuring that any facility where offenders are held is safe and secure. Prison officers also oversee the release processes for inmates. In addition, they sometimes notify victims of changes in the offender's status.

3.6 The Criminal Justice Process

As a CSPO, it is useful to have a basic outline of the sequence of events in the criminal justice process, which starts when a crime is reported or observed. The process may vary according to the jurisdiction, the seriousness of the crime, whether the accused is a juvenile or adult and other factors.

Not every case will include all these steps and not all cases follow this sequence directly. In addition, many crimes are never prosecuted because:

- They are not reported;
- No suspects can be identified; or
- The available evidence is not adequate for the prosecutor to build a case.

3.6.1 Entry into the justice system

According to the National Centre for Victims of Crime (2008), the following steps usually take place when first entering the criminal justice system:

- 1) **Report:** The police receive the crime report from victims, witnesses, or other parties (or witness the crime themselves and make a report):
- 2) **Investigate:** The police investigate the crime. Officers try to identify a suspect and find enough evidence to arrest the suspect they think may be responsible.
- 3) **Arrest or summons:** If officers find a suspect and obtain sufficient evidence, they may arrest the suspect or issue a summons for the suspect to appear in court at a specific time. This decision depends on the nature of the crime and other factors. If officers do not find a suspect and enough evidence, the case remains open.

3.6.2 Prosecution and pre-trial

- 1) **Charges:** The prosecutor considers the evidence assembled by the police and decides whether to file written charges (or a complaint) or release the accused without prosecution.
- 2) **First court appearance:** If the prosecutor decides to file formal charges, the accused will appear in Court to be informed of the charges and of his/her rights. The presiding officer (i.e. judge or magistrate) does not automatically decide to release the accused on bail or just detain him based on the evidence before the Court, as the state will declare whether it opposes bail or not. In the event that bail is opposed, the Court may advise the accused about his right to bring a formal bail application. Where bail is not opposed, the accused will be released on bail or warning.

During the first court appearance, an accused that does not have an attorney or legal representative will need to apply to the Legal Aid Directorate. The Legal Aid director will consider the financial means of the accused and thereafter decide whether to appoint a state-funded legal representative or lawyer to represent him/her. An accused can also opt to represent him/her in court.

3.6.3 The bail process and conditions

Bail refers to “the conditional release of a person charged with a criminal offence. To be released, the accused person must provide a money deposit

(or the promise of a money deposit) and promise to attend court at a later date” (“Bail”, 2010).

“When a person has been arrested and charged with a crime, the police must bring him/her in front of a magistrate or judge within 48 hours. The magistrate or judge then decides if the accused person should remain in jail until the trial or if he/she should be released on bail” (“Bail”, 2010).

Article 12(1) (d) of the Constitution of the Republic of Namibia (1990) states:

“All persons charged with an offence shall be presumed innocent until proven guilty according to law, after having had the opportunity of calling witnesses and cross-examining those called against them.”

The magistrate or judge often sets conditions for bail (“Bail”, 2010).

Some examples of common bail conditions stipulate that:

- The accused must report at a specific time and place to a person in authority (such as a police station). This may be each day, each week or each month;
- The accused may not go to a specific place; for example, the home where the complainant is living;
- The accused may not communicate with any witnesses in the trial; and
- A probation officer must supervise the accused.

“In cases of rape, the court MUST add conditions to make sure that the accused will not make contact with the complainant” (“Bail”, 2010).

In cases of domestic violence, the court MUST add the following mandatory conditions, unless there are special circumstances (“Bail”, 2010):

- The accused may not have any contact with the complainant;
- The accused may not have a firearm or other specified weapon; and
- The accused must provide financial support for the complainant or any children at the same level as before the arrest. (Note: This applies only where the accused already has a legal duty to maintain these defendants. For example, the accused could be ordered to pay maintenance for children or a wife, but not for a girlfriend).

3.6.4 Bail hearings and the rights of complainants

- The complainant has the right to attend the bail hearing, to make sure that the magistrate or judge gets all the relevant information;
- In rape cases, the police have a duty to inform the complainant of the court date for the bail hearing;
- A complainant also has the right to ask the prosecutor to present relevant information or evidence at the bail hearing; and
- If the complainant decides not to attend the bail hearing, the prosecutor has a duty to tell the complainant if the accused has been released on bail and what bail conditions were imposed.

3.7 The Trial Process

3.7.1 Understanding the trial process

A trial refers to the formal process that occurs in a courtroom in which the Court decides whether the prosecutor has been able to prove beyond a reasonable doubt that the accused committed the offence with which he/she is charged. Trials are held before a judge or magistrate depending on the seriousness of the crime and other factors. The prosecutor and defence attorney present evidence and question witnesses. The judge or magistrate finds the accused guilty or not guilty on the original charges or lesser charges. Accused persons that are found not guilty or acquitted are usually released. If the verdict is guilty, the judge will set a date for sentencing.

Modern systems of criminal procedure are divided into two models, namely the accusatorial model and the inquisitorial model.

The **accusatorial system** originated from the earliest form of litigation where confrontation between two parties before an impartial arbiter replaced vengeance. Namibia follows an accusatorial system of procedure, which is based on the presiding officer making a comprehensive and complete analysis of the offence by integrating all the available evidence.

The **inquisitorial model** originated from the Middle Ages where the judges themselves investigated the case.

During a trial, the prosecutor and the defence lawyer call witnesses and present evidence and arguments to support their case. The prosecutor goes first.

It is important for victims/witnesses to understand that communication in Court takes place within certain formal procedures established over generations.

These conventions are not only foreign to the lay person, but also intimidating and confusing, as they disrupt communication. Some examples are that:

- The person addressing the witness often faces the presiding officer while putting questions to the witness and directing questions through the bench.
- Procedural objections and discussions about the questions posed and the witness' responses often interrupt questioning.

In addition, legal practitioners use a highly specialised language that is specific to a court environment. Some have described courtroom language as a dialect with its own conventions, jargon and vocabulary, which sets it apart from everyday communication.

This is exacerbated by the fact that lawyers are masterful users of language. Combining language tactics and skilful questioning techniques can systematically destroy the credibility of the witness. Witnesses may find this daunting, if for example, the attorney says: "I'm going to put it to you that you are fabricating this issue."

"Witnesses have a right to be treated in a sensitive, dignified, fair and respectful manner, and in a system that allows them to be able to be a full participant and to leave the justice system as a more empowered person and with the confidence that justice is done" (UNODC, 2014).

3.8 Basic Court Processes and Concepts

The following basic concepts, situations and court processes will make it easier for victims/witnesses to know what to expect:

- A victim/witness who has to testify may not wait in the courtroom, but in a separate waiting room (if there is one), or in the passage outside the courtroom.
- During a trial, all the witnesses testify one after the other. Witness testimonies can take anything from one day, to a couple of days, weeks or even a few months.
- **Postponements** can occur in the middle of a trial if witnesses aren't available or if the Court roll is already booked up.
- **Leading evidence** (also called examination-in-chief) is the process of calling a witness so that his/her evidence can be placed before the Court by using a question and answer method. This method enables the party (i.e. the prosecutor) to control what the witness says, thus ensuring order and relevance.
- The prosecutor assumes responsibility for ensuring that all the evidence relevant to the elements of the offence is placed before the Court. The way in which evidence is led is often strange for the general public, and witnesses may find it difficult to express themselves when this method is used in Court.
- **Mitigating factors** are those factors that are favourable to the accused and generally result in a lighter sentence, while **aggravating factors** have the opposite effect. Both these factors influence the "extent to which the offender is to be blamed for his crime and how much he or she therefore deserves to be punished" (Terblanche, 2016: 211). Despite there being little theoretical discussion on the concepts of aggravating and mitigating factors, the courts refer to them in the context of determining substantial and compelling circumstances as though these concepts have a clear and definite meaning.
- If the Court acquits an accused, the process ends there. However, if the accused is convicted, then he/she will have to be sentenced.
- Sentencing an accused is similar to another mini-trial. The prosecution gets an opportunity to call witnesses in aggravation of sentence, while the defence gets an opportunity to call witnesses in extenuation.

- In the sentencing phase, the Court may recall witnesses in some instances to testify about the effect that the crime has had on their lives, which means they then testify twice. Once the presiding officer has taken all the factors into consideration, he/she will decide on what sentence to impose.
- Once any sentence of imprisonment has been imposed, the correctional service department becomes involved to ensure the punishment is enforced.
- An accused who has been sentenced to a term of imprisonment will be transferred to a prison facility where he/she becomes the responsibility of correctional service officials.
- The correctional service department monitors community service sentences. In addition, it also controls the parole board and related parole issues.

Historically, delivering gender-responsive criminal justice is lacking. A gender-sensitive legal system takes into consideration the fact that women face disadvantages and inequality in public and private life. These types of legal matters that bring women into contact with the formal justice system tend to be those that disproportionately concern females. If legal practitioners understand the impact of the legal system on women specifically, their responses to women will be more appropriate, and this will hopefully inspire women to have more confidence in the legal system.

Therefore, a gender-responsive system focuses on:

- Taking a gender perspective on the criminal law itself, as well as assessing access and obstacles to the criminal justice procedures available for women and men. Thus, it entails adopting gender-sensitive strategies to protect victims and promote access to criminal justice.
- Ensuring that the laws, criminal justice institutions as well as the criminal justice processes and outcomes do not discriminate against anyone on the basis of gender. It also means understanding the interrelationship between "gender and crime" and how crime and violence impact women and men differently.
- Encompassing the importance of safety and dignity for victims/survivors and the empowerment of women while holding perpetrators accountable for the violence.

The continued general failure of the criminal justice response to violence against women remains highly prevalent and socially tolerated. The reality is that these largely unpunished violent crimes have the at the most, re-victimised and re-traumatised victims.

3.9 Reasons for Underreporting

The effect of the CJS on victims/survivors of gender-based violence plays a key role in underreporting and therefore cannot be underestimated. There are a number of reasons or explanations for women not reporting or why cases are dropped. These include:

- i) Lack of an enabling environment for women, such as:
 - problems with the laws (e.g. incident not criminalised, statute of limitation, weak protection order regime) and
 - lack of gender-responsive policies.

- ii) Lack of resources and capacity, such as:
 - infrastructure challenges
 - capacity issues (e.g. lack of knowledge and skills);
 - attitudinal issues
 - lack of specialisation and multi-disciplinary approaches
 - lack of female officers
 - weak oversight (internal, external) and
 - poor monitoring and evaluation (e.g. lack of data and research).
- iii) Side issues relating to demand, such as:
 - lack of information/understanding of rights and criminal justice processes; and
 - inadequate assistance and support to women (e.g. legal, counselling, victim support).

Additional reasons for the under-reporting of cases are indicated in Table 1 below.

Table 1: Reasons for not reporting GBV/GBVAW focus on the victim/survivor or the service provider

| Survivor-focused | Service provider-focused |
|---|--|
| Shame and guilt | Lack of knowledge about GBV |
| Fear of negative responses/lack of trust | Incompetence at handling cases |
| Fear of escalation of violence | Lack of time |
| Social isolation | Lack of resources and support |
| Language and cultural barriers | |
| Lack of safety for themselves and children | Gender-stereotyping |
| | Negative attitudes and misconception about GBV/GBVAW |
| Lack of physical access, especially in remote areas | Patriarchal beliefs |

3.10 The trial experience for GBV/GBVAW witnesses

Based on their sex/gender, “women often face specific barriers in their efforts to seek justice. For female survivors of gender-based violence, the barriers to justice are often even greater” (Cusack, 2014).

Furthermore, Cusack (2014) comments that:

Judicial stereotyping is a common and harmful barrier to justice, particularly for female survivors of violence. Such stereotyping may result in judges or magistrates forming views about cases based on pre-conceived belief or myths, rather than relevant facts. For example, stereotyping may distort a judge’s perception of the facts; affect his/her vision of who is a “victim” and influence his/her views about witness credibility. Ultimately, however, it compromises the impartiality and integrity of the justice system, which, in turn, can lead to miscarriages of justice and the re-victimisation of complainants.

Complainants may also encounter hostile and brutal cross-examination in sex offence trials – where the defence attorney attempts to discredit the complainant’s testimony by bringing up sexual history and drawing on rape myths and stereotypes.¹ In addition, some complainants may experience distressing flashbacks to the sexual trauma they experienced when having to face the accused in court (Cusack, 2014).

3.10.1 Additional Reading

All participants are strongly advised to read the following three articles to increase their knowledge on how various aspects of a trial and court appearance affect a victim/survivor of GBV/GBVAW.

Article 1: Putting trials on trial: Sexual assault and the failure of the legal profession

The excerpts below of Sui’s (2018) review of a book by Elaine Craig offers valuable insights. While her book focuses on sexual assault trials in Canada, many of the details are applicable to other countries.

1 Note that the practice of a defence attorney bringing up the complainant’s sexual history as a means of discrediting the complainant/victim is no longer admissible as evidence and can therefore not be led or solicited in court.

“Elaine Craig, associate professor at Dalhousie University’s Schulich School of Law in Canada recently published a new book entitled *Putting Trials on Trial: Sexual Assault and the Failure of the Legal Profession*. In 227 gruelling pages, Craig unapologetically puts the legal profession on trial, while citing uncensored excerpts of court transcripts, so that the reader can see clear examples of both humane and inhumane treatment of sexual assault victims in court.

There are several takeaways from Craig’s book, but these are a few of the big ones:

- a) There are systemic problems with the way that sexual assault trials are handled in Canada.
- b) The trial process, let alone the sexual assault trial process, was created by and for well-educated, able-bodied white people. The challenges that victims of sexual assault already face are made even worse if the victim has a lower socio-economic status, if they have a disability, or if they are non-white.
- c) Victim-blaming culture and gender discrimination lead to problematic assumptions made in Canadian sexual assault trials. For example, when a woman accuses someone of sexual assault, it is common for her to be asked about things like whether or not she fought back, whether or not she screamed for help, or what she was or wasn’t wearing.
- d) Feminism and political correctness do not skew the trial process in favour of the complainant.

In conclusion, most sexual assaults in Canada go unreported. This is largely because sexual assault victims do not trust the criminal justice system and feel ashamed about having been sexually assaulted.

Trials are not designed to heal victims of sexual assault. The decision to participate in a sexual assault trial means having to push through the fear of the legal process and the shame of the experience. Many sexual assault victims actually regret participating in the legal process because of the way they were treated in court, especially by the defence counsel.

If a sexual assault victim is in a domestic violence situation, they can put themselves in even more danger by reporting their abuser.

Article 2: How the 'rugby rape trial' divided Ireland

This newspaper article detailing a recent rape case in Northern Ireland provides a compelling insight into the court experience for a rape witness.

In the report, Fionnuala Ní Aoláin, Ireland's UN rapporteur on human rights makes an especially pertinent comment: "Law does violence to women, compounding the physical and emotional harms women experience from sexual harm. Masculinity pervades our courts" (McKay, 2018).

Access this link to read the full article:

<https://www.theguardian.com/news/2018/dec/04/rugby-rape-trial-ireland-belfast-case>

Article 3: Supporting rape victims in court

In her article published in the Guardian UK on (26 March 2013), journalist Louise Tickle suggests ways to make the trial experience less traumatic for witnesses.

The perception of not being believed can be particularly traumatic for rape victims.

"I was at home when the 'not-guilty' verdict came in," says Emma, 22. "I was devastated. We both live here. I still think I'll see him."

For the year that it took to bring her case to court, Emma had lived in a state of high anxiety, which resulted in her losing her job and becoming unable to leave the house. But, she says, the horror of being raped was compounded by her experience in the courtroom, where she felt bullied by a defence barrister who repeatedly put it to her that she was a liar.

Afterwards, she explains: "I went to my doctor and said I feel silly, but I feel traumatised by the whole process."

The experience that sexual abuse victims go through in court has recently been highlighted by the case of Frances Andrade, who rebuilt her life after being abused in her teens, before giving evidence against her attackers decades later, when a case was brought.

Charged with being a liar and a fantasist by a defence barrister, she is thought to have killed herself before her abusers were found guilty. Andrade's family has since cited the trauma of being aggressively cross-examined as an important factor in her mental distress.

Emotional turmoil is clearly not an uncommon response to being forced to rake over memories of sexual abuse. But it's the perception of not being believed by police and lawyers – whether or not that is the reality – which is really damaging, says Emma.

So, what can be done to ease the experience of sexual violence victims, who are brave enough to report a crime to police? And what support is available to them as they attempt to survive the ensuing investigation and court appearance?

Andrade's family say that for the two-year run-up to the case, she was told not to have counselling for fear of having her evidence fatally undermined and the charges thrown out.

The police involved in her case have since said they at no stage advised her against counselling, but it's clear from official guidance that anyone who does take this option risks the Criminal Prosecution Service (CPS) deciding not to proceed with their case.

"It can be ridiculous; it has been that somebody's been in therapy for a year with us, and they then feel that they're well enough to bring a case, and then they have to stop the therapy," says Vivienne Lamb, a director of a sexual violence advice centre. "Our understanding is that generally it is better not to have therapy at that time, based on the decisions of the CPS in the past and our concern that we would not want to ever jeopardise a case."

A slightly different perspective on the dilemma is offered by the CPS. They say, "Our policy is that the interests of the victim are paramount – even when proposed therapy may prejudice a criminal case – and that any decision on seeking therapy is one for the victim, or their carers in conjunction with the professional agencies providing support."

The concern seems to be that a witness in an abuse trial might alter their evidence as a result of therapy, which delves into the detail of the crime. "I'm a therapist, and I cannot see how anything I do could be interpreted as coaching," says Lamb.

This leaves victims with just one source of permitted support: the independent sexual violence adviser (ISVA).

Often employed by rape crisis centres, the ISVA has clearly defined boundaries: they may offer emotional and practical support whether a victim chooses to report or not and may also continue to support them throughout an investigation. They however, cannot discuss anything about the sexual abuse itself.

It is a role that Baroness Stern in her 2010 review on rape reporting in England and Wales said should be an intrinsic part of the criminal justice system and a resource which every victim should be offered.

The Home Office says it part-funds 87 ISVAs – that means, as Rape Crisis points out, that sexual violence support organisations "have to magic up the balance from somewhere".

Whether you can get this support also depends on where you live, observes Rape Crisis. "We need ISVA pools in each police area to allow for equity of service."

Given the hundreds, possibly thousands of shelved historical abuse and sexual violence cases that director of public prosecutions Keir Starmer has just declared will be re-opened, the need for the support that ISVAs offer may soon be very urgent indeed.

The relationship with an ISVA, says Lamb, can mean the difference between someone feeling able to continue with a case and give evidence in court and dropping out at any stage of the process. But the ISVA must work within a system that despite some changes – such as the victim's video statement being played in court, so they do not have to recount every detail of the offence – is still slow, process-driven and by definition antagonistic to a victim's version of events.

Emma's case took a year to come to court, recalls her ISVA, Olivia Hartwell. On the first day of the trial, terribly nervous, she was kept waiting around until mid-afternoon to give her evidence, despite being told to arrive first thing.

What measures does she think might mitigate the distress involved in going to court?

"The timescale," says Hartwell, immediately. "It takes far too long, from the point of reporting; an average of one year and 10 months in abuse or rape cases."

Not being able to have their ISVA in the video link room if that is where a victim chooses to give evidence is also something her organisation is campaigning to change. "Our crown court has on occasion allowed us to have an allocated seat in the witness box, but even that's different every time," she says.

What about cross-examination – has she ever seen a case where a defence barrister has been exemplary? "I've seen cases where they haven't been too bad and others where they've been pretty harsh," she says. "I think they can be too aggressive, but judges are quite good nowadays in pulling them up for being too aggressive or repeating questions."

Emma says she wanted the opportunity to tell her story to the court in the way that she experienced it. Being repeatedly cut short and told that her answers were not relevant to the question has clearly scarred her. Twelve months on from the not-guilty verdict, has she considered getting therapeutic support to help her with her feelings about the trial as well as the rape? "My doctor has offered, and where Olivia works, but I try to block it out," she says. "But it is hard. I have nightmares, and there are days I can't get out of bed."

Section 4: Supporting Court Witnesses

Learning objectives

At the end of this section, CSPOs will be able to:

- Describe the provisions of the Criminal Procedure Amendment Act 2000;
- Understand the needs and purpose of a court preparation programme;
- Work with survivors of GBV according to global standards;
- Provide a secure, safe and relaxing environment for vulnerable witnesses when preparing them for Court;
- Teach vulnerable witnesses relaxation techniques to assist them in Court; and
- Design an education component for the court preparation programme.

4.1 What is a Witness?

A witness is viewed as a source of information. When testifying in Court, the function of a witness is to provide certain information that will enable the Court to come to a decision on the matter before it. The Court needs to access the information from the witness in its most accurate form to make a decision about the conviction or acquittal of the accused.

4.2 Provisions for Witnesses

The trial process can be extremely stressful for witnesses and victims/survivors of GBV/GBVAW. The Criminal Procedure Amendment Act (No. 24 of 2003) makes legal provision for the protection of vulnerable witnesses or those considered to be intimidated.

4.2.1 Legal provisions

According to Crown Prosecution Services (2017),

Many witnesses experience stress and fear when attending Court and giving evidence. Some witnesses however, may have particular difficulties attending Court and giving evidence due to their age, personal circumstances, fear of intimidation or because of their particular needs. In such circumstances, where witnesses are considered to be vulnerable or intimidated, "**special measures**" can improve the quality of their experience by helping them to give their "best evidence".

According to the High Court of Namibia Vulnerable Witnesses' Project (Silungwe, 2007), in many cases, a vulnerable witness refuses to testify in the presence of the accused perpetrator since

it can cause flashbacks of the traumatic event. It may also rekindle her/his memories of the trauma experienced at the time of a sexual crime and/or acts of domestic violence.

Sometimes witnesses may be overwhelmed by having to come to Court and are even more fearful if they have to face the accused. These are among the greatest concerns that sexual assault and domestic violence survivors express.

Moreover, it is "not easy for children and other vulnerable witnesses to testify in the physical presence of the alleged perpetrator, since the stress of a direct confrontation with the accused may result in the witness confusing events or details, recalling things incorrectly or forgetting essential information and consequently losing credibility" (Silungwe, 2007).

In such cases, the **Criminal Procedure Amendment Act 24 of 2003** covers these trials.

The Act makes provision to make special provisions available for vulnerable witnesses as well as sexual assault complainants to reduce the trauma involved in giving evidence at Court.

4.2.2 Definition of a vulnerable witness

The amended Section 158A (3) of the Criminal Procedure Amendment Act (2003) defines a vulnerable witness as follows:

A vulnerable witness is a person -

- a. Who is under the age of eighteen;
- b. against whom an offence of a sexual or indecent nature has been committed;

- c. against whom any offence involving violence has been committed by a close family member or a spouse or a partner in any permanent relationship; and
- d. That because of some mental or physical disability, intimidation by the accused or any other person, or for any other reason will suffer undue stress while giving evidence, or who because of such disability, background, possibility or other reason will be unable to give full and proper evidence.

4.2.3 Special arrangements for vulnerable witnesses

Furthermore, the new Section 158A (2) sets out certain steps regarding “special arrangements” for the convenience and protection of vulnerable witnesses.

- The trial can be held in an alternative venue which will be less formal and less intimidating;
- The Court can adjourn the trial and reconvene it in an alternative venue, which is more suitable for a vulnerable witness during the witness’s testimony;
- The furniture in the courtroom can be re arranged or changed, or people can be directed to stand or sit in different places to what is usual;
- A victim/witness may be allowed to testify behind a one-way screen by means of closed-circuit television;²
- A support person can accompany the witness while he/she is testifying; and
- The presiding officer may authorise any other steps that he/she thinks is “expedient and desirable” to facilitate the giving of evidence by a vulnerable witness.

Additional Measures

- The presiding officer can place strict limitations on the use of irrelevant cross-examination to badger or to intimidate any witness; and
- According to Section 166 (4) of the Criminal Procedure Act 51 of 1977, it is mandatory for the presiding officer to do the cross-examination of children aged below 13 years.

² **Note that the accused must be able to see the witness, but the witness does not have to see the accused. The accused legal representative, the prosecutor and the magistrate must be able to see the witness.**

- The only exception is that the presiding officer can allow cross-examination of these children to happen through someone with special qualifications that the Minister of Justice has determined, and if that person is available when the child gives evidence.

4.3 Court Preparation of Witnesses

This section explains the concept of court preparation and its significance for victims/survivors who need to testify in Court.

Court preparation significantly enhances the ability of a witness to provide the best possible quality and quantity of information while testifying

4.3.1 What is court preparation?

- Court preparation is a life-skills approach to empower witnesses to testify effectively through acquiring relevant skills and knowledge;
- It empowers victims/witnesses to understand their role and cope with their participation in the legal system;
- It helps witnesses have a better grasp of the full spectrum of the legal process;
- It significantly enhances the ability of a witness to provide the best possible quality and quantity of information while while testifying; and
- Court preparation encourages survivors to discuss and work through their fears about court.

Court preparation is necessary because:

- The judicial system demands that a witness can effectively provide a prompt, clear and consistent report of a recognisable crime;
- It demystifies the courtroom environment through educating witnesses and involving them throughout the legal process; and
- It teaches witnesses how to use stress reduction and anxiety management techniques, which helps them to testify more efficiently and reduce anxiety related to the uncertainty of events to come.

4.3.2 The scope of court preparation

This process prepares witnesses to:

- Understand courtroom processes and language (e.g. what is an oath);
- Know the roles and responsibilities of court individuals (e.g. purpose of cross-examination);
- Understand their own role when testifying;
- Learn specific techniques to reduce stress and manage anxiety;
- Involve and keep their family members informed; and
- Receive physical support.

4.3.3 Best-practice model for preparing witnesses for court

A model of best practice for witness preparation and court support developed by the Australian Government's Witness Assistance Programme comprises nine key components (Office of the Director of Public Prosecutions (ODPP): Witness Assistance Service, n.d.). The components in the Australian programme aim to reduce the stress and the likelihood of secondary trauma for women in cases of GBV/GBVAW while empowering them to testify effectively in Court. These are:

- Educational preparation
- Environmental awareness
- Witness role preparation
- Emotional and psychological preparation
- Practical preparation
- Safety considerations

- Access and equity considerations
- Appearance in court
- Post-court planning.

4.3.4 Namibia's court preparation programme

In Namibia, the components used in its court preparation programme focus on:

- Addressing the fears and expectations of the witness;
- Educating and providing information on court procedures, the trial process and the role of the witness;
- Familiarising the witness with the courtroom and the roles of court personnel;
- Giving evidence-in-Chief (which entails victims/witnesses having to relate the details of what happened to them in Court);
- Handling cross-examination;
- Using relaxation techniques;
- Providing support in Court; and
- Post-trial support.

It is important to note that a court preparation programme is not a counselling programme. The witness cannot discuss the details of the crime with the CSPO. However, the CSPO can assist the witness in contacting the prosecutor and refer her/him to additional services or resources such as counselling or houses of safety.



4.4 The Principles of Working with Victims/Survivors of GBV/GBVAW

CSPOs should always apply four key principles when working with GBV survivors, namely safety, confidentiality, respect and non-discrimination.

The principles of safety and confidentiality

The safety of the victim/survivor and his/her family should be ensured at all times. Keeping survivors safe should be a number one priority. Survivors of sexual and gender-based violence (SGBV) are at heightened risk of ongoing violence (e.g. domestic violence), murder or suicide, as well as social discrimination and isolation. CSPOs and other service providers must assess safety risks and minimise the risks for survivors and their immediate family members.

Since the issue of confidentiality is important, victim/witnesses need to know that CSPOs function within the guidance of the Office of the Prosecutor General (OPG). Therefore, information divulged on the victim's safety or the court matter may be shared with the relevant prosecutor, with consent from the witness. Alternatively, the witness should be referred to a social worker for further intervention services.

Incidents of GBV also affect a victim/survivor's sense of security and trust in other people. The world may suddenly seem a dangerous, chaotic or unsafe place. Not surprisingly, survivors may lose their belief in the goodness of humankind. CSPOs should try to support them by staying close and remaining calm, even if they are extremely distressed.

Being genuine and honest will help the distressed victim/survivor of GBV to rebuild a sense of trust and safety and begin the recovery process.

The principle of respect

Respect means seeing the victim/survivor as the primary role player in the situation. This entails respecting the survivor's wishes, rights and dignity at all times. The role of the court support and preparation officer is to assist the victim/witness to provide testimony in court in a dignified, focused and unhurried way.

Since loss of control is a central element of situations of GBV, a survivor has to regain a sense of control over her/his life during the recovery process.

Failing to respect a survivor's right to find her/his own solutions can increase feelings of helplessness and dependency on others. The CSPO should therefore always focus on strengthening a survivor's self-efficacy to enable her/him to feel empowered and competent. Thus, survivors should be in control of the process and their wishes should determine what actions are taken.

The principle of non-discrimination

All people have the right to the best possible assistance without discrimination, based on gender, age, disability, race, colour, language, religious or political beliefs, sexual orientation, status or social class, etc.

Gender-based violence exists in every country, culture and community

4.5 Establishing Rapport

The survivors, for whom CSPOs provide court preparation, will be vulnerable individuals, so it is highly likely they will be traumatised by their experiences. Thus, they may distrust people that they do not know, especially if they perceive them to be part of the justice system.

Building instant rapport entails:

- Being mindful of body language – for example, do not cross your arms;
- Using the person's name;
- Making eye contact;
- Avoiding being judgmental;
- Being genuine and honest;
- Being friendly;
- Showing an interest;
- Finding common ground;
- Giving genuine compliments; and
- Expressing empathy.

Since such vulnerable individuals may also be shy and feel intimidated, it is therefore important for CSPOs to establish a rapport with them immediately. When CSPOs sometimes have to assist a witness from another town or city, they may only have between one hour and one day with a witness to allay her/his fears and build confidence so she/he is able to testify.

An important aspect of the court support and preparation officer's role is to create conditions of trust and respect. These will not only help their clients feel safe and secure but will empower them to present strong evidence and testimony after they have completed a court preparation programme.

CSPOs are also obligated to work within a human right's framework. This means always ensuring that their actions or behaviours do not violate the dignity of their clients in any way.

4.6 Relaxation and Grounding Techniques

Relaxation is the body's natural antidote to stress. When you feel stressed, your body can be flooded with chemicals, which then prepares you for "fight or flight." This is useful in a real emergency where you really need to be alert. However, if ongoing and excessive stress results in continually activating these chemicals, it depletes your body's defence systems. This reduces energy levels and sometimes results in an inability to cope as effectively as before with normal everyday activities.

Relaxation techniques can help to bring your system back into balance. These techniques work by helping to deepen breathing, reduce stress hormone levels, slow down your heart and blood pressure rates and relax your muscles. Relaxation has been shown to increase energy and focus, help the body combat illness, relieve aches and pains, heighten problem-solving abilities as well as boost motivation and productivity. All these aspects are vital for giving credible evidence in court.

The court preparation programme should provide opportunities for a witness to learn relaxation techniques, which are primarily aimed at:

- Assisting those victims/survivors of GBV who may be suffering from post-traumatic stress disorder (PTSD). It is important to remember that it is normal to experience flashbacks and anxiety after a trauma;
- Appearing in court and facing the alleged perpetrator may trigger such PTSD-related symptoms, which could limit the ability of any witness to provide credible evidence. Grounding techniques help control these symptoms by diverting attention away from thoughts, memories or worries and refocusing on the present moment; and

- Alleviating any general stress and anxiety the witness brings to the court preparation programme or may experience on the day of the trial.

Grounding techniques are strategies that can help a victim/survivor manage negative thoughts, intense emotions, flashbacks or traumatic memories. By engaging the senses and focusing on your present surroundings, a survivor is directed back to the present moment.

Grounding techniques help to occupy the mind in a non-destructive way, thereby avoiding actions such as emotional eating, getting drunk, cutting or acting out sexually. They help individuals find a balance between feeling cut off from their emotions and being overwhelmed by them when something or someone triggers traumatic memories of trauma.

Note that the key to grounding is to pull one's thoughts away from feelings of anxiety and into the present. Most grounding techniques involve taking time to notice the things around you that you did not before so you can stay in the present and out of your head.

The goal of relaxation techniques is to induce calmness. The following techniques will help victims/witnesses feel more calm and peaceful. Remind victims/witnesses that different techniques may work better for them than others, so encourage them find the ones that work best.

Relaxation: Deep breathing

With its focus on full, cleansing breaths, intentional deep breathing is a simple, yet powerful relaxation technique. It's easy to learn, can be practiced almost anywhere and is a quick way to get stress levels in check.

The key to deep breathing is to breathe deeply from the abdomen, getting as much fresh air as possible in your lungs. When you take deep breaths from the abdomen rather than shallow breaths from your upper chest, you inhale more oxygen. The more oxygen you get, the less tense, short of breath and anxious you feel.

How to do it:

- Wear loose clothing. Sit up straight in a comfortable chair with your shoulders, head, and neck supported against the back of the chair. Put one hand on your chest and the other on your stomach.

- Breathe in slowly through your nose for four counts. (The hand on your stomach should rise. The hand on your chest should move very little.)
- Pause and hold for two counts.
- Now breathe out (exhale) slowly through your mouth for four counts, pushing out as much air as you can while contracting your abdominal muscles. (The hand on your stomach should move in as you exhale, but your other hand should move very little.)
- Continue to breathe in through your nose and out through your mouth. Try to inhale enough so that your lower abdomen rises and falls.
- Repeat the sequence five times.

Make this exercise even more effective by using focused breathing i.e. adding a mental image and a word/phrase with your breath:

- When breathing in, imagine that the air is filled with a sense of peace and calm. Try to feel it throughout your body and say in your mind, "I breathe in peace and calm."
- When breathing out, imagine that the air is lifting away your anxiety and tension and say in your mind, "I breathe out stress and tension."

Relaxation: Progressive muscle relaxation

When we experience stress, it is often accompanied by muscular tension. Progressive Muscle Relaxation (PMR) is a two-step process in which you systematically tense and relax different muscle groups in the body (see Figure 3). The aim is to start at your feet and work your way up to your face, trying to tense only those muscles intended. It may take some practice at first, but after doing this exercise regularly you will start becoming very familiar with how tension and complete relaxation feel like in different parts of the body. This will make it easier to recognise the first signs of the muscular tension that accompanies stress so you can relax both your body and mind.

How to do it:

- In a quiet environment, loosen clothing, take off your shoes and get comfortable.
- Take a few minutes to breathe in and out in slow, deep breaths.

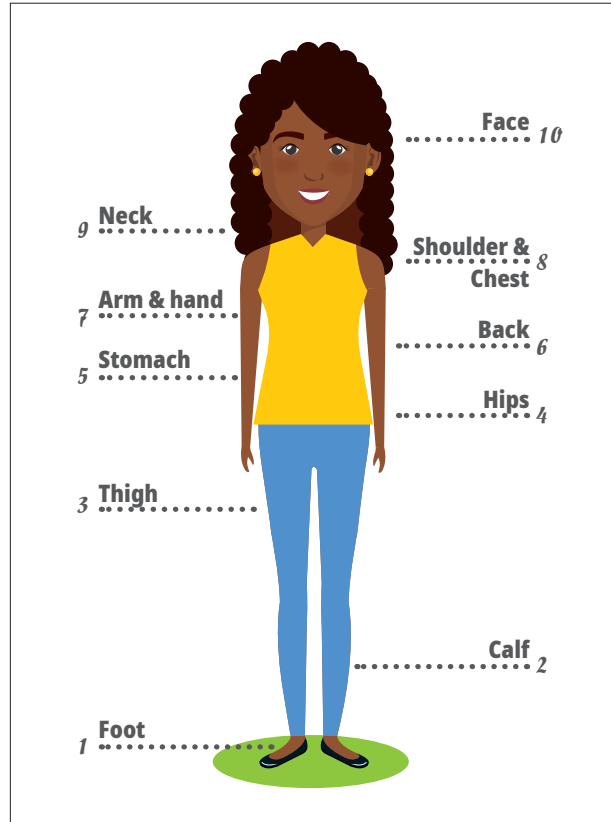


Figure 3: Progressive muscle relaxation

- When you are ready, shift your attention to your right foot. Take a moment to focus on the way it feels.
 - Slowly tense the muscles in your right foot, squeezing as tightly as you can. Keep the muscle tensed for approximately five seconds.
 - Make sure you can feel the tension, but not so much that you feel a lot of pain.
 - Then relax the foot and keep it relaxed for approximately 10 seconds while breathing slowly and deeply. (It may be helpful to say something like "Relax" as you relax the muscle.)
 - As you relax the muscles, focus on the tension flowing away and experience how your foot feels as it becomes limp and relaxed.
 - Now, shift your attention to your left foot. Follow the same sequence of muscle tension and release.
 - Move slowly up through your body, contracting and relaxing the different muscle groups.
- HelpGuide (2020)*

Relaxation: Rhythmic movement

ACEs Connection (2020) is an excellent resource for relaxation through rhythmic movement. When you are stressed, tension gets trapped in the body and can affect you on a body-mind level. When done gently, repetitive rhythmic movement helps to release tension and return to a relaxed state. Rhythmic movement helps to integrate the mind and body by resetting the nervous system and rewiring the brain to implement the body's natural healing and renewal processes. Focus on moving slowly, choosing a movement you enjoy and being mindful during the activity.

Examples include:

- Running or jogging;
- Walking;
- Swimming;
- Gardening;
- Dancing to music; and
- Rowing.

Relaxation: Additional strategies

Relaxation techniques help to address and alleviate the physiological manifestations of prolonged stress and anxiety. These include mindfulness, deep breathing, tai chi, yoga, visualisation and meditation. Remember to find the ones that work best for you.

Other strategies that you could try to help you relax include:

- Stretching;
- Squeezing a rubber ball;
- Listening to relaxing or soothing music;
- Creating a playlist of nature sounds (the ocean, a bubbling stream, rain falling, wind, birds chirping); and
- Hanging wind chimes up near an open window to hear their gentle tinkling sound.

Grounding: The chair

Grounding techniques are strategies that can help a victim/survivor manage negative thoughts, intense emotions, flashbacks or traumatic memories. By engaging the senses and focusing on one's present surroundings, a survivor is directed back to the present moment. Grounding techniques help to occupy the mind in a non-destructive way, thereby avoiding actions such as emotional eating, getting drunk, cutting or acting

out sexually. They help individuals find a balance between feeling cut off from their emotions and being overwhelmed by them when something or someone triggers traumatic memories of trauma.

This chair exercise is done while sitting down and involves focusing on experiencing the feeling of the chair on your skin.

How to do it:

- Sit in a chair and grip it firmly with your hands. Make sure your feet are positioned an equal distance apart.
- Clear your mind of all other thoughts.
- Close your eyes and focus on the feeling of the chair on your legs, back and hands.
- Take deep breaths and count to 30.
- Repeat until you feel more collected and calmer.

Grounding: The 5-4-3-2-1 technique

This grounding technique uses sensory awareness to turn your attention away from thoughts, worries or memories and refocus on the present moment. It helps to control these symptoms and make you feel more relaxed, calmer and able to cope with difficult moments. In this technique, you use each of your senses to purposefully take in the details of your surroundings. If needed, you can repeat the five steps more than once (Rape Crisis Information Pathfinder, n.d.).

How to do it

- Before starting the 5-4-3-2-1 exercise, pay attention to your breathing. Slow, deep, long breaths can help you maintain a sense of calm or help you return to a calmer state.
- Once you find your breath, go through the following steps to help ground yourself:
- Name **FIVE** things you can see when you **look** around your surroundings. Specifically focus on them and take a moment to think about what they are. Next, describe them for yourself.
- Name **FOUR** things you can **touch** around you. It could be your hair, the ground under your feet or your clothing.
- Name **THREE** things you can **hear** outside of your body, like the sound of cars, birds singing or people talking nearby.

- Name **TWO** things you can **smell**. It could be the smell of someone’s perfume or food cooking nearby.
- Name **ONE** thing you can **taste**. It could be what the inside of your mouth tastes like, e.g. coffee, gum or your most recent meal.

Grounding: Mindful walking

This standard technique often used in yoga and meditation is also very effective in overcoming anxiety. The technique works best when done outdoors while barefoot. However, you can also do it indoors if the weather is too cold.

How to do it:

- Remove your shoes and place your feet an equal distance apart.
- Focus on your breathing and imagine your breath moving through your body and into the ground.
- Focus intently on the feeling of the ground underneath your feet. Can you feel grass? Ground? Leaves? Gravel?
- Take a few steps, focusing on the ground. Close your eyes and try to work out what you are walking on, based only on the feeling on the bottom of your feet.
- As you walk around, try to push away any other thoughts that come into your mind.
- Repeat for as long as it takes to become calm.

Grounding: Square breathing

Square Breathing (also called Box breathing) is a powerful anxiety management technique used to alleviate stress, PTSD, anxiety disorders and panic attacks. This four-step technique focuses on taking slow, deep breaths (See Figure 4).

Regular, deep breathing is known to naturally alleviate anxiety and relieve stress. In addition, regulated breathing also heightens performance and concentration. According to the Mayo Clinic (MFMER, 2020), there’s sufficient evidence that intentional deep breathing can actually calm and regulate the autonomic nervous system (ANS). This system regulates instinctive body functions such as temperature. Deep breathing can also lower blood pressure and provide an almost immediate sense of calm.

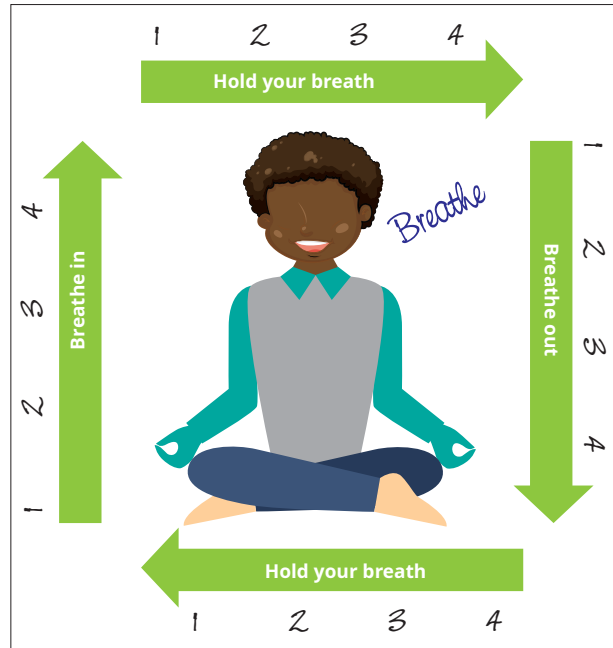


Figure 4: Square breathing technique

Note that it might be difficult to get the technique of box breathing right if you’ve never done it before. You might feel dizzy after a few rounds – don’t worry, this is normal! If you get dizzy, stay sitting for a minute and resume normal breathing. As you practise the technique more often, you’ll be able to go longer without feeling dizzy. Try to do four sequences of the box breathing technique in one session. It can be practised several times a day whenever you need to relieve stress or calm your nerves.

How to do it:

- Before you get started, make sure that you are sitting up straight in a comfortable chair with your feet flat on the floor. This will ensure you are able to take deep breaths.
- Try to be in a stress-free, quiet environment where you can focus on your breathing.
- Focus on your posture and keep your hands relaxed in your lap with your palms facing up. When you’re ready, start with step 1.

Step 1: Slowly exhale

Sitting upright, slowly exhale (breathe out) through your mouth, getting all the oxygen out of your lungs. Focus on this intention and be conscious of what you’re doing.

Step 2: Slowly inhale

Inhale slowly and deeply through your nose, counting to four very slowly in your head.

Feel the air fill your lungs, one section at a time, until your lungs are completely full and the air moves into your abdomen.

Step 3: Hold your breath

Hold your breath for another slow count of four.

Step 4: Exhale again

Exhale through your mouth for the same slow count of four, expelling the air from your lungs and abdomen. Be conscious of the feeling of the air leaving your lungs.

Grounding: Cognitive awareness exercise

Re-orient yourself in place and time by asking yourself some, or all of, these questions:

- Where am I?
- What is today?
- What is the date?
- What is the month?
- What is the year?
- How old am I?
- What season is it?

4.7 Mental Exercises

Mental exercises can take your mind off uncomfortable thoughts and feelings. They are discreet and easy to use at nearly any time or place. Experiment with these exercises to find which ones you find most beneficial.

Here are some examples (Therapist Aid, (2019):

- Name all the objects you see;
- Describe the steps in performing an activity you know how to do well. For example, how to kick a football, prepare your favourite meal or tie a knot;

- Count backwards from 100 by 7;
- Pick up an object and describe it in detail. Describe its colour, texture, size, weight, scent and any other qualities you notice;
- Spell your full name, and the names of three other people, backwards;
- Name all your family members, their ages and one of their favourite activities;
- Read something backwards, letter-by-letter. Practise for at least a few minutes; and
- Think of an object and “draw” it in your mind, or in the air with your finger; for example, try drawing your home, a vehicle or an animal.

In all the above techniques, it is important that CSPOs give special consideration to how they interact with female victims/survivors from groups that experience multiple types of discrimination. (These include ethnicity, age, socio-economic status (including single mother status), being from a remote or rural location, sexual orientation, disability status as well as status as a refugee, asylum-seeker or an internally-displaced person). Women who have minority status often face additional hurdles in accessing justice due to various factors. These include physical or geographical isolation from support services, legal assistance, law enforcement and courts; cultural and linguistic barriers, fears of ‘exposure’ and legal ramifications (for women with immigrant status this may mean fear of deportation).

In addition, lesbians, bisexual women and transgender (LBT) women may face hurdles such as experiencing fear of being “outed”, reprisals and possible discrimination.

Mental exercises are easy to use at nearly any time or place.

Empowering Quotations

Turn your wounds into wisdom
– Oprah Winfrey

Instead of saying: “I’m damaged, I’m broken, I have trust issues” say “I’m healing, I’m rediscovering myself, I’m starting over”. Positive self talk.

Be patient, things will get better.

You have the power to say, this is NOT how my story will end.

Be you. Do you. For you.

Being positive doesn’t mean you don’t have negative thoughts, it means you don’t let those thoughts control your life.

When something bad happens you have three choices. You can either let it define you, let it destroy you, or you can let it strengthen you.

The only keeper of your happiness is you. Stop giving people power to control your smile, your worth and your attitude – Mandy Hale

Section 5: Court Accompaniment and Support

Learning objectives

At the end of this section, CSPOs will be able to:

- Understand the impact of a vulnerable witness having a support person to accompany her/him in court;
- Refer vulnerable witnesses to additional service providers;
- Document and report on each client to whom court preparation is offered; and
- Understand the need for self-care in order to provide an effective service to clients.

5.1 Support in the Courtroom

In addition to assisting a vulnerable witness to prepare for Court, CSPOs can also attend the court proceedings with her/him to provide support through the trial process. As indicated, the Criminal Procedure Amendment Act (No. 24 of 2003), makes provision for a vulnerable witness to have a support person with her/him in Court.

Note that there are quite strict conditions that should be adhered to as stipulated in the Guidelines for Service Providers on the Combating of Domestic Violence Act of Namibia (Legal Assistance Centre, 2005).

These guidelines stipulate that:

- a) The support person can stand or sit near the victim/witness and give physical comfort to her/him as necessary. The support person can also interrupt the proceedings to alert the presiding officer to the fact that the witness is becoming upset. The presiding officer can then take appropriate steps such as calling a short recess.
- b) The support person may not help the witness answer questions or instruct the witness on what to say.
- c) The presiding officer can instruct the support person not to communicate with the witness during testimony or to refrain from doing anything that might interfere with the evidence.

The CSPO is allowed to:

- Assist a witness to relax while waiting to enter the Court;

- Remind a witness of her/his strengths to boost confidence;
- Answer any of a witness' questions or address any fears; and
- Keep a witness informed about relevant times and other logistics.

5.2 The Responsibility of Judicial Officers towards Witnesses

CSPOs should be mindful that judicial officers also have a responsibility to protect vulnerable witnesses from unnecessary stress and trauma.

In this regard, judicial officers should take an active management role in protecting and accommodating witnesses to minimise their distress and increase the accuracy and completeness of their testimony through the following:

- They can accommodate witnesses in the courtroom without compromising judicial neutrality or undermining the rights of the accused.
- The presiding officer should inform witnesses about a few ground rules to assist them in testifying as effectively as possible. For example, such ground rules would include highlighting some basic procedures and telling witnesses to indicate when they do not understand or cannot remember something.
- Presiding officers should ensure that witnesses are not bullied or harassed in Court; they have a duty to intervene when it is obvious that a witness is confused and does not understand a question.

5.3 Post-trial Support

Once a witness has testified, she/he needs to be debriefed as soon as possible. It is important to provide the witness an opportunity to explore and talk about the court experience; most importantly, this is an appropriate time for congratulations. Praise the witness for doing an excellent job and for showing courage during the trial proceedings. Focus on empowering the witness to feel that she/he has made a valuable contribution to the trial. It's important to build up the witness' self-esteem and confidence; these are both valuable in her/his recovery and to increase feelings of empowerment.

Although the witness may have completed the task of testifying, the trial may continue for some time. Other witnesses may still need to testify, while the magistrate may take long to make a decision. It is important that the court preparation and support officer should regularly inform and update the witness about each stage of the process.

When the magistrate has made his/her decision, he/she will say if the accused is "guilty" or "not guilty." If the Court finds the accused not guilty, it does not mean that the relevant court officials did not believe your client. It means that there was not sufficient evidence to find the accused guilty. Remember, the evidence has to prove beyond all reasonable doubt that the accused committed the abuse and this may be difficult to prove if the survivor of GBV was the only witness. If the accused is found to be not guilty, he/she will go free.

However, if the judge or magistrate finds the accused guilty, he/she will be sentenced. The sentencing may happen immediately after the trial, or it could take a few days or even several weeks.

Regarding the sentencing process, it is important that victims/witnesses are informed of their rights so that they can decide whether or not to participate.

These rights are stipulated in Section 25(2) of the Combating of Domestic Violence Act, (No. 4 of 2003), which grants "the complainant, the complainant's next of kin, if the complainant is deceased, or a person designated by the complainant or the complainant's next of kin has the right to appear personally and has the right to reasonably express any views concerning the crime, the person responsible, the impact of the crime on the complainant, and the need for restitution and compensation."

Take note that each witness is different and will respond differently. For example, at the end of a

trial, some witnesses may experience a sense of relief or be unable to find closure. Other witnesses want to put the process of testifying behind them, while some may opt not to attend the sentencing.

It is important that the CSPO keeps contact with the witness and informs her/him of the sentencing details, such as the location where the accused will be placed for his sentence and when he will be released. Also, remember to allow the victim/survivor of GBV to express any concerns that she/he may have.

Many victims/witnesses of GBV who come to Court hope that the trial will be a time when everything that they have been through will be resolved. Yet, the process can be a huge disappointment if the accused is found not guilty. The emotional energy that a witness may have spent on participating in the trial can leave her/him feeling drained and exhausted. Even if the perpetrator is found guilty, the survivor still has to deal with many issues after the trial.

At the end of the court process the CSPO must provide the survivor of GBV with information about other support organisations for possible therapy, counselling, health issues, or even safety and security. In addition, he/she may even make referrals to these service providers, if the victim/survivor gives them permission to do so.

5.4 Referral Processes

One of the roles of a CSPO is to refer victims/survivors to other service providers if she/he believes they require additional assistance. Police officials, the prosecutor and sometimes the magistrate may refer a vulnerable witness to the court support and preparation officer.

5.4.1 Services required for a holistic response to GBV

Providing a holistic response to GBV requires the following services:

- Health;
- Safety and security;
- Legal and justice system; and
- Psycho-social services.

CSPOs can obtain copies of the national referral chart from the Ministry of Gender Equality and Child Welfare.

5.4.2 . Documentation requirements

It is essential that all CSPOs keep clear and precise documentation for every client (victim/witness). There should be a separate client file for each victim/witness; this must be kept confidential and be stored in a safe place.

Each client file should contain information on:

- a) The person's name, date of arrival for court preparation, date of trial and notes on the client's reflections on the date she/he leaves the programme;
- b) The results of the trial (conviction or non-conviction of the accused);
- c) The strategies the CSPO has used during each court preparation session; and

- d) Referral notes, which means recording details about which person/organisation referred the victim/witness to the court preparation programme. This should be documented along with any forwarding referrals that the CSPO makes.

CSPOs will find a template for documentations information in the activity handout section of this handbook. It is important to complete this checklist at the end of each month and send it to your supervisor.



5.5. Self-help for Court Support and Preparation Officers

Working with victims/survivors of GBV/GBVAW as a CSPO can be very demanding. It is important to realise that this work can reduce your own emotional and physical resilience, making you more vulnerable to illness. Unless you actively attend to your own needs and wellbeing, it is likely that your own productivity and effectiveness as a CSPO will suffer.

Listening to and supporting survivors can trigger your own emotions, which may leave you feeling overwhelmed and powerless. It is therefore important to find a self-help strategy that works for you. No single strategy works for everyone. Choose a strategy that promotes healthy lifestyle habits, alleviates stress and maintains your overall physical and emotional health. In this way, you'll be helping yourself to be more effective in providing the best services to your clients who rely on you for support to cope with GBV/GBVAW.

Many people that do stressful or challenging work have discovered over time how to recognise their own stress triggers and handle difficult situations. In the next activity, you'll be able to recall what you have learnt from the training programme activity in this handbook and share your own self-help strategies with other participants that help you cope better.

WHAT ANXIETY FEELS AND LOOKS LIKE

| | |
|-------------------------------------|----------------------------|
| FEELING DISCONNECTED FROM THE WORLD | "WHY CAN'T I RELAX?" |
| OVERTHINKING | "WHAT IF ...?" |
| HEADACHES | TIGHT CHEST |
| TENSENESS | UNCONTROLLABLE WORRIES |
| INCREASED HEART RATE | DISPERSONALISATION |
| HYPERVENTILATION | LIGHT-HEADEDNESS |
| SHORTNESS OF BREATH | TREMBLING |
| LOSS OF APPETITE | WORRYING ABOUT PAST EVENTS |
| WORRYING ABOUT FUTURE EVENTS | "WHY CAN'T I SLEEP?" |
| EXCESSIVE WORRYING | WANTING REASSURANCE |
| RESTLESSNESS | SWEARING |
| PANIC ATTACKS | IRRITABILITY |
| SECOND-GUESSING | MUSCLE TENSION |
| DISQUALIFYING THE POSITIVE | HOT FLUSHES |
| STOMACH CRAMPS | FEAR |
| ALL OR NOTHING THINKING | |
| AGITATION | |
| NERVOUSNESS | |



Use the space below to write down what self-help strategies you have learnt from the handbook activity.

Part 2

PRACTICAL EXERCISES

Activity 1: What does Dignity Look Like?

As a court support and preparation officer, how would you apply the 10 elements of dignity in practice? Write down your thoughts in relation to the elements listed below:

1. Acceptance of Identity

2. Recognition

3. Acknowledgement

4. Inclusion

5. Safety

6. Fairness

7. Independence

8. Understanding

9. Benefit of the doubt (trust)

10. Accountability

Activity 3: The Consequences of Stepping out of the Prescribed Norms

Answer the questions below:

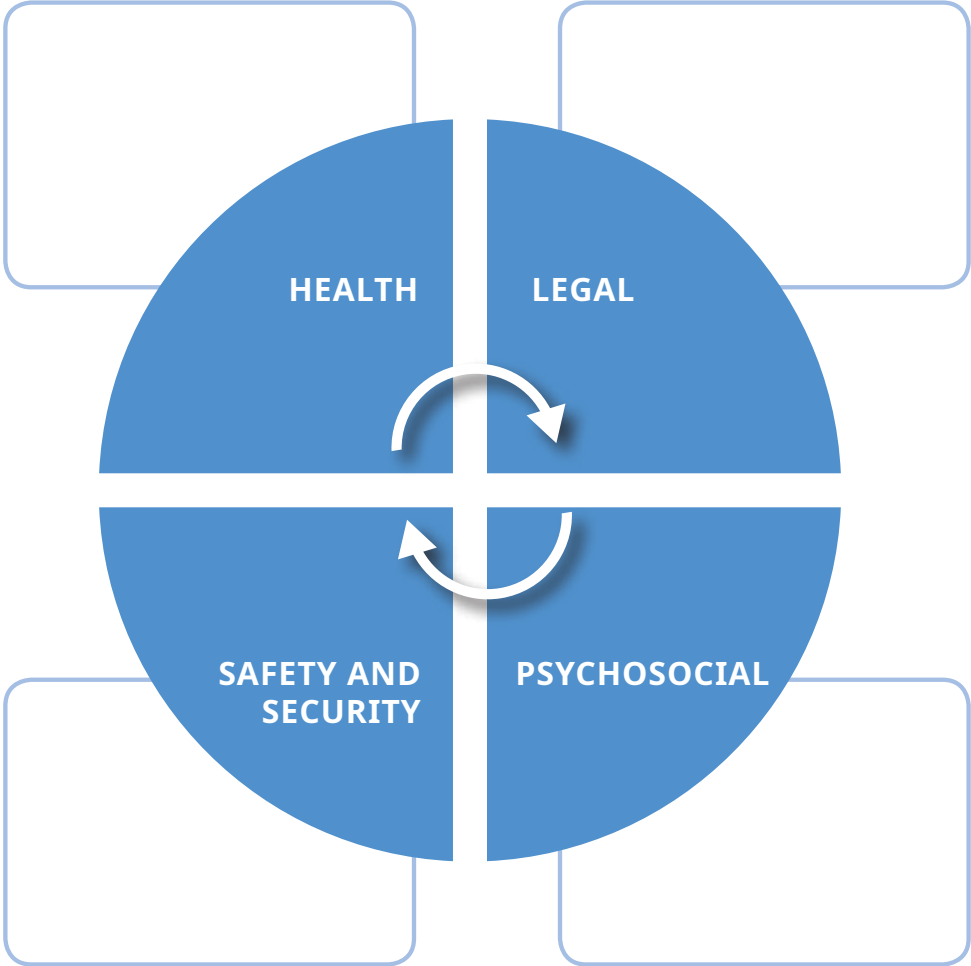
1. List what “names” or “comments” were made if you stepped out of these ascribed stereotypical roles/images?

2. What are some of the repercussions – both social and physical – against girls/boys who step out of their socially desirable roles?

3. Discuss the differences, if any, in the stereotypes and consequences of breaking the norms for girls and boys.

Activity 4: Identifying Additional Service Providers for Victims/Survivors of GBV

Complete the BLANK text boxes in the diagram below by filling in the ministries and organisations that provide necessary services to victims/survivors of GBV. Include any faith-based organisations, community-based organisations or local non-government organisations in their regions that you know of.



Love yourself like your life depends on it, because it does.

*We either make ourselves miserable or we make ourselves strong.
The amount of work is the same.*

*It doesn't matter what's been written in your story so far.
It's how you fill up the rest of the pages that counts.*

Stop yourself from stopping yourself

*Dream what you want to dream, go where you want to go, be what you want to be.
Because you have only one life and one chance to do all the things you want to do.*

ACTIVITY 5: Documentation

Recommended template for Monthly Client Reports:

| | |
|--|-----------|
| Name of witness: | Ref. Nr.: |
| Date of birth: | |
| Date entered the court preparation programme: | |
| How was the witness referred to you? (Please tick the applicable box below): <input type="checkbox"/> Police <input type="checkbox"/> Prosecutor <input type="checkbox"/> Judge <input type="checkbox"/> Magistrate <input type="checkbox"/> Other (Please specify) | |
| Date on which the client leaves the court preparation programme: | |
| Record below the dates of each court preparation session: | |
| Record the activities that each client participated in during each session here: | |
| Date of the trial: | |
| Outcome of the trial: | |
| Record how the witness felt/reacted emotionally after the trial: | |
| Record which organisations you referred the witness to during or after court preparation: | |
| Specify how the referral was made: | |
| State how the witness felt after the trial: | |

One of the most courageous decisions you'll ever make is to finally let go of what is hurting your heart and your soul – *Brigitte Nicole*

.....

Our wounds are our sources of growth – *Rachel Naomi Remen*

.....

We would do ourselves a tremendous favour by letting go of the people who poison our spirit – *Dr Steve Maraboli*

.....

I will breathe. I will think of solutions, I will not let my worry control me. I will not let my stress level break me. I will simply breathe. And it will be okay.

You're not a victim for sharing your story. You are a survivor setting the world on fire with your truth. And you never know who needs your light, your warmth and raging courage – *Alex Elle*

.....

Trauma creates change you don't choose. Healing is about creating change you do choose – *Michelle Rosenthal*

.....

Strength doesn't come from what you can do. It comes from overcoming the things you once thought you couldn't – *Rikki Rogers*

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