

CRIMINAL JUSTICE PRACTICE AND VIOLENCE AGAINST WOMEN

Assessment
of the Readiness
of the Ukrainian Criminal
Justice System to Implement
the Principles of the Istanbul
Convention



DCAF

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development and
the rule of law



This report was prepared by Kateryna Cherepakha (La Strada-Ukraine), Alain Laferté (DCAF), Kateryna Levchenko (La Strada-Ukraine), Maryna Legenka (La Strada-Ukraine) and Mylène Socquet-Juglard (DCAF), with editorial contribution by Heather Huhtanen (DCAF).

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ACRONYMS

CC	Criminal Code
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CSO	Civil Society Organization
CWASU	Child and Woman Abuse Studies Unit
CoE	Council of Europe
CofUAO	Code of Ukraine on Administrative Offences
DCAF	Geneva Centre for the Democratic Control of Armed Forces
DV	Domestic Violence
ECHR	European Convention on Human Rights
GfK	Growth from Knowledge
GREVIO	Group of Experts on Action against Violence against Women and Domestic Violence
IO	International Organization
IPV	Intimate Partner Violence
LSU	La Strada – Ukraine
MIA	Ministry of Internal Affairs
NP	National Police
NGO	Non-Governmental Organization
NSJU	National School of Judges of Ukraine
OSCE	Organization for Security and Co-operation in Europe
UAH	Ukrainian Hryvnia
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
VAW	Violence against Women
WHO	World Health Organization

EXECUTIVE SUMMARY

PRESENTATION OF THE ASSESSMENT REPORT

Objective

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) and La Strada-Ukraine (LSU) collaborated to assess the current practices of the Ukrainian criminal justice system in responding to violence against women (VAW) and domestic violence (DV).

The specific purpose of this assessment was to explore the readiness of the criminal justice system to implement the principles and obligations associated with the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention), signed by Ukraine in 2011 and soon to be ratified.

In this framework, this report is intended to serve as a baseline for the development of policies and projects to improve the criminal justice response to VAW/DV.

Methodology

DCAF and LSU conducted the assessment over a period of ten months, from April 2016 to February 2017. To enable a reliable and comprehensive analysis, the methodology was designed around two main priorities: documenting the actual practice of the criminal justice system related to VAW/DV, rather than gathering opinions; and collecting a broad range of qualitative and quantitative data from a wide assortment of sources.

The research strategy implied both access to existing information within the criminal justice system and access to practitioners, through a combination of research activities:

- gathering existing administrative data and statistics;
- collecting quantifiable and qualitative data through anonymous questionnaires administered to 388 police officers, 106 prosecutors, and 169 judges;

- analysing 925 court decisions issued in 2015 in administrative and criminal VAW/DV cases;
- monitoring 77 first instance court hearings related to VAW/DV cases in the district courts of Kyiv and Kharkiv;
- analysing the calls of 109 victims to the national DV hotline and assessing their satisfaction with the police response in their cases; and
- conducting 20 in-depth interviews with criminal justice system managers and practitioners, lawyers providing free legal aid, and VAW/DV experts from civil society and international organizations.

DCAF/LSU involved Ukrainian criminal justice actors in the process of designing the research methodology as well as in the assessment process. The active participation and unlimited transparency of criminal justice system institutions in Ukraine enabled DCAF/LSU to capture and document the response of this system to VAW/DV in an unprecedented way.

MAIN FINDINGS AND CONCLUSIONS

The criminal justice system response to violence against women is ineffective

While the criminal justice system is expected to ensure that perpetrators are held accountable for the offences they commit and to prevent VAW/DV through deterrent prosecution and sentencing policies, the data collected by DCAF/LSU revealed three indicators of ineffectiveness that ultimately result in virtual impunity for perpetrators:

- ***Underreporting*** – the criminal justice system fails to capture most incidents of VAW/DV.

According to victimization surveys, approximately 1,850,000 women aged 15-49 experience DV in Ukraine every year; yet, in 2015 only 83,740 cases of DV were reported to the police.

- ***Attrition*** – when VAW/DV is reported to the police, most cases are discontinued within the criminal justice system and thus fail to result in a conviction.

In 2015, 1,049 cases of rape were reported to the police, but only 61 alleged perpetrators were convicted by courts in the same period.

- **Non-deterrant sentencing practice** – actual sentencing practices do not deter perpetrators from committing VAW/DV in the first place or from becoming repeat offenders.

Among perpetrators convicted of a VAW/DV-related criminal offence that is punishable by imprisonment, only 3 in 10 are sentenced to jail time.

The ineffective response of the criminal justice sector to VAW/DV tends to result in high rates of recidivism and contributes to sustaining a social environment conducive to VAW/DV.

The data collected by DCAF/LSU suggest that the ineffective criminal justice system response to VAW/DV has three main causes:

Cause 1 – Pervasive gender stereotyping and gender bias among practitioners

There is no impervious barrier that exists between the criminal justice system and society. Gender stereotypes and negative attitudes toward victims of VAW/DV present in Ukrainian society are thus present within the criminal justice system as well. This was reflected in data collected by DCAF/LSU in the framework of this assessment, illustrating the tendency of criminal justice practitioners to:

- **Minimize the importance of VAW/DV** – 39% of the criminal justice practitioners surveyed believe DV is a private matter;
- **Blame victims for their own victimization** – 60% of the criminal justice practitioners surveyed believe victims of sexual assault are sometimes responsible for their own victimization; and
- **Approach cases of VAW/DV with scepticism and distrust of victims** – 58% of the criminal justice practitioners surveyed believe that, in most cases, DV reports made to police are false.

These attitudes, built on stereotypes, not only mitigate the willingness of police officers, prosecutors, and judges to address VAW/DV, but impact criminal justice practice generally and taint court decisions.

Cause 2– Lack of individual capacities

DCAF/LSU researchers concluded that the individual capacities of criminal justice practitioners in Ukraine to handle VAW/DV cases must be improved. The weaknesses observed in these practitioners fall into two main categories:

- **A lack of general information and knowledge related to VAW/DV.**
Criminal justice practitioners have little information on the institutional environment available to support victims of VAW/DV and tend to misunderstand the dynamics of these crimes; and
- **A lack of technical skills necessary to handle VAW/DV cases in an effective and efficient way.**

Criminal justice practitioners particularly demonstrate a poor capacity to interact with victims of VAW/DV in a way that avoids secondarily victimizing them, and to engage in multi-agency cooperation.

Cause 3– Insufficient institutional capacities

The current institutional environment does not foster conditions that enable criminal justice practitioners to handle VAW/DV cases in an effective and efficient way. More specifically, the data collected by DCAF/LSU highlights:

- **A need to improve the availability and standardization of training offered to practitioners.**

The training currently offered is not proportional to the needs of criminal justice professionals, who depend on ad-hoc projects or initiatives, and has limited impact on actual practice;

- **The need to develop guidelines and procedures.**

A coordinated, effective, and efficient response by criminal justice actors to VAW/DV requires a framework for individual behaviour and practice; and

- **The need to develop human resources and infrastructure within the criminal justice system.**

Understaffing and a lack of infrastructure creates an institutional environment that actually inhibits criminal justice practitioners from delivering victim-centred services. This can make reporting VAW/DV incidents traumatic for victims and prevent them from pursuing justice.

Transforming criminal justice practice and paving the way for implementation of the Istanbul Convention

To improve its response to VAW/DV, the Ukrainian criminal justice system must initiate a transformation that tackles weaknesses at both the individual and institutional levels by:

- ***Strengthening individuals*** by developing their technical competence and confronting their gender bias and gender stereotypes;
- ***Strengthening institutions*** by developing policy and practice frameworks (procedures, guidance materials), training and educational requirements and opportunities, and organizational structures (staffing, infrastructure).

With this in mind, DCAF/LSU has laid out 17 recommendations aimed at improving the criminal justice response to VAW/DV in Ukraine, in the context of the upcoming ratification of the Istanbul Convention. These recommendations are meant to prepare the Ukrainian criminal justice system to comply with the main principles of the Istanbul Convention (due diligence, a victim-centred approach, and multi-agency cooperation) translated into its main areas of intervention (prevention of VAW/DV, protection of victims, and prosecution of perpetrators).

INTRODUCTION: PAVING THE WAY FOR IMPLEMENTATION OF THE ISTANBUL CONVENTION

From April 2016 to February 2017, DCAF and La Strada-Ukraine (LSU) collaborated to assess the response of the Ukrainian criminal justice system to violence against women (VAW) and domestic violence (DV). In the context of the upcoming ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence, this assessment specifically explored the readiness of the Ukrainian criminal justice system to comply with the principles and obligations associated with the Convention (see chapter 1).¹

The findings presented in this report were gathered through a combination of qualitative and quantitative research methods, including: the collection and analysis of administrative data and statistics; the monitoring of court hearings; examination of court decisions; questionnaires targeting police officers, prosecutors, and judges; in-depth interviews; and analysis of calls made to the national DV hotline (see chapter 2).

Results of this research revealed that the Ukrainian criminal justice system is not yet prepared for the implementation of the Istanbul Convention. Indeed, the current criminal justice system response to VAW/DV appears to be ineffective. Instead of ensuring the accountability of perpetrators, it contributes to reinforcing a social context of virtual impunity for these offences (see chapter 3).

In 2016, for example, 1,049 complaints of rape were reported to police nationwide; yet, in the same reporting period, only 61 perpetrators were sentenced for this offence (art. 152 of the CC) by the courts.²

Virtual impunity for VAW is not unique to Ukraine and is a challenge shared by countries across Europe. For instance, the conviction rate in rape cases in Belgium is estimated at just 4%, and in England it is 7%.³ This is why due diligence (the obligation for states parties to develop all necessary means to effectively address VAW/DV) is among the core principles of the Istanbul Convention. To comply with this principle, Ukraine must address the ineffectiveness of its criminal justice system response to these crimes.

¹ Ukraine signed the Istanbul Convention in 2011 with a commitment to ratify it.

² National Police of Ukraine.

³ Jo Lovett and Liz Kelly, *Different systems, similar outcomes? Tracking attrition in reported rape cases across Europe* (London: CWASU, 2009).

Data collected in the framework of the DCAF/LSU assessment led researchers to conclude that this ineffectiveness is the consequence of three main categories of weakness:

- Pervasive gender-based stereotypes and gender bias among police, prosecutors, and judges (see chapter 4);
- A lack of individual capacities (knowledge and understanding of VAW/DV, and technical skills) to handle VAW/DV cases (see chapter 5); and
- Limited institutional capacities (guidelines, procedures, organizational structures) to respond to VAW/DV (see chapter 6).

Still, these gaps between current criminal justice practice and the requirements of the Istanbul Convention should be seen in the context of the demonstrated willingness of decision makers within the criminal justice system to tackle the weaknesses mentioned above. Criminal justice institutions in Ukraine engaged in the DCAF/LSU assessment process from the very early stages and have been motivated to improve criminal justice responses to VAW/DV. They validated the research objectives and methodology, and facilitated and participated in the implementation of research activities. But most importantly, they have demonstrated genuine interest in the results of the assessment, in order to inform the development of their internal policies; in particular, training and educational policies.

This report has been made with and for the criminal justice system. It concludes with a series of recommendations intended to serve as a baseline for the design of policies and projects aimed at facilitating the implementation of the Istanbul Convention and improving the response of the criminal justice system to VAW/DV.

CHAPTER 1. THE ISTANBUL CONVENTION AS A GAME CHANGER

"One of the critical problems we have is the ineffectiveness of the current legislation, which fails to protect people who have suffered [from DV]. The legislation has no impact on abusers either.... To consider DV as an administrative offence is definitely not enough. This is why it is very important that the Verkhovna Rada.... adopts the draft law on the ratification of the Istanbul Convention."

Interview with a VAW/DV expert from civil society

Although knowledge of the Istanbul Convention is inconsistent among criminal justice practitioners, those who are most familiar with the instrument reckon it will constitute a game changer in their area of work and in the way in which the criminal justice sector responds to violence against women (VAW) and domestic violence (DV).

Built upon existing international legal frameworks and the jurisprudence of international courts, the Convention on preventing and combating violence against women and domestic violence was adopted by the Council of Europe in 2011 and has come into force in 22 countries since 2014.⁴ It is the first pan-European and legally-binding instrument aimed at tackling all types of VAW, including DV, and is unique in its approach. It addresses VAW/DV comprehensively, engaging legal and practical elements to improve both the de jure and de facto response of states parties to VAW/DV.

Ukraine signed the Convention in 2011 and has started the ratification process. Although the timeline for completion of this process is still unclear at the time of this writing, the Istanbul Convention has already had an impact in the criminal justice system in Ukraine. All criminal justice institutions should be prepared to work within the framework of these new rules.

A. Main principles of the Convention

The Istanbul Convention is articulated around three main principles: due diligence, a victim-centred approach, and multi-agency coordination.

⁴ As of 9 January 2017.

Due diligence

Article 5 of the Convention introduces the due diligence principle, under which states parties are held accountable for violence against women perpetrated by both state and non-state actors.⁵ Although perpetrators do bear responsibility for the offences they commit, states parties are obliged to fully address all forms of VAW with the aim of eliminating them through active implementation of prevention, protection, and prosecution policies.

The due diligence principle is found in other core international human rights instruments as well, such as the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and its optional protocol, and the European Convention on Human Rights (ECHR). Ukraine has ratified both these instruments and is thus already bound by the due diligence principle.⁶

In a groundbreaking judgement from 2009, the European Court of Human Rights engaged the responsibility of Turkey in this regard, because state authorities had demonstrated insufficient commitment to take appropriate action within the scope of their powers to address domestic violence. The Turkish government was ordered to pay a fine of EUR 30,000 in non-pecuniary damages to the applicant, Ms Opuz, whose mother was killed in the context of DV.⁷

A victim-centred approach

For states to ensure the efficiency and effectiveness of responses to VAW/DV, the Istanbul Convention puts forth an approach that is centred on victims.

All principles and areas of intervention contained in the Convention thus revolve around the rights and needs of victims, which the criminal justice system is held to guaranteeing and satisfying. To that effect, the Istanbul Convention urges states to reform these systems through the training and education of law enforcement and legal professionals (in particular to avoid secondary victimization) and by increasing the number and quality of support services.

⁵ See Article 5, State obligations and due diligence: “Parties shall refrain from engaging in any act of violence against women and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this obligation. Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors.”

⁶ The CEDAW optional protocol recognizes the competence of the CEDAW Committee to receive and consider complaints from individuals or groups within its jurisdiction. Ukraine ratified the ECHR in 1997.

⁷ See: European Court of Human Rights, Judgement, Opuzv Turkey, No. 33401/02, 9 June 2009.

Multi-agency coordination (integrated policies)

The Istanbul Convention also obliges states parties to develop and implement “comprehensive and coordinated policies” that offer “a holistic response” to VAW/DV.⁸

Coordination efforts should include the adoption of guidelines and protocols standardized across agencies, as well as trainings on their use and benefits. The multi-agency approach is expected to be implemented at national, regional, and local levels, and to include civil society organizations (CSOs) active in combating VAW/DV.

B. Three areas of intervention

These three main principles of the Istanbul Convention translate into three main policy areas. Referred to as the three Ps, these objectives – prevention, protection, and prosecution – oblige states to develop and implement different concrete measures by which to address VAW/DV.⁹

Prevention

The Preamble of the Istanbul Convention highlights the structural nature of VAW/DV, which is rooted in gender inequality and the imbalance of power between women and men. Preventing DV and VAW thus implies challenging gender stereotypes, harmful “traditional” practices, and discrimination against women.

States and non-state actors are urged to take the adequate steps necessary to eliminate elements that create social environments conducive to VAW/DV. As such, state bodies are expected to take the lead in VAW/DV prevention efforts, in particular when it comes to training the professionals who handle these cases and are in regular contact with victims, developing treatment programmes for perpetrators, and raising awareness in order to confront gender stereotypes and promote a society free of or unwelcome to discrimination.¹⁰

Protection

When prevention has failed and VAW/DV incidents do happen, the Convention compels states parties to ensure the protection of victims and provide them with support services to help facilitate their recovery. Beyond developing

⁸ See Chapter II of the Convention.

⁹ See Chapter III of the Convention.

¹⁰ See Chapter IV of the Convention.

specialized services, states should work to make certain that general services also have the capacity to meet the specific needs of VAW/DV victims.

Some examples of protection measures set forth in the Convention include easy access for victims to information on available support services, the introduction of emergency barring orders, shelters available in sufficient numbers and in adequate geographical distribution, and the introduction of risk assessment procedures to avoid the potential escalation of violence.

Prosecution

To ensure the accountability of perpetrators, the Istanbul Convention envisions the criminalization of all forms of violence against women – i.e., domestic violence (including psychological violence), sexual violence, sexual harassment, stalking, female genital mutilation, forced marriage, forced abortion, and forced sterilization.

Moreover, states parties to the Convention are obliged to take a range of measures to guarantee the effective investigation of any allegation of VAW/DV. This includes the possibility of prosecuting offenders in cases involving more severe forms of violence without a report or complaint filed by the victim; a prohibition on mandatory alternative dispute resolution mechanisms; and the obligation to issue “effective, proportionate, and dissuasive” sentences¹¹. The Convention also lists circumstances that judicial professionals must consider as aggravating factors in the context of prosecution.¹²

On top of that, states are to ensure that gender stereotypes do not taint judicial decisions.

C. Implications for the Ukrainian criminal justice system

The principles and obligations of the Istanbul Convention will have significant consequences for the Ukrainian criminal justice system. Thus, Draft Law No. 4952, adopted at the first reading by the Ukrainian Parliament in November 2016, is aimed at enabling Ukraine to meet some of the Convention’s requirements.¹³ Although Ukraine has not yet ratified the Convention, this Draft Law introduces a preliminary transformation to the legal framework (the Criminal Code and Criminal Procedural Code) addressing VAW/DV.

¹¹ See article 45 of the Convention.

¹² See Chapter VI of the Convention.

¹³ Verkhovna Rada, Draft Law No. 4952 “on amendments to some laws of Ukraine in connection with ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence.” More information available (in Ukrainian) at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59648 (accessed 8 March 2017).

Still, this transformation needs to be associated with policy and capacity developments in order to enable actual improvements in the criminal justice response to VAW/DV. A combination of legislative and capacity developments should ultimately result in the emergence of a culture of accountability to replace the current culture of impunity.

Transformation of the legal framework

"If domestic violence was considered not an administrative offence but a criminal offence, it... would be a solution to a number of problems."

Interview with a judge

Since 2002, DV has been charged in Ukraine as an administrative offence.¹⁴ This designation has contributed to creating a climate of impunity and represents a significant gap between the requirements of the Convention and Ukrainian law. Draft Law No. 4952 is meant to close this gap by criminalizing DV (including psychological violence) and all other forms of VAW. It will also set more dissuasive sentencing guidelines for DV (imprisonment for up to five years), intended to deter perpetrators from committing violence for the first time and to prevent repeat offences.

Moreover, the Draft Law introduces a series of restrictive measures to ensure adequate protection of victims and effectively prevent the escalation of violence. Such measures include restrictions on communication with children, the prohibition of communication with the victim, an obligation to maintain a certain distance from the victim, and mandatory intervention programmes for perpetrators. Connected with these measures, a risk assessment procedure is also foreseen, whereby criminal justice professionals would assess the risks of repeat offence and escalating violence, including the risk of lethality.

Finally, Draft Law No. 4952 intends to introduce a series of new aggravating factors into the criminal code, such as offences based on sexual identity, offences committed in the presence of a minor, and offences committed against a current or former spouse. This last reform will mean that rape against a spouse will be more severely sentenced than rape perpetrated against any other victim.¹⁵

These planned legislative developments demonstrate the willingness of Ukraine to align with the requirements of the Istanbul Convention. This is a first

¹⁴ Before 2002, domestic violence as such was not recognized as a unique offence in Ukraine.

¹⁵ Though the draft law was adopted in a first reading by the Parliament in November 2016, a final version may reflect amendments subsequently introduced.

step in addressing limitations in the institutional capacity to respond to VAW/DV. However, changes in the legal framework will not be effective without a transformation in practice and increased operational capacities.

Developing capacities at the operational level

There is no doubt that it is necessary to address VAW/DV through legislation in Ukraine. Should Parliament confirm the adoption of the Draft Law at a second reading, the developments it introduces will serve as useful weapons with which to combat VAW/DV. However, if these developments are not met by increased capacities at the operational level, they will be as ineffective as guns without ammunition.

"Judges are also not ready to handle [VAW and DV] cases. One of the important problems is a lack of psychological knowledge. Judges are not prepared to run court hearings and speak to traumatized persons. Very often they... do not consider such cases important. They do not pay enough attention and respect to victims. I'm not saying that all judges are like this, but I do think that judges, prosecutors, and law enforcement bodies... do not have basic psychological knowledge. This is a weak point in our struggle for the rights of women victims of violence."

Interview with a VAW/DV expert from civil society

The DCAF/LSU team has identified seven core capacities that should be developed within the criminal justice system of Ukraine to respond to VAW/DV in a way that is consistent with the principles and areas of intervention laid out in the Istanbul Convention. These are the capacity to:

- address all forms of VAW cited in the Convention (DV, sexual violence including rape, sexual harassment, stalking, forced marriage, forced abortion, forced sterilization, and female genital mutilation);
- manage risk and victim safety;
- ensure and enforce the accountability of perpetrators (through sentencing, protection orders, and treatment programmes);
- deliver victim-centred and gender-sensitive services by qualified and trained professionals;
- ensure inter-agency coordination and information sharing (at the national, regional, and local levels);
- investigate all VAW/DV cases (by interviewing victims/witnesses/ perpetrators, collecting and preserving evidence, and formulating grounds on which to bring charges); and
- monitor VAW/DV statistics and evaluate criminal justice sector responses to VAW/DV.

This report, particularly chapters five and six, will provide evidence that the current capacities of the criminal justice system in Ukraine are weak in these areas. Therefore, criminal justice system and government actors should work to develop these capacities at the institutional level (through procedures, policies, guidelines, protocols, equipment, etc.) and at the individual level (knowledge, qualifications, skills, attitudes, behaviour, etc.).

Replacing a culture of impunity with a culture of accountability

To address VAW/DV, one of the main challenges for the criminal justice system and for the whole of Ukrainian society is to transform a culture of impunity into a culture of accountability. In this sense, accountability refers to that of perpetrators, but also of state and criminal justice system institutions.

According to the Istanbul Convention and its principle of due diligence, perpetrators of VAW/DV should be held accountable for their offences, and, in the meanwhile, the state should be held accountable for taking all necessary measures to address VAW/DV. Thus, a twofold mechanism has been established to monitor actual implementation of the Convention by states parties. This monitoring involves two different bodies – an independent expert body, the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), the mandate of which is to monitor implementation of the Convention; and a political body, the Committee of the Parties, which follows up on GREVIO conclusions and adopts recommendations to states parties.

The monitoring procedure involves regular, country-by-country evaluations and also a special inquiry process, which may be initiated by GREVIO when there is reliable indication that action is required to prevent a large-scale or serious violation of the Convention.

In implementing the Convention, Ukrainian criminal justice system institutions will report on efforts made at the national and local levels to improve their response to VAW/ DV and, more specifically, to prevent violence from happening, to protect victims, and to ensure the prosecution of perpetrators. Through these reports, submitted by Ukraine to the Council of Europe in the framework of this monitoring procedure, criminal justice authorities will have to demonstrate and document initiatives to: investigate and carry out judicial proceedings related to VAW/DV without undue delay, enforce a dissuasive sentencing policy, design and deliver a large-scale training scheme, develop internal procedures and protocols, place the interests of victims at the centre of all policies and procedures, strengthen multi-agency cooperation, disseminate information on available support services for victims, and establish monitoring procedures to assess responses to VAW/DV.

CHAPTER 2. RESEARCH METHODOLOGY

The research methodology for this assessment was driven by two priorities. First, to document actual criminal justice practices in the field of VAW/DV, and second, to collect both qualitative and quantitative data from a wide range of sources to facilitate a reliable and comprehensive analysis. The process of information collection itself provided several key indications regarding the readiness of the Ukrainian criminal justice system to implement the Istanbul Convention.

A. A wide scope of inquiry for reliable and comprehensive analysis

The strategy of DCAF/LSU was to apply a wide scope of inquiry in combination with qualitative and quantitative methodology, to enable the most reliable and comprehensive analysis of the criminal justice response to VAW/DV.

The collection of administrative data and statistics

Research began with the collection of administrative data and statistics related to VAW/DV, which provided a quantitative overview of the prevalence of VAW/DV and the response of the criminal justice system in Ukraine. Indeed, the proportion of VAW/DV cases reported to police out of the total estimated cases, and the conviction rate once cases enter the justice chain, are both good indicators by which to assess criminal justice responses to VAW/DV.

To access this information, DCAF/LSU made formal and/or informal requests to relevant institutions, including the Ministry of Interior, the National Police, the State Court Administration, the General Prosecutor's Office, the Ministry of Social Policy, the Office of the Ombudsperson, and the Coordinating Centre for Legal Aid. The UNFPA also provided the latest available victimization survey, measuring the prevalence of VAW/DV in Ukraine.

Questionnaires to police officers, prosecutors, and judges

DCAF/LSU drafted three different questionnaires, targeted to police officers, prosecutors, and judges.

The objective was to capture the opinions and experiences of these legal professionals, and assess their capacities, related to VAW/DV. These questionnaires were amended and validated by the National Police, the National Prosecution Academy of Ukraine, and the National School of Judges, respectively; and were disseminated to criminal justice practitioners through these partner institutions.

Questionnaires were primarily intended to capture quantifiable data. Most questions allowed respondents to choose one or several answers from a set of choices. However, some questions did allow for qualitative responses, offering respondents the option to provide examples or explanations. A limited number of questions were entirely open-ended.

Questionnaires were designed to ensure the anonymity of respondents, who were not required to provide any identifying information.

In total, 663 questionnaires were collected from 388 police officers, 106 prosecutors, and 169 judges. Combined with other qualitative and quantitative data collected through the assessment process, this relatively high number of respondents allowed researchers to better contextualize the opinions, experiences, and capacities of criminal justice practitioners. Still, this data was not meant to be and is not presented as statistically significant.

Analysis of court decisions

Researchers analysed 925 court decisions from 2015, issued in VAW/DV cases. Among these decisions, 300 dealt with DV offences qualified as administrative, and 625 dealt with VAW or DV offences qualified as criminal.

While the questionnaire sent to judges was meant to capture their opinions, experiences, and capacities from a quantitative point of view, the analysis of court decisions was intended to provide a more qualitative perspective on these same factors. In fact, DCAF/LSU considered this the most effective way to understand the legal reasoning behind court decisions, examine the evaluation of mitigating and aggravating factors, and monitor sentencing practices.

The exclusive source of information for this analysis was the state registry of court decisions, an open database that allows the general public to access court documents.¹⁶ However, most court decisions related to rape cases are

¹⁶ State Court of Ukraine, “Єдиний державний реєстр судових рішень [Unified State Register of Court Decisions],” <http://www.reyestr.court.gov.ua/> (accessed 13 March 2017).

not available to the general public. This limited the capacity of researchers to undertake an extensive analysis of decisions in this specific area.

Monitoring of court hearings

DCAF/LSU monitored 77 first instance court hearings related to VAW/DV (74 administrative DV offences, 2 criminal DV offences, and 1 rape) in the district courts of Kyiv and Kharkiv.

The observation of court hearings helped researchers assess criminal justice practice and document how law and procedure are implemented in reality by criminal justice professionals. This approach was a means to accessing the criminal justice system at work, without any filter.

The specific aims of observing court hearings were twofold. First, to assess the extent to which the court environment is victim-oriented and contributes to ensuring the safety of victims. Second, to analyse the interactions between court professionals, victims, and perpetrators in order to identify any potential gender bias.

Researchers randomly selected the cases to be monitored from the schedule of court hearings (open to the general public, by law), which is provided by district courts online. Only two criteria were used to make selections from among the hearings: a connection to VAW/DV, according to the short description of the case in the schedule, and the availability of researchers at the time of the hearing.

Partly inspired by an OSCE manual on trial monitoring, DCAF/LSU designed a court hearing observation form to facilitate data collection.¹⁷ This form, articulated around questions on the court environment and court interactions, was completed by the 18 monitors who implemented this activity. These monitors were trained by DCAF/LSU on how to fill in the observation form before starting their research and were part of a debriefing meeting after observing their first series of court hearings to discuss potential methodological or logistical issues, so that any necessary adjustments could be made.

Analysis of victims' calls to the national DV hotline

The development of victim-centred court and criminal justice procedures is one of the main principles of the Istanbul Convention. With this in mind, DCAF/LSU also assessed the criminal justice response to VAW/DV from the perspective of victims.

¹⁷ O. Banchuk, R. Kuibida and M. Sereda, Моніторинг судового процесу: посібник для громадських об'єднань (OSCE, 2015). Available at: <http://www.osce.org/ukraine/233521> (accessed 13 March 2017).

LSU runs the national wide toll-free hotline on prevention of domestic violence, human trafficking and gender-based discrimination.¹⁸ This hotline has been available in Ukraine since 1997 and since 2004 formally on DV. It provides victims of DV, human trafficking, and gender-based discrimination with information along with legal and psychological support. In 2016, of 38,547 calls received, 90% were related to domestic violence.

In the framework of this analysis, DCAF/LSU drafted a brief questionnaire to assess the satisfaction of DV victims regarding the police response in their cases, administered to some callers to the hotline. In total, feedback from 109 victims of DV was collected over a 2-month period. This is a small number of respondents compared to the total volume of calls received by the hotline; but this is due to ethical considerations. The absolute priority of DCAF/LSU was to avoid any interference between the questionnaire and the primary objective of providing victims with information and support. The questionnaire was only introduced when it was clear that asking additional questions was both appropriate and relevant.

The results of this questionnaire are therefore only indicative and should be combined, for reliable analysis, with other sources of information.

In-depth interviews

Finally, researchers conducted 20 in-depth interviews with managers and practitioners within the criminal justice system, legal practitioners providing free legal aid services, and VAW/DV experts of international organizations and civil society.

These interviews were held at the end of the assessment process, when other research had been or was nearly completed. The objective was to engage in open discussion on the preliminary results of the research, in order to gain a deeper understanding of the criminal justice practices captured through research activities.

Interviews were focused around a series of questions aimed at guiding and facilitating the conversation and loosely based on preliminary findings. The length of interviews varied, from 15 to 40 minutes, with an average of approximately 30 minutes. When permitted by subjects, interviews were tape recorded for the purposes of later analysis and to ensure the reliability of the information collected.

¹⁸ In 2016, the hotline operated with financial support from the UNFPA, the German Ministry of Foreign Affairs, DiakonieKatastrophenhilfe, the Norwegian Ministry of Foreign Affairs, IOM, Avon, the OPEN-project, ICCO/KerkinActie, the British Embassy in Ukraine, and the Stabilization Support Service.

Table 1. Synthesis of research methodology

Mode of Inquiry	Objective(s)	Scope	Source(s) of Information
Collection of statistics: Collection of available administrative data and statistics related to VAW/DV.	Assess the criminal justice system response to VAW/DV from a quantitative perspective.	National	Ministry of the Interior; National Police, the State Court Administration; Ministry of Social Policy; Coordinating Centre for Legal Aid Providing; General Prosecutor's Office; the Office of the Ombudsperson; the UNFPA.
Analysis of court decisions: Qualitative analysis of publicly available court decisions related to VAW/DV, issued in 2015.	Understand the legal reasoning behind court decisions, how mitigating and aggravating factors are evaluated, and sentencing practices.	925 court decisions issued in 2015, nationwide.	Unified State Register of Court Decisions
Monitoring of court hearings: Direct observation of first instance court hearings related to VAW/DV cases.	Assess the extent to which the court environment is victim-centred and ensures the safety of victims; and identify any potential gender-bias in interactions between the court, victims, and perpetrators.	77 hearings in Kyiv and Kharkiv, from August 2016 to February 2017.	N/A
Questionnaire to police, prosecutors, and judges: Dissemination of a self-reporting questionnaire among criminal justice practitioners.	Understand the opinions, experiences, and capacities of criminal justice practitioners related to VAW/DV.	663 questionnaires collected from 388 police officers, 106 prosecutors, and 169 judges nationwide.	National Police; National Prosecution Academy of Ukraine; National School of Judges.

Mode of Inquiry	Objective(s)	Scope	Source(s) of Information
Questionnaire for callers to national DV hotline	Evaluate the satisfaction of victims regarding police response to VAW/DV.	109 respondents, nationwide, from August to October 2016.	LSU national toll-free hotline on prevention of DV, human trafficking and gender-based discrimination.
In-depth interviews	Deepen and contextualize preliminary results from other research activities.	20 interviewees, nationwide.	National Police; National Prosecution Academy of Ukraine; National School of Judges; sitting judges; Center for providing free secondary legal aid; State Department for Execution of Punishment; international organizations and civil society representatives.

B. Strengths and weaknesses as demonstrated through the information collection process itself

The process of collecting data was itself indicative of the readiness of the criminal justice system in Ukraine to implement the principles and obligations associated with the Istanbul Convention. This process demonstrated that the criminal justice system lacks capacities to comply with some provisions of the Convention, in particular those related to the delivery of victim-centred services and the monitoring of administrative data/statistics.

However, efforts made by all institutions to facilitate access to information, combined with their eagerness to follow up on the results of this assessment, have proven the willingness of criminal justice professionals to address the weaknesses raised by this research. And this willingness can be considered the first step toward actually improving the responses of the Ukrainian criminal justice system to VAW/DV.

Transparency and a willingness to improve criminal justice responses to VAW/DV

The research methodology for this assessment implied access to both existing information and to practitioners (police officers, prosecutors, judges); and the transparency and active participation of criminal justice system institutions enabled this to come to fruition. In fact, throughout the entire assessment process, criminal justice institutions facilitated access for researchers, demonstrated transparency, and responded positively to most demands of DCAF/LSU.

Although national legislation and court regulations ensure that court hearings are open to the general public, researchers had anticipated that court professionals may show explicit or implicit signs that they were reluctant to be monitored. Instead, monitors reported being welcomed in court, including by judges.

"Both judges and assistants were rather positive about having monitors present at the court hearing. No obstacle was met while accessing the courtrooms."

Report from a monitor who observed court hearings in Kyiv

In addition, during in-depth interviews and when completing questionnaires, criminal justice practitioners did not show any signs of self-censorship. On the contrary, there were several occasions when the experiences and opinions shared by respondents were notably unfiltered.

"What surprised me in the questionnaire results? There are some answers... [that] are not socially acceptable... I thought people would not answer so openly. I thought they would not share what they really think about VAW/DV. I was surprised with their answers. They really answered with what they think!"

Staff member, criminal justice institution,
after viewing results of questionnaires given
to criminal justice practitioners

In order to lay the groundwork for such transparency, the researchers involved criminal justice institutions in the design of the research methodology and its implementation. Researchers sought this involvement through two different channels. First, DCAF/LSU held bilateral meetings with criminal justice institutions to discuss issues related to their respective responsibilities. Second, DCAF/LSU organized a collective meeting at which all stakeholders involved in

the assessment provided an overview of the process and collectively validated the research methodology.¹⁹

During these early meetings, criminal justice institutions shared their willingness to cooperate in the assessment in order to inform their internal policies. From the very first stage of the research, these institutions acknowledged the ineffectiveness and inefficiency of collective responses to VAW/DV in Ukraine and demonstrated genuine interest in the initiative along with an eagerness to know the research results. This assessment was viewed by these institutions as a tool by which to more specifically identify their respective weaknesses, so that they can develop policies that improve their response to VAW/DV.

Just one example of this in action occurred in 2016 at the National School of Judges of Ukraine (NSJU), which established an internal working group to develop a training curriculum on DV. They requested technical assistance from DCAF/LSU to reach this objective and, with the commitment of the NSJU and the working group members, defined the following transformative objective: to develop a two-day DV training curriculum for judges aimed at fostering their willingness and ability to improve their practice, and thus improve the judicial response to domestic violence in Ukraine. At the time of this writing, work on this curriculum is in progress.²⁰

The National Police and the National Prosecution Academy of Ukraine have also shared their intention to follow up on assessment results. This willingness by criminal justice actors to improve responses to VAW/DV is one of the key findings of the assessment process. It is as important as any weaknesses this research unveiled.

Some challenges to overcome

While the information collection process provided evidence of transparency within the criminal justice system, it also revealed major weaknesses.

The initial objective in monitoring court hearings was to assess interactions between court professionals, victims, and perpetrators and to identify potential gender bias. Researchers were unable to collect reliable evidence of gender bias in court interactions, though. This is in part because 64 of the 77 cases monitored were rescheduled due to the absence of the alleged perpetrator, and in part because victims participated in hearings in less than one quarter of the cases observed.

¹⁹ This collective meeting was held in Kyiv on 26 May 2016. It gathered representatives of the National Police, the National School of Judges, legal aid services, the Ministry of Social Policy, the Kharkiv University of Internal Affairs, the OSCE, the UNFPA, and UN Women.

²⁰ As of March 2017.

The fact that so many alleged perpetrators do not present themselves in court demonstrates the failure of the criminal justice system to ensure the accountability of those who commit DV. Additionally, the non-representation of DV victims during hearings reveals that, far from being victim-centred, justice procedures tend to disregard them. The combination of these two elements suggests that domestic violence cases and domestic violence victims are not a priority of the criminal justice system.

Among the 77 cases monitored by researchers, 74 were administrative offences. According to current legislation, the presence of a victim during a court hearing is not compulsory in DV cases that qualify as administrative offences.²¹ This leaves it up to the judge to decide if a victim should be present or not, based on his/her assessment of the conditions of the case. In practice, judges consider it unnecessary in most of the cases to hear from the victim before adjudicating.

The upcoming criminalization of DV will mean that victims of VAW/DV are invited to court hearings and heard on the record by default.²² However, this change alone will not ensure the victim-centred approach stipulated by the Istanbul Convention. Indeed, it is unlikely that judges who now view the presence of DV victims in court hearings as unnecessary will view the needs and concerns of victims as a priority once the legislation has changed.

The information collection process also demonstrated the weak capacity of criminal justice institutions in Ukraine to systematically monitor VAW/DV-related administrative data. And, a lack of gender-disaggregated data is problematic.

The Council of Europe has previously noted the difficulties faced by Ukrainian state bodies to register and collect administrative data related to VAW/DV, and in particular, gender-disaggregated data.²³ Yet, this assessment found the most striking issue in this context was not related to the (un)availability of data but to a neglect of its exploitation. In other words, some of the most relevant data on DV and VAW is dormant and unexploited; whereas, according to the Istanbul Convention, data collection is meant to facilitate regular monitoring that informs policy developments.

²¹ In accordance with Article 268 of the Code of Ukraine on Administrative Offenses, the hearings of DV cases should be held in the presence of the defendant. No other stakeholder is mentioned.

²² See more on Draft Law No. 4952 in chapter 1.

²³ Iryna Kalachova, The Current System for Collecting and Analysing Data Regarding Violence against Women and Domestic Violence in Ukraine (Kyiv: Council of Europe, 2015).

This lack of exploitation of data is reinforced by the fact that there is no clear understanding among institutions regarding the data that exists and where it can be accessed. For example, on several occasions during meetings and interviews, DCAF/LSU researchers were told there was no victimization survey measuring the prevalence of VAW/DV nationwide, despite the fact that the UNFPA issued a very comprehensive victimization survey in 2014.²⁴ Data of this nature, some of which is detailed in chapter 3, is available but underexploited, and must be monitored and analysed to shape policy developments aimed at addressing VAW/DV.

²⁴ Inna Volosevych, et al., The Prevalence of Violence Against Women and Girls(Kyiv: UNFPA, 2014). Available at: <http://www.unfpa.org.ua/eng/publications/470.html> (accessed 13 March 2017).

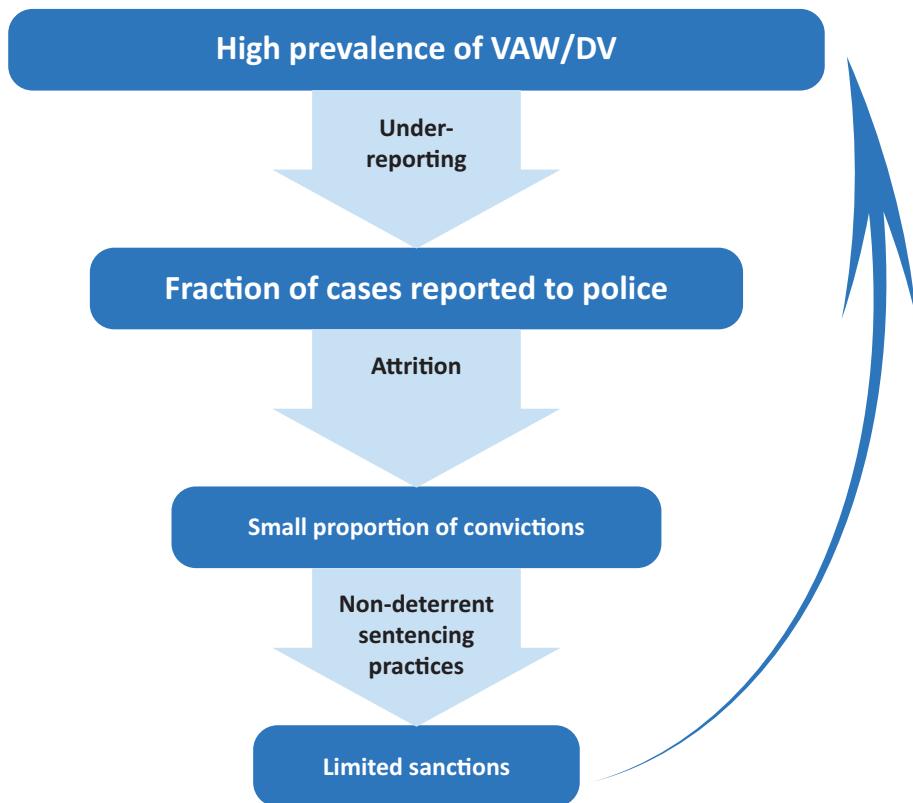
CHAPTER 3. THE INEFFECTIVE RESPONSE OF THE CRIMINAL JUSTICE SYSTEM TO VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

Administrative data and statistics related to VAW/DV collected in the framework of this assessment indicate that the criminal justice response to VAW/DV in Ukraine is ineffective.

While the criminal justice system is expected to ensure that perpetrators are held accountable for the offences they commit, and to prevent VAW/DV through deterrent prosecution and sentencing policies, the data revealed three indicators of ineffectiveness, ultimately resulting in virtual impunity for perpetrators. The first of these indicators is the small fraction of VAW/DV incidents that are even reported to police; the second is the small proportion of reported cases that result in a conviction; and the third is the disproportionate sentencing applied to convicted perpetrators, which does not act as a deterrent.

This three-link chain of ineffectiveness contributes to an environment that sustains high rates of VAW/DV and in which recidivism prevails.

Figure 1. The three indicators of ineffectiveness in the criminal justice system response to VAW/DV



A. Underreporting of violence against women and domestic violence

A comparison of the administrative data on VAW/DV (reflecting the number of cases that enter the justice chain) and available victimization surveys (indicating the prevalence of VAW/DV in Ukraine) reveals a significant discrepancy, which indicates underreporting. Indeed, only a fraction of VAW/DV incidents in Ukraine are reported to the police.

Underreporting as an indication of the ineffectiveness of the criminal justice system

In 2014, the UNFPA issued the results of a victimization survey for Ukraine. The survey was conducted by GfK Ukraine through face-to-face interviews with a representative sample of 1,606 women from across the country. The results indicate that 21.6% of women aged 15-49 have experienced physical, psychological, and/or sexual violence from a current or former partner in their lifetime; and 7.9% reported having experienced sexual violence from a partner or a non-partner. The survey also showed that every sixth woman in Ukraine has experienced at least one form of intimate partner violence within the last 12 months.²⁵

These findings are consistent with other victimization surveys conducted in the region. A recent WHO review of available data, for example, indicates that 26% of women in Eastern Europe have experienced physical and/or sexual violence by an intimate partner or sexual violence by a non-partner.²⁶

Extrapolated to the national population, the UNFPA results mean that, in a given year in Ukraine, approximately 1.85 million women aged 15-49 experience physical, psychological, and/or sexual violence from their partner, and approximately 880,000 women of those ages have already experienced sexual violence from a partner or a non-partner at least once in their lifetime.

Yet, the criminal justice system fails to capture most of these incidents, with only a fraction reported to the police. Indeed, in 2015, the Ministry of Internal Affairs registered just 83,740 administrative offences related to domestic violence (including those reported by men).²⁷ This number is far below the number of DV incidents estimated by victimization surveys to have been committed against women in that time period.

Similarly, 1,049 cases of rape were reported to the police in 2016; far fewer than the number of actual rapes occurring in the country every year.²⁸

²⁵ Inna Volosevych, et al., The Prevalence of Violence Against Women and Girls (Kyiv: UNFPA, 2014).

²⁶ WHO Department of Reproductive Health and Research, Global and regional estimates on violence against women: prevalence and health effect of intimate partner violence and non-partner sexual violence (World Health Organization, 2013), Appendix 2, page 47. Available at: <http://who.int/reproductivehealth/publications/violence/9789241564625/en> (accessed 13 March 2017).

²⁷ Art. 173.2 of Code of Ukraine of Administrative Offenses. The Ministry did not provide gender-disaggregated data.

²⁸ Under Art.152 of the Criminal Code.

Table 2. Only a fraction of VAW/DV is reported to the police

Domestic Violence		
Proportion of women aged 15-49 who have experienced physical, psychological, or sexual violence by a partner ²⁹	In their lifetime	In last 12 months
	21.6%	16.7%
Estimated number of women aged 15-49 ³⁰ who have experienced physical, psychological, or sexual violence by a partner ³¹	~2,400,000	~1,850,000
Number of domestic violence cases registered by police in 2015 (victims not disaggregated by gender) ³² (Art. 173.2 CofUAO)	83,740	
Sexual Violence		
Proportion of women aged 15-49 who have experienced sexual violence in their lifetime (from a partner or non-partner) ³³	7.9%	
Estimated number of women aged 15-49 who have experienced sexual violence in their lifetime (from a partner or non-partner) ³⁴	~880,000	
Number of rape cases reported to police in 2016 (victims not disaggregated by gender) ³⁵ (Art. 152 CC)	1,049	

Underreporting is not at all unique to Ukraine. Indeed, VAW and DV are some of the most chronically underreported crimes worldwide. In France, for instance, the National Observatory of Violence Against Women estimates that only 10% of women victims of rape report the crime to police.³⁶

²⁹ Volosevych, et al., 32.

³⁰ As of 1 January 2014, the number of women aged 15-49 in Ukraine was estimated at 11,105,927. Ibid., 5.

³¹ This estimation is based on the UNFPA victimization survey (Volosevych) and the number of women aged 15-49 cited in supra note 6.

³² Ministry of Internal Affairs (gender-disaggregated data not available).

³³ Volosevych, et al., 24.

³⁴ See supra note 7.

³⁵ Ministry of Internal Affairs (gender-disaggregated data not available).

³⁶ “Les principaux points à retenir”, Lettre de l’Observatoire National des Violences Faites aux Femmes, no. 8, MIPROF, November 2015.

Underreporting as a consequence of the ineffectiveness of the criminal justice system

"I called the police, but the police officer who came said it was not a murder. Should I call them again, I would pay a fine."

Feedback from a victim of domestic violence
who called the national DV hotline

A social environment that reflects a collective tolerance for VAW/DV discourages victims to report incidents to the police. But, besides these social factors, underreporting is also partly rooted in the weakness of criminal justice responses to VAW/DV. Victims anticipate that making a report to police is unlikely to bring any positive outcome, and could even make their situation worse.

DCAF/LSU surveyed 109 callers to the national DV hotline, who were victims of domestic violence. While 75 had reported their cases to the police, the remaining 34 had not; and when asked why not, most answered that they "did not believe reporting to police could be helpful" (14 respondents) or said they "did not trust police services" (7 respondents).

Importantly, the 75 victims who had reported DV to the police indicated that this choice had a counterproductive effect in many cases, exposing victims to an escalation of violence. Indeed, when asked how reporting their case to the police had influenced conditions in the home, 21 victims answered that violence had increased afterward; whereas only 2 said the violence stopped and 11 reported that it decreased. For the others, there was no change.

"After I reported to the police, he beat me up, took our children, and brought them to his mother's village."

Feedback from a victim of domestic violence
who called the national DV hotline

The potential that police intervention may be counterproductive is internalized by victims and contributes further to underreporting. In fact, international research has shown that victims who report being victimized and feel the criminal justice response is insufficient or made them unsafe are less likely to report subsequent victimization.³⁷ These results reflect a survey on gender-

³⁷ Eve Buzawa, et al., Response to Domestic Violence in a Pro-Active Court Setting (Washington, DC: National Institute of Justice, 1999).

based violence conducted in 2015 in conflict-affected regions of Ukraine by the Ukrainian Centre for Social Reforms (supported by UNFPA). In that study, which surveyed a sample of 2,512 women, mistrust of police was among the main reasons cited by victims to explain non-reporting.³⁸

To capture and thus intervene in a more significant portion of VAW/DV incidents in Ukraine, it is necessary for the criminal justice system to improve its response to these incidents and to restore the trust of potential victims.

B. Attrition within the criminal justice system

Attrition rates measure the number of cases that are discontinued within the criminal justice process and thus fail to result in a conviction at the end of the justice chain. The attrition rate in the Ukrainian criminal justice system is very high for cases of VAW/DV, which tends to limit victims' access to justice.

Low conviction rate

As noted above, the criminal justice system in Ukraine captures only a fraction of VAW/DV incidents. Once cases are reported to the police, most are discontinued, and at the end of the justice chain, the conviction rate is very low.

Since the Draft Law criminalizing domestic violence has not yet come into force (see chapter 1), DV incidents are currently reported as administrative offences in Ukraine. However, the most serious incidents may be requalified as criminal offences (such as cases involving bodily injury, battery and torture, and threats to kill, among other factors).

In 2015, 2,985 pre-trial criminal investigations were opened for DV cases. In the same period, only 338 perpetrators were found guilty of a criminal offense related to DV. In other words, in a given year, when 9 DV-related criminal offences enter the justice system, only one perpetrator is convicted in the same period.

Other forms of VAW – and rape cases in particular –are even more markedly impacted by attrition. As mentioned in the previous section, 7.9% of women aged 15-49 in Ukraine report having experienced sexual violence at least once in their lifetime. However, in 2016, only 61 perpetrators were convicted for rape (under art. 152 of the CC) across the entire country. Underreporting

³⁸ Ukrainian Centre for Social Reforms, Gender-based violence in the conflict-affected regions of Ukraine (Kyiv, 2015).

partly explains this (only 1,049 rape cases were reported), but it is also due to the attrition process within the criminal justice system itself.

These numbers mean that for every 17 rape cases reported to the police in a given year, only one perpetrator is convicted by courts in the same period. This is not usually related to an inability to identify the perpetrator, though, as the victim and perpetrator know each other in three-quarters of sexual violence incidents in Ukraine.³⁹

The data presented in Table 3 highlights the failure of the criminal justice system to ensure that perpetrators of VAW/DV are held to account for the offences they commit, which is a main obligation associated with the Istanbul Convention and a key principle of justice in general.

Table 3. Conviction rate in cases of criminal DV-related offences and rape

	Number of cases	Number of convictions	Conviction rate
Pre-trial criminal investigations opened on DV cases (2015) ⁴⁰	2,985	338	11.2%
Reported cases of rape in 2016 ⁴¹ (Art. 152 CC)	1,049	61	5.8%

A similar pattern in other European countries

Attrition within the criminal justice system is a critical issue in other European countries as well. The number of reported rape offences has grown over the last three decades while the number of prosecutions has lagged, proportionately, resulting in a falling conviction rate. A multi-country survey in Europe, conducted by Jo Lovett and Liz Kelly, indicated that conviction rates in cases of alleged rape range from just 4% in Belgium to 34% in Hungary.⁴²

Lovett and Kelly identified the primary decision-makers who influence attrition (victims, police, prosecutors, or judges), and the reasons cases are discontinued (insufficient evidence, withdrawal of the complaint by the victim, offender not

³⁹ According to the UNFPA victimization survey, in cases of sexual violence, victims most frequently identify their perpetrator as: a current or former partner (44%); an acquaintance (24.5%); or a relative (5.5%). See: Volosevych, 24.

⁴⁰ Data from the Ukrainian Ministry of Internal Affairs. Form 1-HC-OBC (595) on family violence.

⁴¹ Data on reported cases from the Ministry of Internal Affairs, and on number of convictions from the State Court Administration.

⁴² Jo Lovett and Liz Kelly, Different systems, similar outcomes? Tracking attrition in reported rape cases across Europe (London: CWASU, 2009).

identified or not located, etc.). What they found differed from one country to another, depending on local procedures and culture.

Conducting similar research in Ukraine would enable the identification of specific attrition points within the criminal justice system and would set a baseline by which to address them.

Table 4. Attrition within criminal justice systems (in cases of alleged rape), across Europe⁴³

	AUT	BEL	ENG	GER	HUN	IRE	POR	SCO	SWE	Average
Case progress										
Suspect charged	31%	49%	22%	34%	62%	18%	21%	59%	43%	38%
Case referred to court	30%	4%	21%	28%	39%	16%	16%	28%	16%	22%
Suspect convicted	18%	4%	7%	23%	34%	8%	8%	16%	10%	14%
Primary decision-makers influencing attrition										
Victim	8%	8%	44%	14%	20%	39%	44%	20%	0%	22%
Police	3%	0%	17%	1%	42%	20%	0%	18%	33%	15%
Prosecutor/										
Investigative judge	74%	91%	25%	79%	30%	38%	53%	46%	64%	56%
Judge / Jury	14%	0%	14%	5%	6%	2%	3%	2%	2%	5%
Unknown	1%	1%	0%	0%	2%	1%	0%	13%	0%	2%
Why cases were discontinued before court										
No or insufficient evidence	21%	36%	26%	46%	48%	39%	37%	41%	59%	39%
Offender not identified or not located	43%	46%	2%	27%	18%	8%	5%	1%	23%	20%
Victim withdrawal of cooperation and retraction	16%	9%	30%	18%	11%	29%	33%	18%	13%	20%
Other reasons	11%	7%	38%	9%	21%	24%	25%	10%	2%	15%
Unknown	9%	2%	4%	0%	2%	0%	0%	30%	3%	6%

⁴³ Adapted from Lovett and Kelly.

C. Non-deterrant sentencing practice

Sentencing practices related to VAW/DV in Ukraine are captured in Tables 5 and 6 (below). This data, collected through analysis of a sample of court decisions issued nationwide in 2015, reveals that perpetrators found guilty of VAW/DV are unlikely to be sentenced to jail, even in cases of serious DV offences requalified as criminal and in cases of criminal offences related to VAW.⁴⁴ Judges in Ukraine show a preference for suspended sentences or other sentences that exclude detention.⁴⁵ In the sample of court decisions reviewed by DCAF/LSU, of 631 perpetrators found guilty of a DV- or VAW-related criminal offence, 221 (35%) were sentenced to jail, 231 (37%) were given suspended sentences, and 179 (28%) were sentenced to other sanctions.

When perpetrators were sentenced to jail, the periods of detention they were assigned were near the minimum guidelines set by legislation. For instance, in cases of unintended murder, Art. 119 of the Ukrainian Criminal Code foresees imprisonment from 3 to 8 years; but in the cases reviewed, the 6 perpetrators convicted to imprisonment under this article were sentenced to less than 5 years.

Further, while perpetrating a criminal offence against one's partner is considered an aggravating factor by the Istanbul Convention, Ukrainian judges appear to evaluate this, in practice, as a mitigating factor. This was also the finding of a 2014 review of court decisions in Ukraine by the UNDP Office in Kyiv: *"Very often the courts treat family violence perpetrators with too much humanity. Courts sometimes impose very light sentences for murder or severe physical injuries. Such punishment does not reflect the level of social danger of the crime committed and the circumstances of the particular case. Courts barely take into account the criminal history of an offender demonstrating a clear pattern of violent behaviour toward family members."*⁴⁶

⁴⁴ DV cases requalified as criminal may involve: bodily injury, battery and torture, threats to kill, unintended murder, and intended murder. Criminal offences of VAW include: human trafficking, rape, violent unnatural gratification of sexual desire, creating of brothels or trade in prostitution, and pimping.

⁴⁵ Section VIII of the Ukrainian Criminal Procedural Code discusses the "Execution of Court Decisions." Articles 536 and 537 give courts leeway to defer the execution of a sentence for various reasons or in other ways mitigate the sentence of a convicted person. Chapter XII of the Ukrainian Criminal Code, on "Discharge from punishment and from serving it" also gives the court freedom to "discharge the convicted person from serving the sentence imposed."

⁴⁶ Olga Shapovalova, Моніторинг національної судової практики розгляду судами кримінальних, цивільних справ і справ про адміністративні правопорушення, пов'язаних із вчиненням насильства в сім'ї (Kyiv: UNDP, 2014). Available (in Ukrainian) at: http://www.ua.undp.org/content/dam/ukraine/docs/%D0%9B%D0%9A/Monitoring_final.pdf (accessed 13 March 2017).

Table 5. Sentencing practices in cases of DV-related criminal offences

Article of Criminal Code	Period of imprisonment foreseen in Code ⁴⁷	Number of guilty verdicts analysed ⁴⁸	Sentence applied			Financial compensation
			Imprisonment	Suspended sentence	Other (excluding detention) ⁴⁹	
Intended Murder (Art. 115)	7 to 15 years	102	100	2	-	22
Unintended murder (Art. 119)	3 to 8 years	8	6	2	-	3
Grievous bodily harm (Art. 121)	5 to 10 years	103	58	45	-	6
Bodily injury of medium gravity (Art. 122)	3 to 5 years	67	13	52	2	13
Minor bodily injury (Art. 125)	Up to 2 years	101	8	4	89	14
Battery and torture (Art. 126)	Up to 5 years	31	-	1	30	3
Threat to kill (Art. 129)	Up to 5 years	18	8	10	-	4

⁴⁷ Sanctions other than imprisonment are also foreseen for most of the criminal offences presented in the table, but they are not indicated, to limit the content of the table so that it is reader friendly.

⁴⁸ This number reflects individual perpetrators found guilty; this number may thus be larger than the number of cases because some cases involve several perpetrators.

⁴⁹ The scope of these sanctions includes: fines, community service, correctional work, personal restraint, confiscation of property, and deprivation of the right to hold certain positions or perform certain activities. Military personnel are subject to specific sanctions, such as service restrictions, retention in a disciplinary battalion, or a downgrade in rank.

Table 6. Sentencing practices in cases of VAW-related criminal offences

Article of Criminal Code	Period of imprisonment foreseen in Code ⁵⁰	Number of guilty verdicts analysed ⁵¹	Sentence applied			Financial compensation ⁵³
			Imprisonment	Suspended sentence	Other (excluding detention) ⁵²	
Human trafficking (Art. 149)	3 to 15 years	11	6	5	-	2
Rape (Art. 152)	3 to 15 years	10	6	4	-	2
Violent, unnatural gratification of sexual desire (Art. 153)	5 to 15 years	15	8	6	-	4
Creating brothels/ trade in prostitution (Art. 302)	2 to 7 years	97	2	41	54	-
Pimping/ involving [another]inprostitution (Art. 303)	3 to 15 years	68	6	59	3	-

These three indicators of the ineffectiveness of the criminal justice response to VAW/DV in Ukraine –underreporting, attrition, and non-deterrent sentencing practices – reflect a collective tolerance throughout Ukrainian society for VAW/DV. Within the criminal justice system, and in society, impunity for these crimes prevails over accountability. Weak criminal justice system responses to VAW/DV tend to result in high levels of recidivism and contribute to a social environment that is conducive to these offences.⁵⁴ Therefore, improving the response of criminal justice actors to VAW/DV is necessary not only to ensure the accountability of perpetrators, but also to combat VAW/DV on societal level.

⁵⁰ See supra note 24.

⁵¹ See supra note 25.

⁵² See supra note 26.

⁵³ In these cases, financial compensation was collected to cover the costs to the state of expertise.

⁵⁴ International research has demonstrated that sentence severity is significantly linked to reduced recidivism. See: Andrew R. Klein, Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges(Washington DC: National Institute of Justice, 1999).

CHAPTER 4. GENDER BIAS AND CRIMINAL JUSTICE PRACTICE

The data collected from criminal justice practitioners in Ukraine suggests that gender bias influences both their practice and their decision making, which impedes full access to justice and protection for victims of VAW/DV. While this may sound provocative, the reality is that gender bias has been found to exist in every criminal justice system in which it has been studied.⁵⁵ Nonetheless, criminal justice professionals who identify and acknowledge the presence of gender bias are better positioned to tackle the challenge; while those who remain unaware or dismissive of this factor risk impeding fair, equal, and impartial access to justice across the systems and societies in which they work.

This chapter introduces the concept of gender bias and reviews some key research from the last three decades on the topic. Within this framework, the findings collected in Ukraine for this assessment are then situated and analysed.

A. What international research on gender bias can tell us

Gender bias is defined as the inclination toward or prejudice against one gender. There are three aspects of gender bias that can help us understand how this inclination or prejudice operates in practice:

- Stereotyped thinking about the nature and roles of women and men;
- Perceptions about the relative worth of women and men due to what is seen in any given society as women's work and men's work; and
- Myths and misconceptions about the social and economic realities of women's and men's lives.⁵⁶

⁵⁵ See Pamela M. Casey, et al., *Helping Courts Address Implicit Bias: Resources for Education* (Williamsburg, VA: National Center for State Courts, 2012); and Jerry Kang, "Implicit Bias: A Primer for Courts," prepared for the National Campaign to Ensure the Racial and Ethnic Fairness of America's State Courts, 2009.

⁵⁶ Lynn Hecht-Schafran, "Gender Bias in the Courts: Time is not the Cure," in *Creighton Law Review* 22 (1989): 413-428.

While criminal justice institutions are responsible for maintaining a fair and impartial system, it is problematic to assume that criminal justice practitioners are inherently objective. Indeed, there is an important distinction between the notions that the law is blind and that the law is fair. In the first instance, the law does not take into account the objective differences between the roles, responsibilities, and characteristics assigned to women and those assigned to men; while the second underscores the need for law to consider these gender-based differences specifically.

Canadian Professor Constance Backhouse notes that: *"If our society did treat all... genders equally, then it would be manifestly unfair for judges and adjudicators to take... gender into account... [However], we live in a society in which there is a great deal of documented evidence to suggest that, at least systematically, ...men continue to hold a position of dominance over women."*⁵⁷

Still, it can be difficult to understand how professionals who have been trained to follow the evidence (police), develop sound legal arguments based on that evidence (prosecutors), and adjudicate a case based on how the law applies to facts and circumstances (judges) could be biased. Indeed, the vast majority of criminal justice actors are committed to undertaking their work with integrity, fairness, and impartiality; and yet, gender bias has been found among police, prosecutors, and judges throughout the world. This is because gender bias is very often implicit, or unconscious.

Implicit bias refers to the automatic and unconscious process of assigning a stereotype and/or linking negative or positive attitudes to a particular group, or to an individual associated with a group.⁵⁸ Because implicit biases operate at an unconscious level, individuals "may not even be aware that they hold biased attitudes."⁵⁹ In other words, we can consciously believe in gender equality but still exhibit unconscious attitudes that negatively stereotype women.

Research has produced hundreds of neuroscientific, cognitive, and social psychological studies that provide sufficient, if not overwhelming, evidence to support the existence of implicit bias. Most notably in this context, "[an] exponentially increasing number of empirical studies demonstrate a relationship between measures of implicit bias and real-world discriminatory behavior."⁶⁰

⁵⁷ Constance Backhouse, "Bias in Canadian Law: A Lopsided Precipice," *Canadian Journal of Women and the Law* 10, no. 1 (1998), 174-175.

⁵⁸ Kang.

⁵⁹ Casey, et al.

⁶⁰ Ibid.

B. Values and attitudes toward violence against women and domestic violence

There is no impenetrable barrier between criminal justice systems and societies; and this means that the gender stereotypes and negative views of victims of VAW/DV prevalent in Ukrainian society also exist within the criminal justice system. Data collected in the framework of this assessment illustrates that criminal justice practitioners minimize the seriousness of VAW/DV, blame victims for their own victimization, and approach reports of VAW/DV with scepticism if not outright doubt.

Minimizing the seriousness of VAW/DV

A Demographic and Health Survey conducted in Ukraine in 2007 indicated that 11% of the male population aged 15-49 believed it acceptable to beat one's partner in some cases.⁶¹ This was reflected in the survey data collected by DCAF/LSU from (male and female) criminal justice practitioners, which revealed that 10% of prosecutors, 11% of judges, and 12% of police officers share this opinion. These findings illustrate the extent to which women in Ukraine exist within a profoundly vulnerable social context; in which a significant minority of criminal justice practitioners believe that violence against women is acceptable. This is an example of gender bias. Gender-biased attitudes and values held by criminal justice practitioners are at odds with the principles of the Istanbul Convention, particularly the requirement to address VAW with due diligence.

DCAF/LSU also found that 39% of criminal justice practitioners consider DV a 'private matter' that falls outside their concern or purview. Again, this finding indicates the presence of gender bias among these criminal justice actors and signals a need to address the attitudes and stereotypes of practitioners related to VAW/DV. This inclination to consider DV a private matter also denies the seriousness of its impact on society. Every sixth woman in Ukraine experiences intimate partner violence in a given year, making DV the single greatest security threat faced by women, and thus making it a security issue for society as a whole. In fact, it is estimated that approximately 145,000 women aged 15-49 sustain serious injuries (including 15,000 gunshot wounds) from their partner or husband every year in Ukraine.⁶² These statistics denote a security issue that is far from private.

⁶¹ Ukrainian Center for Social Reforms, Ukraine Demographic and Health Survey 2007 (State Statistical Committee and Macro International, 2008). Available at: <http://dhsprogram.com/pubs/pdf/FR210/FR210.pdf> (accessed 13 March 2017).

⁶² This estimation is derived from the female population aged 15-49 as of January 2014 and the 7.8% rate of female victims of DV of that age range who reported serious injury or gunshot wounds. See: Inna Volosevych, et al., The Prevalence of Violence Against Women and Girls (Kyiv: UNFPA, 2014), 41.

DV also impacts women in the professional sphere and thus affects the national economy. For example, 44% of women victims of DV in Ukraine report consequences such as the loss of a job, regular absences from work, and loss of concentration and/or lower productivity.⁶³ Moreover, DV has been shown to cost countries significant amounts of financial resources in both the economy and the health sector.⁶⁴ This would suggest that DV is an economic issue, not a private matter.

Notably, this assessment found that criminal justice actors appear to prioritize keeping families together, with 77% of prosecutors, 81% of police officers, and 84% of judges expressing their view that reconciliation between partners should always be the primary aim in cases of DV. In this way, domestic violence is minimized and treated as a minor dispute. Victims are expected to forgive offenders in service of the higher interest of maintaining the integrity of the family.

Indeed, according to survey results, criminal justice professionals overwhelmingly believe that their role is to facilitate this reconciliation process— a belief that is incongruous with the victim-centred approach of the Istanbul Convention.

"We had a call from a woman [victim of domestic violence] recently.... [A district police officer] told [her]: 'You should talk with your husband and reconcile with each other.' This woman believed it and asked us how to proceed [with a reconciliation]."

Interview with an expert of the center on providing free legal aid

Table 7. Proportion of practitioners who completely or partially agree with statements about DV

	Police officers (n = 388)	Prosecutors (n = 106)	Judges (n= 169)
In some cases, it is acceptable to beat one's partner	12%	10%	11%
Domestic violence is a private matter	39%	39%	38%
The reconciliation of partners should always be the priority in cases of DV	81%	77%	84%

⁶³ Inna Volosevych, et al., The Prevalence of Violence Against Women and Girls (Kyiv: UNFPA, 2014), 44.

⁶⁴ A study in the United Kingdom concluded that DV in that country costs individuals, the state, and businesses £23 billion yearly. See: Sylvia Walby, "The Cost of Domestic Violence," UK Department of Trade Women and Equality Unit, 2004.

Distrusting and blaming victims

Victims of VAW/DV in Ukraine may also face significant levels of distrust and blame by the very professionals responsible for ensuring their security and providing them access to justice. DCAF/LSU found that 55% of judges, 58% of prosecutors, and 59% of police officers regard a majority of DV reports as false.

"I've reported to the police no less than four times... They started to believe me when my husband started to threaten me and my child with a gun."

Feedback from a victim of violence who called the national DV hotline

This opinion among criminal justice practitioners that there is a high prevalence of false reporting is a result of their lack of understanding and knowledge of DV, and is inconsistent with data collected in other contexts.⁵⁵ It appears, for example, that some behaviours not uncommon to victims of DV – such as making a complaint and then withdrawing it and returning to an allegedly abusive relationship – are viewed as evidence of false reporting. Such behaviours should instead be understood as evidence that the existence of systemic abuse is more likely. Indeed, research indicates that victims suffering the most severe abuse are often the most likely to withdraw their complaint and/or return to the abusive relationship.⁵⁶

Because criminal justice practitioners may not understand that DV occurs in a context of power and control, they mistake evidence of domination for evidence of false reporting. This common misinterpretation was an impetus for the Istanbul Convention provision that calls for the prosecution of alleged DV offenders even when a victim withdraws their complaint. In other words, criminal justice systems are expected to enact procedures that enable them to protect victims who may not be able to protect themselves.

Sometimes, victims are not confronted by distrust but are instead blamed by criminal justice actors for their own abuse. DCAF/LSU survey data revealed that 58% of police officers, 61% of prosecutors, and 62% of judges in Ukraine

⁵⁵ In the UK, the Crown Prosecution Services reviewed prosecutions on domestic and sexual violence during a 17-month period in 2011 and 2012. They found few false allegations of domestic and sexual violence. In the period reviewed, there were 5,651 prosecutions for rape and 111,891 for domestic violence; and 35 prosecutions for making false allegations of rape, 6 for making false allegations of domestic violence, and 3 for making false allegations of both rape and domestic violence. See: Keir Starmer, "False allegations of rape and domestic violence are few and far between," The Guardian, 13 March 2013. Accessible at: <https://www.theguardian.com/commentisfree/2013/mar/13/false-allegations-rape-domestic-violence-rare> (accessed 13 March 2017).

⁵⁶ Majda Halilović, Survivors Speak: Reflections on Criminal Justice System Responses to Domestic Violence in Bosnia and Herzegovina (Sarajevo: Atlantic Initiative and DCAF, 2015).

believe that victims of sexual violence are sometimes responsible for their own victimization. These results highlight the crucial need for a deeper understanding of DV/VAW among criminal justice practitioners.

Of course, Ukrainian criminal justice professionals do not have a monopoly on holding women liable for their victimization. Around the world, victims of sexual violence are routinely blamed for provoking their own assault by dressing or behaving in certain ways.⁵⁷ The notion that women's provocativeness is the reason for their victimization is an example of a rape myth, rooted in sexual stereotypes that 'good' women are sexually restrained and therefore, sexually active women are 'loose' and untrustworthy. In reality, there is no connection between how revealing a woman's clothing is and the probability she will be a victim of a sexual assault.⁵⁸

Table 8. Proportion of practitioners who completely or partially agree with statements about VAW/DV

	Police officers (n = 385)	Prosecutors (n = 106)	Judges (n = 169)
In your experience, most reports of DV are false	59%	58%	55%
Victims of rape are sometimes responsible for what happened to them	58%	61%	62%

The victim-centred approach promoted by the Istanbul Convention is meant to guide criminal justice systems in designing policies, developing procedures, and delivering services that meet the needs of VAW/DV victims. Criminal justice professionals must consider the safety and protection of victims, as well as their interest in justice, when handling VAW/DV cases. In the Ukrainian context—where many criminal justice actors have reported both their distrust of VAW/DV victims and their own tendency to blame victims for precipitating their own victimization—there is clearly a need to improve the criminal justice response to VAW/DV. The values and attitudes of criminal justice practitioners are not neutral and do not exist in a vacuum. They influence VAW/DV cases all along the justice chain, from the number of victims who report, to the cases that are selected for investigation, to prosecution and adjudication.

⁵⁷ Renae Franiuk, Jennifer Seefelt and Joseph Vandello, "Prevalence of rape myths in headlines and their effects on attitudes toward rape," *Sex Roles* 58, no. 11-12 (2008): 790-801.

⁵⁸ Avigail Moor, "She Dresses to Attract, He Perceives Seduction: A Gender Gap in Attribution of Intent to Women's Revealing Style of Dress and its Relation to Blaming the Victims of Sexual Violence," *Journal of International Women's Studies* 11, no. 4 (2010):115-127.

C. The observable impact on criminal justice practice

The attitudes and values that criminal justice practitioners hold in relation to VAW/DV shape the response of the criminal justice system as a whole and are intrinsically linked to whether that response is effective and efficient. The data collected suggests that the response to VAW/DV in Ukraine is currently neither effective nor efficient, and illustrates the extent to which practitioners may believe in harmful stereotypes and hold dismissive attitudes about VAW/DV.

The criminal justice system in Ukraine fails to capture most VAW/DV incidents (see underreporting, described in chapter 3). Arguably, this is largely due to stereotypes, attitudes, and values held by practitioners that limit their willingness to respond to complaints of VAW/DV. Indeed, if criminal justice professionals view incidents of VAW/DV as ‘private matters,’ they are less inclined to take on or prosecute such cases, or to do so with the necessary diligence and commitment. Moreover, if the primary interest of criminal justice practitioners is to maintain the integrity of the family, they arguably have less interest in perpetrators being held accountable.

The impact on interactions between criminal justice practitioners, victims, and perpetrators

DCAF/LSU researchers observed court hearings in VAW/DV cases lasting between 4 and 22 minutes, with an average hearing length of 7 minutes. The majority of these hearings were related to administrative offences,⁶⁹ which are by nature less time consuming than those for criminal offences. Nevertheless, the fact that only one quarter of the hearings exceeded 10 minutes could suggest that cases of VAW/DV are assigned a low level of importance and are thus afforded little court time.⁷⁰

In the sample of DV victims surveyed for this assessment, two-thirds of those who reported their case to the police relayed being dissatisfied with the response, with most victims explaining that police were indifferent or reluctant to take action. In the view of these victims, police officers do not see DV as a police matter, leaving victims to feel as though it is their responsibility to resolve the situation on their own.

“The police refused to intervene [when I called]. They told me ‘it is family business, solve it yourself.’”

Feedback from a victim of DV who called the national DC hotline

⁶⁹ 74 out of 77 hearings monitored were for administrative offences.

⁷⁰ This is not the only explanation; this could also suggest a lack of human resources. See chapter 6.

Finally, the culture of tolerance and indifference toward VAW/DV that is reflected back by the criminal justice system may also embolden perpetrators. According to court hearing data, alleged offenders appeared in court for only one-sixth of the cases called before a judge. It could be argued that alleged perpetrators do not take the criminal justice system seriously and do not believe they will face consequences if they are non-responsive to a court hearing (even repeatedly) in cases of VAW/DV.

What's more, when alleged offenders do appear, 75% of them are not represented by a lawyer. It is possible that alleged perpetrators of VAW/DV feel they can afford to show up at a hearing without representation because they do not believe they will be convicted or sentenced; and indeed, the data indicates that suspended sentences – which amount to no sentence at all, in practice– are given in the majority of VAW/DV cases.

“[My husband] realized that he would not be punished. He beat [me] for any minor thing.”

Feedback from a victim of DV who called the national DC hotline

The impact on court decisions

DCAF/LSU reviewed the sentences applied by courts to 631 offenders were found guilty of a criminal offence related to VAW/DV and punishable by imprisonment (see chapter 3). However, of these 631 convicted perpetrators, just 221 were sentenced to jail-less than the number of perpetrators who received a suspended sentence (231). Though Article 75 of the Ukrainian Criminal Code sets out the possibility of applying suspended sentences, stating that the court may discharge a convicted offender from serving a punishment upon consideration of “the gravity of an offense, the character of the convicted offender and other circumstances of the crime,” it does not reasonably imply that suspended sentences are to be used as the default option. Yet, gender bias among criminal justice practitioners, which leads them to minimize VAW/DV crimes and even doubt and blame VAW/DV victims, impacts how courts evaluate and sentence cases.

Moreover, while the Istanbul Convention obliges all states parties to take all necessary measures within their power to address VAW/DV, the qualitative analysis of court decisions undertaken as part of this assessment suggests that judges tend to look for all possible reasons to mitigate the responsibility of offenders and minimize the gravity of their offences– as illustrated in the case below.

The Istanbul Convention puts forth that the social status of the perpetrator shall not interfere with the judgement in a case, but in Ukraine, the economic status of a perpetrator as the family breadwinner or his participation in Anti-Terrorist Operations are routinely used to justify suspended sentences.

At last, despite the fact that the Istanbul Convention states that previous sexual behaviour of a victim of sexual violence shall not be considered in the evaluation of a case, 52% of the judges surveyed by DCAF/LSU in Ukraine believe this history should be taken into account. In fact, the private life and past sexual behaviour of victims is often used to mitigate the responsibility of perpetrators, as if these factors make victims partly to blame for their own victimization.

Case study 1

"On 15 July 2015, at 2:00 pm, [Mr X] was walking in the street, intoxicated by alcohol. [He] decided to... sexually assault [Ms Y], a minor girl. Aware [Ms Y] was under age, [he] attacked [her] and dragged [her] by force off the street... With the use of physical violence and overcoming [her] resistance, he threw [her] on the ground, put [her] on [her] knees, held [her] body by force and came from behind to satisfy [his] sexual desires in an unnatural way. The minor girl [Ms Y] resisted this illegal assault and bit [Mr X] twice with [her] teeth on [his] shoulders and chest. As a result of the sexual assault, [Mr X] caused [Ms Y] injuries including skin wounds in the anus, which was bleeding, and abrasions on the right knee."

Sentence:

[Mr X] was found guilty of criminal offence under art. 153 of CC and sentenced to four years of imprisonment. However, the participation of [Mr X] in anti-terrorist operations in eastern Ukraine was identified as a mitigating circumstance.

Given this mitigating circumstance and the profile of [Mr X], who "*[had] not been convicted previously... [had] dependant minor children and [held] a permanent job,*" the court concluded that [Mr X] could be rehabilitated without serving the punishment, and decided to release [Mr X] on probation.

In the opinion of the court, "*such punishment [was] necessary and sufficient for the correction of [Mr X] and to prevent [him] from committing new offenses*".

Court decision №366/2351/15-k, 2015

CHAPTER 5. LACK OF INDIVIDUAL CAPACITIES

The previous chapter highlighted how the ineffectiveness of the criminal justice system response to VAW/DV is primarily rooted in the values and attitudes of criminal justice practitioners. Yet, the results of this assessment also revealed that when practitioners overcome their biases and are willing to seriously address VAW/DV, they may lack the necessary skills and knowledge to do so.

In fact, this lack of individual capacities is a significant factor contributing to the inadequate response of the Ukrainian criminal justice system to VAW/DV.

"What can we do? All [victims] want something from us, but nobody has taught us anything [to handle these demands]"

Interview with a police officer

The need to improve the capacity of criminal justice practitioners to handle VAW/DV cases has been observed and has also been reported by practitioners themselves. The individual capacities lacking within the criminal justice system fall into two main categories: a lack of general information and knowledge related to VAW/DV, and a lack of technical skills needed to perform the wide range of tasks involved in handling cases of VAW/DV.

A. Limited knowledge and understanding of VAW/DV

Data collected by DCAF/LSU suggests that criminal justice practitioners in Ukraine have limited awareness related to VAW/DV. More specifically, many are unfamiliar with the current legal and normative framework, have little information on the institutions available to support victims, and tend to misunderstand VAW/DV and their role in addressing it.

Awareness of the legal and normative framework

Criminal justice practitioners surveyed by DCAF/LSU self-reported and demonstrated a lack of knowledge on both the current national legal framework and international norms in the field of VAW/DV. For instance, 51% of judges acknowledged that they have insufficient or no familiarity with

current national legislation and procedures on VAW/DV. Among police officers and prosecutors, this proportion was far lower (5% and 17% respectively), suggesting they are familiar with this framework. However, when asked to describe international standards and explain the law, police officers and prosecutors revealed relatively low levels of knowledge. Their responses clearly contradicted their self-assessments; and in some cases, even revealed factual misunderstandings.

Similarly, the analysis of a random sampling of 300 court decisions on DV cases and issued in 2015 revealed that, in 8 cases, judges sentenced a perpetrator convicted of domestic violence (as an administrative offence) with a fine, when this sanction was no longer applicable.⁷¹ This lack of knowledge on the laws and procedures related to VAW/DV is undoubtedly exacerbated by the fact that many criminal justice practitioners do not handle VAW/DV cases on a regular basis. Indeed, 49% of police officers, 62% of judges, and 87% of prosecutors surveyed reported handling fewer than five cases of DV within the last 12 months. The proportion of practitioners who regularly deal with cases involving other forms of VAW is even lower.⁷² Thus, any knowledge gained by criminal justice practitioners through initial and ongoing training might be lost or become obsolete as a result of limited practice.

In this context, 61% of police officers, 80% of prosecutors, and 88% of judges reported that they need additional training on current national legislation on VAW/DV. This demand for training by professionals in all areas of the criminal justice system contrasts with the high self-confidence exhibited by prosecutors and police officers when assessing their familiarity with current national legislation. This paradox could reflect an understandable reluctance on the part of practitioners to disclose what may be perceived as an individual deficiency.

⁷¹ Since 12 February 2015, a fine has no longer been a sanction that can be applied in cases of domestic violence (see amendments made to the Administrative Code in 2015 “concerning the question of responsibility” in cases of DV; available in Ukrainian at: <http://zakon3.rada.gov.ua/laws/show/187-19>). However, DCAF/LSU found fines applied in at least 8 decisions issued after that date, including seven related to incidents that occurred after this date. These case numbers are 504/931/15-n, 386/773/15-n, 465/7376/15-n, 310/3635/15-n, 303/2827/15-n, 574/542/15-n, 127/11033/15-n, and 308/3051/15-n.

⁷² For instance, only 11 of the 663 criminal justice practitioners surveyed reported having handled a case of forced marriage within the last twelve month.

Table 9. Proportion of practitioners who self-reported knowledge of or a need for training on the national legal framework for VAW/DV

	Police officers (n = 388)	Prosecutors (n = 106)	Judges (n= 169)
I am unfamiliar or insufficiently familiar with current national legislation and procedures on VAW/DV.	5%	17%	51%
I am in need of additional training on current national legislation and procedures on VAW/DV.	61%	80%	88%

The data collected for this assessment also highlighted that criminal justice practitioners in Ukraine have little knowledge of international norms and instruments in the field of VAW/DV; and yet, again, these practitioners self-reported higher levels of knowledge than were indicated in their responses to open-ended questions seeking detail. On DCAF/LSU questionnaires, 80% of prosecutors, 83% of judges, and 87% of police officers reported being informed about the Istanbul Convention, for example. But these high rates contrasted with the demonstrated knowledge of practitioners when they were asked about the main provisions and principles of the Convention.

While criminal justice professionals in Ukraine are clearly aware that the Istanbul Convention exists, they are far less familiar with its actual content. Most could only describe elements of the Convention very generally (for instance, “It is about protection from domestic violence”), and were unable to highlight specific principles or provisions that make it a unique legal instrument.

Notably, the fact that the Convention was signed in 2011 but has not yet been ratified by Ukraine may help explain the discrepancy between awareness of its existence and knowledge related to its content. Indeed, because the Convention has not been ratified, few criminal justice practitioners are likely to have been obliged to review its contents in detail.

At the same time, many practitioners surveyed by DCAF/LSU are aware of their need for more knowledge about the Istanbul Convention and other international legal instruments in the field of VAW/DV. In fact, 90% of judges acknowledged a need for additional training on international legal instruments and norms in this field.

The institutional environment

Another principle of the Istanbul Convention is multi-agency cooperation with integrated policy. Indeed, the Convention is based on the premise that no single institution can deal with VAW/DV alone. An effective response to VAW/DV requires coordinated action by multiple actors within and outside of the criminal justice system. The Convention therefore requires states parties to implement comprehensive and coordinated policies that involve government agencies, local authorities, and CSOs.

Criminal justice practitioners will be unable to implement this principle of the Convention if they are not aware of the institutional tools available to prevent and address VAW/DV. In other words, if criminal justice practitioners are to coordinate their actions with other actors, they must first know the stakeholders with which they are expected to coordinate.

This assessment has shown that criminal justice practitioners in Ukraine lack information about the institutional context for preventing and combating VAW/DV and have difficulty identifying the institutions they can and should cooperate with in order to provide victims with more efficient and more comprehensive support.

In fact, 45% of police officers, 72% of prosecutors, and 87% of judges reported having no information on support services available to victims of VAW/DV. Of these three groups, police officers seem to have a higher capacity to situate their local institutional environment within the field of VAW/DV. However, when asked to provide more details about the support services they know, police officers proved to have a limited knowledge on the topic.

Table 10: Proportion of practitioners with no knowledge of support services available to VAW/DV victims

	Police officers (n = 388)	Prosecutors (n = 106)	Judges (n= 169)
Practitioners reporting having no information on support services available to victims of violence	45%	72%	87%

UNFPA mobile teams operating in the conflict-affected regions of eastern Ukraine since November of 2015⁷³ have also seen a low proportion of their clients referred by the police, which further illustrates the weak capacity of

⁷³ UNFPA mobile teams consist of two psychologists and one social worker, and bring support to women where ongoing conflict has exacerbated the problem of VAW/DV.

criminal justice practitioners to cooperate with other stakeholders involved in preventing and combating VAW/DV. Approximately 3% of the women they support have been referred by the police.⁷⁴

Understanding of VAW/DV

As mentioned in the previous chapter, the attitudes of some criminal justice practitioners toward VAW/DV reflect a poor understanding of the phenomenon. This is apparent in the tendency of these practitioners to:

- minimize the importance of VAW/DV and under estimate its prevalence and its considerable impact on both individuals and society at large;
- distrust victims due to a lack of awareness of the obstacles and difficulties victims must overcome to report VAW/DV incidents; and
- blame DV victims for returning to violent relationships due to a lack of appreciation for the context of domination and control in which DV takes place.

Research has identified a typology of violence that occurs in the framework of intimate relationships, based on the violent partner's motives, whether a pattern of controlling behaviour exists, and the frequency of violent incidents. This typology, developed by sociologist Michael P. Johnson and known as Johnson's Typology, identifies three types of intimate partner violence:

- ***Intimate terrorism*** (or domestic violence battering) – The aim is to control a relationship, in which the perpetrator has a dominant role. Violence incidents are repeated.
- ***Violent resistance*** – The aim is to escape intimate terrorism (above). The perpetrator is the victim of domestic violence. Incidents are rare and occur in reaction to or as defence against the partner's violence.
- ***Situational couple violence*** – This is perpetrated by both partners and occurs when conflict situations escalate, with the aim to “win” the conflict. It takes place infrequently and usually ends when the conflict is resolved.⁷⁵

The analysis of court decisions undertaken by DCAF/LSU, along with in-depth interviews, indicate that criminal justice practitioners have difficulty differentiating among these three types of violence. They particularly mistake

⁷⁴ UNFPA, Mobile teams report, 15 February 2016. This rate was measured in a sample of 3,243 cases of reported violence.

⁷⁵ Michael P. Johnson, “Patriarchal Terrorism and Common Couple Violence: Two Forms of Violence against Women,” Journal of Marriage and Family 57, no. 2 (1995): 283-294.

violent resistance for domestic violence; and this is why the vast majority of applications for clemency filed by women and reviewed by the National Pardons Commission are from victims of domestic violence who have killed their partner or husband to defend against intimate terrorism.⁷⁶ This suggests a failure by the criminal justice system to ensure the protection of DV victims and prevent the escalation of violence, which forces DV victims to come to their own defence, sometimes committing murder.

Case study 2

[Ms X] was having a drink and listening to music while repairing a radio. [Mr Y] approached her and proposed having sex while touching the buttocks of [Ms X]. She refused to have sex with [Mr Y], demonstrating her refusal through strong language. [Mr Y] felt insulted, grabbed [Ms X]’s hair, and started to force her to have sexual intercourse, threatening to satisfy his sexual arousal in an unnatural way.⁷⁷ Based on the sudden personal hostile relations that developed between herself and [Mr Y] – who was under the influence of alcohol – [Ms X] developed the criminal intent to kill [Mr Y]. Intoxicated with alcohol and pursuing to carry out her criminal intention, [Ms X], who had noticed a kitchen knife, grabbed it with her left hand. Aiming to stab [Mr Y] she put it in her right hand and stabbed him in the chest. After this, [Mr Y] released the hair of [Ms X] and laid down in the chair. Then [Ms X], aiming to put her criminal intention to kill [Mr Y] into action, stabbed him a second time in the chest causing the loss of consciousness of [Mr Y].”

Sentence:

[Ms X] was found guilty of intentional murder (art. 115 of the CC) and sentenced to 7-years imprisonment.

Court Decision №182/6179/14-к, 2015

Criminal justice practitioners in Ukraine not only tend to misunderstand some key aspects of VAW/DV, but some data collected by DCAF/LSU suggest they also do not fully comprehend the role they are expected to play in addressing the phenomenon. Indeed, the fact that so many criminal justice practitioners consider DV a private matter and place a high priority on reconciling intimate partners (see chapter 4) reveals a disregard for the pivotal role of ensuring the protection of victims and the accountability of perpetrators.

⁷⁶ Source : Interview with a VAW/DV expert.

⁷⁷ In the Ukrainian legal context, the formulation “unnatural way” means anal and/or oral sexual

B. A lack of technical skills to handle VAW/DV cases

Alongside the limited knowledge and understanding of VAW/DV that criminal justice professionals have, the findings of this assessment suggest that they may be limited by a lack of technical skills as well. Handling cases of VAW/DV with due diligence requires a specific skill set; and in fact, the lack of these skills among criminal justice practitioners in Ukraine was self-reported as a weakness by practitioners themselves.

Self-reported capacities in the field of VAW/DV

The Istanbul Convention addresses domestic violence as well as other forms of violence against women, including sexual violence, sexual harassment, stalking, forced abortion, forced sterilization, forced marriage, and female genital mutilation. Ukrainian criminal justice practitioners are more familiar with DV than with other forms of VAW, most of which are not defined as such in current national legislation (see chapter 1).

In this context, a significant majority of criminal justice practitioners self-reported possessing good or sufficient individual capacity to handle DV cases (93% of judges, 92% of police officers, and 67% of prosecutors); but when it comes to handling other forms of VAW, this level of confidence drops (see table 10). It is clear that the capacities of criminal justice practitioners to handle all forms of VAW must be developed in order to successfully implement the Istanbul Convention.

Table 11: The self-reported individual capacities of practitioners to handle VAW/DV cases

<i>Proportion of criminal justice practitioners who report having good or sufficient capacity to handle cases of:</i>	Police officers (n = 388)	Prosecutors (n = 106)	Judges (n= 169)
domestic violence	92%	67%	93%
sexual violence, including rape	75%	64%	87%
sexual harassment	72%	54%	79%
stalking	74%	44%	71%
forced abortion	59%	31%	58%
forced sterilization	58%	25%	51%
forced marriage	63%	29%	54%
female genital mutilation	56%	26%	54%

In addition, a notable proportion of practitioners self-reported that they possessed insufficient capacity to perform some of the technical tasks associated with implementing the principles and obligations of the Convention, such as managing risk and guaranteeing safety for victims, conducting interviews, collecting and preserving evidence, and ensuring inter-agency coordination.

Table 12: The self-reported individual capacities of practitioners to carry out VAW/DV-related tasks

Proportion of criminal justice practitioners who report having no or insufficient capacity to:	Police officers (n = 388)	Prosecutors (n = 106)	Judges (n= 169)
Manage risk and ensure the safety of victims	16%	48%	N/A
Conduct interviews with victims, perpetrators, and witnesses	8%	16%	12%
Cooperate with other agencies	17%	23%	N/A
Collect and preserve evidence in cases of DV	8%	N/A	N/A
Collect and preserve evidence in case of sexual violence, including rape	20%	N/A	N/A

Capacities observed in criminal justice practice

The questionnaires disseminated by DCAF/LSU researchers to police officers, prosecutors, and judges were helpful in identifying the specific technical skills that Ukrainian criminal justice practitioners need to develop so that they can better handle VAW/DV cases. The self-reported data on questionnaires was then complemented and confirmed by other documentation of actual criminal justice practice and any weaknesses demonstrated therein.

The analysis of court decisions and in-depth interviews carried out by DCAF/LSU suggest that VAW/DV cases are routinely discontinued due to the limited capacity of criminal justice practitioners to collect evidence and ensure multi-agency coordination during investigations. Specifically, the evidence sent to courts does not always enable the appropriate adjudication of cases because necessary information is lacking.

"One of the main problems is the poor quality of the materials sent to court. That is why a big percentage are sent back.... [Documentation] can be recorded in such way that it is not possible to clearly identify a person, to qualify the offence properly, or to fully understand the context of the offence. There are cases when just an article [of the Criminal Code] is written without any additional information..."

The description of the offence tends to be rather poor. There are cases when it is not indicated [that the offender] was convicted [for the same offense] the year before, though this is important information for qualification. In other cases, the document is not signed properly... If the documents are of low quality I cannot hear this case, as there are gaps that cannot be bridged during the hearing... Therefore, I have to send the material back to be improved."

Interview with a judge

The tendency of criminal justice practitioners to minimize VAW/DV incidents and to distrust or blame victims has already been highlighted in this report (see chapter 4). These attitudes about VAW/DV and about victims of VAW/DV ultimately result in secondary victimization and additional trauma for victims, which international research demonstrates has a detrimental effect on their long-term psychological wellbeing and their trust in the criminal justice system.⁷⁸ The inability of criminal justice practitioners to perform interviews that do not result in secondary victimization, as envisioned by the Istanbul Convention, has been reported by victims themselves in Ukraine and by the CSOs that provide them with legal, social, or psychological assistance.

"[When victims report VAW/DV to the police], they are disregarded, they are not informed about the existence of support services, they are humiliated and stigmatized – 'You are all the same,' 'It's your fault,' 'Why have you come for the third time? You've gotten assistance twice already,' 'Why do you report when it will not help anyway?'"

Interview with a VAW/DV expert from a civil society organization

A report on conflict-related sexual violence in Ukraine recently issued by the Office of the United Nations High Commissioner for Human Rights also confirmed this weakness among criminal justice practitioners, as well as its potential impact on the willingness of victims to interact with these practitioners: "Police officers and investigators lack the specific skills required to interview victims of sexual violence. Establishing a rapport with survivors, particularly those who were recently assaulted, requires specific psychological training and appropriate psychological support. The manner in which police record victims' testimony may be particularly traumatic and can prevent them from pursuing justice."⁷⁹

⁷⁸ Uli Orth, "Secondary Victimization of Crime Victims by Criminal Proceedings," Social Justice Research 15, no. 4 (2002): 313-325.

⁷⁹ Office of the United Nations High Commissioner for Human Rights, Conflict-Related Sexual Violence in Ukraine: 14 March 2014 to 31 January 2017, 2017, 29. Available at: http://www.ohchr.org/Documents/Countries/UA/ReportCRSV_EN.pdf (accessed 13 March 2017).

CHAPTER 6. LACK OF INSTITUTIONAL CAPACITIES

This assessment captured the ways in which the criminal justice system in Ukraine fails to respond effectively and efficiently to VAW/DV, and identified gaps between the principles and obligations of the Istanbul Convention and Ukrainian criminal justice practice. While the ineffectiveness of the criminal justice response to VAW/DV is rooted in gender stereotypes pervasive among criminal justice practitioners, who also lack sufficient technical skills, this ineffectiveness is also due to institutional-level deficiencies. Currently, the institutional environment in Ukraine is not conducive to the handling of VAW/DV cases in a way that aligns with the requirements of the Istanbul Convention.

The data collected by DCAF/LSU particularly revealed criminal justice system insufficiencies as far as the delivery of training on VAW/DV and the development of guidelines and protocols to ensure coherence and consistency in responding to VAW/DV, as well as inadequate human resources and infrastructure to respond effectively and efficiently to cases of VAW/DV.

A. The need for institutionalized, specific, and transformative training

The Istanbul Convention obliges states parties to develop training for criminal justice system practitioners – and other professionals who support victims of VAW/DV – to improve their capacity to deliver high quality, well-coordinated, consistent, and victim-centred services. This assessment has revealed that the training currently available to criminal justice practitioners has two main weaknesses: the limited availability of regular VAW/DV-specific training, and the limited impact of the trainings that are available.

Insufficient opportunities for training

Of those surveyed by DCAF/LSU, more than half of prosecutors and judges (53% for both professions) and over a quarter of police officers (27%) reported never having participated in a training on DV offered in the framework of continuing education. This proportion is even higher for training on other forms

of VAW (see table 12 below). In other words, during their careers within the judiciary, only about half of judicial practitioners have or take the opportunity to enhance their ability to respond to DV and VAW cases.

One reason such a large proportion of criminal justice practitioners in Ukraine have not attended any trainings on VAW/DV is because the availability of specialized professional training is very limited. Most trainings on the subject are offered as ad-hoc courses delivered in the context of specific projects or isolated initiatives. Even if these are high-quality offerings, they are typically delivered only once or a few times; they are not designed to and cannot target a majority of practitioners.

"To make education [on VAW/DV] more effective, it would be better not to have ad-hoc trainings but to include them in the [educational] work plan of our [institution]."

Interview with a senior criminal justice institution manager

To this end, the institutions in charge of educating police officers, prosecutors, and judges in Ukraine have taken steps to systematize continuing education, so that it routinely includes trainings on specific areas such as VAW/DV.

For instance, at the end of 2016, the National School of Judges established a working group to develop a two-day training curriculum on DV for judges.⁸⁰ And since the start of 2017, the National Prosecution Academy of Ukraine has incorporated a compulsory lecture titled “Combating domestic violence” in its training course for newly-hired prosecutors. Finally, ongoing police reform has led to the institutionalization of training courses on VAW/DV for police officers, and this training was made mandatory for any officers expected to handle VAW/DV cases on a regular basis.

"In 2016, the 3,355 district police officers who have passed recertification were trained in 14 areas. A 98-hour training course was developed for them, where 6 hours were dedicated to domestic violence... This year [in 2017], we supported trainings for district police officers who have just entered the police. Their education is 688 hours and lasts around 4 months... It also includes a course on counteracting domestic violence, human trafficking, and discrimination. This is not a big portion though, since it is a 4-hour course."

Interview with a VAW/DV expert from an international organization

Table 13. Participation of criminal justice practitioners in VAW/DV training courses or modules

	Police officers (n = 388)	Prosecutors (n = 106)	Judges (n= 169)	Police officers (n = 388)	Prosecutors (n = 106)	Judges (n= 169)
<i>Proportion of practitioners who have never participated in training on:</i>	Continuing education			Initial education		
Domestic violence	27%	53%	53%	35%	55%	60%
Sexual violence	35%	55%	61%	37%	32%	35%
Sexual harassment	41%	63%	70%	44%	54%	60%

The limited impact of current training on criminal justice practice

While only some criminal justice practitioners have had the opportunity to participate in VAW/DV-related trainings in the framework of their continuing education, a significant proportion of those who had this opportunity report that they do not use the knowledge acquired in practice. In fact, 16% of police officers, 37% of judges, and 54% of prosecutors do not believe the trainings they attended help them in handling DV cases; and even fewer feel they gained skills or information to help them handle cases related to VAW (with 32% of police officers, 49% of judges, and 63% of prosecutors reporting they did not).

Table 14. The helpfulness of current VAW/DV trainings to practitioners

	Police officers (n = 321)	Prosecutors (n = 68)	Judges (n= 78)
<i>Trainings you attended on handling DV cases were...</i>			
Helpful	41%	21%	31%
Partially helpful	43%	25%	32%
Not helpful at all	16%	54%	37%
<i>Trainings you attended on handling VAW cases were...</i>			
Helpful	29%	25%	28%
Partially helpful	39%	12%	23%
Not helpful at all	32%	63%	49%

The fact that the trainings on VAW/DV offered to criminal justice practitioners fail to provide them with the tools they need to handle cases of VAW/DV suggests that most of these trainings may not be appropriately designed or delivered with this goal in mind.

A demand for additional and practice-oriented training

Throughout the DCAF/LSU assessment, numerous criminal justice practitioners expressed their strong desire for practice-oriented training courses linked to the core capacities that are required to implement the Istanbul Convention. These practitioners called for specialized training with a particular focus on: risk management; interviewing and interacting with victims, perpetrators, and witnesses; multi-agency cooperation; and investigative techniques.

The previous chapter of this report highlighted some of the ways individual criminal justice practitioners lack the capacity to handle VAW/DV cases and thus need exposure to systematic and transformative trainings. As the data presented in table 15 shows, this need is fully acknowledged by the criminal justice practitioners surveyed by DCAF/LSU. For instance, though new legislation envisions the integration of a risk assessment phase into the criminal procedural code in cases of DV (see chapter 1), 63% of police officers and 79% of prosecutors reported a lack of training in managing risk and ensuring the safety of victims.

Table 15. Training demands of practitioners

<i>Proportion of criminal justice practitioners who report a need for additional training in order to:</i>	Police officers (n = 388)	Prosecutors (n = 106)	Judges (n= 169)
Manage risk and ensure the safety of victims	63%	79%	N/A
Conduct interviews with victims, perpetrators, and witnesses	53%	74%	N/A
Interact with victims, perpetrators, and witnesses	N/A	N/A	78%
Cooperate with other agencies	58%	79%	N/A
Collect and preserve evidence	56%	83%	N/A

B. A lack of guidelines and procedures

Developing specialized professional training for criminal justice practitioners in the field of VAW/DV must be considered a priority. This will enable these practitioners to build their individual capacity to handle VAW/DV cases and will ultimately improve the overall criminal justice system response to these crimes.

In parallel to this, however, is a need for clear guidelines and procedures. Data collected from criminal justice professionals reveals that a lack of guidelines and procedures is an impediment to a coordinated, effective, and efficient response to VAW/DV.

The development of guidelines for handling VAW/DV cases

The Istanbul Convention stipulates that states parties take all necessary measures to effectively and efficiently address VAW/DV. As such, criminal justice institutions are expected to foster conditions that enable police officers, prosecutors, and judges to respond to VAW/DV in a way that aligns with international norms and standards. Among these are the development of guidelines and procedures that support criminal justice practitioners to act effectively.

According to practitioners surveyed in the framework of this assessment, criminal justice institutions have failed to fulfil this supportive role. Indeed, it appears that criminal justice practitioners have very little guidance material available to support them in decision making or in handling specific tasks in cases of VAW/DV. Yet, these tasks are often very technical, requiring specialized tools and knowledge.

Only 8% of prosecutors, 14% of judges, and 36% of police officers reported having access to guidance materials for handling DV cases. Access to material to support these professionals in handling cases of VAW is even more limited, with just 7% of prosecutors, 10% of judges, and 22% of police officers reporting having access to such tools. In addition, when asked to explain which guidance materials they had used, some criminal justice practitioners listed materials that make up the legal framework (i.e. “legislation,” “legal acts,” and “orders”) as opposed to genuine guidance materials.

For these reasons, it appears that the best approach is to systematically combine the design of training curricula on VAW/DV with the development of guidance materials to support criminal justice practitioners in their response to VAW/DV.

Table 16. Guidance materials available to criminal justice practitioners

<i>Proportion of practitioners who report having access to guidance materials for handling cases of:</i>	Police officers (n = 388)	Prosecutors (n = 106)	Judges (n= 169)
domestic violence	36%	8%	14%
violence against women	22%	7%	10%

The need to strengthen multi-agency cooperation

“Analysis of the applications sent to the Ombudsman Office of Ukraine shows that the main problem in the sphere of DV remains the absence of cooperation between representatives of the various agencies responsible for the implementation of the State policy on domestic violence prevention... and the divisions of the National Police responsible for handling family violence cases when DV incidents happen.”

Written information provided by the Office of the Ombudsman

Multi-agency cooperation and integrated policies represent one of the three main principles of the Istanbul Convention (see chapter 1). States parties are expected to develop coordination protocols at the national, regional, and local levels to organize cooperation mechanisms both within the criminal justice system and between criminal justice actors and other relevant stakeholders. In addition, criminal justice practitioners are obliged to receive training on how to implement these protocols.

Cooperation within the criminal justice system is a challenge worldwide and is often fraught with political and hierachal challenges. Criminal justice practitioners are generally in a position to engage in multi-agency cooperation only when the role of each stakeholder is well defined and framed. In Ukraine, Order No. 3131/386⁸¹, adopted in 2009, regulates multi-agency cooperation in the framework of implementation of the state policy against family violence. However, actual implementation of this procedure has been ineffective, and the Order covers only DV, no other forms of VAW.

The gap between a need for multi-agency cooperation and a lack of guidelines and protocols on this issue has led criminal justice practitioners to respond eagerly to opportunities for jointtrainings. In fact, 37% of judges, 63% of police

⁸¹ «On the approval of the Instruction on the Procedure of cooperation between agencies responsible for the implementation of state policy against family violence, services for children, centres for social services for family, children and youth and respective law enforcement units on measures against family violence”

officers, and 69% of prosecutors would participate in joint VAW/DV-related trainings involving stakeholders from various agencies.⁸²

Table 17. Multi-agency guidance materials and joint trainings

	Police officers (n = 388)	Prosecutors (n = 106)	Judges (n= 169)
Proportion of criminal justice practitioners who report having access to guidance materials on multi-agency cooperation	21%	8%	N/A
Proportion of criminal justice practitioners willing to participate in VAW/DV joint trainings	63%	69%	37%

C. Understaffing and insufficient infrastructure

The Istanbul Convention urges states parties to allocate appropriate human resources and develop relevant infrastructure by which to address VAW/DV in an effective and efficient way. The findings of this assessment, which included analysis of external sources such as data from the Office of the United Nations High Commissioner for Human Rights, are that this requirement has not been met within the Ukrainian criminal justice system to date.

A lack of human resources

Another institutional weakness impeding an effective and efficient criminal justice system response to VAW/DV in Ukraine is a lack of adequate human resources. Understaffing at criminal justice institutions negatively impacts the capacity of criminal justice practitioners to handle cases with due diligence.

“I am the only staff for ten villages and I cannot do anything [to properly handle VAW/DV cases] even if I want to. We just do not have enough staff!”

Interview with a police officer

Ukraine suffers from insufficient staffing across the criminal justice sector. Its 765 courts require 9,071 judges to properly function; and yet, as of 15 November 2016, courts were understaffed by 27% with only 6,614 judges at

⁸² LSU, in cooperation with the Stabilization Support Service, has conducted 25 multi-agencytrainings in 2016/17, throughout Ukraine, on how to provide assistance to victims of conflict-related sexual violence. Feedback from participants has confirmed their eagerness for such jointtrainings.

the bench. What's more, this average understaffing rate actually masks some particularly extreme situations, such as⁶ courts that have no judges at all and are thus unable to function.⁸³ Similarly, as of October 2016, the Ukrainian police forces were estimated to be lacking 18,875 officers.⁸⁴

"After the reforms of law enforcement bodies, we faced a very significant staff reduction. Now, for one prosecutor working in the city of Kyiv, there are from 400 to 800 criminal cases to handle monthly. Taking into account that police investigators have similar or even heavier workloads, they try to build working groups to proceed with these cases faster."

Interview with a senior manager from a criminal justice institution

Such understaffing creates institutional environments within which criminal justice practitioners cannot deliver quality and victim-centred services in response to VAW/DV.

A lack of infrastructure

In observations of court hearings in Kyiv and Kharkiv, DCAF/LSU researchers assessed the court environment as a whole, including its infrastructure, since a secondary objective of this monitoring was to assess the extent to which court infrastructures ensure the safety of VAW/DV victims. Researchers observed very little infrastructure dedicated to ensuring the safety of victims, such as separate waiting rooms in court buildings to prevent VAW/DV victims and their alleged perpetrators from having contact (this was never observed), separate entrances into court buildings (observed in 3 instances out of 77).

The Office of the United Nations High Commissioner for Human Rights has similarly highlighted that police stations in Ukraine are not equipped with infrastructure that allows police officers to conduct confidential interviews.⁸⁵ This, combined with many other factors, contribute to making it traumatic for victims of VAW/DV to report these crimes, and may ultimately inhibit them from pursuing justice at all.

⁸³ Office of the United Nations High Commissioner for Human Rights, Conflict-Related Sexual Violence in Ukraine: 14 March 2014 to 31 January 2017, 2017, 29. Available at: http://www.ohchr.org/Documents/Countries/UA/ReportCRSV_EN.pdf (accessed 13 March 2017), 30. As cited, this information was provided by the High Qualification Commission of Judges in a letter to the UN Human Rights Monitoring Mission in Ukraine (HRMMU).

⁸⁴ Ibid., 29. Also see (in Ukrainian): Національна Поліція, "Сьогодні, 3 жовтня, в Міністерстві внутрішніх справ України глава Нацполіції розповілапрорезультатам тестації співробітники в Національній поліції України," 3 October 2016, <https://www.npu.gov.ua/uk/publish/article/2015649> (accessed 13 March 2017), slide 3.

⁸⁵ Ibid.

CONCLUSIONS AND RECOMMENDATIONS

The ineffectiveness of the criminal justice system response to VAW/DV

This DCAF/LSU assessment captured, documented, and analysed how the Ukrainian criminal justice system responds to VAW/DV. The findings revealed that the response of the criminal justice system to VAW/DV is ineffective. This ineffectiveness has three different indicators:

- Underreporting – most cases of VAW/DV are not reported to the police;
- Attrition – only a fraction of the VAW/DV cases reported to police result in a conviction at the end of the justice chain; and
- Non-deterrant sentencing – sentencing practices fail to prevent VAW/DV in the first place and do not deter the escalation of violence or repeat offences.

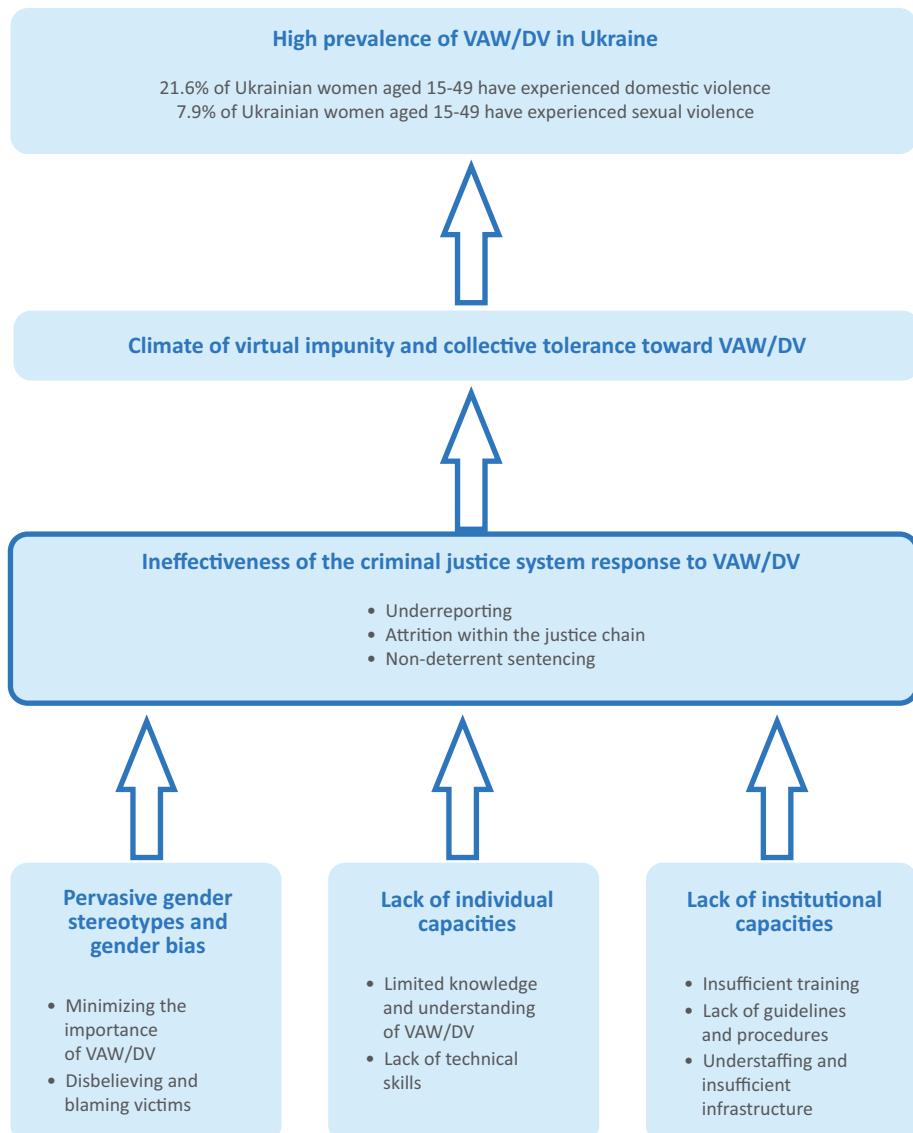
Quantitative and qualitative data collected by DCAF/LSU suggest three main causes of the ineffective criminal justice system response to VAW/DV in Ukraine:

- Pervasive gender stereotypes and gender bias among criminal justice practitioners, which mitigate their willingness to address VAW/DV;
- A lack of individual capacities that limits the ability of criminal justice practitioners to handle VAW/DV cases appropriately; and
- Insufficient institutional capacities, which tend to foster an environment that impedes rather than supports criminal justice practitioners in responding effectively and efficiently to VAW/DV.

The result of this ineffective response to VAW/DV by the criminal justice system is that perpetrators are not held accountable for the offences they commit, and victims are obstructed in their pursuit of justice. This contributes to a society-wide climate of virtual impunity and a collective tolerance of VAW/DV. Indeed, while the criminal justice system is tasked with preventing VAW/DV, its ineffectiveness ultimately contributes to sustaining the high

prevalence of VAW/DV in Ukraine, where among women 15-49, 21.6% report having experienced domestic violence in their lifetime and 7.9% report having experienced sexual violence in their lifetime.

Figure 2: Markers, causes and impact of the ineffectiveness of criminal justice system response to VAW/DV

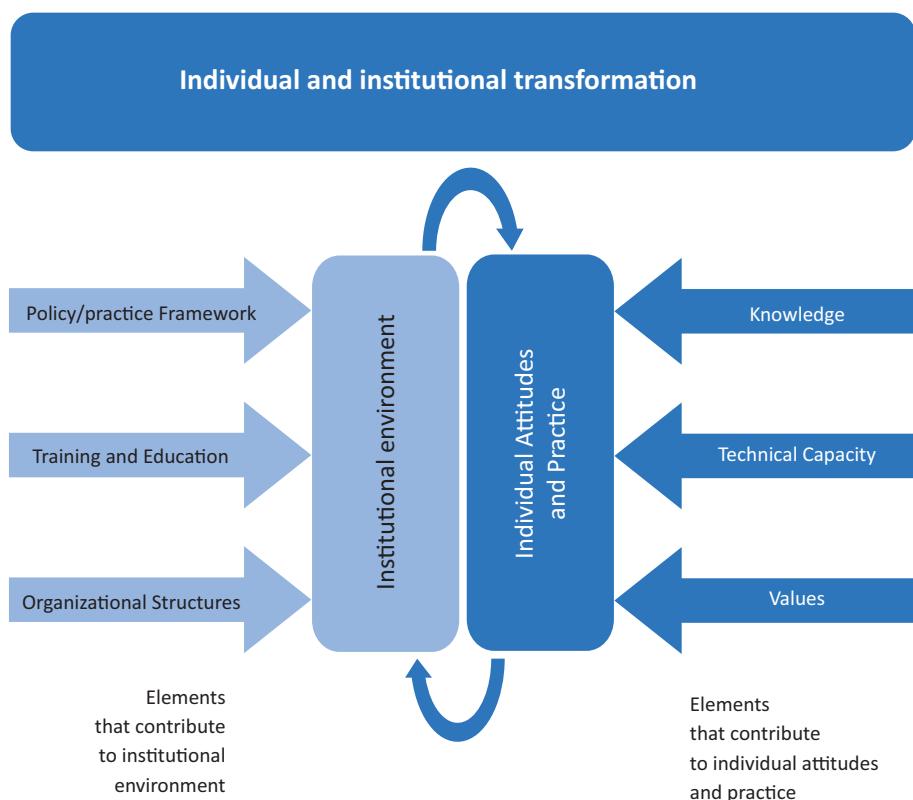


A need for individual and institutional transformation

The causes of the ineffectiveness of the criminal justice response to VAW/DV rest at the individual level (values, knowledge, technical capacity) and at the institutional level (policy framework, training and education, organizational structures). Interventions aimed at improving the response of the criminal justice system to VAW/DV should therefore:

- strengthen individual capacities by developing technical competence and confronting attitudes based on gender bias and gender stereotypes; and
- reinforce institutional capacities to support practitioners by developing policy and practice frameworks (procedures, guidance materials), training and educational requirements and opportunities, and organizational structures (staffing, infrastructure).

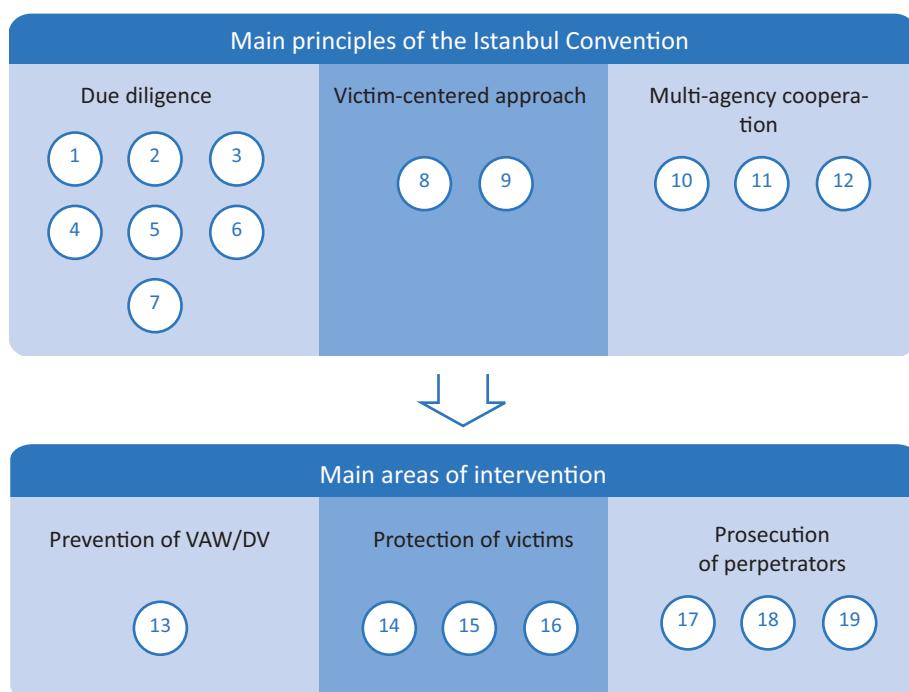
Figure 3: The two pillars of the transformative approach



Recommendations to pave the way within the Ukrainian criminal justice system for the successful implementation of the Istanbul Convention

The results of this assessment and the conclusions of DCAF/LSU researchers have generated a series of recommendations meant to pave the way within the Ukrainian criminal justice system for successful implementation of the Istanbul Convention.⁸⁶ In figure 4, presented below, these recommendations are clearly situated within the context of the principles and areas of intervention of the Istanbul Convention. The main principles of the Convention are due diligence, a victim-centred approach, and multi-agency coordination; and its main areas of intervention are the three Ps – prevention, protection, and prosecution.

Figure 4: Final recommendations in the context of implementation of the Istanbul Convention



⁸⁶ The aim of DCAF/LSU research was to assess the capacity of the criminal justice system to implement the Istanbul Convention. Therefore, the final recommendations cover specifically and exclusively the individual and institutional capacities within the criminal justice system. The final recommendations do not intend to cover the legislative framework nor the development of individual/institutional capacities outside the criminal justice system.

Due diligence

1. Improve the collection and monitoring of administrative data and statistics (including gender-disaggregated) to routinely assess the effectiveness of the criminal justice response to VAW/DV;
2. Develop and institutionalize trainings that enable criminal justice practitioners to handle all forms of VAW, beyond DV;
3. Develop and institutionalize practice-oriented training curricula that give criminal justice practitioners the tools to transform their practice and improve their response to VAW/DV;
4. Combine the design of training curricula with the development and dissemination of guidance material to support criminal justice practitioners in responding to VAW/DV; and
5. Allocate appropriate human resources to criminal justice institutions to support the effective handling of VAW/DV cases.
6. Develop a long-term training policy that institutionalizes training rather than offering it ad-hoc;

Victim-centered approach

7. Develop and institutionalize trainings that enable criminal justice practitioners to interact with victims in a way that does not secondarily victimize them; and
8. Adapt the infrastructure of criminal justice institutions to meet the needs of VAW/DV victims in terms of confidentiality and/or safety.

Multi-agency cooperation

9. Develop and disseminate communication materials to inform criminal justice practitioners about the institutional environment available to support VAW/DV victims (at the local, regional, and national levels);
10. Strengthen coordination protocols and procedures (at the national, regional, and local levels) that frame the role of respective institutions involved in handling VAW/DV cases;
11. Strengthen cooperation between criminal justice institutions and stakeholders outside the criminal justice system (including CSOs) in order to deliver more comprehensive and effective support to VAW/DV victims; and
12. Develop and institutionalize joint-trainings involving stakeholders from various agencies.

Prevention of VAW/DV

13. Develop training and communication initiatives to address the tolerance of criminal justice practitioners toward VAW/DV.

Protection of victims

14. Develop and institutionalize trainings on risk assessment to help criminal justice practitioners ensure the safety of victims.

Prosecution of perpetrators

15. Develop a sentencing policy that aims to deter perpetrators from committing VAW/DV;
16. Develop research efforts on attrition within the criminal justice system to identify and address main points of attrition along the justice chain that lead to the discontinuation of VAW/DV cases; and
17. Develop and institutionalize training that enables judges to evaluate aggravating and mitigating factors in a way that aligns with international standards and the Istanbul Convention.