



Malawi Violence Against Women and Girls Prevention and Response Programme

~~~~~  
GENDER TRANSFORMATIVE CURRICULUM PART B:

### **Justice Duty Bearers - Judiciary**



**Justice Andrew K.C.  
Nyirenda, SC**

Chief Justice of the Republic  
of Malawi

## FOREWORD FROM THE MALAWI JUDICIARY

The severity and high prevalence of Violence Against Women and Girls (VAWG), is one of the factors contributing to inequality between men, women, girls and boys, as well slow progress towards the attainment of sustainable development for Malawi. The Government of Malawi's commitment to ending violence against women and girls is demonstrated through a strong legal and policy framework on VAWG, as well as implementation of several programmes on combating this vice. The Judiciary and other justice duty bearers work alongside a number of partners and stakeholders from the community to the national level on preventing VAWG as well as putting up measures for an effective response mechanism. The Judiciary believes that continuous dedicated training of justice duty bearers is one the critical strategies for improving women's and girls' access to justice and attainment of gender equality. Gender equality is a fundamental human rights principle enshrined in the Constitution of Malawi and in international human rights treaties. Gender in itself is an important aspect in the judicial system because 'experiences of crime and injustice are gendered and women have been the primary or only victims of certain forms of violence, usually perpetrated by men'. (OSCE 2019).

Incorporating a gender perspective in the judicial system therefore contributes towards the rule of law by facilitating equal access to justice for all people, regardless of their sex. This includes ensuring that gender related laws are progressively interpreted and effectively enforced; and - with respect to gender-based violence - that perpetrators are held accountable and effective reparations are accessible to survivors. In addition, it entails removal of obstacles to women's and girls' access to justice while also strengthening the capacity of justice duty bearers in adaptation of measures for ensuring that the justice delivery system is gender-responsive. Such gender reforms in the judicial sector are essential to transforming discrimination and inequality of power within society so that laws protect the rights of everyone, and justice institutions are effective and fair.

This is why the Judiciary welcomes the Gender Transformative Curriculum which will guide the learning and skills building of justice duty bearers. These include Judges, Magistrates, Legal Aid service providers, Prosecutors, Legal Practitioners and Paralegals, which will enable them to effectively support VAWG survivors. It is expected that the contents of the Curriculum will develop the key competencies and confidence required to challenge discriminatory social norms contributing to violence against women and girls in Malawi. It must be acknowledged that judicial officers are members of society and therefore come to the bench with personal values. It is therefore important that prejudices and harmful gender stereotypes do not influence how the court effectively discharges its roles. In addition, members of the Judiciary need to develop critical consciousness of their attitudes, values and behaviours as individuals and develop positive changes at individual level in order to deliver transformative support to survivors of gender-based violence in their day-to-day work.

As justice duty bearers, we have a critical role to play in a coordinated response to ending violence against women and girls, and this calls for supporting individuals on a personal process of self-reflection, critical analysis and at times challenging what we know as the acceptable 'norm'. I am happy to observe that the guide in Annex 1 provides an overview of practical tools that will enable facilitators who will roll out this Curriculum to end users, to consciously apply behavioural and emotional skills. I believe that judicial officers will now have an opportunity to reflect on individual beliefs and behaviours which may influence how they dispense justice in matters of VAWG.

It is my utmost expectation that the series of training under this Curriculum will result into transformation with respect to behaviours, practices and procedures that create obstacles to equal access to justice for women and girls, as well as promoting those that ensure better access to justice.

A handwritten signature in black ink, appearing to read 'Andrew K.C. Nyirenda'.

**HONORABLE JUSTICE ANDREW K.C. NYIRENDA, SC  
CHIEF JUSTICE OF THE REPUBLIC OF MALAWI**

## Module for Justice Duty Bearers – Judiciary

| Day 1         | Module                                                                                                                                            | Page Reference |
|---------------|---------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| 9.00 – 9.30   | WELCOME, INTRODUCTIONS AND EXPECTATIONS (30 MINS)                                                                                                 | 4              |
| 9.30 – 10.30  | QUICK RECAP AND REFLECTION ON FOUNDATIONAL MODULE: SOCIAL NORMS (60 MINS)                                                                         | 5              |
| 10.30 – 11.30 | TYPES OF VAWG AND THE RELATED APPLICABLE LAWS (60 MINS)                                                                                           | 6              |
| 11.30 – 12.00 | SHORT REFLECTION BREAK (30 MINS)                                                                                                                  | 9              |
| 12.00 - 13.00 | <i>Lunch</i>                                                                                                                                      |                |
| 13.00 – 13.10 | Quick recap on morning's sessions                                                                                                                 |                |
| 13.10 – 14.10 | CRITICAL ANALYSIS AND REFLECTION ON THE LAWS ADDRESSING VAWG (60 MINS)                                                                            | 10             |
| 14.10 – 15.10 | INTERROGATION OF JUDICIAL PERSONNEL'S VALUES, ATTITUDES AND BELIEFS WHEN INTERPRETING, PROTECTING AND ENFORCING THE LAW RELATED TO VAWG (60 MINS) | 11             |
| 15.10 – 16.00 | FINAL REFLECTION (50 MINS)                                                                                                                        | 12             |

| Day 2         | Module                                                                                    | Page Reference |
|---------------|-------------------------------------------------------------------------------------------|----------------|
| 8.30 – 9.00   | WELCOME, INTRODUCTIONS AND EXPECTATIONS (30 MINS)                                         | 13             |
| 9.00 – 10.00  | THE COMPONENTS OF ACCESS TO JUSTICE (60 MINS)                                             | 13             |
| 10.00 – 11.00 | BARRIERS TO ACCESS TO JUSTICE FOR WOMEN AND GIRLS AFFECTED BY VIOLENCE (60 MINS)          | 14             |
| 11.00 – 11.30 | SHORT REFLECTION BREAK (30 MINS)                                                          | 15             |
| 11.30 – 12.30 | <i>Lunch</i>                                                                              |                |
| 12.30 – 12.40 | Quick recap on morning's sessions                                                         |                |
| 12.40 – 13.40 | GENDER STEREOTYPING AND HOW IT UNDERMINES WOMEN'S ACCESS TO JUSTICE (60 MINS)             | 16             |
| 13.40 – 14.40 | THE ROLES AND DUTIES OF JUDICIAL OFFICERS IN ENSURING WOMEN'S ACCESS TO JUSTICE (60 MINS) | 19             |
| 14.40 – 15.40 | FINAL REFLECTION (50 MINS)                                                                | 21             |
| 15.40 – 16.00 | Closing remarks                                                                           |                |

| Day 3         | Module                                                                       | Page Reference |
|---------------|------------------------------------------------------------------------------|----------------|
| 8.30 – 9.00   | WELCOME, INTRODUCTIONS AND EXPECTATIONS (30 MINS)                            | 22             |
| 9.00 – 10.00  | ROLES AND RESPONSIBILITIES OF KEY DUTY BEARERS IN THE JUDICIARY (60 MINS)    | 22             |
| 10.00 – 11.00 | WOMEN AS VICTIMS AND OFFENDERS (60 MINS)                                     | 23             |
| 11.00 – 12.00 | PRE-TRIAL ISSUES (60 MINS)                                                   | 25             |
| 12.00 – 13.00 | <i>Lunch</i>                                                                 |                |
| 13.00 – 13.30 | REFLECTION AND RECAP (30 MINS)                                               | 26             |
| 13.30 – 14.30 | GENDER-SENSITIVE CASE AND COURTROOM MANAGEMENT (60 MINS)                     | 26             |
| 14.30 – 15.30 | EVIDENTIARY ISSUES AND INTERACTIONS WITH THE FEMALE VICTIM WITNESS (60 MINS) | 28             |
| 15.30 – 16.30 | SENTENCING (60 MINS)                                                         | 32             |
| 16.30 – 17.20 | JUDICIAL REMEDIES (50 MINS)                                                  | 34             |
| 17.20 – 17.35 | FINAL REFLECTION (15 MINS)                                                   | 35             |
| 17:35 – 17.45 | Closing remarks                                                              |                |

# Day 1: Legal Framework

## 1. WELCOME, INTRODUCTIONS AND EXPECTATIONS (30 MINS)

### Objective

To promote trust and respect in the group by establishing workshop commitments

### Facilitator notes

It is important that you build positive and supportive group dynamics so that participants feel free to share their feelings, knowledge and experience. If this is established at the beginning then the group will become self-regulating and supportive.

One of the main roles of the trainer is to ensure that all participants actively engage with the topics and remain connected to the group. From the outset, it should be stated as a ground rule that active participation is expected and is critical to the success of the training.

In a training session, four different aspects of the learning process can be distinguished, as represented in the below table: The objective of any training session is likely to involve all four of these categories. When identifying the objectives of a particular training, the following should be kept in mind: the development of judges' and prosecutors' knowledge and skills on the particular topic of violence against women and girls, as well as the promotion of attitudes and values that support gender equality and eliminate VAWG.

| Knowledge                                                  | Skills                                                                                                                      | Attitudes                                                                                                                 |
|------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| E.g. Knowledge of human rights instruments / relevant case | E.g. Skills in identifying a human rights issue and researching relevant legal rules to apply the law to a given situation. | E.g. Appropriate attitudes to reinforce the professional responsibility to respect and promote the human rights of women. |

*Adapted from the European Union Training Manual for Judges & Prosecutors on Ensuring Women's Access to Justice 2017, pg. 105.*

### Step by Step

#### Welcome and introductions (approx. 15 mins)

1. Welcome the participants to the workshop and give a general overview of the training and agenda for the day.

a) If most people in the group already know each other, the following is a suggested opening activity

#### ***Suggested Activity if participants know each other***

Give each participant a card. Ask each person to write down one expectation and one fear for the workshop. Collect all of the cards, shuffle them and redistribute them. Ask someone to read the card they hold and record the answers on two separate flip charts. After each person reads the goals on the card, ask a few questions such as: "What is your name?" "What is your position?" "How long have you been doing this work?" You may wish to ask other questions to make the person feel included. Ask the person to pick the next reader, who will pick the next reader, and so on. If you get duplicate answers, place a check mark next to the original on the flip chart, so that all contributions are acknowledged.

*Adapted from the UNDOC Training Curriculum on effective Police Responses to Violence Against Women 2010, pg. 12.*

b) If the people in the workshop do not know each other, the following is a suggested opening activity

### ***Suggested Activity if participants do not know each other***

Divide participants into groups of three people. Allow 10 minutes for people to exchange information: name, position, interest in the topic, favourite food and so on. Ask one group to volunteer to be first and have each person in the triad introduce one other person. For example, person A would introduce person B, person B would introduce person C and person C would introduce person A. Listen carefully to each introduction and look for opportunities to ask follow-up questions or make short comments on the introductions.

*Adapted from the UNDOC Training Curriculum on effective Police Responses to Violence Against Women 2010, pg. 12.*

## **Hopes and Fears (approx. 150 mins)**

### **Objective**

To explore individuals' hopes and fears and clarify expectations of the training

### **Materials**

Post-it notes, flip chart paper, tape

2. Ask participants to take a moment and reflect on the hopes we have for this workshop. What insights, learnings and skills it may bring. Also, as is common in any new situation, we may also have some fears
3. Ask participants to brainstorm their hopes on one colour post-it note and their fears on a different colour (these should be pre-prepared by the facilitator). Encourage one hope or fear per post-it note. Reinforce that there is no right or wrong answer and all answers are anonymous
4. Once participants have written their hopes and fears down they can hand the post-it notes to the facilitator or post them on the flip chart paper assigned separately for 'hopes' and 'fears'. Write the expectations down on flip chart paper
5. The facilitator will quickly group the different viewpoints and respond to them. Ideally, we should be able to allay individuals' fears, but it is important not to dismiss fears casually. For example, if a participant raises a fear around confidentiality, then you can reassure them that this is going to be talked about as one of the first steps in the process. Where possible, show where the participants' expectations align with the objectives, but also for those that do not fit, be open to sharing that they are outside the scope of the training.

## **2. QUICK RECAP AND REFLECTION ON FOUNDATIONAL MODULE: SOCIAL NORMS (60 MINS)**

### **Objective**

To gauge what the participants learnt from the foundational module on social norms

### **Step by Step**

1. Split the group into pairs. The facilitator should urge the participants to pair with a person whom they do not know or did not work with in the foundational module.
2. The facilitator should then ask the participants to share the following in their pairs:
  - Their overall impressions on day one – social norms?
  - What was the one thing that struck them the most or they talked about with their friends/family after the foundational training and then anything that they changed as a result of the training.
3. The facilitator should ask a few pairs to share with the rest of the participants what they discussed in their pairs.
4. The facilitator should then ask the participants to have a plenary discussion on the issues raised above and solicit core points that individuals took away that would influence the sessions being held today.
5. It would be good for the participants to discuss and write on a flip chart (drawing on plenary discussion) how gender norms affect the roles of judiciary and how they are relevant for the day's discussions.
6. Ask the participants what are the core principles we need to keep reminding ourselves throughout the discussions today?

### Sessions covered in module 1

- Exploring power, power over, power within, power to and power with
- Gender and Sex, the difference being that our gender is socialised
- How we are socialised to be men and women in society and how that has informed our gender beliefs
- Healthy and unhealthy relationships
- Different types of violence; physical, emotional, economic, sexual
- How our beliefs shape our support for survivors
- Survivor needs including trust and confidentiality
- Our role as duty bearers, and how we can better co-ordinate

## 3. TYPES OF VAWG AND THE RELATED APPLICABLE LAWS (60 MINS)

### Objective

The aim of this session is for participants to identify types of VAWG and their related applicable laws and to identify the appropriate charges (in civil and criminal) for different types of VAWG.

### Facilitator notes

This objective will be achieved through a discussion on the various types of VAWG and the related applicable laws. Of particular importance is the fact that most, if not all, of the participants are well acquainted with the subject matter. As such, the facilitator should not take much time on the knowledge part of the subject matter. Additionally, the participants are likely to come from various working contexts and prior training. As such, the facilitator should encourage mutual respect among participants and between participants and facilitators. Make clear that all levels of experience are useful and relevant to the discussion

### Step by Step

The facilitator should facilitate the following suggested discussion (Adapted from the UNDOC Training Curriculum on effective Police Responses to Violence Against Women 2010, pg. 14.)

1. As a large group, ask participants to identify the types of violence against women and girls they logically encounter in their line of work and communities. The facilitator should ask the participants to specifically identify the most prevailing forms of violence against women and girls they encounter in their line of work and communities.
2. Record the answers on flip-chart paper at the front of the room and then post these on the walls of the classroom or hall.
3. Lastly, ask the participants to identify local/national laws and international laws currently in place regarding various forms of violence against women. The facilitator should ask the participants to match each identified law against the form of violence against women and girls the law addresses.
4. Again, the facilitator should have one participant recording the answers on flip-chart paper and then post these on the walls of the classroom or hall.
5. Are there forms of violence that have been missed by the group? If so, the facilitator will need to list and expand upon them.
6. Are there any new forms of violence against women and girls that have been promulgated in amended or new legislation? If so, what are these new forms?
7. Further to that, ask the participants to identify the appropriate charges related to each type of VAWG identified by the group.
8. The facilitator can consult the following handout for the types of VAWG and their related applicable laws.

### *Different types of VAWG and their domestic related applicable laws*

#### Physical violence

Physical violence is the intentional use of physical force with the potential for causing death, disability, injury, or harm. Physical violence includes, but is not limited to, scratching; pushing; shoving; throwing; grabbing; biting;

choking; shaking; slapping; punching; burning; use of a weapon; and use of restraints or one's body, size, or strength against another person.

### Related Applicable Laws

#### *Constitution of the Republic of Malawi, 1994*

**Section 13(a)(iii)** provides for the implementation of policies to address social issues such as domestic violence.

**Section 20** prohibits discrimination on the basis of, among other things, sex which can help prevent VAWG.

**section 23 (5)** provides for the protection children from any form of economic exploitation or any treatment, work or punishment that is likely to be harmful to their health, or to their physical, mental or spiritual or social development

#### *Prevention of Domestic Violence Act, 2006*

An Act that makes provision for the prevention of domestic violence (any criminal offence arising out of physical, sexual, emotional or psychological, social, economic or financial abuse committed by a person against another person within a domestic relationship), for the protection of persons affected by domestic violence; and for matters connected therewith. The Act also makes provision for the procedure in respect of applications for protection, tenancy and occupational orders for victims of domestic violence.

### Psychological/emotional Violence

This involves trauma to the victim caused by acts, threats of acts, or coercive tactics. Psychological/emotional abuse can include, but is not limited to, humiliating the victim, controlling what the victim can and cannot do, withholding information from the victim, deliberately doing something to make the victim feel diminished or embarrassed, isolating the victim from friends and family, and denying the victim access to money or other basic resources. Stalking is a type of psychological/emotional violence and generally refers to "harassing or threatening behaviour that an individual engages in repeatedly, such as following a person, appearing at a person's home or place of business, making harassing phone calls, leaving written messages or objects, or vandalising a person's property."

### Related Applicable Laws

#### *Marriage, Divorce and Family Relations Act, 2015*

As observed by the law commission, in the case of the girl child, marriage under the age of eighteen years is a health hazard because sexual relations under that age may result in a lot of health complications. Not only that but as a result of some customs girls are married off at a young age, at times against their will, causing them emotional and psychological suffering.

The Act prescribes marriage age of 18 years (**section 15**). This thereby outlaws marriage at any age lower than that thereby protecting girls from sexual, emotional and psychological abuse.

Also see Prevention of Domestic Violence Act, 2006 below

### Sexual Violence

Sexual violence is divided into three categories: 1) use of physical force to compel a person to engage in a sexual act against his or her will, whether or not the act is completed; 2) attempted or completed sex act involving a person who is unable to understand the nature or condition of the act, to decline participation, or to communicate unwillingness to engage in the sexual act, e.g., because of illness, disability, or the influence of alcohol or other drugs, or because of intimidation or pressure; and 3) abusive sexual contact. Threats of physical or sexual violence use words, gestures, or weapons to communicate the intent to cause death, disability, injury, or physical harm.

### Related Applicable Laws

#### *Gender Equality Act, 2013*

Covers, among other things, the prohibition and provision of redress for sex discrimination, harmful practices and sexual harassment. The Act defines harmful practices in **section 3** as social, cultural or religious practices which on account of sex, gender or marital status, does or is likely to (a) undermine the dignity, health or liberty of any person; or (b) result in physical, sexual, emotional or psychological harm to any person.

#### *Prevention of Domestic Violence Act, 2006*

An Act that makes provision for the prevention of domestic violence (any criminal offence arising out of physical, sexual, emotional or psychological, social, economic or financial abuse committed by a person against another person within a domestic relationship), for the protection of persons affected by domestic violence; and for matters connected therewith. The Act also makes provision for the procedure in respect of applications for protection, tenancy and occupational orders for victims of domestic violence.

#### *Child Care, Protection and Justice Act, 2010*

The Act consolidated the law relating to children by making provision for childcare and protection and for child justice; and for matters of social development of the child and related affairs. Specifically, for example, the Act

provides for procedures in cases involving children. With regards VAWG, the Act makes provision under **sections 80 and 81** for the protection of children from undesirable practices such as harmful cultural practices and forced and early marriages. Finally, the Act also establishes under **section 132 to 149** the Child Justice Courts and provides their jurisdiction, composition, procedure and powers.

#### *Penal Code, Cap. 7:01, Laws of Malawi*

Makes provision of general rules as to criminal responsibility. The Penal Code establishes punishments and legal definitions for various forms of gender-based violence. These include:

- Rape (section 132),
- Attempted rape (section 134),
- Abduction of girls under sixteen (section 136),
- Indecent assaults on females (section 137),
- Insulting the modesty of a woman (section 137(3)),
- Defilement (section 138(1)),
- Attempted defilement (section 138(2)),
- And many more.

#### *Criminal Procedure & Evidence Code, Cap. 8:01, Laws of Malawi*

This is regarded as the principal source of the law governing criminal procedure, and for our purposes, governs the criminal procedure for the criminal sexual offences of rape and defilement. It caters for circumstances beginning from initiation of proceedings to when one is convicted or acquitted. It also governs appeal to the High Court or Supreme Court of Appeal. **Section 6** mandates all criminal offences under Penal Code, i.e. rape and defilement, to be tried in accordance with the code. A good example of a section which addresses violence against women and girls is **section 71A** which provides for protective procedure of how victims of sexual violence can tender evidence in court.

#### **Economic Violence**

Economic violence is making or attempting to make an individual financially dependent by maintaining total control over financial resources, withholding one's access to money, or forbidding one's attendance at school or employment.

Some forms of economic violence against women include:

- Controlling the resources they have
- Giving the woman an inadequate 'allowance' to run the house
- Holding the cheque books and credit cards
- Forcing the woman to work outside the home
- Keeping all titles property in the name of the man only
- Forcing the woman to illegally claim government benefits
- Not allowing the woman to obtain an education

#### **Related Applicable Laws**

##### *Marriage, Divorce and Family Relations Act, 2015*

Economic, psychological, emotional and physical abuse amounting to cruelty as one of the factors that proves that the marriage has irretrievably broken down.

##### *Deceased Estates (Wills & Inheritance) Act, 2011*

This law protects spousal property rights by prohibiting application of customary laws to inheritance of deceased property – **section 4**. The Act also does away with customary heirs and ensures that property remains with the immediate family of a person who dies without a will. The Act thus has the effect of eliminating the act of property grabbing (economic violence) which largely affect widows.

### ***International Law that addresses VAWG***

#### **Declaration On The Elimination Of Violence Against Women**

This Declaration could arguably be regarded as the Chief International Law which specifically addresses Violence Against Women. In its preamble, the Declaration is concerned about violence against women being an obstacle to the achievement of equality, development and peace in the world. It further affirms that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms while being concerned about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women. The Declaration further recognises 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, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.

As such, the Declaration in **Article 1** broadly defines violence against women as any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Just like the Protocol to the African Charter cited below, this broad definition of violence against women ensures protection of women from many unconceived forms of violence.

#### **Protocol To The African Charter on Human And Peoples' Rights on The Rights Of Women In Africa**

One of the aims of the treaty is to eliminate all forms of discrimination and of gender-based violence against women (Preamble). For example **Article 1** defines **violence against women** as all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war.

Such a broad definition ensures protection of women from many forms of violence.

#### **African Charter on Human and People's Rights**

**Article 3** of the charter provides for the right to equality before the law and equal protection of the law. This can ensure that females are accorded the same protection as males thereby offering legal protection from violence perpetrated against them.

**Article 5** is on Prohibition of torture and cruel, inhuman and degrading treatment. VAWG such as sexual violence amounts to torture, cruel, inhuman and degrading treatment (Equality Now and EWLA v. Federal Republic of Ethiopia Com 341/2007).

#### **African Charter on The Rights and Welfare Of The Child**

**Article 21** provides for Protection against Harmful Social and Cultural Practices which include customs and practices discriminatory to the child on the grounds of sex or other status as well as child marriages which largely affect girls more than boys. The treaty therefore provides protection to girls against violence.

**Article 27** prohibits Sexual Exploitation which includes the inducement, coercion or encouragement of a child to engage in any sexual activity; the use of children in prostitution or other sexual practices; and the use of children in pornographic activities, performances and materials. Sexual exploitation largely affects girls and is a form of violence. As such the African Children's charter affords girls protection from sexual violence.

Other International Instruments include;

- Universal Declaration of Human Rights
- United Nations Convention on the Rights of the Child
- SADC Protocol on Gender and Development

#### **Case Law**

Refer to handout on compiled criminal and civil judgements / cases if provided .

## 4. SHORT REFLECTION BREAK (30 MINS)

### **Objective**

To enable the participants to process their thoughts and feelings about the morning session.

### **Step by Step**

1. The facilitator should ask the participants to split into pairs. Urge the participants to pair with a person whom they are not closely affiliated with.
2. Ask the participants to share the following in their pairs:
  - What happened?
  - What is being examined?
  - What is most important/interesting/relevant about the training so far?
  - What were their reactions during the training?
  - Why?

- How can what has been explained so far explained any further e.g. with theory?
- What have they learned from the training so far?
- What does this mean for my future actions/decisions e.g. when applying international law in the national courts in VAWG matters?

3. The facilitator should ask a few pairs to share with the rest of the participants what they discussed.

## 5. CRITICAL ANALYSIS AND REFLECTION ON THE LAWS ADDRESSING VAWG (60 MINS)

### Objectives

- To critically interrogate the laws applicable in addressing VAWG
- To analyse whether they are gendered and survivor-centred, i.e. whether the laws put survivors' safety first, are in the best interest of survivor, are non-discriminatory in nature, afford self-determination, and respect confidentiality.

### Step by Step

1. The facilitator should group the participants and allocate each group copies of the following legal instruments:

- Constitution of the Republic of Malawi, 1994.
- Gender Equality Act, 2013.
- Prevention of Domestic Violence Act, 2006.
- Child Care, Protection and Justice Act, 2010.
- Penal Code, Cap. 7:01 Laws of Malawi
- Marriage, Divorce and Family Relations Act, 2015.
- Deceased Estates (Wills and Inheritance) Protection Act, 2011.

2. In the light of the earlier discussion on the different types of VAWG and their related applicable laws, the facilitator should then ask the groups to deliberate and form an opinion on the following in their groups:

- What does survivor-centred legislation look like?
- What does legislation that promotes equality and gender equality look like? In doing so, the participants should brainstorm legislation they are familiar with that does not uphold or promote equality.
- Examine their respective legal instrument in-depth and identify the types of VAWG covered by the different statutes.
- Examine to what extent each legal instrument protects the rights of women and girls from violence.
- Examine whether their respective legal instruments
  - Is survivor-centred; and
  - Promotes equality and gender equality.
- Examine how effective their respective legal instruments have been in preventing and responding to VAWG.
- Highlight any challenges that judges face when applying the law related to VAWG and the likely implications of such challenges on the victims of VAWG.
- Highlight any gaps in their respective legal instruments. What are the gaps in the rights of women? What are the gaps in state responses to violence against women? How do these gaps affect the international rights of women and as victims of violence? How can these gaps be rectified?

3. Ask a volunteer to record the group discussions and key points on flip-chart paper. Post these on the walls for future reference and discussion.

4. After the group discussions, the facilitator should ask the participants to present their respective discussions to the wider group and invite comments, questions and recommendations from the wider group where necessary.

5. The facilitator should ask the participants to reflect on the session and engage them in plenary discussion on the following issues:

- What did they learn from this session?

- What needs to change? Is there anything we need to do differently, think differently, judge differently as a result of these reflections?

6. Finally, the facilitator should pose the following: As judicial personnel, what can you do to challenge legislation that addresses VAWG that is not survivor-centred and protective of the rights of women and girls?

## 6. INTERROGATION OF JUDICIAL PERSONNEL'S VALUES, ATTITUDES AND BELIEFS WHEN INTERPRETING, PROTECTING AND ENFORCING THE LAW RELATED TO VAWG (60 MINS)

### Objectives

- The aim of this activity is to interrogate the values, beliefs, behaviours and attitudes on VAWG of the judicial personnel when interpreting, protecting and enforcing the laws relating to VAWG, and
- To interrogate the consequent impact of the same on the survivors of VAWG.

### Step by Step

1. Firstly, the facilitator should ask the participants to name some commonly held beliefs, values or attitudes towards women and girls that have experienced violence, within courts and the judicial system. What do some lawyers or judges and all other judicial personnel think towards women and girls that have been raped, left the marital home, are asking for rights to property, have been emotionally abused etc.
2. The facilitator should ask the participants to reflect on their values, beliefs, behaviours and attitudes towards VAWG.

#### *Examples of beliefs, behaviours and attitudes*

Notable examples of such beliefs, behaviours and attitudes include bias, patriarchal gender norms and holding stereotypes about gender, women and girls and VAWG in general.

Taking the example of domestic violence, such stereotypes may include:

- Domestic violence is a private or family matter and should therefore be resolved within the family, without State intervention. The misconception that domestic violence is a private family matter also involves assumptions about 'normal family relationships' and gender roles within families. Therefore, such assumptions about gender roles within the family can have an influence on whether the legal system determines that an act or acts constitutes domestic violence and the level of severity that is required for sanctions or protective orders. This can result in rigid standards based on an overly narrow concept or stereotypical assumptions about what constitutes domestic violence that in turn, can impact women's right to a fair trial.
- Men hold ultimate power in interpersonal and family relations and women are subordinate in those same relations. This single stereotype may result in multiple inferences in cases of domestic violence like a) a man is justified in using violence to discipline his wife if she does not obey him, and b) a man is justified in using violence or threats of violence to maintain power in marriage and family relations.

3. The facilitator should then ask the participants to discuss in plenary the likely influences of these beliefs, values and attitudes on judicial decision making in VAWG matters.
4. To make this exercise a little more participatory, the facilitator should put an imaginary line in the room – at one end 'agree' and the other 'disagree'. Read out the statements below and ask the participants to stand at the place along the continuum from agree to disagree.
  - "If the violence is serious enough, the victim will testify in court"
  - Domestic violence is a private or family matter and should therefore be resolved within the family, without State intervention.
  - Women are likely to fabricate allegations about being raped or sexually assaulted.
  - The "real" victim immediately reports her rape.
  - "Real" rape victims would have put up a fight and shown signs of a physical struggle.

- 5. The facilitator should then ask those standing on the line to share with the whole group why they chose to stand there.

#### Facilitator notes

The facilitator should check that these statements are as close to the reality of possible thoughts that the participants may hold. If it is unlikely any judge would be open to holding these thoughts, then the exercise will not draw out the issues for debate. As such, the facilitator is given all the discretion to come up with more statements relevant to the exercise

- 6. After this, hold a plenary session and ask the group to reflect back on the introductory module sessions around survivors and ask:
  - What is the impact on the survivor when she is not believed?
  - What messages are these statements telling perpetrators about their right to be violent?
  - Do the laws support or challenge these discriminatory beliefs, values and attitudes?
- 7. Then ask the participants to reflect on the introductory module when we talked about the influence social norms and our own gendered identity has on the way we behave, both personally and professionally.
- 8. Ask individuals to turn to a neighbour and talk for two minutes about how social norms and gender has influenced their response in the workplace.
- 9. Having reflected on the introductory module and this session, would they do anything differently now?
- 10. Finally, the facilitator should ask the participants to interrogate ways in which they can challenge and change negative attitudes towards VAWG and eliminate stereotypes surrounding VAWG matters. Ask participants to consider what steps they can take as judicial personnel to challenge the attitudes towards VAWG, stereotypes and the inferences that follows?

## 7. FINAL REFLECTION (50 MINS)

#### Objective

To enable the participants to reflect on the whole day of training

#### Step by Step

- 1. The facilitator should ask the participants to split into pairs. Urge the participants to pair with a person whom they are not closely affiliated with.
- 2. The facilitator should then ask the participants to share the following in their pairs:
  - Their overall impressions on the training?
  - What is most important/interesting/relevant about the training so far?
  - What were their reactions during the training? What they found interesting and disinteresting.
  - Why?
  - How can what has been explained so far explained any further e.g. with theory?
  - What have they learned from the training so far?
  - What does this mean for my future actions/decisions e.g. when applying international law in the national courts in VAWG matters?
- 3. The facilitator should lastly ask a few pairs to share with the rest of the participants what they discussed.
- 4. Closing remarks by the facilitator.

# Day 2: Access to justice for women and girls affected by violence

## 8. WELCOME, INTRODUCTIONS AND EXPECTATIONS (30 MINS)

### Objective

To welcome the participants once again and help them reflect on the previous day and highlight their expectations for the new day.

### Step by step

1. In introductory remarks, the facilitator should welcome and thank the participants for their decision and effort to come for day two; and for their fruitful participation in day one. Express optimism and excitement towards another fruitful session. Then ask (rhetorically) if everyone is as enthused as you.
2. Ask participants to share a one-minute reflection of the day one activities. In the reflection, ask participants to mention the activity, incident, statement or thought that they liked most about the previous day's session. If no one steps up, ask participants randomly to just say something about the previous session in general. Targeting at least half of the participants would be okay.
3. Facilitator should then briefly outline the objectives and activities for the day. These should not be given in great detail to avoid planting the thought that it will be a long day.

## 9. THE COMPONENTS OF ACCESS TO JUSTICE (60 MINS)

### Objective

To enable the participants to familiarise themselves with the components of access to justice as elaborated in General Recommendation No. 33 of the UN Committee on the Elimination of Discrimination Against Women.

### Step by step

1. Ask the participants to split into pairs and discuss what 'women's access to justice' means to them. As a follow up, ask the participants to brainstorm some of the key components of access to justice involved in enhancing women's access to justice.
2. Distribute the handout below and ask the participants to compare their answers to the above exercise with the ones in the handout.

### *Components of women's access to justice in detail*

**Justiciability** requires the unhindered access by women to justice as well as their ability and empowerment to claim their rights as legal entitlements.

**Availability** requires the establishment of courts, and other quasi-judicial bodies in urban, rural and remote areas, as well as their maintenance and funding.

**Accessibility** requires that all justice systems are secure, affordable and physically accessible to women, and they are adapted and appropriate to the needs of women, including those who face intersectional or compounded forms of discrimination.

**Good quality of justice systems** requires that all components of the system adhere to international standards of competence, efficiency, independence and impartiality and provide, in a timely fashion, appropriate and effective remedies that are enforced and that lead to sustainable gender-sensitive dispute resolution for all women. Justice systems should be contextualised, dynamic, participatory, open to innovative practical measures, gender-sensitive, and take account of the increasing demands for justice by women. Provision of remedies requires the ability of women to receive from justice systems viable protection and meaningful redress for any harm that they may suffer.

**Accountability of justice systems** is ensured through the monitoring of the functioning of justice systems to guarantee that they are in accordance with the principles of justiciability, availability, accessibility, good quality and provision of remedies. The accountability of justice systems also refers to the monitoring of the actions of justice system professionals and holding them responsible if they violate the law.

*Adapted from the European Union Training Manual for Judges & Prosecutors on Ensuring Women's Access to Justice 2017, pgs. 15 – 16.*

3. Divide the participants into six groups and allocate each group one component of access to justice so that they can examine the component in depth and interrogate ways in which they can implement their allocated component to ensure and enhance women's access to justice.



4. Ask each group to make a two-minute presentation on their discussion and allow the other participants to make comments and questions where necessary.

## 10. BARRIERS TO ACCESS TO JUSTICE FOR WOMEN AND GIRLS AFFECTED BY VIOLENCE (60 MINS)

### Objectives

- To explore the obstacles faced by women in accessing justice from a legal, institutional, socio-economic and cultural level
- Examine the root causes of such barriers and their impact on survivors of VAWG
- Interrogate ways to eradicate such barriers.

### Step by step

1. Split the participants into pairs and ask them to identify the two levels of obstacles to women's access to justice. Under each level, the participants should identify the various obstacles that women affected by violence face when accessing justice.
2. The participants should then compare their answers from their discussion with the ones contained in the handout below.

## Types of obstacles to women's access to justice

### The Legal/institutional level

Discriminatory or insensitive legal frameworks (including legal provisions that are explicitly discriminatory; gender blind provisions that do not take into account women's social position; gaps in legislation concerning issues that disproportionately affect women)

Problematic interpretation and implementation of the law – discriminatory or gender insensitive interpretation of laws

Ineffective or problematic legal procedure (the lack of gender-sensitive procedures in the legal system)

Poor accountability mechanisms (this category can include corruption)

Under-representation of women among legal professionals

Gender stereotyping and bias by justice actors

### The socio-economic and cultural levels

Lack of awareness of one's legal rights and legal procedures or of how to access legal aid (which can stem from gender differences in educational levels, access to information, etc.)

Lack of financial resources (including the means to pay for legal representation, legal fees, judicial taxes, transportation to courts, childcare, etc.)

Unequal distribution of tasks within the family

Gender stereotypes and cultural attitudes

*Adapted from the European Union Training Manual for Judges & Prosecutors on Ensuring Women's Access to Justice 2017, pg. 13.*

3. As a follow up, ask the participants to brainstorm the likely root causes of the obstacles to women's access to justice they identified above and interrogate the impact that the identified obstacles have on the survivors of VAWG in the judicial justice system.
4. Facilitate an interactive discussion on ways in which the identified obstacles can be mitigated within the judiciary. Use the following discussion guideline:
  - Start by acknowledging the fact that judges and prosecutors can have a greater impact on addressing the barriers that are associated with the legal/institutional sphere.
  - Divide the participants into six groups.
  - Allocate each group one obstacle to women's access to justice identified under the legal/institutional level in the table above
  - Ask each group to examine its allocated obstacle in depth and interrogate ways in which the judiciary can mitigate such obstacles.
5. After the group discussion, allow each group to make presentations and solicit comments and questions from the audience.
6. Pose the following questions to the participants: As a judge or lawyer, what do you think needs to change to ensure and promote women's access to justice? What can you do personally from now onwards to challenge and mitigate the various obstacles faced by women affected by violence when accessing justice? What will you do differently? Is there anything we need to do differently, think differently, judge differently as a result of these reflections?

## 11. SHORT REFLECTION BREAK (30 MINS)

### Objective

To enable the participants to process their thoughts and feelings about the morning session.

### Step by Step

1. The facilitator should ask the participants to split into pairs. Urge the participants to pair with a person whom they are not closely affiliated with.
2. Ask the participants to share the following in their pairs:

- What happened?
- What is being examined?
- What is most important/interesting/relevant about the training so far?
- What were their reactions during the training?
- Why?
- How can what has been explained so far explained any further e.g. with theory?
- What have they learned from the training so far?
- What does this mean for my future actions/decisions e.g. when applying international law in the national courts in VAWG matters?

3. The facilitator should ask a few pairs to share with the rest of the participants what they discussed.

## 12. GENDER STEREOTYPING AND HOW IT UNDERMINES WOMEN'S ACCESS TO JUSTICE (60 MINS)

### Objective

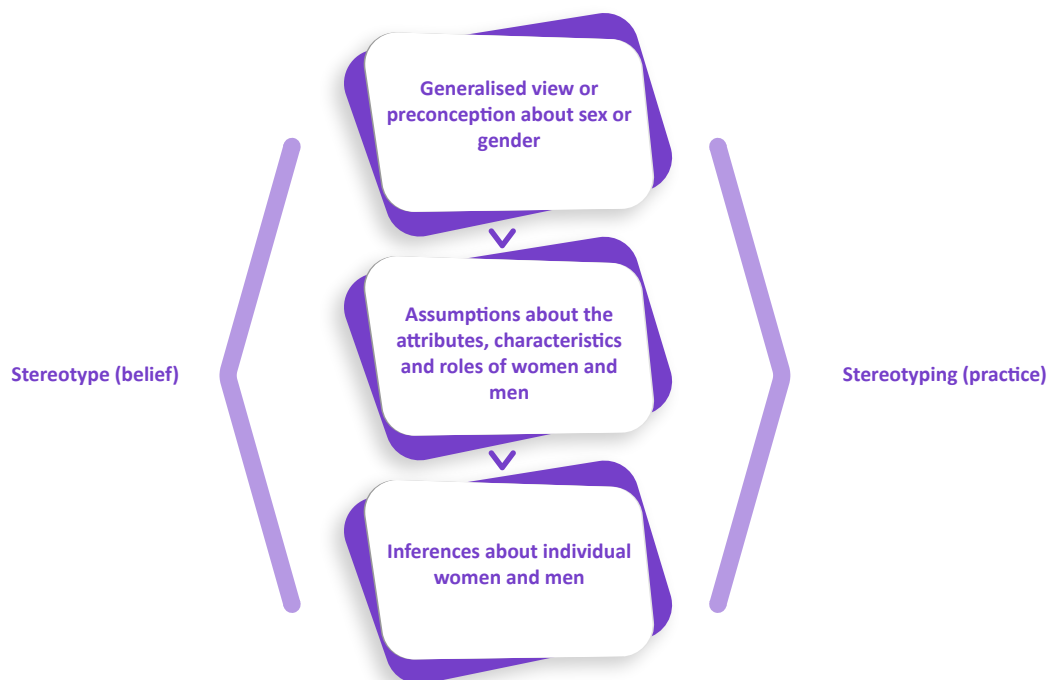
To examine how stereotyping undermines women's access to justice and the likely implications of the same to women as victims of VAWG.

### Step by Step

1. Ask participants to split into pairs and reflect on their understanding of gender stereotypes and gender stereotyping. The participants may also identify some examples of gender stereotypes they know or encounter in their line of work.
2. Ask a few pairs to explain to the audience what they discussed.

### Gender stereotyping

Gender stereotyping is the practice of ascribing to an individual woman or man specific attributes, characteristics, or roles by reason only of her or his membership in the social group of women or men. The process of stereotyping is part of human nature. It is the way in which we categorise individuals into particular groups or types, often unconsciously, in part to simplify the world around us. The diagram below represents the differences between a gender stereotype and the practice of gender stereotyping.



In essence, stereotypes are beliefs that are held, whereas stereotyping involves acting upon such beliefs in practice.



3. The facilitator should then distribute the following handout and explain to the audience some of the common gender stereotypes.

### ***Common gender stereotypes***

- It is not possible for a man to rape his wife;
- Women who wear revealing clothes are partly to blame if men sexually harass or abuse them;
- There is always evidence of struggle in unwanted sexual encounters;
- Women and girls lie about sexual encounters;
- Forced sexual encounters always leave a trace that will provide collaborative evidence;
- A man is entitled to have sex with his partner if they are in a long-term relationship;
- Domestic violence is a private matter between the couple and there should be non-intervention;
- Good girls don't get raped;
- Previous sexual experience predisposes women to be sexually available;
- Good wives are not beaten by their husbands;
- Good wives prioritise their domestic responsibilities;
- Good wives do not challenge their husbands;
- The way the woman dressed meant she was asking for it;
- The child wanted it, teased the man;
- This is a respectable member of society;
- Children tell lies;
- Women do not know their own pleasure.

4. Ask the participants to discuss in plenary what the root causes of gender stereotypes are.
5. In large letters, the facilitator should print each of the following titles on cards/paper (one title per paper).  
STRONGLY AGREE, DISAGREE, AND STRONGLY DISAGREE.
6. The facilitator should then display the signs around the room, leaving enough space between them to allow a group of participants to stand near each one.
7. The facilitator should read out loud the statements provided in the above handout and choose those statements that s/he think will generate the most discussion (or create your own)
8. The facilitator should then read aloud the first statement and ask the participants to stand near the piece of paper that represents their opinion. After the participants have made their decisions ask for one or two volunteers from each group to explain why they feel that way. Continue for each of the statements.
9. After discussing all the statements, facilitate a discussion by asking the following questions:
  - How did it feel to express an opinion that was different from that of some others?
  - Which statements did you find the most challenging to form an opinion on and why?
  - How do you think people's attitudes about some of the statements might affect their response to VAWG matters?
10. The facilitator should tell the participants that they have explored and reflected on some of the gender stereotypes common in the society. Now they should further explore and examine how those gender stereotypes influence the courts' response to VAWG and VAWG survivors.
11. The facilitator should then split the participants into groups, either by their positions/roles and or male and female groups.
12. The facilitator should now read out to the group a short scenario available in Worksheet below and ask the group to discuss answers to the questions.

### ***Hypothetical case study: Mary***

Mary and her husband are known for their quarrels. Sometimes it gets serious and neighbours and friends get involved as her husband gets physically violent. One night Mary comes to you crying with bruises saying her husband is threatening to kill her, that his friend reported to him that they saw her talking to another man in the street.

- What does society and the participants think about the woman in this scenario?
- Why do they think this?
- What does society and the participants think about the man in this scenario?
- Why do they think in this way?
- How do people in your profession/position 'normally' respond when it is brought to them?
- What makes them respond in this way?

13. The facilitator should then ask the groups to feedback to the wider plenary and allow for questions/clarifications/comments. Probing questions include:
- Would anyone like to share any reflections or insights gained from this discussion?
  - Were there any differences in the various groups' perception of how society and the participants would respond?
  - Were there any differences within the groups on how people in the judiciary 'normally' respond to such a situation when the case is brought to them?
14. The facilitator should inform the participants that they will now move on to discuss how judicial gender stereotyping undermines women's access to justice.
15. To begin with, the facilitator should ask the participants how they think judicial gender stereotyping undermines women's access to justice.
16. Ask the participants to read the hypothetical case study off Ndazona below and discuss the questions that follow.

#### ***Hypothetical case study: Ndazona***

Ndazona is a first-year student at Chancellor College. A lot of people ridicule her about the impropriety of her dressing saying that she dresses in a way that arouses men sexually. One day, Jack, a friend to Ndazona attempted to have sex with her without her consent. Two weeks after the incident, Ndazona reported the matter to the Chanco Faculty of Law Gender Justice Clinic which reported the matter to the police. After thorough investigation by the police, they arrested Jack and charged him with the offence of attempted rape. In acquitting Jack, the Magistrate Court held that Jack was not to blame for the alleged attempted rape because Ndazona asked for it with the way she was dressing, hence she was partly to blame. Furthermore, the Magistrate Court emphasised on the point that, due to the private nature of the offence of rape, it is very difficult to solely rely on the evidence of the victim as women tend to lie in sexual encounters. Lastly, the Court had serious doubts about the credibility of Ndazona's story as she took a long time to report the incident.

#### ***Questions for discussion:***

- According to the judge, how should a rape victim dress and behave to be credible?
- What do you think of a sexual assault victim who does not immediately raise a complaint of being sexually assaulted and reports months after the incident?
- What possible reasons would make a woman or girl not to immediately report a sexual assault?
- How is consent proved in sexual assault cases? Are there any concerns with the way consent is proved in the courts of law?
- What do you think would be the impact of such a judgment on women's access to justice? Why?
- If you were a judge in this case, would you arrive at the same decision or not? Explain

#### **Facilitator notes**

The facilitator should bring participants' attention to the fact that discrimination against women based on harmful or wrongful gender stereotypes can adversely impact their ability to access justice. Although the legal system aims to safeguard justice and human rights, it can replicate prevailing social values, including discriminatory norms such as gender stereotypes. Judicial gender stereotyping occurs when judges and prosecutors:

- Ascribe to an individual specific attributes, characteristics or roles by reason only of her or his membership in a particular social group (e.g. women).
- Perpetuate harmful stereotypes by failing to challenge stereotyping.
- Allow stereotypes to influence or affect their decisions, regardless of the law and facts.

### Handout: likely impacts of gender stereotyping on women's access to justice

Gender stereotyping can **compromise a variety of rights** such as the right to non-discrimination and equality, the right to an effective remedy, and the right to a fair trial and equality before the law, thus affecting a single case in many ways. Ultimately, it violates key tenets of the justice system - its impartiality and integrity - and this can result in miscarriages of justice and secondary victimisation in the judicial process.

Stereotyping can **compromise the impartiality of judges' and prosecutors' decisions**. "Women should be able to rely on a justice system free from myths and stereotypes, and on a judiciary whose impartiality is not compromised by these biased assumptions. Eliminating judicial stereotyping in the justice system is a crucial step in ensuring equality and justice for victims and survivors".

Stereotyping can affect judges' and prosecutors' views about **witness credibility** and on the **legal capacity of witnesses**.

Stereotypes can **distort judges' and prosecutors' perceptions and understanding of gender-based violence and whether a human rights violation has occurred**. This is manifest in cases of sexual violence, where the law and criminal justice practices are saturated with stereotypes.

*"Examples of stereotypes applied to rape cases through gender-biased criminal rules of evidence and procedure are provided by cases where the following requirements or beliefs obtain: proof of physical violence is required to show that there was no consent; women are likely to lie, therefore evidence should be accepted only if corroborated; women can be assumed to be sexually available; women can be inferred to be consenting to sex even if forced, threatened or coerced, because they remained silent; previous sexual experience predisposes women to be sexually available, or to automatically consent to sex; women bear the responsibility for sexual attacks or invite them by being out late or in isolated places or by dressing in a particular manner; it is impossible to rape a sex worker; raped women have been dishonoured or shamed or are guilty rather than victimised."*

**Note:** If prosecutors base their charging decisions on stereotypes or judges rely on stereotyping in their judgements, they may shift the burden to victims in cases of gender-based violence, and **offenders may not be held legally accountable**.

Finally, judicial gender stereotyping can **impede access to legal rights and protections**. Family law proceedings are rife with assumptions about family relationships and gender roles within families, particularly in relation to parenthood. For example, sexually active women might be seen as unfit parents. Stereotypes can violate the rights guaranteed by law of women who seek custody or supervised visits of their children to protect themselves and children from violent partners.

*Adapted from the European Union Training Manual for Judges & Prosecutors on Ensuring Women's Access to Justice 2017, pgs. 25 -26.*

## 13. THE ROLES AND DUTIES OF JUDICIAL OFFICERS IN ENSURING WOMEN'S ACCESS TO JUSTICE (60 MINS)

### Objective

This session is intended to encourage prosecutors and judges to consider how they can maximise the role they play in facilitating women's access to justice.

### Step by Step

1. Divide the participants into groups of 4/5 and then ask them to discuss:
  - The significance of promoting women's access to justice
  - The approach(es) that the judges should take to ensure women's access to justice.
  - The approach(es) that the judges should take to remove the barriers that women face in accessing justice.
  - How best can the judges challenge patriarchal gender norms and uphold the value of gender equality in society?
2. After the discussion, divide the participants into two groups and ask the them to debate on the following statement; *Impartiality requires a gender-blind approach*

3. Ask the participants to consider again the case study of Ndazona from the previous exercise (page 16) and discuss the following questions:
- What do you think would be the impact of such a judgment on women's access to justice? Why?
  - If you were a judge in this case, what would you do to ensure that Ndazona's right to access justice is promoted and safeguarded?
  - If you were a judge in this case, would you arrive at the same decision or not? Explain
4. After the discussion, the facilitator should inform the participants the following with regards the role and duties that judges can play in ensuring women's access to justice.

### ***Roles and duties that judges can play in ensuring women's access to justice***

Judicial personnel have different roles, but both have a great deal of influence over the extent to which the rule of law is upheld in their particular jurisdiction. As State authorities, both professional groups can send powerful messages to society that violations of women's rights will not be tolerated and will be treated no less seriously under the law than any other human rights abuses. The acts of individual judges and prosecutors contribute to the overall identity of the justice system- whether it is perceived as impartial, fair and just. Judges and prosecutors also have important oversight authority and should provide leadership and expertise to other justice professionals, including the police, parole and probation staff, and attorneys.

In order to ensure that women have equal access to justice, judges and prosecutors should adopt a gender-sensitive approach to their work and ensure that they interpret the law in line with substantive notions of equality and international human rights. Practitioners should be aware of such issues as the disparate impact of laws on women; when it is legitimate to use differential treatment in law and policy in order to ensure an equitable outcome, and how inequitable distribution of resources leads to unequal distribution of power.

Prosecutors and judges should take a proactive approach to ensuring that barriers that women face in accessing justice are removed. For example, prosecutors dealing with cases of violence against women must build a strong case against the perpetrator that does not hinge entirely on the testimony of the victim herself. The prosecutor should actively pursue a range of other forms of evidence. Judges should consistently apply a gender perspective in their work, and being proactive can involve ensuring that subordinate staff members (of prosecutor's offices or courts) receive training in gender-sensitive approaches or taking part in reform processes to develop gender-aware policies and guidance.

The justice system can play a crucial role in challenging patriarchal gender norms and upholding the value of gender equality in society. Judges and prosecutors have a responsibility to uphold the fairness and integrity of the justice system and to eliminate gender bias. Taking a gender sensitive approach to justice may at first glance appear to conflict with judges' duty of impartiality. In fact, impartiality does not require a gender-blind approach.

Stereotypes are a form of bias and close legal practitioners' minds to the truth. They permeate the various stages of the legal process: the investigation, trial and judgement phases. Accordingly, judges, magistrates and adjudicators are not the only actors in the justice system that apply, perpetuate and reinforce stereotypes. Prosecutors, law enforcement officials and other actors can allow stereotypes to influence investigations, trials and ultimately the judgement.

Prosecutors and judges should identify, challenge and dismantle stereotypes that occur in the justice system. This means not only that judges and prosecutors must not engage in discriminatory behaviour nor engage in gender stereotyping themselves, but they must also adopt gender sensitive approaches to the application of law and counter the myths and stereotypes present in laws or submitted by any of the parties.

*Adapted from the European Union Training Manual for Judges & Prosecutors on Ensuring Women's Access to Justice 2017, pgs. 42 – 43.*

## 14. FINAL REFLECTION (50 MINS)

### Objective

To enable the participants to reflect on the whole day of training

### Step by Step

1. The facilitator should ask the participants to split into pairs. Urge the participants to pair with a person whom they have not interacted with during the training so far.
2. The facilitator should then ask the participants to share the following in their pairs:
  - Their overall impressions on the training?
  - The thing that has most interested them
  - The thing that has least interested them
  - The three main things that they have learnt throughout the training period so far
  - What they will do different from here onwards
3. Ask anyone who is ready to present what their partner said
  - First state the name of the partner and what they do
  - Present the answers in the order they appear in step 2
4. After at least half of the participants have presented, the facilitator should make a brief summary of what the participants have learnt and make an assessment of whether the participants are on the right track. Ask the participants to reflect deeply on everything they have learnt and play their important role towards a better gender-sensitive, survivor-centred response to VAWG.
5. Ask any participants to give the last remarks.

# Day 3: The referral system in civil and criminal VAWG matters

## Introduction

The module explores and interrogates the roles, responsibilities and mandates of the Judiciary in relation to VAWG matters and how well they can fulfil their roles, responsibilities and mandates with a survivor-centred perspective/approach.

## Aim and Rationale

The module aims at exploring what duty bearers in the judiciary individually and collectively should do to strengthen prevention and responses to VAWG and instil a survivor-centred perspective/approach.

## Facilitator notes

The facilitator should be familiar with the outcomes of the module and should be well conversant with the content of the module. Additionally, the facilitator should take note of the materials that are required for each activity in this module and ensure that all relevant facilitation resources are available.

## 15. WELCOME, INTRODUCTIONS AND EXPECTATIONS (30 MINS)

### Objective

To welcome the participants once again and help them reflect on the previous two days and highlight their expectations for the new day.

### Step by Step

1. In introductory remarks, the facilitator should welcome all participants and thank them for their decision and effort to come for the third day, and for their fruitful participation in days 1 and 2. Express optimism and excitement towards yet another fruitful session. Then ask (rhetorically) if everyone is as enthused as you.
2. Ask participants to share a one-minute reflection of the day one and two activities. In the reflection, ask participants to mention the activity, incident, statement or thought that they liked most about the previous sessions. If no one steps up, ask participants randomly to just say something about the previous session in general. Targeting at least half of the participants would be okay.
3. Facilitator should then briefly outline the objectives and activities for the day. These should not be given in great detail to avoid planting the thought that it will be a long day.

## 16. ROLES AND RESPONSIBILITIES OF KEY DUTY BEARERS IN THE JUDICIARY (60 MINS)

### Objective

To interrogate whether the role of each justice duty bearer in the judiciary is effectively played in line with the survivor-centred approach.

### Step by Step

1. The facilitator should ask the participants to split into pairs and reflect on the following:
  - The role that each play in addressing violence against women and girls.
  - What was their first encounter with violence against women and girls in line of their work?
  - How did they react after hearing the facts?
  - Why?
  - What was their first impression(s) of the victim?
  - Why?
  - How did they respond to the matter?
  - Do they think they satisfactorily handled/responded to the matter? Why? Was the response survivor-centred?



- What challenges were there in responding to the matter?
  - What lessons did they learn from their first encounter with VAWG?
  - What would they have done better? What did they plan on doing next time they encounter a matter involving violence against women and girls?
  - How was this first encounter different from the subsequent encounters with violence against women and girls matters?
2. The facilitator should ask at least five pairs to share their discussion with the audience and ask the audience to make comments and ask questions where necessary.
  3. Finally, the facilitator should pose the following question to the participants for reflection: *Do the participants play their role in addressing VAWG with a survivor-centred mind-set?*

## 17. WOMEN AS VICTIMS AND OFFENDERS (60 MINS)

### Objective

This session will explore the situations in which women who have experienced long-term or repeated violence have committed crimes in response to these offences.

### Facilitator notes

The facilitator should alert the participants that throughout the training they have focused on women being the victims of violence. However, this session will deviate away from that trend and focus on women as offenders.

### Step by Step

1. The facilitator should distribute the following two case studies to the participants involving men as offenders versus women as offenders and divide them into groups for discussion:

#### ***Men as offenders: R v Mwasumola 1966-68 ALR Mal 569***

The wife of the accused agreed to have sexual intercourse with him despite a customary ban of the same within a period of two months after the death of their child. When the husband went to the wife for intercourse, she refused. He became furious and fatally attacked her with a stick. He was charged then with murder.

The court had to determine whether the circumstances amounted to murder. In so doing, the court observed and concluded that the man had been provoked. This was backed by the reasoning that the man was entitled to sex. The court stated that a wife cannot lawfully deny her husband sex and that a husband cannot be guilty of raping his wife.

The court thus found the conduct of the woman to have been wrongful, amounting to provocation.

The defendant was convicted of manslaughter contrary to section 208 of the penal code.

#### ***Women as offenders***

##### **Nabanda**

After years of domestic violence, Nabanda set fire to her sleeping husband following threats earlier in the evening of being attacked with a hot poker. In the eyes of the court, the defendant could not rely on the defence of provocation because the delay in attacking her husband should have provided a cooling off period and she was sentenced for murder.

##### **Nangozo**

Nangozo stabbed and killed her uncle after he had tried to sexually assault her by forcing himself on her in her bedroom when her husband was away on a field trip. In its judgement, the court denied Nangozo an opportunity of relying on self-defence because the judge felt she had acted with a force that was disproportionate to the lesser offence she was trying to prevent.

- 2. The facilitator should then distribute the following handout containing questions for discussion in groups.

### **Discussion Questions**

- Generally, how do the judicial personnel treat female offenders? Do they treat them differently from male offenders? Explain.
- Is the test of a reasonable man gender neutral? If yes, how is that so? If not, how best can it be made gender neutral?
- What do you think of a female offender who commits a crime against her abuser in response to the persistent and repeated abuse and violence from her abuser?
- What possible reasons would make a woman subjected to long-term or repeated abuse to commit a crime against her abuser?
- Why do you think the judge in the first case involving the male offender decide differently from the judges in the subsequent cases involving women as offenders? If you were the judge in the three cases, how would you have decided? Would you have decided any different than the judges in the three cases? If yes, why? If not, why?
- Should judges have regard to or disregard the battered woman syndrome concept altogether when dealing with female offenders who committed crimes against their abuser after long-term or repeated abuse?
- What are some of the mitigating factors that the court and prosecution should consider when sentencing female offenders?
- What are some of the special considerations that judicial personnel, particularly judges and prosecutors, should give to when dealing with female offenders?

- 3. After the group discussions, the facilitator should ask some of the groups to present what they discussed. Notes should be taken on the relevant points made during the presentation. In so doing, the facilitator should ask the other groups who do not present to highlight areas or points that they discussed and felt that the groups that presented did not tackle.
- 4. After this, the facilitator should allow the participants to reflect individually on the above discussion; what they learnt, what they thought they did well, what they thought they did not do well, how things should be improved and by whom?

### **Best practice**

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders with their Commentary (known as the Bangkok Rules) states “[w]hen sentencing women offenders, courts shall have the power to consider mitigating factors such as lack of criminal history and relative non-severity and nature of the criminal conduct, in the light of women’s caretaking responsibilities and typical backgrounds.” (Rule 61). This rule allows judges to consider the circumstances of the offense and encourages the use of judicial discretion in sentencing.

- 5. Divide the participants into two groups to debate on the following two statements;
  - Whether records of prior abuse should be used in the female defendant’s favour when she then commits violent offences against her abuser in response to the abuse.
  - Female offenders are more likely to have experienced violence or any form of gender-based violence in their lifetimes than either male offenders or women in the general population.

### **Facilitator notes**

The facilitator should inform the participants that, when dealing with female offenders that committed crimes in response to abuse, they should be aware of the connections between women’s experience of violence and their commission of crimes.



## 18. PRE-TRIAL ISSUES (60 MINS)

### Objective

To assess the implications of pre-trial issues on the victim and the case as a whole.

### Step by Step

1. The facilitator should first ask the participants to raise some of the pre-trial issues that they experience in their line of work as judicial personnel responding/dealing with violence against women and girls.
2. The facilitator should then compare the issues raised with the following pre-trial issues:

#### *Pre-trial issues in matters of VAWG*

- **Plea bargaining:** **Section 252A (2)** of the **Criminal Procedure & Evidence Code** defines plea bargaining as a process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case, subject to court approval. It includes the accused pleading guilty to a lesser offence or the accused pleading guilty to only one or more counts of a charge. Additionally, the plea bargaining could be a charge or sentence bargain; prosecutors will usually agree to reduce charges, recommend lower sentence lengths, or make some other compromise in exchange for the plea.
  - **Pre-trial custody time limits** relate to a period that an accused person may be held in lawful custody in relation to an offence while awaiting the commencement of his trial. The time limits are in accordance with the periods specified under section **Part IVA** of the **Criminal Procedure & Evidence Code**. Specific to sexual and gender-based violence against women, **section 161G** provides that the maximum period that a person accused of rape or defilement may be held in lawful custody pending commencement of his trial in relation to rape or defilement shall be ninety days.
  - **Bail applications:** This is an agreement between the state and the accused person together with sureties where the accused agrees to forfeit a certain fixed sum of money for him to be tried while out of custody. It is governed by **section 42 (2) (e)** of the **Constitution**, the **Bail (guideline) Act** and **section 118** of the **Criminal Procedure & Evidence Code**.
  - **Adjournments:** governed by **section 250** of the **Criminal Procedure & Evidence Code**. The Court may, in its discretion before or during the hearing of any case, adjourn the hearing to the time and place to be stated to the parties. Where the court adjourns the hearing of a case, it may release the accused without security, may release the accused on bail with a bond with or without sureties or commit the accused to prison.
  - **Withdraw or discontinuance of a case:** governed by **section 77** and **81** of the **Criminal Procedure & Evidence Code** respectively. **Section 77** is to the effect that the prosecution may discontinue the case against the accused either before the accused person is called upon to make his defence (in which case he shall be discharged immediately without barring the prosecution from commencing subsequent proceedings against the accused on account of the same facts) or after the accused person is called upon to make his defence (in which case he shall be acquitted). On the other hand **section 81** is to the effect that the prosecution may withdraw the case against the accused person either before the accused person is called upon to make his defence (in which case he shall be discharged immediately without barring the prosecution from commencing subsequent proceedings against the accused on account of the same facts) or after the accused person is called upon to make his defence (in which case he shall be acquitted).
3. The facilitator should then divide the participants into five groups and allocate each group one pre-trial issue to examine in great detail.
  4. Some of the questions for discussion should be as follows, although the facilitator may also add some questions which they think are relevant to the discussion:
    - How should each of the pre-trial issues be managed in VAWG matters in comparison with other matters like murder or theft? Should there be any comparison or not? Why?
    - What are the effects/implications of each of the pre-trial issues on the victim, accused and the trial? For example, what could be the impact on the victim where a husband who was repeatedly abusing her wife and girl child gets released on bail or from lawful custody after the pre-trial custody time limits have elapsed? The same question could be asked in respect to a situation where an accused person is released from custody after the court adjourned the case or where the prosecution withdraws or discontinues the case.

- Additionally, what are the likely impacts on the victim where a plea bargain between the accused and the prosecution is entered/agreed either without consultation with the victim or against the victim's wishes or best interest?
- What could be the general effect/implication on the trial and the public in respect of the above questions?
- What role could the judicial personnel, especially judges and prosecutors, play in ensuring that pre-trial issues in VAWG matters are managed and dealt with due regard to the survivor-centred approach?

5. After the above discussion, the facilitator should ask the groups to present their findings and notes should be taken on the relevant points raised.
6. Finally, the facilitator should bring the discussion into plenary for final comments, observations and questions.

## 19. REFLECTION AND RECAP (30 MINS)

### Objective

To enable the participants to process their thoughts and feelings about the day's session so far.

### Step by Step

1. The facilitator should ask the participants to split into pairs. Urge the participants to pair with a person whom they are not closely affiliated with.
2. Ask the participants to share the following in their pairs:
  - What happened?
  - What is being examined?
  - What is most important/interesting/relevant about the training so far?
  - What were their reactions during the training?
  - Why?
  - How can what has been explained so far explained any further e.g. with theory?
  - What have they learned from the training so far?
  - What does this mean for my future actions/decisions e.g. when applying international law in the national courts in VAWG matters?
3. The facilitator should ask a few pairs to share with the rest of the participants what they discussed.

## 20. GENDER-SENSITIVE CASE AND COURTROOM MANAGEMENT (60 MINS)

### Objective

To present survivor-centred practical considerations that both prosecutors and judges can take to ensure safety and reduce risks for women involved in legal processes, especially in criminal cases.

### Facilitator notes

The facilitator should inform the participants that some of the barriers to justice that women and girls encounter are related to the fact that legal procedures are often inadequate to address the specific needs of women as victims or as litigants. In contrast, when legal practitioners are aware of and understand the perspectives of women encountering the justice system, they can act in a way to improve those processes. As such, the facilitator should ask the participants to be open about their experiences and interactions with the victims of VAWG during trial and notify them that the way VAWG cases are managed can have a detrimental impact on both the case and the victim complainant.

### Step by Step

1. As a starting point, the facilitator should explain the grounding-breaking features of the Istanbul convention to the participants.

### ***A closer look at the Istanbul Convention***

Preventing violence, protecting victims, prosecuting perpetrators and the need for integrated polices at the national level are the cornerstones of the Istanbul Convention. The measures required by the Convention are firmly based on the premise that violence against women cannot be eradicated without investing in greater equality between women and men and that, in turn, only real equality between women and men and a change in power dynamics and attitudes can truly prevent this serious violation of human rights.

The Convention contains a number of ground-breaking features, including:

- Recognition of violence against women “*as a violation of human rights and a form of discrimination against women.*” Under the Convention, Violence Against Women means “*all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life*” (Article 3(a)).
- The Convention requires parties to include a gender perspective in the implementation of its provisions.
- The most comprehensive non-discrimination clause among CoE treaties (21 specifically protected grounds and “any other status”).
- Criminalisation of a comprehensive list of acts or behaviours defined as forms of violence against women (including ‘new’ offences, such as forced marriage, sexual harassment and stalking, forced abortion and forced sterilisation).
- Specific provisions on changing attitudes and eliminating stereotypes.
- Reference to the due diligence standard, requiring state authorities to prevent, investigate, punish and provide reparation for acts of violence perpetrated by non-state actors.
- Inclusion of a chapter on the obligations of state parties to ensure that investigations and judicial proceedings concerning the forms of violence covered by the Convention are “carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings.”
- Requiring parties to ensure that all measures form part of a comprehensive and coordinated set of policies that offer a holistic response to violence against women and domestic violence.
- Recognition of the role of non-governmental organisations (NGOs) and the need to allocate appropriate resources for the adequate implementation of all measures provided for in the Convention, including those carried out by civil society

2. Pose the following question for a brief plenary discussion: *What is the victim-centred approach required by the Istanbul Convention and how does it work?*

#### **Facilitator notes**

The victim-centred approach required by the Istanbul Convention briefly provides that the rights, needs and safety of victims of violence against women are placed at the forefront during investigation and prosecution, without discrimination.

3. The facilitator should then ask the participants to split into pairs to reflect on VAWG cases they know about and to reflect on whether VAWG case and courtroom management in Malawi adheres to the survivor-centred approach required by the Istanbul Convention.
4. After the discussion, the facilitator should ask at least five pairs to share what they discussed and should allow the broader group to make comments and ask questions.
5. The facilitator should have one participant or him/herself take notes for future reference.
6. The facilitator should divide the participants in groups of 4/5 and pose the following question for discussion: *What are the safety concerns and risk mitigations that prosecutors and judges should take to ensure the safety of victims in legal proceedings, both to avoid re-victimisation by the perpetrator and secondary victimisation during the legal process itself?*
7. The participants should ask the rapporteur of each group to make a two-minute presentation on their discussion and allow the audience to ask questions and make comments.
8. The facilitator should take notes of the points raised on flip-chart papers for future reference.

9. Finally, and as a follow up, the facilitator should distribute the following handout and facilitate a debate on the following statement: *Section 71A of the Criminal Procedure & Evidence Code is not enforced as intended in practice.*

### **Section 71A of the Criminal Procedure and Evidence Code**

#### **Evidence of Victims of Sexual Offences**

14 of 2010

- (1) Where a victim of a sexual offence is to give evidence in any proceedings under this Code, the court may, of its own motion, upon application made by a party to the proceedings, or a victim of a sexual offence, make one or more of the following orders—
- (a) that the court close while evidence is being given by the witness in the proceedings, including evidence given under cross-examination, and that no person remain in or enter a room or place in which the court is being held, or remain within the hearing of the court, without its permission;
  - (b) that a screen, partition or one-way glass be placed to obscure the witness's view of a party to whom the evidence relates, but not so as to obstruct the view of the witness by the magistrate or the judge and jury;
  - (c) that the witness be accompanied by a relative or friend for the purpose of providing emotional support;
  - (d) that the evidence of the witness be given at a place outside the courtroom and transmitted to the courtroom by means of closed-circuit television.
- (2) Where the order is made under subsection (1) (b) or (d), the judge, in a trial by jury, shall cause a direction to be issued to the jury to the effect that—
- (a) the procedure is a routine practice of the court;
  - (b) no adverse inference is to be drawn against the accused person as a result of the issue of these orders; and
  - (c) the evidence of the witness is not to be given any greater or lesser weight because of the use of such orders.
- (3) Where an order is made under subsection (1) (c), the relative or friend accompanying the witness shall be visible to the parties and the court and, in a trial by jury, to the jury, while the witness is giving evidence.
- (4) An order under this section may be made, varied or revoked on the court's own initiative or on the application of a party or witness.

10. The facilitator should ask the participants to provide justifications and examples for the arguments. The points for the debate could be how the courtroom is set up, are there screens available when giving evidence in case section 71 of the CPEC is invoked by either the victim witness or the court, what is the normal position of victims and the accused in the court – i.e. what is their physical proximity or do they have eye contact.
11. The facilitator should be taking all the relevant points raised by both groups for future reference.

## **21. EVIDENTIARY ISSUES AND INTERACTIONS WITH THE FEMALE VICTIM WITNESS (60 MINS)**

### **Objective**

To bring to light the evidentiary issues that victims of VAWG face when tendering evidence in court and all those challenges female victim witnesses face when interacting with the formal justice system, specifically the court. The session will further examine ways in which these issues can be rectified so as to make the interaction with female victim witnesses survivor-centred.

### **Facilitator notes**

The facilitator should notify the participants that when prosecutors and judges have a basic understanding of how women's experiences of the legal system, as victims, witnesses, or offenders, differ from men's experiences, they can have an impact on ensuring that women have confidence in the justice process and that their interests are properly and appropriately protected.

### **Step by Step**

1. The facilitator should hand out the case study to the participants to read. The facilitator should ask one participant to read the contents of the case study aloud. The facilitator should then ask the participants to form groups of 4/5 and discuss the questions that follow.

### **Case study: *Kasambeni v R Criminal Appeal No. 38 of 2002***

The appellant was convicted and sentenced to four and a half years IHL for the offence of rape contrary to section 132 of the Penal Code. On the material day, the appellant together with other two teachers invited three girls into his house where the appellant and the other two men wanted to have sex with the girls. It was in evidence that the two friends to the complainant refused to have sex with the two teachers and nothing happened. The complainant however, entered the bedroom of the accused together with him where it transpired later that she was raped by the accused as he slept with her without her consent. The Appellant appealed against both sentence and conviction.

In quashing the conviction by the lower court and allowing the appeal Kumange J held that the elements of the offence of rape were not fulfilled according to the evidence presented. He opined that the complainant being an adult of 18 years of age could not be said that she did not know what was to happen in a man's bedroom alone. He further stated that had it been that she was indeed raped she could have screamed in protest to the advances by the appellant. Such screams could have been heard by the people who were on the sitting room within the same house.

The Judge also expressed disallowance of what he called the immoral behaviour of the modern generation of engaging into sexual activities before marriage. He stated that the girl spread the news that she was raped for fear of her parents and the communities' reaction that she slept with her teacher.

It should also be noted that when the case was reported to the school committee, the appellant was fined K200 for the offence. It was the complainant's father who reported the matter to the police.

#### **Discussion questions**

- According to the judge, how should a rape victim behave to be credible?
- What do you think of a sexual assault victim who does not immediately raise a complaint of being sexually assaulted and reports months after the incident?
- What possible reasons would make a woman or girl not to immediately report a sexual assault?
- How is consent proved in sexual assault cases? Are there any concerns with the way consent is proved in the courts of law?
- If you were a judge in this case, would you arrive at the same decision or not? Explain

2. The facilitator should further pose the following questions based on the case study:

- Based on the case study, brainstorm the experiences that women encounter in court.
- What are the difficulties, if any, that female victims face by being involved in VAWG criminal proceedings? How do the participants think those difficulties can be rectified so as to make VAWG criminal proceedings survivor-centred?
- The facilitator can probe on problems of the victim being a bystander in her own case, her interests not considered when making sentences and providing remedies etc.
- What is the overall effect of the limited role that victims of VAWG play in criminal court proceedings as compared to the active role that victims of VAWG play in civil court proceedings?
- What can the participants do to ensure the efficiency and effectiveness of the court process and ensure that the victim has the support she requires?

3. The facilitator should ask the rapporteurs of the groups to make a short presentation of their thoughts. The facilitator should urge the other participants to make comments and pose questions on the presentations. The facilitator should take notes of all relevant points raised by the groups.

4. The facilitator should ask the participants to deliberate on the following examples of possible problematic interactions with female witnesses and how they could be corrected, and ask them whether they agree or not and why.

**Possible problematic interactions with female witnesses**

| Possible gender bias or perceptions of gender bias                                                                                                                                                                                                                  | Gender-sensitive interaction                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| During a hearing for a protection order, the judge addresses the victim of domestic violence as “ <i>Mary</i> ” and the perpetrator as “ <i>Mr. Banda</i> .”                                                                                                        | Modes of address for women and men should be of an equivalent level (Mrs/Ms and Mr, rather than a first name).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| When interviewing a victim of sexual violence, the prosecutor or judge begins the conversation with: “ <i>Tell me what happened on 9th of July</i> ” and later interrupts the witness/victim by stating: “ <i>Just explain the facts of the alleged incident.</i> ” | The prosecutor or judge should strive to make the victim/witness comfortable, explain the proceedings, express understanding that the processes of describing a violent assault is difficult, and ask the victim/witness to explain the events in her own words. Note that in cases of sexual violence, some jurisdictions recommend a flexible approach to allowing hearsay evidence as long as it does not infringe the rights of the accused. It is important that the interviewer, whether a prosecutor or judge, allow the victim to speak without expressing frustration or impatience if there are gaps in the account or she finds it difficult to speak. Interruptions should be kept to a minimum and only used when necessary (if the witness is breaking procedural rules in court or for clarification). |
| During a protracted divorce proceeding with disputes over the division of property, a judge says “ <i>You women are all the same. You are never satisfied.</i> ”                                                                                                    | The judge should not express frustration, imply that all women are the same or act in the same manner, or suggest that the litigant does not have a just cause.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| When called as a witness in a domestic violence case, the victim contradicts a statement made to the police and says she injured herself. The prosecutor or judge asks: “ <i>Were you lying to the police or are you lying now?</i> ”                               | The prosecutor or judge should recognise that when a victim/witness changes her account of the facts, it is usually due to such factors as having been threatened by the perpetrator, reconciliation with the perpetrator or due to her dependency status.<br>The prosecutor should request a recess and speak to the victim in a sensitive manner about her concerns. The prosecutor should also prepare to submit corroborating evidence and to explain why the victim is behaving in this manner.                                                                                                                                                                                                                                                                                                                  |

*Adapted from the European Union Training Manual for Judges & Prosecutors on Ensuring Women’s Access to Justice 2017, pgs. 94-95.*

5. The facilitator should remind the participants that the CEDAW Committee identifies several problem areas related to the evidentiary base in cases brought by women, such as: inadequate evidence collection (failures during the investigation period); evidentiary rules that are “restrictive, inflexible or influenced by gender stereotypes” (especially relevant to violence against women cases); and difficulties collecting evidence “relating to emerging violations of women’s rights occurring on line and with the use of ICT’s [information and communication technologies] and new social media.” (General Recommendation No. 33 on women’s access to justice. paras 25(a) and 51.)
6. The facilitator should distribute the following case example

**Case law example: ECtHR, Judgement in Y v. Slovenia, 28 May 2015**

The case of Y v. Slovenia before the ECtHR concerns procedural obligations and role of the judge during criminal proceedings in a case of sexual assault. The underlying case concerns a claim made by Y against X, alleging that he had forced the applicant (a 14-year old girl at the time) to engage in sexual intercourse. During the criminal proceedings, gynaecological evidence was found to be inclusive, and X cross-examined Y, asking her over 100 questions during a four-month period. The ECtHR examined whether in the criminal proceedings against X, the State afforded sufficient protection to Y's right to respect for her private life, and especially for her personal integrity. The Court found that many of X's questions during cross-examination were aimed at attacking Y's credibility and intended to denigrate her character. While acknowledging the right of the defendant to cross-examination, the Court held that the State failed to maintain an appropriate balance between the rights of the defendant and the applicant's right to privacy. While noting that the defence has some leeway to challenge the reliability and credibility of the witness/victim and to point out possible inconsistencies in her testimony, the Court also stated clearly that "cross-examination should not be used as a means of intimidating or humiliating witnesses".

*Adapted from the European Union Training Manual for Judges & Prosecutors on Ensuring Women's Access to Justice 2017, pgs. 80.*

7. On the basis of the case study at the beginning of this exercise and the case example just distributed, post the following questions:

- Generally, should victims be required to testify in court? If yes, why? If not, why?
- Generally, what are prevalent difficulties that Malawian female victims face in presenting evidence in court? Specifically, what were the evidentiary issues faced by the victim witness in the case?
- How well can the participants ensure that the assessment of a victim's evidence should not be guided by stereotypical expectations of victim behaviour?

**Facilitator notes**

The facilitator can highlight to the participants that a gender-sensitive legal system is one that takes into consideration the fact that women face disadvantages and inequality in public and private life. The kind of legal matters that bring women into contact with the formal justice system tend to be those that disproportionately concern females. When prosecutors and judges have a basic understanding of how the experiences of women in the legal system, as victims, witnesses, or offenders, differ from men's experiences, they can have an impact on "ensuring that women have confidence in the justice process and that their interests are properly and appropriately protected.

- What questions and approach of questioning victim witnesses do the participants think is the best and advances the survivor-centered approach? During cross-examination, on what issues might/should the judge intervene and why?
- How best can the participants protect the victim from possible prejudicial, embarrassing or harmful evidence by the defence, in particular, evidence that may be damaging to the victim witness but which is not relevant or has no value in the case (for example evidence of past sexual conduct or reputation)? As a follow up, how best can the participants protect the victim witness from evidence based on stereotypes and assumptions (like the one in the case study above) about, for example, women's private behaviour, dress and private life?
- How best can the participants create an enabling environment that allows victims to provide the best possible evidence?

**Facilitator notes**

The facilitator can also highlight that it is important to recognise that providing evidence about violent incidents can impact victims differently. Some may find the process cathartic or empowering and a part of their recovery process. Other victims may experience secondary traumatisation. With these different outcomes in mind, prosecutors bear the responsibility of assessing the individual circumstances of each victim and tailoring their responses to meet the specific situations.

## 22. SENTENCING (60 MINS)

### Objective

To interrogate ways in which the judiciary can adopt a survivor-centred approach in sentencing

### Step by Step

1. To begin with, the facilitator should ask the participants to briefly discuss in pairs what the primary goals of sentencing in criminal VAWG matters should be.
2. The facilitator should notify the participants to hold onto their answers to the above discussion and should divide the participants into two groups and facilitate a debate on the following statement: *The primary goals of sentencing in criminal VAWG matters must be to prevent the reoccurrence of the violence, to protect the victim, and to hold the perpetrator accountable. The rehabilitation of the perpetrator should not be the primary aim of a criminal sentence.*
3. The facilitator should be taking notes on flip-chart paper for future reference.
4. In plenary, the facilitator should then ask the participants to consider whether their answers to the above discussions are survivor-centred; that is, whether the suggested primary goals for sentencing are survivor-centred. For example, whether the interests and safety of the victim are considered when sentencing and whether the sentencing in criminal VAWG matters reflect the serious nature of the offence.
5. The facilitator should divide the participants into groups to discuss the following:
  - What is considered to be an appropriate sentence for various types of gender-based violence cases and why;
  - What are some of the common mitigating and aggravating factors that they experience during sentencing in VAWG matters?
  - What should and shouldn't be considered appropriate mitigation, and what issues need to be given adequate consideration in terms of enforcement, cultural sensitivity etc.?
  - Finally, how should judgments be drafted and disseminated in VAWG matters?
6. Finally, the facilitator should ask the participants in plenary whether the judiciary has a set of procedures for judicial decision-making about sentencing and whether the judiciary has developed sentencing guidelines to help judges decide on the appropriate sentence in criminal VAWG matters like other jurisdictions like the United Kingdom.
7. The facilitator should then share the suggested factors for judges to consider in the context of criminal sentencing in VAWG matters below and ask the participants to deliberate whether they agree with them or not and why.



### ***Suggested factors for judges to consider in the context of criminal sentencing in VAWG matters***

Some points that prosecutors and judges may consider in the context of criminal sentencing in VAWG matters include the following:

- Are there aggravating circumstances that justify an increased sentence? These can include the relationship of the perpetrator to the victim; whether the offense was repeated/does the perpetrator has a prior conviction; whether children were present when the violence was committed; the extreme nature of the violence and/or whether a weapon was used.
- Does any risk assessment that was conducted during the proceedings indicate that there is a possibility that the perpetrator will reoffend?
- Is the perpetrator a 'first-time' offender? Practitioners should be aware that many offenders who appear in court for the first time have used violence in the past but may never have been charged. Caution should be exercised when making decisions about suspended sentences or conditional released based on the fact that the perpetrator does not have a criminal record. Prosecutors and judges should consult other sources of information to determine a perpetrator's history of abuse.
- Can a perpetrator of sexual violence be required to register as a sexual offender as part of the sentence in the particular jurisdiction?
- Has the victim been given the opportunity to provide information about the impact of the violence that is relevant to sentencing? For example, judges can allow victims to address the court or provide a written statement that presents her opinion about the sentencing of the perpetrator, the effect of the crime on herself and other family member, especially children and any concerns she may have. Prosecutors should prepare the victim for sentencing hearings and present her with such options. Judges are not required to follow the opinion of the victim, but her statements can be useful to remind the court of the harm that the perpetrator has caused.

*Adapted from the European Union Training Manual for Judges & Prosecutors on Ensuring Women's Access to Justice 2017, pgs. 84-85.*

## 23. JUDICIAL REMEDIES (50 MINS)

### Objective

To examine ways in which the provision of judicial remedies is adequate, effective, promptly attributed, holistic and proportional to the gravity of the harm suffered as recommended by the CEDAW Committee in General Recommendation No. 33, para 19(b).

### Step by Step

1. The facilitator should ask the participants to reflect on how they provide remedies in their line of work to victims of VAWG, some of the considerations that help them in the provision of judicial remedies and whether such provision of judicial remedies is done with a survivor-centred approach in mind.
2. The facilitator should then ask the participants to split into groups of 4/5 and discuss some of the factors to consider when providing judicial remedies to victims of VAWG. As a follow up, the participants should also brainstorm some of the procedural guidelines that may be followed when providing judicial remedies to victims of VAWG.
3. While still in their groups, the facilitator should also ask the participants to deliberate the likely effect(s) of not considering the victims of VAWG in the provision of judicial remedies in criminal VAWG matters, e.g. rape, and whether such approach is survivor-centred. If the answer to the last question is in the negative, the participants should consider ways in which the provision of judicial remedies in criminal VAWG matters can be survivor-centred.
4. The facilitator should then ask the rapporteur for each group to briefly present their discussion and allow questions and comments to be made.
5. The facilitator should take notes on the flip-chart papers while the discussion is taking place.
6. The facilitator should finally present to the participants some of the suggested considerations to follow when providing judicial remedies to victims.

### ***Suggested considerations when providing judicial remedies to VAWG victims***

- Did the party suffer disproportionate harm based on her sex/gender?
- What types of remedies could provide the best redress for this kind of differential impact?
- What remedy would be the most appropriate way to make the victim whole, given the type of harm suffered?
- When determining an appropriate remedy, have the victim's desires been taken into account?
- Will the remedy provide redress for all the different types of harms that the victim has experienced and have been identified? Keep in mind, for example, the psychological harm that victims of gender-based violence may suffer in addition to physical, sexual or other forms of harm, or lost income in cases of employment discrimination.

*Adapted from the European Union Training Manual for Judges & Prosecutors on Ensuring Women's Access to Justice 2017, pg. 82.*

## 24. FINAL REFLECTION (15 MINS)

### Objective

To enable the participants to reflect on the training as a whole

### Step by Step

1. The facilitator should ask the participants to split into pairs. Urge the participants to pair with a person whom they have not interacted with during the training so far.
2. The facilitator should then ask the participants to share the following in their pairs:
  - Their overall impressions on the training?
  - The thing that has most interested them
  - The thing that has least interested them
  - The three main things that they have learnt throughout the training period so far
  - What they will do different from here onwards
3. Ask anyone who is ready to present what their partner said
  - First state the name of the partner and what they do
  - Present the answers in the order they appear in step 2
4. After at least half of the participants have presented, the facilitator should make a brief summary of what the participants have learnt and make an assessment of whether the participants are on the right track. Ask the participants to reflect deeply on everything they have learnt and play their important role towards a better gender-sensitive, survivor-centred response to VAWG.
5. Ask participants to list three to six actions that they could take in their daily work to eliminate VAWG in a manner that is survivor-centred. The facilitator can explain that they will contact the participants again in six months to see how these actions progressed; whether or not it was easy to implement them, and whether the participant needed additional support, including possibly additional training.
6. Ask any participants to give the last remarks.



**Tithetse Nkhanza Programme**  
**The Malawi Violence Against Women & Girls Prevention and Response Programme**  
**Area 9, Plot 5**  
**Lilongwe, Malawi**  
**[www.tithetsenkhanza.com](http://www.tithetsenkhanza.com)**



**Tithetse** !  
Nkhanza ●