



# Procedural Guideline of Access to Justice Standards for Cases of Violence Against Women and Girls in Formal and Customary/Community-based Justice Systems in the West Bank, Palestine

UN Trust Fund to End Violence Against Women and Girls  
Project: "Gender Justice to End Violence Against Women and Girls"

2021





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## A NOTE ON THE USAGE OF THE TERMS, GBV AND VAWG, SURVIVOR AND VICTIM

**GENDER-BASED VIOLENCE (GBV):** it is an umbrella term for any harmful act that is perpetrated against a person's will and that is based on socially ascribed (i.e., gender) differences between males and females. It is rooted in gender inequality, the abuse of power and harmful norms. The term is primarily used to underscore the fact that structural, gender-based power differentials place women and girls at risk for multiple forms of violence. While women and girls suffer disproportionately from GBV, men and boys can also be targeted. GBV, rather than the term 'Sexual and Gender-Based Violence' (SGBV), is used to clarify that sexual violence is a component of GBV and not a separate issue.

**VIOLENCE AGAINST WOMEN AND GIRLS (VAWG):** is defined as any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women and girls, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Violence against women and girls encompasses, but is not limited to, physical, sexual, and psychological violence occurring in the family or within the general community, and perpetrated or condoned by the State. Types of VAWG: domestic violence that can include economic, psychological, emotional, physical, and sexual violence, femicide which includes honor killing, sexual violence that can include rape, corrective rape, sexual harassment, human trafficking, female genital mutilation, child marriage, online or digital violence which includes cyberbullying, non-consensual sexting, doxing.

Hence, terms are strongly related, and, in this publication, both are used, though VAWG is prevalently referred.

A person who has experienced VAWG may be referred to as 'victim' or 'survivor'.

**VICTIM:** is a term typically used when referring to aspects of the justice system. Moreover, 'victim' can be used in reference not only to those who have been victims of crimes and violations of sexual violence, but may also include their family and community members, including children born as a result of pregnancy from

rape. Importantly, the term ‘victim’ refers to individuals that have both survived violence, and those that did not.

**SURVIVOR:** is generally preferred in the psychological and social sectors because it implies agency, autonomy, and resilience.

Given the justice sector-related content of this publication but at the same time the absolute importance of the empowerment lens to convey when dealing with VAWG cases, this publication uses the term ‘survivor/victim’, to capture both interlinked meanings.

## FOREWORD

The Access to Justice (A2J) Program at Tdh creates a comprehensive and strategic framework for action, combining axes on operations, advocacy, research and quality and accountability, with a view to creating lasting and meaningful change in the lives of youth and children in contact with the law with the justice system as (alleged) perpetrators, victims or witnesses of a crime. A ‘Gender Justice’ programmatic theme has been developed and operationalized within Tdh’s A2J Program in the Middle East and North Africa (MENA), including Palestine. It focuses on: (i) advancing the justice apparatus to be age-appropriate and gender-responsive, (ii) upholding the rights of girls and young women survivors/victims in justice procedures, whether formal or customary, with a particular focus on child marriage, (iii) fostering the Women, Peace and Security agenda in the region as relates to justice and peacebuilding processes and (iv) supporting women’s and girls’ rights and youth feminist organizations and social movements in MENA.

Women’s Affair Technical Committee (WATC) is a Palestinian feminist organization established in 1992 as a coalition of women’s grassroots committees, striving for the social, political, and economic empowerment of women to achieve a democratic Palestinian society that ensures plurality, social justice and equality between men and women. WATC is a specialized actor in country in GBV interventions and it has been playing a crucial role at the legislative arena to enhance protective regulations and empowerment of women and girls.

Tdh and WATC are partners implementing the UN Trust Fund to End Violence Against Women and Girls project named: “*Gender Justice*”

*to End Violence Against Women and Girls*” from 2018 till 2021. It activates a responsive gender justice to address VAWG, proposing a promising pilot to generate evidence-based innovative and replicable approaches. It entails a holistic conception of access to justice for women and girls (demand side: promoting female’s agency in justice; and supply side: tackling both formal and customary/community-based justice systems).

Access to justice is a fundamental human right and a means of implementing other human rights. Working with gender justice lens implies advocating for and fostering full equality and equity between women, girls, men, and boys in all spheres of life. Gender justice exceeds the traditional concept of gender equality that limits to the elimination of all forms of discrimination against women and girls, and emphasize on women and girls, with diverse backgrounds and experiences, determining and shaping the narratives, structures and decisions that affect their lives, as members of communities on an equal basis. Women and girls taking control and taking collective action are the most important drivers of sustained improvements in women’s and girls’ rights and are a powerful force to actively improve access to justice.

Tdh and WATC hope that this publication fosters gender justice in Palestine, by specializing the justice apparatus with age- and gender-appropriate and survivor/victim-centred approaches and practices.



## INTRODUCTION: SETTING THE SCENE

In Palestine, women and girls experience multiple layers of violence and discrimination and face conditions of oppression on two fronts: they live under the Israeli occupation (which, among others, has led to female's bodies weaponized and re-shaped into a tool of political control) and live within a society governed by patriarchal norms and attitudes. This implies the establishment of a generalized concept of gender inferiority that develops from early stages of life and solidifies through the social constructs and stereotypes that perpetuate the cycle of violence, their participation in the spheres of public life and decision-making in private life. Ultimately, this severely limits the exercise of women's and girls' rights. VAWG is a socio-culturally rooted problem exacerbated by the footprint of the prolonged conflict, the impact on community/family structures and the difficulty of access to services, and deeply particular when tackling justice for women and girls' survivors/victims of violence.

It is of paramount to work comprehensively and complementarily on both sides of justice: the supply and the demand. Particularly, reinforcing the supply of justice targeting key formal and community-based/customary justice structures, practices, and systems relevant to VAWG cases, changing entrenched negative attitudes and promoting pro-gender community and local justice norms.

One of the main barriers for VAWG survivors to access justice safely and fairly is the lack of justice standards applied by the competent security and justice stakeholders when they deal with those cases. There is judicial bias and stereotyping, secondary victimization, absence of specific procedures for VAWG cases including taking into account age considerations, lack of survivor/victim-center approaches and its mainstreaming into specific principles and guidance into the different judicial stages: report, settling, investigation phase (evidence collection, testimonies, etc.), trial and post-trial/sentencing.

The same applies to customary/community-based justice processes handled by customary actors. Indeed, many VAWG cases are dealt at the community level without reaching the formal justice system. Those are seldom applying concrete standards, given the specific considerations, consequences, and impact VAWG cases have on females specifically, but also on children involved directly and

indirectly in the cases. Prompting pro-gender community norms on VAWG cases resolution at the community level is an urgent challenge to be addressed.

While some of the access to justice standards should apply to both, formal and community-based/customary justice processes, some differences arise given the diverse nature of the VAWG case pathways at formal and customary justice levels in the West Bank.

The **Procedural Guideline of Access to Justice Standards for Cases of Violence Against Women and Girls in Formal and Customary/Community-based Justice Systems in the West Bank (Palestine)** has been developed to provide key guiding principles and operational recommendations (non-exhaustive) across the different legal and justice stages that female (adults and children) survivors/victims experience. It has been carried out with the goal to reinforce the capacities and to enhance the quality of the processes of the supply side of justice dealing with VAWG cases; however it can serve to raise awareness, provide information and empower survivors/victims and/or their persons of support. The Procedural Guideline is expected to serve as a tool to evaluate and monitor the justice pathways when addressing and making intervention plans for women and girls survivors/victims of violence ensuring that, whether the intervention is made by formal or community/customary justice actors, appropriate standards apply and abide by, enabling a justice environment in which survivors/victims are treated fairly, with respect, dignity and equality.

The Procedural Guideline is not comprehensive of all processes at each justice institution, formal or customary, when dealing with VAWG cases, nor all the justice standards that should apply, but it certainly captures those that are the most important and critical ones, as highlighted by the justice stakeholders, and women and girls survivors/victims. Thus, this publication is to be read in conjunction and with a complementary approach to other resources available in Palestine.

The Procedural Guideline is framed by six components that the Committee on the Elimination of Discrimination Against Women (CEDAW) defined as essential for women's and girls' access to justice.<sup>1</sup> These include:

<sup>1</sup> General recommendation on women's access to justice, Committee on the Elimination of Discrimination Against Women, CEDAW/C/GC/33.

- **Justiciability:** Unhindered access to justice and empowerment to claim women's and girls' rights.
- **Availability:** Establishment and continued operation of courts also in hard-to-reach areas.
- **Accessibility:** Justice systems that are secure, affordable, and physically accessible, and are adapted and appropriate to women's and girls' specific needs.
- **Good quality:** Justice systems that adhere to relevant international standards.
- **Provision of remedies:** The ability to receive viable protection and meaningful redress for any harm that they may suffer.
- **Accountability of justice systems:** Monitoring of the functioning of the justice system in accordance with abovementioned five principles.

An in-depth research was carried out, including desk review and collection of qualitative data through structure and semi-structured interviews with the main justice actors and institutions in the West Bank, from both formal and community-based/customary justice systems, as well as individual interviews and focus groups discussions with women and girls survivors/victims of VAWG who have experienced justice processes, whether formal or customary. All due safeguards and standards for female survivors of violence were carefully considered and apply (rapport building, confidentiality, data protection, information and consent/dissent, provision of required support, trained professionals, language, space, feedback).

## JUSTICE STANDARDS FOR VAWG CASES AT PRE- JUSTICE STAGES: THE FAMILY PROTECTION UNITS (POLICE)

The police force is the entry point into the justice system for many survivors/victims and perpetrators of violence against women and girls. A timely police intervention can prevent an escalation of violence and provide prompt access to justice for the survivor/victim. This is achieved when the perpetrator is arrested, and the protection of survivor/victims is the priority for the police force. Early referral to the investigation (prosecution level) is essential. Police officers must pay careful attention to the safety requirements of survivors/victims, informing them of their legal rights, judicial processes available and consequences, as well as activating referral pathways that can immediately accommodate and provide for their needs, with due confidentiality.



In VAWG cases, the Family Protection Units (FPU) are the police force assigned to deal with such cases. There are key stages which require careful consideration when dealing with VAWG cases:

- **Gender-responsive public information** is to be provided widely, where the **focus is the justice empowerment of the survivor/victim and her protection and safety are the priority** while arresting (even if preventative) the (alleged) perpetrator. The appropriateness of the information publicized is key to shift perceptions of untrust from the survivors/victims of VAWG cases and encourage them to report their cases to the police at first. Helplines should be functional and provided with trained police workforce specialized in dealing with VAWG cases.
- Revision of **reporting forms** and **statement taking documents** to accommodate a survivor/victim-centered approach (language, points of information requested, etc.). Avoid increasing the burden the victim/survivor already bears.
- **Only trained police officers can handle VAWG cases. Female police workforce should be available and trained specifically**, as the majority of survivors/victims of VAWG are female, who require the accompaniment of a female professional in the first place, unless they request otherwise. Within this specialized workforce on VAWG, police officers experts in handling children and adolescents must be trained and available. Female professionals at police levels should be also hired on higher management levels.
- Regardless of where the case is brought, **police officers that are not belonging to the Family Protection Unit must refer immediately the case to the police workforce within that Unit**. Presence of police within the FPU should be ensure in all police directorates, starting from those that receive more cases of VAWG, whether or not happening at the family level.
- It is **mandatory** that the police officer opens an **official file following a VAWG complain/report**.
- **Avoid re-victimization in the statement taking, build rapport with the victim/survivor before starting**. Look for a safe place, mindful of providing enough safety to the victim/survivor if she needs to come to the police station where she may need to not be seen for her own safety. A separate room should be allocated for the use of victims/survivors of VAWG cases while waiting.
- **Inform the victim/survivor of VAWG reporting her case of all the different stages of the process, her potential choices, and the potential consequences of each of them**. Explain in detail the protection services available. It is essential that the survivor/victim who is reporting is aware of all her rights and obligations during the proceedings to come. She has also the right to withdraw her complaint. If that is the case within 48 hours, the police officer in charge of the case shall seek the assistance of an expert (female) who support the survivor/victim in perform a thorough assessment of the situation and evaluate the reasons behind the withdrawal: if the decision is freely taken or responds to external pressures or threats. If the latter, the activation of protective services must be immediate.

- In VAWG cases, once the file has been opened and the statement from the survivor/victim has been taken, **a referral to the justice institutions is to be made by the police, particularly to the Public Prosecution Office. If the VAWG survivor/victim is a child, Child Protection Services are to be notified in addition to the justice authorities.** It is essential that the step of notification within the referral pathway established is carefully followed, so prompt and adequate access to justice is guaranteed to the survivor/victim.
- In cases, where, after receiving all the information as stated above in the reporting stage, the **victim/survivor decides not to pursue the justice pathway, the Family Protection Unit needs to ensure the referral to adequate protection services for VAWG survivors.** If the case is deemed of high risk (life-threatening) according to the description of facts by the survivor/victim and the perusal of the police, considering the prevailing social norms associated with reporting or simply approaching the police, the police officer shall **report ex officio** to the justice authorities, explaining carefully to the survivor/victim the reasons and the process about to start and securing full safety for her and her children if need be.
- The Family Protection Unit police officers must in all cases refrain from mediating between a survivor/victim of VAWG and a perpetrator, including family members. By no means the police should contact the family of the survivor/victim if she wishes not to or returning her to his family environment. **Rather, support sources or an alternative home should be provided,** in addition to ensure the ability for the survivor/victim woman to stay with her children in a safe place.
- Establish **protocols of action** pertaining the safe referral to the following protection services specific for VAWG survivors/victims: shelter, legal support, child protection, psychological and mental health services (bases on a case-by-case need assessment). In deciding the coordination and referral to those services while the investigation phase starts, it is essential to inform the survivor/victim about the possibilities, conditions of the services, what are her choices, and the following steps so they can take their own informed decisions. Because **survivors/victims are exercising their right to be protected, they are the ones to decide what's in their best interest, with the correspondent support** provided by trained police workforce from the FPU.
- The **immediate arrest of the (alleged) perpetrator and the potential conditions for his release (i.e. bail) must take into primarily account the upmost need for the safety of the survivor/victim.** These decisions are to be coordinated and agreed by the Family Protection Unit and the prosecution at minimum. If the survivor/victim is a child, child services/social development authorities are to be part of the decision-making process.
- Ensure the availability of a **suitable place to accommodate female survivor/victims in police stations** to shelter them during the first period before they are transferred to safety houses.

## INVESTIGATION (COLLECTION OF EVIDENCE)

- Entrenched gender bias and stereotyping (in some occasions unconscious) in VAWG cases negatively impacting female survivors/victims play a significant role in the investigation techniques and methods employed. In addition to **avoiding coercive interviewing methods**, investigators must **avoid secondary victimization** of female survivors/victims while evidence collection takes place.
- Ensure **age- and gender-appropriate analysis in the design of special interview techniques and protocols** for VAWG cases. Tools should be available and the police workforce at the Family Protection Unit should be regularly trained and mentored on those. If the **case involves sexual violence, higher safeguards and specific interviewing techniques and professionals** (e.g. forensic) are to be available.
- In the investigation stage, special attention should be paid not only to the primary survivor/victims but also it is essential considering **collateral effects on others** (e.g. children particularly but also other family members). Consider the possibility that the children of a female VAWG survivor/victim because of intimate partner violence (IPV) and/or domestic violence, can be also survivors/victims and, thus, the police in charge should be able to identify and act accordingly.
- During the investigation phase, the VAWG survivor/victim mainly (but also others involved in the process) should have **access to a specialized lawyer**. The right to access legal aid is to be safeguarded by the police while investigating the case.
- The Family Protection Unit shall count with specific **police professionals specialized in interviewing VAWG survivors/victims** as well as professionals trained to interview **children**.
- **Seizing and preserving properly all the evidence** is a must for the justice process. The Family Protection Unit needs to count with specific protocols for VAWG cases.
- The survivors/victims shall be the granted with the **right to review her statement** to make sure it accurately reflects what the girl or woman said. A lawyer should be present at that moment if desired by the survivor/victim.
- While the investigation at the police level takes place, the Family Protection Unit police officers should have at all times the **primary consideration of facilitating access to justice and protection to the VAWG survivor/victim**. In doing so, they should (i) listen to the priorities of the woman or girl as she defines them, (ii) ask thoughtful questions about her situation, (iii) help her assess the seriousness of the offender, (iv) keep the privacy and confidentiality of the case at all times during the investigation.

## **AVOIDING SECONDARY VICTIMIZATION WHEN INTERVIEWING VAWG SURVIVORS/VICTIMS WITHIN THE JUSTICE PROCEEDINGS.**

- Use open-ended questions: they enable comfortable talking to gather information without influencing the survivor/victim and without putting pressure on her. Do not interfere with the survivor's/victim's flow of thoughts and only once the survivor/victim stops or does not know how to continue, then more specific close-ended questions can be posed.
- Prepare the questions having in mind that those should be informative, non-judgmental, and non-accusatory.
- Adopt a calm direct tone of voice and way of talking. If the survivor/victim is agitated try to calm her down in a peaceful way, do not pressure her, ask her if she needs a break or if she needs someone with her.
- Repeat the questions and other type of information as many times as needed until it all is well understood by the survivor/victim. Ask kindly as many times as needed if she needs you to repeat the information or formulating it in another way.
- Call her by her name but make sure you ask her first if she feels comfortable with that.
- Because violence can never be justified, survivors/victims should not be asked about what did not work out or went wrong in the relationship with the perpetrators if in front of a VAWG case within the intra-family level.



# JUSTICE STANDARDS FOR VAWG CASES WITHIN THE CRIMINAL JURISDICTION

## **The Family Prosecution Office**

The Office of the General Attorney of Palestine and/or the Public Prosecution is a branch of the judicial authority in-country. The Public Prosecution represents the community as a whole, with the aim of preserving security and safety, through combating crime by investigating it, prosecuting its perpetrators, and referring them to the courts. It is also the party entrusted with the task of representing the public right of access to fair justice for every citizen before the judiciary. The Public Prosecution Office has the powers to investigate, accuse and plead before the competent judicial authorities and supervise the implementation of criminal judgments.

In VAWG cases, the role of the prosecution is central. The Family Prosecution Office (specialized prosecution unit) is in charge of cases of intra-family violence, including gender-based violence cases against women and girls. In addition, within the scope of VAWG cases they have assigned, it is of particular importance the ones of a sexual nature within the family. If the VAWG case has taken place outside the family (nuclear or extended), the Family Protection Office will be supported by the other units within.

COORDINATION AND REFERRAL FROM AND WITH THE POLICE

- Delays in VAWG cases, from the time of reporting an incident to the indictment, are unfortunately very common. This means the high likelihood that evidence may be lost. A critical first step, therefore, is for the prosecutor to consult with the police as early as possible to discuss **tactics for thorough evidence-gathering and investigation**. This is also the time to review the results of the risk assessment with the police and to decide about the safety of the victim and her family. **The prosecutor must prioritize those cases that demonstrate the greatest risk of harm.**
- The prosecutor shall ensure that s/he has received all the police file. S/he needs to **identify urgently the possible missing or incomplete information in the documents handled by the police, inquire about the reasons and coordinate next steps** to build solid evidence.
- At the pre-charge phase, the prosecutor needs to ensure that **the case is properly identified and flagged as VAWG** and to **develop a plan of action** (evidence-based prosecution strategy). It is also important to **review the facts of the case against all the offenses that constitute VAWG**, remembering that this can include physical, sexual, psychological, and economic violence. With a clear understanding of the elements of the crime that must be proven at trial, prosecutors can also work with police to gather the best evidence during the investigation phase and ensure that they follow proper criminal proceedings.



- The 'forensic report' in VAWG cases is one of the most important documents the judge and his/her team assigned to deal with the case at the court level will have into account. The prosecution shall **coordinate from the onset with specialized health care professionals** that shall in turn be prepared to collect forensic evidence **when authorized by the survivor/victim** and provide testimony in cases where a survivor/victim chooses to pursue legal action. It is worth noting that the prosecutor is responsible for pre-checking and ensuring that the collection of forensic evidence with females that are survivors/victims should **comply with all due 'caring ethics standards'** of dignity, choice, confidentiality, and specialization (including female professionals). Specialized processes for minors are to be in place, and **protocols on collecting forensic evidence from children survivors/victims of VAWG** are to be developed and available to the prosecutor in charge.
- If not allowed as part of the 'forensic report', the prosecutor shall coordinate and ensure that VAWG survivors/victims have **access to psychosocial professionals at all times during the investigation takes place.**
- If required, the prosecutor shall submit an **urgent plead request immediately to the judge for the VAWG survivors/victims to be placed in protective and safe refuge/shelter while the investigation at the prosecution level takes place.** If need be, placement in those places may be **accompanied by security** to protect retaliation against the survivor/victim and her children.
- Same consideration as above as to the need to count, at the prosecution level, with **age- and gender-appropriate interview techniques tools and protocols** for VAWG cases.
- **Witnesses protection programs** should be designed and in place to be activated by the prosecutor in charge of the VAWG case, even at time of the investigation if protective measures are required.
- VAWG survivors/victims as well as witnesses interviewed within the investigation stage at the prosecutor level have the **right to access specialized legal counselling and representation** from the onset of the proceedings. The prosecutor assigned to the case shall ensure that lawyers are present when interviewing 'people of interest' in VAWG cases.
- Prosecutors should be **pro-active in exploring possible forms of corroborating evidence**, and a **checklist** can also be a useful tool. Some common types of evidence to consider include the following: (1) police officer's statement, (2) neighbors' statements or other witness accounts, (3) emergency call recording, (4) CCTV recordings, (5) photographs of the injury and scene, (6) medical history/reports (including history of emergency treatment), (7) history of previous incidents (e.g. criminal record of the perpetrator; exclusion/protection orders; administrative penalties), (8) previous reports on VAWG that were not pursued, (9) letters, notes or messages from the perpetrator, (10) recordings of telephone calls.

## 'EX PARTE & EX OFFICIO' PROSECUTION IN VAWG CASES

Access to justice for VAWG survivors/victims is usually compromised due to several interlinked factors, from prevailing social norms impacting negatively women's and girls' ability to exercise their rights without suffering increased violence and/or retaliation, to inadequate procedures within the justice chain that hinder the due protection of VAWG survivors/victims during proceedings.

**The survivor's/victim's testimony is a crucial piece of evidence; however prosecutors should always keep in mind that it is their responsibility to gather enough evidence to convict the perpetrator of VAWG cases and not the survivor's/victim's.** Hence, they should ensure that the investigations and prosecution will continue even if the survivor/victim declines to report violence or press charges or later withdraw charges and testimony.

VAWG cases are not crimes like others. VAWG happens in the family private sphere, perpetrated behind closed doors and away from the public eye, as a result, the survivor's/victim's testimony is often the strongest and sole evidence of the abuse. Also, perpetrators and survivors/victims are often in an on-going relationship and there are strong and continuing emotional, financial and legal ties between them; and, frequently, for various reasons, VAWG survivors/victims seek to prevent prosecution or opt not to cooperate, as they view prosecution as unnecessary or contradictory to their interests.

Counting with an **evidence-based prosecution strategy** as a highlighted above and **applying age- and gender- responsive interview techniques** increase the likelihood that a survivor/victim will cooperate in the criminal process, and **prosecutors should strive to establish good rapport and a trusting relationship with the survivor/victim through early contact.**

The competency granted to the Public Prosecution to exercise the 'public right of access to justice' in VAWG cases is therefore of paramount importance and it is to be ensured when needed. Proceedings should continue even if the survivor/victim withdraws her 'personal right' (statement/testimony/complaint) and **the prosecutor should activate ex parte and ex officio proceedings, ensuring that the VAWG survivors/victims are protected and receiving the required services.**

# The Criminal Courts

The Palestinian Legislative Council (PLC) enacted the Palestinian Basic Law (PBL) in 1997, which became effective on May 2002 after presidential ratification. The PBL established the governmental structure of the Palestinian state, which created separation of powers and judicial independence. Under the PBL, it is stated that: “The Judicial Authority shall be independent and shall be assumed by the different types and level of courts. The structure, jurisdiction, and rulings of the courts shall be in accordance with law. (...)”. Also, the PLC enacted a series of laws concerning the Palestinian judicial system, the most important of which were the Law of the Formation of Regular Courts No. 5 of 2001 and the Judicial Authority Law No. 1 of 2002.

## PRE-TRIAL STAGE

- The **pre-trial period represents a heightened risk for VAWG survivors/victims, particularly if perpetrators are not in custody before the trial.** Therefore, a risk assessment is critically important during hearings to determine whether the perpetrator will be released or remanded while awaiting trial. Both prosecutors and judges need to understand the factors included in the assessment and give them appropriate consideration if bail and/or other conditions for release are requested by the perpetrator’s defense. Prosecutors should be **prepared to argue for pre-trial incarceration** if there is evidence that the alleged perpetrator may threaten the survivor/victim or otherwise influence the investigation or commit further violent acts. If no risk assessment has been conducted, the judge needs to mandate to conduct one.
- If no incarceration is granted, **restraining orders** should be requested by prosecutors and impose by judges in all VAWG cases, limiting in-person contact, telephone calls, e-mails, and other forms of electronic communication than can be considered harassment. Such orders are an important tool to enhance survivor’s/victim’s safety.
- In reviewing the indictment, **the court should carefully review the charges and be mindful of the dynamics of VAWG.** Judges should be specialized on VAWG and knowledgeable of the social norms surrounding these cases. **Judges should apply survivor/victim-centered approaches** and avoiding practices such as: taking into account justifications for violence and or lowering the violence allegedly perpetrated (e.g. behaviors of the female triggered the violence perpetrated against her...), the file contains information about a survivor’s/victim’s request to withdraw from the case and/or about a community-based process of reconciliation between the parties, or even a request from the prosecutor to discontinue the case due to lack of straight forward evidence. **If the case requires further investigation, the judge should ensure that the case is returned to the prosecutor with adequate explanations of the reasoning, rather than being dismissed.**

- During the pre-trial period, the prosecutor can use a **motion to request that the judge rules certain evidence inadmissible (motions in limine), preventing information that could be intimidating or humiliating to the survivor/victim from being introduced in court**, especially in cases with elements of sexual violence. By controlling the admission of damaging evidence, a survivor/victim is more likely to cooperate in the prosecution of the case, and the perpetrator defendant's control over her is reduced. This is aligned with the **rights to confidentiality and to protection from hardship (including secondary victimization) that shall be granted to VAWG survivors/victims in justice proceedings.**
- The prosecutor should **prepare the survivor's/victim's testimony in a non-physical presence form that conforms to the evidentiary rules of the criminal jurisdiction.** For instance, previous written statement, transcript, or video testimony may/should be **admissible and if not, the prosecutor shall file a request to the judge** highlighting the secondary victimization and harm that a physical presence at the court poses to the survivor/victim, even worse if the VAWG survivor/victim is a child.
- **Coordination between jurisdictions is essential:** The prosecutor assigned to the VAWG cases within the criminal jurisdiction should **inquire about any concurrent personal status and/or civil proceeding in course (or past) that has a relationship with the VAWG case.** Information from family cases could be useful to the criminal prosecution, civil protection orders if existing should take into consideration the safety of the survivor/victims within criminal proceedings, etc. A referral pathway needs to be established and to function promptly, so the information is timely received and does not jeopardize any of the justice processes.

- The prosecutor must be prepared for the eventuality that the survivor/victim will not be cooperative or will not testify at trial. A **distinction should be made between survivors/victims who are reluctant to testify and those who refuse. Building rapport, trust and careful planning** for her safety will enhance the likelihood that she will cooperate, even if reluctant at first. Still, if at trial a survivor/victim appears reluctant to give evidence, the judicial authorities should assess the reasons (fear, shame, misinformation, etc.) in order to determine the best course of action. **Prosecutors and courts should be prepared to sensitively question the survivor/victim on these matters, applying survivor's/victim's-centered approach** with age- and gender-responsive communication and interviewing techniques, providing full information to her, making sure that non **re-victimization, confidentiality, right of choice and safety are granted at all times.** After the questioning, the judge shall consider allowing the survivor/victim to speak with a supportive person and/or a representative of a civil society organization that provides support to survivor/victims of VAWG.

TRIAL STAGE

- **Judicial bias and stereotyping:** focus should be on the behavior of the alleged perpetrator and not on the behavior of the survivor/victim, who should not hold the burden of the proof. During trials and hearings, survivors/victims can behave in a way that is counterintuitive to what is expected, with the risk of that being perceived by the judge as a 'lack of credibility'. The prosecutor may also find it useful to request the court to allow **expert witness testimony** to explain the survivor's/victim's reaction to trauma, to counteract stereotypes or even to explain some forensic evidence. Professional staff working in VAWG cases can testify in court or submit a written expert opinion to be considered by the judge.
- Judges should be also mindful (and trained) of the **tactics that perpetrators use to manipulate the justice system** and how they might appear in court (e.g. the defendant may minimize the violence, lie, externalize the responsibility by blaming alcohol or drug abuse, stress, or the victim herself). The court must maintain **focus on the behavior of the defendant at the time of the incident rather than the surrounding circumstances**. Perpetrators also attempt to **exercise control over the survivor/victim even in court, and it is critical that the judge manages courtroom safety:** securing protection inside the court building, providing separate waiting areas for the parties, separate places for entering the court, not allowing both presences at the court room at the same time (use of technology for survivor's/victim's testimony as recommended above). In cases where the perpetrator is not detained, the parties should be separated on time of interval, allowing the survivor/victim to first leave the court, and providing security services outside the building and police escort to the survivor's/victim's safe place.

SENTENCING STAGE

- Sentences in VAWG should **reflect the severity of the crime and the serious nature of the violence committed**. Proportionate, uniform, and consistent sentencing is important because it sends a clear message that justice will not tolerate VAWG. This may deter other perpetrators. The **primary goals of sentencing in VAWG cases, in order of importance, are to stop the violence, protect the survivor/victim and other family members, particularly children, hold the perpetrator accountable for his actions and to serve as a general deterrent**. The eventual rehabilitation of the perpetrator should be a secondary consideration.
- The prosecutor should prepare the survivor/victim for a sentencing hearing and explain her options for providing input. **The survivor/victim should be given the choice to convey information about the impact of violence on her life and that of other family members** (appearance in court to make an statement, a letter to the judge, submitting a written survivor/victim impact statement, or having family members or friends addressing the court). Whichever form it takes, the prosecutor should privilege the survivor's/victim's desires and opinion of the sentencing of the perpetrator, the effect of the crime on herself, children or other family members (including the extent of physical and emotional negative impacts), and any concerns or additional information she believes are relevant to the sentencing. This should be useful to re-focus a judge's attention on the harm caused to the survivor/victim at the time of sentencing. Having the opportunity to express herself is part of the right to redress and might assist in her recovery.

- When sentencing the judges should carefully consider the following **aggravating circumstances**: repeated VAWG offenses, the survivor/victim was particularly vulnerable, the VAWG was committed against or in the presence of a child, extreme levels of violence were used, use or threats to use weapons, severe physical or psychological harm to the survivor/victim, previous convictions, etc.
- The judge should consider the **negative impact of fines** on the survivor/victim, that may interfere with the perpetrator's obligation to pay child support/alimony to the survivor/victim.
- Consider that VAWG **perpetrators who miss court appearances are at higher risk for re-abuse**.
- **As a minimum, the information below should be available at the time of sentencing**: case 's facts, full information about the perpetrator criminal record/history of abusive behavior whether VAWG related or not, where appropriate, drug, alcohol and/or mental health evaluations, history of court contacts with the family, information about children or other family members in the home who may be affected by the VAWG abuse.
- The prosecutor should thoroughly prepare the survivor/victims and provide clear information on all the positive outcomes of the sentence, the **implications of a conviction or an acquittal**. The prosecutor shall have a **plan prepared for survivor's/victim's protection in all cases and it shall be conveyed to the judge** to make sure those elements are also considered at the time of sentencing. This can include (non-exhaustive) post-conviction or post-acquittal protection orders and how to deal with violations of them.



## **INTERVIEWING CHILDREN SURVIVORS/VICTIMS OR WITNESSES OF VAWG CASES: EXERT EXTREME CAUTION!**

- Only trained professional in interviewing children can handle the interview with them. There should be no exceptions to this rule and hence, justice institutions, at all levels, should count with professionals trained on that regards.
- It is always recommended that a child's psychologist is present.
- The interview should take place in a child-friendly, safe, and quiet room.
- Speak to the child at eye level, by either bending down or sitting down, one next to each other.
- Explain to the child why they are there, avoiding making judgmental statements about the father/male perpetrator. But do not minimize the purpose of the interview. Be friendly yet underline what you are there for.
- Preparation of the interview plan is an absolutely must. Questions should be thoroughly reviewed. Ask questions in a non-leading, non-pressure way, trying to gather information about what happened and also if it happened in the past.
- While age and maturity of the child in question play an important role on how the interview should be prepared and managed, do not assume that younger children are not suitable for interview, rather consider having available all the services they may need and tailor the interview questions to their age.
- Do not forget to ask them what they need, as many times as needed.

## **THE NEEDS OF CHILDREN WHO ARE VAWG SURVIVORS/VICTIMS IN A DIRECT AND/OR AN INDIRECT WAY, INCLUDING CHILDREN WITNESSES.**

It is well-known and evidenced that most survivors/victims of VAWG are women. But it is equally important to assert that many of these women have children and that in some cases VAWG is directed at both, women, and children, and particularly girls given the gender-based element. In other cases, while children may have not been targeted themselves, they repeatedly witness violence against their mothers, and this can cause as severe psychological and emotional violence as the physical one. All measures of protection in VAWG cases shall consider the relationship between survivors/victims (adult or children in direct or indirect way), perpetrator, children of the survivor/victim and their wider social environment. The aim is to avoid a situation where survivors/victims (adults or children in direct or indirect way) and their children have their needs addressed in isolation or without acknowledging their social reality.

## JUSTICE STANDARDS FOR VAGW CASES WITHIN THE SHARIA JURISDICTION

### The Family Counselling and Reform Department & the Sharia Courts

The Sharia Court Law No. 32 of 1959 defines its jurisdiction pertaining to matters of personal status: marriage, divorce, alimony, child custody and inheritance. It outlines the procedures to be followed before the Sharia courts.

The Family Counselling and Reform Department was established by a presidential decree in 2003. It began its work in 2004, and at present, its function is practiced in all Sharia courts. Although some courts do not have independent counseling sections, the task of counseling is itself active in all courts. This counselling task includes the proper assessment of the cases that arrive at the Sharia and it is particularly tailor-made to the justice needs of women and girls, providing them with information about options, stages of the process and their expected outcomes. It is important to note the role played by counseling departments in reducing family disputes, settling disputes as they occur and not turning the dispute to litigation. They offer services of family mediation, especially when involving divorce of child custody cases. If an agreement is not reached by the parties, the Family Counselling and Reform section assigned to the case, will refer the file and all details to the competent judge.

It is though vital to stress that, as such, VAWG cases are not dealt by the Sharia institutions, but the cases they oversee have in many instances a connecting link with those cases and, thus, this section deals with some justice standards pertaining on how to address VAWG within family law cases.

- Cases that fall under the Sharia jurisdiction can pose difficulties for justice personnel dealing with them at pre-trial, trial, and sentencing stages, in part, because the history of violence is often not known to the counsellors, the court or even the lawyers. **When a counsellor/judge is unaware of the history of VAWG, s/he can (inadvertently) increase the danger to the survivor/victim and her children by ordering mediation**

**or alternative dispute resolution to only solve the family law case s/he is dealing with.**

- Therefore, before recommending any form of mediation in family law cases whether by the Family Counselling and Reform sections or whether by the judge, it is imperative to **activate a process to screen for coercive and controlling behaviors in order to detect the VAWG**. The Family Counselling and Reform Department must count with a **risk assessment tool** when reviewing the case: this tool should include a VAWG screening.
- The Family Counselling and Reform Department personnel and judges themselves should receive **training** on how to conduct VAWG screenings before recommending any sort of mediation.
- The **referral mechanism** with the **criminal jurisdiction** and well as with **child protection services** needs to be ensured, whether to ask for information and/or whether to promptly provide information about the family law case being dealt with.
- **Age- and gender- interview techniques and tools** should be available, **specialized people trained** on them, particularly when dealing with children, as stated in the sections above.
- If not well **trained on VAWG dynamics, bias and stereotypes**, the Sharia personnel may fail to **detect or document VAWG in child custody and visitation cases**; they may not recognize that it is the perpetrator's tactic to seek custody/visitation of the children as a way to maintain access to and control over the survivor/victim or to punish her for leaving him. The survivor/victim may be inflicted an unbearable pressure from the perpetrator to not report the VAWG to the justice authorities, out of fear of losing their children for instance.
- **Adopt strategies of courtroom safety**: securing protection inside the court building, providing separate waiting areas for the parties, separate places for entering the court, not allowing both presences at the court room at the same time.

- If VAWG is confirmed/has been detected and reported to the criminal jurisdiction, adopt **fast-track and simplified procedures for family law cases**.
- An **unequal balance of power between parties** (detrimental for females) requires a more **careful review of agreements concerning children, finances and/or property** before they are approved by the court.
- **Child custody evaluations must be conducted by experts who have been trained in the dynamics of VAWG**. Joint custody is not always in the best interest of a child if there is an abusive-parent. **Supervised child visitations** can be ordered and done through a visitation center or a designated intermediary, or in a location away from the survivor/victim.

## **SOCIAL NORMS IMPACTING VAWG HIGHLY SHAPE JUDICIAL PROCEEDINGS: BE AWARE AND ACT UPON**

VAWG-related judicial bias and stereotyping play an important role in VAWG cases. Extensive, specialized, and continuous training of justice personnel is the key to progressively eliminate this pernicious barrier to access to justice for VAWG survivors/victims.

It is important to know that:

- Survivors/victims generally turn to the justice system as a last resort when violence is the most severe and they feel most at risk, and also when all other options have failed.
- Many survivors/victims have had previous, and often unsatisfactory, interactions with justice personnel.
- Many survivors/victims have little trust in the legal system to ensure their safety, or the safety of other family members. Fear of retaliation, the feeling of not being believed/blamed, stigma, social isolation, or losing their children act as powerful deterrents for VAWG survivors/victims.
- Survivors/victims often have experienced severe trauma.
- Survivors/victims are also resilient and have usually managed to adopt survival tactics that can often be misunderstood or questioned by justice personnel and the larger community (such as staying with the perpetrator).

Addressing judicial VAWG bias and stereotyping with justice professionals should be approached with sensitivity. A recommended approach is to provide evidence of judicial bias from legal and judicial practice that can be discussed among professionals, as well as practical examples of actions/good practices that judges have taken to challenge them.

## JUSTICE STANDARDS FOR VAWG CASES WITHIN CUSTOMARY / COMMUNITY - BASED JUSTICE PROCESSES

Palestine has a long history of customary/community-based justice that is very much active nowadays. Because of the still enormous gender-related challenges women and girls face to access justice at the formal level, a very high percentage of them, as stressed in all the interviews carried out for this Procedural Guidelines, opt, are forced or coerced to handle their cases with tribal, chiefs/sheikhs and/or community leaders with a prominent role at their communities, overwhelmingly mostly male.

While there are many positive elements of customary/community-based justice processes (geographical, financial and linguistic accessibility, expediency, confidentiality, cultural/social-appropriateness, familiarity in terms of language used or less heavy administrative process compared to the formal justice system, legitimacy and flexibility and tailored solutions), these processes can also represent a genuine challenge given the application of discriminatory and harmful norms specially impacting women and girls.

Within this context, there are essential preliminary considerations to be made:

- Customary/community-justice systems/practices are diverse within the West Bank. Some still rely on discriminatory social norms against women and girls, some others do not. Therefore, those are to be identified and treated on a case by case basis, prioritizing those that are closer to comply with women's and girl's rights at first, to serve as subsequent catalyzer for others. It is worth noting that customary/community-based justice systems evolve to remain relevant over time and renegotiate their legitimacy vis-à-vis the community members they serve; it is of paramount to recognize this versatility to seeing the potential for the delivery of improved justice outcomes for women and girls.
- The fact that some customary/community-based justice practices do not comply with women's and girl's rights-based norms is not

a reason to not engage with them, rather, on the contrary, it is a reason to actively do it. Similarly, the formal justice system might not be compliant with all the justice standards on women's and girls' rights access to justice, and support is being provided into that direction. It is important to focus on the positive elements that both systems bring and their potential to improve other elements that are not yet supporting women's and girls' access to justice to progressively make those justice systems more gender-responsive.

Below some important justice standards pertaining on how to address VAWG within customary/community-based processes as well as key recommendations to foster the engagement with and of customary justice actors with the proposed standards.

- **In cases of VAWG, the use of customary justice processes is particularly problematic, and it should be avoided**, given the criminal responsibility it may address. Cases of VAWG dealt by customary justice actors **perpetuates a persistent and damaging stereotype**: that in a situation of VAWG, both the perpetrators and the survivor/victim are equally at fault for the violence and that both need to moderate their behavior in order to resolve the issue. The above **heightens the unequal balance of power between the perpetrator and the survivor/victim and, accordingly, the risk of the survivor/victim to continue suffering violence**.
- However, **customary justice actors are in a very privileged and crucial position to deter perpetrators from VAWG, to be able to identify VAWG cases and act upon** them in cooperation with the formal justice system, putting the safety of the survivor/victim (and their children) as a priority, calming down the situation with the perpetrators and his family and sending a clear message to the community that customary justice actors stand against VAWG.
- **Customary justice actors usually deal with family cases under the scope of the personal status matters**: negotiating the terms and conditions of a divorce, division of marital property, child custody, etc. In many instances, the Family Counselling and Reform Departments will reach out to the customary justice actors at the correspondent community where the case at stake belongs to in order to try to reach an agreement/settlement between the



parties to avoid the judicial pathway. Same justice standards that apply to the aforementioned Department applies to customary justice actors: they **need to be trained to identify potential VAWG within the family cases they deal with (dynamics, patterns, consequences)**. If VAWG is identified, the recommended course of action is establishing an interface with the formal justice system. If survivors/victims of VAWG count with the support of the customary justice actors along the process, the benefits for their safety and support will be priceless, with the **positive expansive effect** that community members will most probably follow that support provided by the community leader/customary justice actor.

- The **safety and well-being of survivors/victims** (and their children) must be prioritized in customary justice processes.
- Customary justice actors should **preserve and manage appropriately the safety and the comfort of the survivor/victim within the community-based justice processes**: dealing with the parties separately, being mindful of the power imbalances and the pressure that more likely women and girls suffer in front of a male party, ensuring that survivors/victims are accompanied of a support person of their choice, etc. An appropriate **style of communication** that is neutral, but emphatic could be crucial to foster trust within the survivor/victim, where **training** should be tailored and provided to customary justice actors for this purpose.
- Ensure that **children are not used in community-based justice processes as a tool to pressure female survivors/victims** to bargain or to waive some of their rights.
- Creating **interfaces and synergies between formal and customary/ community-based justice systems** should be a prioritized approach. Cooperation and coordination between them are key to appropriately address VAGW cases with all due safeguards.
- A good practice for customary justice actors is to link with formal justice actors so the **agreements reached in a community-based justice process are legally approved and documented**. It is an accountability way to monitor rights-based agreements and to provide safety to the survivor/victim. The figure of the 'community paralegal' could be enhanced on that regards.

- Customary/community-based justice processes should apply a **pro-gender approach embedded in the cultural and social norms they apply and use to resolve disputes**. While the preservation of community cohesion and family reputation is important, it cannot be a priority over the safety and rights of a survivor/victim of VAWG, let alone children.
- Through the creation of spaces of dialogue and training, customary justice actors should be able to progressively adopt (privately and publicly) **community sanctions against VAWG**. Such violence cannot be considered a private matter and tacitly accepted as a natural feature of gender relations.
- **Female (adults but also youth) are to be given the space as customary justice adjudicators able to deal with cases, particularly those concerning women's and girls'**. Those are to be supported and given legitimacy by male customary justice actors as allies. There are good practices on this direction worldwide, including in the Gaza Strip, that have proven to be very effective.
- Ensure **effective participation of women's and girls' in customary/community-based justice processes**. Recognize their **right to be heard and to be able to make choices in matters that concerns them directly**. They should not be represented by a person or a family member to speak about their interests unless they have chosen that voluntarily without any pressure.
- **Local women's and girls' rights organizations** are often (or could be if supported appropriately) at the forefront to ensure the interest and rights of women's and girls' within customary/community-based processes. Collaboration with them to understand existing efforts and issues of concern is key. These civil society organizations may connect women from the formal justice sector with prominent female at the communities and potential female customary justice actors/adjudicators to be in cases of VAWG.
- They also have the platforms, or are able to generate them, to **amplify women's and girl's voices and influence the visibility and the debate on gender-responsive access to justice at community level**.

- **Legal empowerment** of women and girls, particularly of survivors/victims, is as crucial at the customary/community-based justice level as it is regarding the formal justice system. However, providing this legal empowerment pertaining to customary justice systems is more challenging as they rely on social norms that are usually non-codified. It is therefore very important that this legal empowerment comes hand-by-hand with the support of the key customary justice actors as well as with the local women's and girls' rights organizations, community paralegals, etc. to build productive relationships, and hence, support appropriately the survivors/victims to navigate the processes and arrive to them with all the information they need

## WOMEN'S AND GIRLS VOICES: A WORD OF CONCLUSION

Because Gender Justice is meant to be tailored to women's and girls' needs, they need to be heard. Their voices are the basis to act upon and continue seeking better justice processes that are gender-responsive, fair, dignified, and effective for them.

- 'Our cases at the court, because we are women, are discussed in front of everyone; there is no privacy, no respect. The court environment is so uncomfortable. When I went there, I needed to pass by so many people, explaining over and over my case, some of them, specially the men, were looking at me in a very bad way. In addition, I needed to wait in the midst of a large number of persons and lawyers called out loudly our full name and your type of case, so everybody can hear your issue. I will never be back to the court'. **Woman, 36 years old.**
- 'We need justice that is adapted to our needs as women and girls; this won't happen until we have women working in the justice sector. The majority are men, and specially in high positions. They do not care about us, and they always privilege the men'. **Woman, 27 years old.**
- 'We do not have but the option to go and deal with our cases to the customary actors. It never brings a good result for us, because we end up accepting agreements that do not benefit us. But at least we do not pay, we have more privacy and the case is handled faster than in the formal system. There is not real justice for women in either system'. **Woman, 41 years old.**
- 'I know nothing about my case. I do not know where the complaint ended. No one is providing me any information about my case, even though I have asked for it many times'. **Girl, 16 years old.**
- 'I needed to give my statement to many police officers, men and women, it was very uncomfortable. They told me that I was going to go home with my family soon, but that did not happen. I feel like I am the guilty one here and this is so unfair'. **Girl, 17 years old.**



### List of participants - interviewees

- Ms. Sulafa Sawalha, Director of the Department of Family Counseling and Reform.
- Judge Mr. Abdullah Harb, Sharia Courts.
- Judge Ms. Samoud Al Dumairi, Sharia Courts.
- Colonel Imad Al-Natour, Family Protection Unit, Palestinian Civil Police
- Ms. Darren Salhieh, Head of the Family Prosecution Office.
- Judge, Magistrates Court, Ramallah (name is keeping confidential as expressly requested by the interviewee).
- Mr. Moustafa Hemeda, Customary justice actor from Beitunia, Ramallah, Al-Bireh.
- Mr. Ahmed Adarba, Customary justice actor from Jalazone, Ramallah, Al-Bireh.
- Mr. Alaa Sobh, lawyer involved in customary justice processes, Tubas Charity Society.
- Mr. Eman Mebsalet, social worker involved in customary justice processes, Tubas Charity Society.
- Ms. Halima Abu Sulb, Legal Specialist at the Palestinian Women's Association and defense lawyer before Sharia Courts in VAWG cases.
- Ms. Rose Mickael Elias, Protection Counselor at the Bethlehem Girls' Care Center.
- Focus Group Discussion was conducted with a group of 8 women, aged 25-48 years old. The places where they come from are kept confidential. All of them experienced VAWG judicial processes at Sharia Courts and within customary justice processes.
- Individual interviews were conducted with 3 girls aged between 14-17 years old. The places where they come from are kept confidential. All of them experienced VAWG judicial processes at Sharia Courts and within customary justice processes.





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