

VICTIM SUPPORT TRAINING MANUAL

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Aim of this Manual

Paragraph 16 of the United Nations (UN) Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power states:

Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.

This Manual is intended to help investigators strengthen their oversight and legal knowledge of victim support.

This support starts from the moment an investigator first makes contact with a victim, through to the conclusion of its mandate, and any subsequent trial in case of criminal prosecution.

By approaching victims from a victim support standpoint, we hope investigators will be able to increase community members' confidence in coming forward and reporting cases.

Victims may be important witnesses to a case. Victims who are treated with respect for their inherent dignity are probably more likely to provide their full cooperation during an investigation and any subsequent prosecution. Their collaboration and cooperation are crucial in developing a clear strategy for success as they may have crucial information that can help solve the case.

This information could encompass:

- Helping to identify a suspect or suspects;
- Explaining what happened, as well as indicating details of the type of crime;
- Providing information that may assist in furthering the investigation;
- Identifying other witnesses; and
- Suggesting a possible suspect or suspects.

This Manual is intended as a guide for facilitators running a two-day training course for investigators. The course will give investigators an overview of their obligations regarding victims and victim support, and also of the benefits of providing victim support while investigating and solving cases.

Acknowledgements

In compiling this Manual, we drew in particular on the following manuals: *Building Capacity in the Civilian Oversight of African Policing* (an APCOF publication); *Witnesses and Victims: A Guide for Good Practice* (a CSVN publication); and the *Handbook on Justice for Victims* of the UN Office for Drug Control and Crime Prevention.

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PRE-ASSESSMENT

It is often interesting to determine how much course participants know about a subject before embarking on a course, and to ascertain their attitudes and feelings in respect of the subject matter. Below, are some questions for you to think about and answer. Just be honest! It is not a test. At the end of the course, we will come back to these questions and see how much, if anything, has changed for you.

Table A: Questions to consider and answer prior to embarking on the course

<p>'Only a person directly affected by police action is considered a victim.' Do you agree or disagree with this statement? Explain your thoughts.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>'I have a pretty good idea of what victim support entails.' If you do, explain what you know about such support.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>'When a person phones in a complaint, the first thing to do is get the name of the complainant. The rest can come later.' Do you think this is correct? Explain your reasoning.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>'Secondary victimisation' refers to the victimisation experienced by a person who witnesses a crime. Can you think of other forms of secondary victimisation?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>



A male police officer strip-searches a woman who is in detention. She lays a complaint, stating that the police officer infringed her dignity, which she claims is a fundamental right.

Does this constitute victimisation because:

- A male may not strip-search a female?
- Her dignity has been infringed?
- Both of the above?

And why?

.....

.....

.....

'Treating victims with sincerity, empathy and compassion cannot help solve cases. It is simply a waste of time. We just need the facts.'

Do you agree with this statement? Explain your reasoning.

.....

.....

.....

Is the Victim Protection Act the only Kenyan law that promotes the rights of victims?

Give examples of other Kenyan laws that promote such rights.

.....

.....

.....

Names as many categories as you can of people that the law considers to be vulnerable.

.....

.....

.....

Do you have an understanding of international law relating to victim support?

Explain briefly what international law makes provision for in this regard.

.....

.....

.....

'There is no need to pay attention to the psychological, emotional, physical, economic or social impact of offences so long as evidence gathered is secure.'

Do you agree with this or not? Explain your reasoning.

.....

.....

.....

MODULE 1

VICTIMS AND VICTIM SUPPORT

This module enables the investigator to understand the categories of victims of crime and victimisation, and to appreciate the benefits of victim support during the investigation process.

Crime takes an enormous physical, financial, social, psychological and emotional toll on victims of an offence.

EXERCISE 1 Discuss

- What challenges does an investigator experience when dealing with victims and witnesses?
- Have you personally encountered any of these challenges? If so, describe your experience and how you handled these challenges.

Benefits of victim support

In many criminal justice systems, victims of crime are forgotten and sometimes even re-victimised by the system itself. They are rarely allowed to fully participate in decisions that concern them, and they do not always receive the assistance, support, and protection they need. Redress for the harm they have suffered as a result of victimisation is often not available and, when it is, it is often insufficient or comes too late.

Many countries have found that victims of crimes need programmes that provide social, psychological, emotional and financial support and that also help manage their participation in the criminal justice system.

These programmes should be **victim-sensitive or victim-centred**. They should contain policies, procedures and protocols for the criminal justice agencies that come into contact with victims. This is where support services are offered to secure restoration of victims' emotional, mental, physical, legal or financial status.

EXERCISE 2 **Brainstorm**

Given the challenges in dealing with victims and witnesses that we discussed earlier, do you think an approach where an investigator makes supporting victims a priority will bring any benefits to your investigative role?

The benefits for state institutions in the criminal justice system of making victim support an integral and central part of their work are:

- Increased trust in the criminal justice system;
- Increased cooperation with the ability to establish support programmes by government and other agencies;
- Increased reporting with better information and support services; and
- Increased prevention of re-victimisation in the justice process.

Two definitions of ‘victim’: Kenya and the United Nations

Kenya recently enacted the Victim Protection Act, which defines the term ‘victim’. The United Nations (UN) Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (the UN Declaration), and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law have a more extensive definition. Let us compare what Kenyan and international law state in this regard, and then answer the questions below the table.

Table 1.1: The term ‘victim’ as defined in Kenyan and international law

Kenyan law	International law
Victim Protection Act, 2014	UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)
<p>SECTION 2</p> <p>A victim is defined as ‘any natural person who suffers injury, loss or damage as a consequence of an offence’.</p>	<p>Paragraph 1</p> <p>‘Victims’ means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.</p> <p>Paragraph 2</p> <p>‘Victim’ also includes, where appropriate, the immediate family or dependants of the direct victim, as well as persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation.</p> <p>Paragraph 2</p> <p>This paragraph protects victims’ rights to equality and non-discrimination by ensuring that the provisions of the UN Declaration are applicable to all persons, without distinction of any kind, such as on the grounds of race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.</p>

Kenyan law	International law
	<p>Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005)</p>
	<p>8. For purposes of the present document, victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.</p> <p>9. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.</p>

EXERCISE 3**Discuss**

- The Kenyan definition speaks about a ‘natural person’ in the singular in its definition of ‘victim’. Compare this with what is stated in the international definitions.
- What are the factors that make a person/people a ‘victim’ according to Paragraph 1 of the UN Declaration and Basic Principle 8?
- The Kenyan definition speaks about ‘injury, loss or damage’. Compare this with the international texts, which speak about ‘harm’. Do you think that ‘harm’ could be read into the Kenyan definition? Explain.
- Give an example of a person being a victim through an ‘omission’ on the part of the police.
- Both international texts speak about the immediate family also potentially being victims. Can you think of any examples of this from your own experience?
- The international texts make clear that a person can (indeed must) be considered a victim even if no perpetrator is identified. Can you give an example in this regard?
- Are there situations in Kenya where someone/a group may not be considered a victim, or be regarded as less of a victim, by virtue of, for example, their religion, ethnic origin or some other factor?
- On balance, which of these definitions do you think serves victims better?

Primary victimisation

'Primary victimisation' refers to the situation where a person or persons have directly suffered harm either individually or collectively.

The impact of crime on a victim differs from person to person. It could be physical, socio-economic or psychological, or it could entail all three.

Using the scenario below, let us discuss which of the impacts in the table that follows the scenario may affect the victim. Also use your own experience in relation to your work.

EXERCISE 4 Discuss

Read the scenario below and then circle (in the table that follows) all the possible reactions and effects the victim may suffer as a result.

SCENARIO

A woman walks into a police station to lay a charge of sexual harassment. The station is busy and she has to wait. There are no female officers on duty. Eventually, a male sergeant calls her to the desk and asks her to state her complaint. The other officers are soon listening to her story. There are some suppressed laughs. Eventually the officer tells her that the incident does not warrant an investigation, and that in future she should try and minimise attention to herself by dressing more conservatively.

Table 1.2: Possible reactions and effects a victim may suffer as a result of an incident

Physical	Socio-economic impact	Psychological impact
<p>Immediately and shortly after the incident (a week):</p> <ul style="list-style-type: none"> • an increase in adrenalin in the body • an increased heart rate • hyperventilation • shaking • tearfulness • numbness • feeling cold or frozen • experiencing events in slow motion • dryness of the mouth • enhancement of particular senses • a flight-or-fight response 	<p>Immediately and shortly after the incident (a week):</p> <ul style="list-style-type: none"> • loss of livelihood opportunities while in hospital or recovering • cost of hospital stay and of subsequent medication or treatment • loss of social-security protection (loss of social affiliations and the support of friends, church, clan and society because many may be afraid of the repercussions of laying a complaint against the police) 	<p>Immediately and shortly after the incident (a week):</p> <ul style="list-style-type: none"> • shock • fear • anger • helplessness • disbelief • grief • anger • outrage • impairment of dignity

Physical	Socio-economic impact	Psychological impact
<p>Some time after the incident:</p> <ul style="list-style-type: none"> • insomnia • appetite disturbance • lethargy • headaches • aching muscles • tension • nausea • decreased libido 	<p>After the incident:</p> <ul style="list-style-type: none"> • difficulty in accessing health services • loss of income while attending the trial • obtaining professional counselling in order to come to terms with the psychological and emotional impact of the incident • taking time off work or other income-generating activities • security-related expenses (e.g. burglar bars) 	<p>After the incident:</p> <ul style="list-style-type: none"> • distressing thoughts about the incident • nightmares • depression • guilt • fear • loss of confidence • loss of self-esteem
<p>Possible long-term effects:</p> <ul style="list-style-type: none"> • permanent physical injuries • scarring • stigmatisation • stereotyping 	<p>Possible long-term effects:</p> <ul style="list-style-type: none"> • the person may have to change employment • he or she may not be able to work • his or her marriage or relationships may be affected 	<p>Possible long-term effects:</p> <ul style="list-style-type: none"> • post-traumatic stress disorder

EXERCISE 5

Personal reflection

- Have you experienced something very traumatic? Take a moment to reflect on which of the above effects you felt? Do you still feel any such effects? How does thinking about the experience make you feel now?
- How did the people around you treat you?
- How would you have liked to have been treated?

Secondary victimisation

'Secondary victimisation' refers to the negative responses (actions and attitudes or failure to act) of individuals and institutions to the victim.

There are many ways in which secondary victimisation can occur, and it can occur at any stage of the criminal justice process. Some examples of secondary victimisation by the police are:

- Trying to convince the person not to press charges; or to withdraw a charge;
- Implying, or even stating, that the person is lying;
- Interviewing a victim in public;
- Threatening a victim;
- Ignoring the victim's requests for information or help;
- Not returning a victim's property; and
- Failing to give a victim feedback to their complaint.

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EXERCISE 6 Personal reflection

Let us continue with the scenario above. Identify any examples of secondary victimisation you detect. Think about:

- Their attitude to the victim;
- How they make her feel;
- Whether they believe her;
- Whether they respect her; and
- Whether they put pressure on her in any way.

MODULE 2

THE INTERNATIONAL AND KENYAN LEGAL FRAMEWORK FOR VICTIM SUPPORT

This module sets out the key international and Kenyan legal provisions establishing the rights of victims, as well as guidelines on how to address and guarantee the rights of victims during investigations.

International legal framework

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985

To address victim support on an international level, the United Nations (UN) adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in 1985. Underlying the Declaration is the philosophy that victims should be adequately recognised and that they should be treated with respect for their dignity. The Declaration entitles victims to access all mechanisms of justice and to prompt redress for harm and loss suffered. Further, victims are entitled to receive adequate, specialised assistance in dealing with emotional trauma and other problems caused by the impact of victimisation.

The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) (the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions)

The Protocol establishes a common standard of performance for investigating potentially unlawful death or suspected enforced disappearance. It further comprises a shared set of principles and guidelines for states as well as for institutions and individuals that play a role in investigations. The Protocol provides that individuals have a right to a full and effective remedy and that family members of victims (especially deceased victims) have many of the same rights. Paragraphs 10 and 11 of the Protocol provide as follows:

10. Persons whose rights have been violated have the right to a full and effective remedy. Family members of victims of unlawful death have the right to equal and effective access to justice; to adequate, effective and prompt reparation; to recognition of their status before the law; and to have access to relevant information concerning the violations and relevant accountability mechanisms. Full reparation includes restitution, compensation, rehabilitation, guarantees of non-repetition, and satisfaction. Satisfaction includes government verification of the facts and public disclosure of the truth, ... accurate accounting for ... the legal violations, sanctions against those responsible for the violations, and the search for the disappeared and for the bodies of those killed.

11. Family members have the right to seek and obtain information on the causes of a killing and to learn the truth about the circumstances, events and causes that led to it. In cases of potentially unlawful death, families have the right, at a minimum, to information about the circumstances, location and condition of the remains and, insofar as it has been determined, the cause and manner of death.

The Protocol also establishes clear standards of professional ethics for investigators and provides practical guidance on various stages of the investigation that may be of particular use in thinking about victim support [e.g. family liaison (para. 67), understanding the victim (para. 68), finding, interviewing and protecting witnesses (para. 69–76 and 84–89), as well as detailed guidance on interviews (para. 183–232)].

The Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)

The Protocol includes guidance on conducting interviews as well as on identifying psychological evidence of torture. It also details the documentation of torture and its consequences.

United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime

Other international legal instruments ensure that the human rights of vulnerable groups that may be subject to marginalisation, such as children and women, are upheld and respected in the context of criminal justice and victimisation. When read together, the UN Convention on the Rights of the Child, to which Kenya is a State Party, and the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime provide a framework for ensuring justice for child victims based on the principles of dignity, non-discrimination, the best interests of the child, and the right of the child to participate in judicial processes.

Convention on the Elimination of All Forms of Discrimination against Women

With respect to the rights of women who are victims of crime, international law has developed a number of measures to respond to discrimination and violence against women and girls and to support victims through criminal justice processes. These measures include the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Kenya is a State Party, and a report of the UN Secretary-General on Crime Prevention and Criminal Justice Responses to Violence against Women and Girls (E/CN.15/2008).

There are also other groups that may be particularly vulnerable to revictimisation, or in need of particular specialised support, in the context of victimisation by the police.

General Comment No.4 on the African Charter on Human and Peoples Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5)

The General Comment provides guidance on implementation and monitoring of the right to redress for victims of torture and other ill-treatment by States and other stakeholders, including national human rights institutions, national preventive mechanisms and civil society organisations. It makes clear that States are required to ensure that victims are able in law and in practice to claim redress by providing them with access to effective remedies. This includes the adoption of relevant legislation and the establishment of judicial, quasi-judicial, administrative, traditional and other processes.

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Adopted by General Assembly resolution 60/147 of 16 December 2005)

10. Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.

[...]

12. A victim [...] shall have equal access to an effective judicial remedy as provided for under international law. Other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law. Obligations arising under international law to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic laws. To that end, States should:

- (a) Disseminate, through public and private mechanisms, information about all available remedies for gross violations of international human rights law and serious violations of international humanitarian law;
- (b) Take measures to minimize the inconvenience to victims and their representatives, protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victims;
- (c) Provide proper assistance to victims seeking access to justice;
- (d) Make available all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to remedy for gross violations of international human rights law or serious violations of international humanitarian law.

13. In addition to individual access to justice, States should endeavour to develop procedures to allow groups of victims to present claims for reparation and to receive reparation, as appropriate.

14. An adequate, effective and prompt remedy for gross violations of international human rights law or serious violations of international humanitarian law should include all available and appropriate international processes in which a person may have legal standing and should be without prejudice to any other domestic remedies.

The international legal framework encourages states to enact legislation to give effect to victims' rights in law and practice, something that Kenya has done.

Kenyan legal framework

The Constitution, 2010

Article 50(9) of the Constitution of Kenya, 2010, provides that the Parliament of Kenya must enact legislation providing for the protection, rights and welfare of victims of offences.

The Victim Protection Act, 2014

In 2014, Parliament enacted the Victim Protection Act to give effect to Article 50(9) of the Constitution.

The Act applies to any person in Kenya, irrespective of that person's nationality, country of origin or immigration status, who is a victim of a crime committed within Kenya, or outside Kenya where the victim is a citizen of Kenya. The Act provides for the rights, protection and support of victims of crime, including through support services, reparation, compensation, and special protection for vulnerable victims.

The Act defines 'victim' and establishes general principles that reflect the provisions of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985.

It also articulates the full range of rights of victims from the time of complaint to trial.

The Act further establishes a victim-services regime, which includes a Victim Protection Trust Fund and a Victim Protection Board, to make payments from the Fund for expenses arising out of assistance to victims of crime.

EXERCISE 7**Read and discuss**

Read sections 3 and 5 of the Victim Protection Act set out below, and then answer the following questions:

- Think of cases that you have personally handled. To what extent did you and your colleagues apply the sections correctly?
- Have there been cases where you treated a non-Kenyan differently? If so, in what way?

3. The objects and purposes of this Act are to –
- (a) recognize and give effect to the rights of victims of crime;
 - (b) protect the dignity of victims through –
 - (i) provision of better information, support services, reparations and compensation from the offender, in accordance with this Act;
 - (ii) establishment of programmes to assist vulnerable victims;
 - (iii) supporting reconciliation in appropriate cases by means of a restorative justice response;
 - (iv) establishment of programmes to prevent victimization at all levels of government;
 - (v) preventing re-victimization in the justice process; and
 - (c) promote co-operation between all government departments and other organizations and agencies involved in working with victims of crime.

5. (1) This Act applies to any person in Kenya, irrespective of nationality, country of origin or immigration status, who is –
- (a) a victim of crime committed within Kenya; or
 - (b) outside Kenya, where the victim is a citizen of Kenya.
- (2) The Sexual Offences Act, 2006, and the Counter-Trafficking in Persons Act, 2010, apply to any person contemplated in subsection (1), except in so far as this Act provides for different procedures in respect of such person.
- (3) No victim shall be denied the rights or welfare of a victim under this Act by reason only that similar protection measures are available under any other written law.

The Victim Rights Charter

The Law Office has drafted a Victim Rights Charter, as required by section 32(2) of the Victim Protection Act. The Charter will be implemented by the Victim Protection Board.

EXERCISE 8

Read and discuss

Below is the Preamble to the Kenyan Victim Rights Charter. In your opinion, does it apply to the investigator?

VICTIM RIGHTS CHARTER

Section 32(2)d of Victim Protection Act, 2014

PREAMBLE

The purpose of this Charter is to recognize and apply the principles that govern victims of crime and the standard of service they can expect to receive from agencies in the criminal justice system and other relevant agencies. This Charter is a commitment by the Government to implement measures aimed at continuous reform of the criminal justice system to protect and promote the rights of victims in compliance with the obligations under Article 50(9) of the Constitution of Kenya, Section 19(4) of the Victim Protection Act, 2014, relevant regional and international human rights instruments as ratified by Kenya and other international standards.

The provisions of the Charter shall be implemented by the Victim Protection Board as stipulated in the Victim Protection Act, 2014, and the relevant agencies.

In Part 1, Interpretation, the Charter states:

‘Investigative agencies’ mean[s] any person or institution mandated by law to conduct investigation in any criminal case and includes but [is] not limited to [the] National Police Service, Independent Policing Oversight Authority, Ethics and Anti-Corruption Commission and National Environmental Management Authority.

The National Coroners Service Act, 2017

The National Coroners Service Act deals with deaths while in police or prison custody. A coroner is obligated to investigate a death in these circumstances (see section 25(3)).

The Act also deals with people who cooperate with a coroner (such as witnesses). Such people have immunity under the law and cannot be prosecuted. This provision is helpful, as it ensures that a coroner is able to access information and materials required for investigations (see sections 65 and 67).

The Witness Protection Act, 2006

The Act deals with, among other things, who can refer a victim for witness protection. For instance, police officials and investigators may do so.

MODULE 3

VICTIMS' RIGHTS

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In this module, we deal with the rights of victims after an incident, as set out in the national and international instruments we considered in the previous module.

EXERCISE 9 Case study

The case study that follows forms the basis of the work for this module. Read it carefully. Then read through the victims' rights that we have summarised from Kenyan and international legal instruments (see Figure 3.1), as well as the information on victim assessments and the collection of information, on confidentiality and access to information, on identification parades, and on communication and feedback.

As you go through the case study, think about the following questions and provide relevant answers (e.g. reasons/descriptions/explanations):

- Do the two witnesses fit the United Nations (UN) description of 'victim'?
- What rights were infringed in your opinion?
- What rights were upheld?
- Was there any primary victimisation?
- Was there any secondary victimisation?
- Was all the correct information documented?
- Were the witnesses given the right kind of protection?
- What do you think were the short-, medium- and long-term physical, socio-economic and psychological effects on the two witnesses?
- What could the investigators have done differently or better?

You can indicate in the table on page 20 (Table 3.1) which rights of the witnesses were infringed or respected.

CASE STUDY

An investigator is investigating the death of two men in a tavern. The two were allegedly shot by another man, Peter Kamau.

Peter Kamau states that he acted in self-defence, as the other two drew their guns on him first.

There were several patrons at the tavern at the time of the incident, but they all left. However, one of them called the police.

Two officials, Donovan Kinuthia and Amos Otieno, arrive at the scene of the crime.

After making an assessment of the dead victim, the officials want to interview the two remaining witnesses, Aamiina Abdullahi and Jonas Maina.

Aamiina is a Somali-born woman who has been in Kenya for a few years. She is nervous, as her papers have expired. She is crying. Her English is poor but she manages to explain that she is afraid of being deported and does not want to be interviewed or have anything to do with the case.

When Donovan Kinuthia realises she doesn't have the right papers, he confiscates her identity document (ID) and berates her for entering the country illegally. When she says she doesn't want to be interviewed, he tells her it is the law that she come forward as a witness and cooperate. He says that he will not report her if she cooperates, but that he will keep her ID to make sure that she does not disappear. She says she will cooperate if he promises not to give her name to anyone outside the police service. He assures her that her name will not be given to the media.

Jonas is the bartender. He fell to the ground when the shooting started and hurt his arm. He is in shock and almost faints. He says his mouth is dry and that he is very afraid to be a witness, as he or his family might be intimidated or hurt. Amos Otieno, promises to provide protection for Jonas and his family.

When documenting the details of Aamiina and Jonas, only Jonas is noted as a vulnerable witness.

Two weeks later

Aamiina is called to the offices. She is not told why, so she comes alone. It turns out that there is going to be an identity parade. At the identity parade, there is no one-way window, and the official tells her she must just walk up to the perpetrator and touch him.

Three months later

The investigation is ongoing. Aamiina has repeatedly requested the return of her ID, but Donovan Kinuthia says he can't release it until after the trial. Aamiina asks when the trial will happen and Donovan says he will let her know, but he doesn't.

Six months later

Jonas is in a witness-protection programme and so has not been able to work for all this time. He keeps asking for information on the case. The officials say they 'are still investigating'. They refuse to give him any other information.

Twelve months later

The trial date is set but no one has informed Aamiina or Jonas. The press wants details on the case and someone gives them both Aamiina and Jonas's full names, which are now in the public domain.

Sentencing

Peter Kamau is found guilty. No one asks Aamiina or Jonas to present a victim-impact statement at the time of sentencing and no victim assessment is ever documented.

Table 3.1: Respect for or infringement of victim’s rights

	Jonas Maina		Aamiina Abdullahi	
VICTIM’S RIGHTS	Infringed	Respected	Infringed	Respected
Dignity				
Equality				
Legal rights				
Protection and security				
Privacy and confidentiality				
Communication and information				
Support services				
During the investigation, prosecution and trial				

Table 3.2: Examples of secondary victimisation

Jonas Maina	Aamiina Abdullahi

Figure 3.1: Victim's rights

Victims' rights in terms of the Victim Protection Act, 2014	All victims have these rights...
DIGNITY	<ul style="list-style-type: none"> • The right to be treated in a manner that takes into account the victim's cultural values and beliefs • The provision of better information, of support services, and of reparation and compensation by the offender • The establishment of programmes to assist vulnerable victims
EQUALITY & FREEDOM FROM DISCRIMINATION	<ul style="list-style-type: none"> • The right to freedom from discrimination directly or indirectly on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth
PROCEDURAL RIGHTS	<ul style="list-style-type: none"> • The right of access to justice • The right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair • The right to be treated lawfully • The right to representation by legal and social services of the victim's own choosing • The right to support reconciliation in appropriate cases by means of a restorative-justice response • The right not to be re-victimised during the justice process • The right to have their information recorded in a victim-assessment report
PROTECTION & SECURITY	<ul style="list-style-type: none"> • The right to be protected against secondary victimisation in all informal, administrative and judicial proceedings • The right to be referred immediately to the Victim Protection Board for onward referral to the Witness and Victim Protection Agency in cases of potential intimidation or retaliation • The right to freedom from intimidation, harassment, fear, tampering, bribery, corruption or abuse • The right to safety in respect of the victim and family • The right to secure urgent medical attention, immediate psychosocial support, and police protection, where appropriate. • The right to rescuing and placing in a place of safety of any other persons related to the victim who may still be in the custody or control of the offender • The right to protection of the victim's property and the prompt release of property held by a law enforcement agency as an exhibit
PRIVACY & CONFIDENTIALITY	<ul style="list-style-type: none"> • The right to privacy from the media • The right to privacy from unreasonable intrusion by health professionals • The right to confidential communication with support providers • Where the victim requests confidentiality, the personal details of the victim and members of the victim's family may not be disclosed, except as required by law or to ensure the safety and security of any person

COMMUNICATION & INFORMATION

- The opportunity, as far as possible, to be heard and to respond before any decision affecting the victim is taken
- The right to be addressed in a manner appropriate to the victim’s age and intellectual development
- The right to communicate in the victim’s language of choice, or through an interpreter if necessary
- The right to receive and be updated on information about the case
- The right to submit any information for consideration to the police or prosecution on whether or not to lay a charge, to appeal or withdraw; to the court during plea bargaining, the bail hearing and sentencing; and regarding the release or pardon of a convicted person
- Access to information on the offender, if the interests of the victim outweigh the privacy interests of the accused or offender in the circumstances

SUPPORT SERVICES

- The right to access services in order to deal with any physical injury or emotional trauma suffered by the victim

DURING THE INVESTIGATION, PROSECUTION & TRIAL

- The right to be present at the trial in person or through a representative of their choice
- The right to have the trial begin and conclude without unreasonable delay
- The right to state their views in any plea bargaining
- The right to have the case decided in a fair hearing before a competent authority
- The right to be informed in advance of the evidence the prosecution and defence intend to rely on, and to have reasonable access to that evidence
- The right to have the assistance of an interpreter provided by the state where the victim cannot understand the language used at trial
- Where the personal interests of the victim have been affected, he or she has the right to be permitted to have his or her views and concerns considered at stages of the proceedings determined to be appropriate by the court
- The right to choose whether or not to participate in restorative justice
- The right to compensation or restitution if ordered by a court
- The right to present a victim-impact statement to the court sentencing the person convicted
- The right to give oral evidence or make written submissions, and to adduce evidence that has been omitted, subject to certain provisions

EXERCISE 10 **Experiential activity**

In groups of five, share your current practices or experience regarding victim assessment and the collection of information.

- What has worked? What has not worked?
- If given a chance, what would you not do?

Sections 6 of the Victim Protection Act, 2014, sets out a procedure for the preliminary assessment of victims that applies to any person charged with the duty of assisting victims. The report concerned must be filed within 24 hours of the reporting of the offence.

- 6.
- (1)
 - (2)
 - (3) A person making a report under subsection (1) shall classify the victims according to the case into general victims and vulnerable victims.
 - (4) Where there are several victims as a consequence of an act of terrorism, internal civil unrest, war or any other activity that is likely to cause mass victimization, the officers shall immediately open a special register that shall contain the details of victims set out in section 7.

Section 7 indicates the information about the victim that needs to be recorded:

7. Details of a victim shall in appropriate cases include –
- (a) name, age or, if unknown, the approximate age of the victim.
 - (b) the complexion of the victim;
 - (c) the ethnicity or race of the victim;
 - (d) height or approximate height of the victim;
 - (e) any distinguishing feature of the victim;
 - (f) in cases of deceased victims, any distinguishing item on the victim such as clothing, jewellery or other distinguishing item;
 - (g) location at which victim was found;
 - (h) any person accompanying the victim;
 - (i) any other document of identification of the victim.

Confidentiality and access to information

The Victim Protection Act, 2014, provides strong protections with respect to the right to privacy and confidentiality of victims. We will discuss this again when we deal with interviews and the matter of consent.

Section 8 of the Act provides as follows:

8. (1) A victim has a right to privacy –
- (a) from the media, whether print, electronic or other types;
 - (b) from unreasonable intrusion from health professionals;
 - (c) of confidentiality of their communication with victim support service providers; or
 - (d) from any other person.

Where a victim requests confidentiality, officers must ensure that the residential address, telephone number, cell phone number, email address and place of employment of the victim and of members of the victim’s family are not disclosed, except if required by law or to ensure the safety and security of any person.

Section 19 of the Act protects victims’ rights to information, in accordance with Article 35 of the Constitution and any other law on the subject. The information to which victims have access is broadly defined by the Act as:

that information necessary for the realisation by the victim of their rights under the Act, providing that the release of that information does not unreasonably delay or prejudice the investigation or affect the safety and security of a person, or interfere with the course of justice.

Identification parades

Identification parades and photo identification can be a particularly traumatic experience for victims who are witnesses. If not done professionally, correctly, and with regard to the dignity and needs of the victim, there is a risk that identification parades or photo identifications can add to the trauma of victims, lead to false identifications or even put their lives in danger.

Here are some dos and don’ts from a victim support point of view when conducting an identification parade.

Table 3.3: The dos and don’ts of identification parades

DOs	DON'Ts
<input type="checkbox"/> Use a room with one-way glass where the suspect cannot see the victim.	<input type="checkbox"/> Take the victim into the prison to identify the perpetrator.
<input type="checkbox"/> If a one-way mirror is not available, use some other type of screen.	<input type="checkbox"/> Ask the victim to identify the perpetrator if the perpetrator can see the victim.
<input type="checkbox"/> Explain to the victim in advance that the investigator cannot be present during the parade.	<input type="checkbox"/> Ask the victim to touch the perpetrator.
<input type="checkbox"/> Recommend to the victim that they bring a lawyer or family member along on the day. But explain that the person cannot be present during the parade.	
<input type="checkbox"/> Explain to the victim in advance that the investigator cannot be present during the parade.	
<input type="checkbox"/> Explain to the victim that they should not feel pressure to positively identify anyone at the parade.	
<input type="checkbox"/> Explain that they should only identify someone if they are certain.	

Communication and feedback

Victims have a right to be kept informed about the progress of their case. Respecting this right contributes to the empowerment of victims and it improves confidence in the criminal justice system.

The following are the types of information that victims need:

- The case number;
- The name and contact details of the investigating officer;
- Details of the arrest of a suspect;
- The outcome of a coroner's findings (This is prescribed by the National Coroners Act, 2017.);
- The date of any identification parade they have to attend;
- The number of the court case;
- The date of bail hearings;
- The outcome of the bail hearings;
- The outcome of the investigation of their case;
- The outcome of the prosecution;
- Any decision to withdraw or materially alter the charge, and the reasons therefor;
- Whether they will be required to attend the court proceedings, and the date on which the proceedings will take place;
- The date of the trial and the verdict or other result;
- The date of sentencing and the outcome thereof;
- Whether the accused has appealed against conviction or sentence, and the outcome of the appeal;
- Other institutions or parties involved in supporting the case where such disclosure does not jeopardise the integrity or security and safety of the victim of such parties;
- How and when they can claim property taken by the Kenya Police Service as evidence;
- What services are available to address their particular needs, and how to access such services;
- Documentation in the possession of the authorities that can facilitate civil litigation; and
- Any other information relevant to victim support.

MODULE 4

VULNERABLE VICTIMS

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This module emphasises the importance of appreciating the existence of circumstances that render some victims as vulnerable, what their vulnerabilities are, and how to safeguard their rights in the investigation process. It also emphasises that some victims require special care owing to their levels of vulnerability.

The Victim Protection Act, 2014, defines a vulnerable victim as one who, due to age, gender, disability, or other special characteristics as may be prescribed by regulations under this Act, may require the provision of special justice and support.

Whereas victims of sexual offences and child victims are entitled to all the rights and protections that other victims have, they also require additional measures of protection.

The Act provides that these factors must be taken into account when considering vulnerability [see section 17(1)].

EXERCISE 11 Experiential activity

Read through the factors relating to possible vulnerability in Table 4.1, as set out in section 17(1) of the Victim Protection Act, and give an example of each. We have provided answers in respect of two of the factors.

Table 4.1: Factors relating to possible vulnerability

Factor	Example
Physical, intellectual or psychological impairment	
Age	Children The elderly
Dependency on the accused	

Factor	Example
Trauma	
Disability	
Cultural differences	
Religious differences	
Gender	
Language	
The nature of the offence committed against the victim	
Health status	HIV Paralysis Morbid obesity
Socio-economic status	
Safety and security context	

In addition to the rights we considered earlier, vulnerable victims have the following rights:

- The right to legal and social services at the state's expense;
- The right to contact with family or any primary caregiver;
- The right to placement in a place of safety;
- The right to a representative appointed to appear on the victim's behalf;
- The right to special consideration by the criminal justice agencies and victim support service providers in matters related to victim protection and welfare services; and
- The right to be provided with programmes designed to ensure their enjoyment of the benefits provided for victims under the Act.

Children

There are additional special protections provided for child victims under the Victim Protection Act, and these include the following:

- That the best interests of the child are of paramount consideration, and that the rights accorded in terms of the Children's Act must be observed;
- Placement by the police or the Director of Public Prosecutions of the child in a place of safety until the court makes a decision in relation to the matter, that is, if it would not be prudent to place the victim with parents, guardians, or caregivers; and
- Treatment in accordance with the Children's Act for any child victim held in any institution.

At the international level, the United Nations (UN) Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, 2005, further elaborate on the measures that can be taken to protect the rights of children who are also victims. The Guidelines were developed in response to concerns that children who suffer harm or injury as a result of victimisation do not have their rights adequately recognised and may suffer re-victimisation or additional harm when assisting in the justice process. The Guidelines are clear that children are vulnerable in this context and require special protection appropriate to their age, level of maturity, and individual special needs (Paragraph 7).

The Guidelines are underpinned by the principles of dignity, non-discrimination, the best interests of the child, and the right of the child to participation (Paragraph 8). Such Guidelines articulate the following rights for children, with specific instructions to the state as to how to support implementation of these rights in a practical way:

Table 4.2: Rights of child victims and witnesses of crimes

Rights of child victims and witnesses of crimes	The right to be treated with dignity and compassion
	The right to be protected from discrimination
	The right to be informed
	The right to be heard and to express views and concerns
	The right to effective assistance
	The right to privacy
	The right to be protected from hardship during the justice process
	The right to safety
	The right to reparation
	The right to special preventative measures

MODULE 5

CHARACTERISTICS OF A GOOD INVESTIGATOR

This module deals with how the investigator and other staff can support victims through all stages of the investigation process. We start with the initial engagement with the victim, either at the crime scene or during the complaints-handling process. We end with the support that the investigator can provide if the matter is prosecuted and goes to trial.

Victims are generally an invaluable source of information when investigating an alleged offence, as they are often also witnesses. The more respectfully a victim is treated by the authorities, the more likely they are to cooperate. Cooperative victims make for better witnesses and contribute to more successful investigations.

The need for victims to trust investigators cannot be stressed enough. Without trust, fewer victims will report offences, and, when the an alleged offence is investigated proactively, witnesses will be less cooperative.

While you as an individual cannot be responsible for how the rest of the criminal justice system and other referral agencies treat the victim, you play a crucial part in the initial engagement. How you treat the victim and witnesses, including their families, from the start to the end of the case, has a major impact on the likely cooperation you will get.

Building goodwill and trust is essential for an investigator to be able to carry out his or her mandate. Solving crime is difficult enough without resistance from the community that you are serving. You need to do everything you can to sincerely show that your job is to investigate alleged offences and that you will deal with all reports fairly.

In light of the above, you need to possess certain personal characteristics that show that you support victim empowerment.

EXERCISE 12 Talk and reflect

- Have you had a bad experience with a company recently, one where you felt that you were not treated well?
- Maybe you could not get through to the company on the phone, or the company did not reply to your emails? Or, if it did, its employees were rude or uninterested.

Talk about one or two examples.

- How do you feel now about that company? And how did that interaction make you feel?

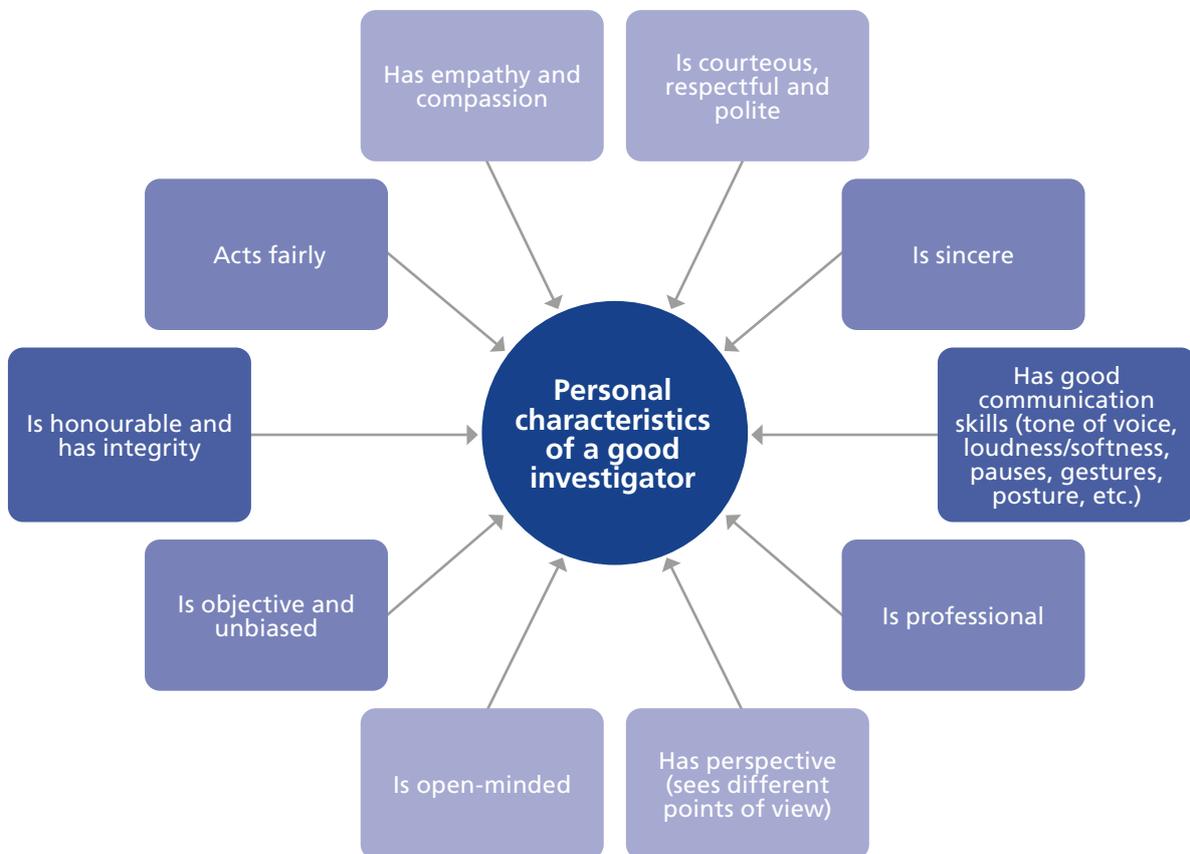
Circle any feelings below that resonate with you:

- | | | |
|-------------------|----------------|-------------------|
| <i>Happy</i> | <i>Tired</i> | <i>Frustrated</i> |
| <i>Irritated</i> | <i>Angry</i> | <i>Pleased</i> |
| <i>Fed up</i> | <i>Cheated</i> | <i>Unheard</i> |
| <i>Victimised</i> | <i>Bullied</i> | <i>Ignored</i> |

The aim of victim support is to prevent victims from feeling like you did.

Below are some characteristics of a good investigator. Can you add any? How many do you think you reflect in your work?

Figure 5.1: Personal characteristics of a good investigator



Apart from these personal characteristics, there are other ways you can build trust with victims:

- **Language**

Kenya has 68 languages. English and Swahili are the official languages. While 70% of the population can speak Swahili, only 16% are English-literate. Trying to communicate when you do not speak the same language is difficult. You may get impatient or irritated, or even believe that the victim is stupid. Having an interpreter in these instances helps to build trust.

- **Culture and religion**

It is important to develop an attitude of respect for other people's religion and culture.

- **Socio-economic status**

Poorer victims often feel that their issues or problems are not taken as seriously as those of someone who is richer or more powerful. All victims should be treated equally and fairly, regardless of their socio-economic status.

Also remember the power dynamic between victim and investigator.

Note on diversity and non-discrimination

The Constitution of Kenya contains strong protections for all persons, including victims. The provision of services, including the approach taken, cannot be influenced by personal prejudice or stereotyping regarding victims, including on the basis of the victim's status, or the details of how that victim came to be in contact with the police in the first place. However, in reality, many sex workers, people who use drugs, members of the LGBTI community, and immigrants experience stigma, discrimination and abuse.

- All people and communities rely on the police and law enforcement agencies to keep them safe, but the police and law enforcement officers sometimes commit such abuse. This highlights the need for dialogue, engagement, policy and action that can make police protection for all a reality.
- Investigators can reduce stigma and discrimination faced by marginalised groups (including those that engage in illegal activity) through the way it treats people in its daily interactions with them.
- Understanding the impact of criminalisation, and the stigmatisation and discrimination faced by marginalised populations, is a critical part of being able to work with all groups in a community. This can empower the police and law enforcement agencies to fulfil their mandate while upholding the constitutional principles that should be inherent in daily interactions with all people.
- The way that police members interact with civilians has wide-ranging implications for broader society. These interactions influence community relationships, social cohesion and human rights. Ultimately, they can reinforce or reduce cycles of violence. Similarly, they can increase or decrease the risk of HIV infection and transmission to others, as well as promote or prevent access to HIV prevention and treatment services for LGBTI people, sex workers and people who use drugs, as well as their families and all community members.

(Adapted from *Dignity, Diversity and Policing: An SAPS Training Manual*, 2017)

MODULE 6

DEALING WITH COMPLAINTS

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In this module, we address the processes and procedures that are key when dealing with complaints. These include procedural and victim-centred approaches when receiving complaints via phone, email and in person. It is important to note that effective complaints procedures will help deal with complaints quickly, fairly and consistently.

At the crime scene

Following procedure while supporting victims

EXERCISE 13 Discuss

- What is your usual procedure when you arrive at a crime scene? What are some of the challenges you encounter at the crime scene with regard to victims?
- Do you have a specific approach to dealing with victims at the crime scene?

Generally, the sequence of activities at a crime scene is as follows:

1. Identify;
2. Protect;
3. Search;
4. Record; and
5. Retrieve.

EXERCISE 14 Reorder

Does the sequence in Table 6.1 follow this order? Reorder it if not. While doing this, discuss if this is the way you would normally do things at the crime scene (in an ideal world). Also add other ways in which you can provide victims at the crime scene with support.

Table 6.1: Sequence of activities at a crime scene

Current order	New order
1. Make sure you are safe.	
2. Identify whether the victim is vulnerable, and, if so, refer him/her to specialised services.	
3. Call for medical attention if someone is hurt.	
4. Ensure control over suspects.	
5. Take statements if possible.	
6. Identify who is at the scene (suspects, victims, witnesses, family and friends, curious onlookers).	
7. Separate victims from witnesses and suspects.	
8. Collect evidence and follow the chain of evidence.	
9. Search for evidence.	
10. Remove everyone from the crime scene except suspects and witnesses.	
11. Prevent others from touching/damaging the evidence.	
12. Note everything that you see. Take down the names and details of everyone present.	

Receiving complaints in person

As with the case of arriving at the scene of the crime, there are two aspects that need to be dealt with, namely:

- Procedural aspects; and
- Victim support.

When a victim walks into an office in order to make a complaint, how the staff member handles the complaint is very important in building trust on the part of the victim and the community.

The difference between someone walking into your office and arriving at the crime scene is that you have much more control in your office. It is not a chaotic situation involving suspects, witnesses and curious onlookers.

The steps that you should follow when a victim or witness comes into your office are indicated in Table 6.2. Remember that the United Nations (UN) definition of who a victim is a broad one and includes family or others who have an interest in solving the case.

EXERCISE 15 Discuss and brainstorm

- Which aspects in Table 6.2 are procedural and which entail victim support? What other victim support can you provide?

Table 6.2: Procedural aspects and victim support

Get a trauma counsellor to come into the office to talk with the victim.

Ask whether the victim's life is in danger.

Get medical assistance for the victim.

Express empathy with the victim, speak gently, and act professionally.

Take the victim to a private room.

Offer the victim something to drink.

Find someone who can speak the victim's language.

Ask whether the victim needs help contacting a relative or friend.

Greet the victim respectfully and ask him/her to take a seat.

Explain the rights of the victim during the investigation, prosecution and trial process.

Ask whether there are any other witnesses.

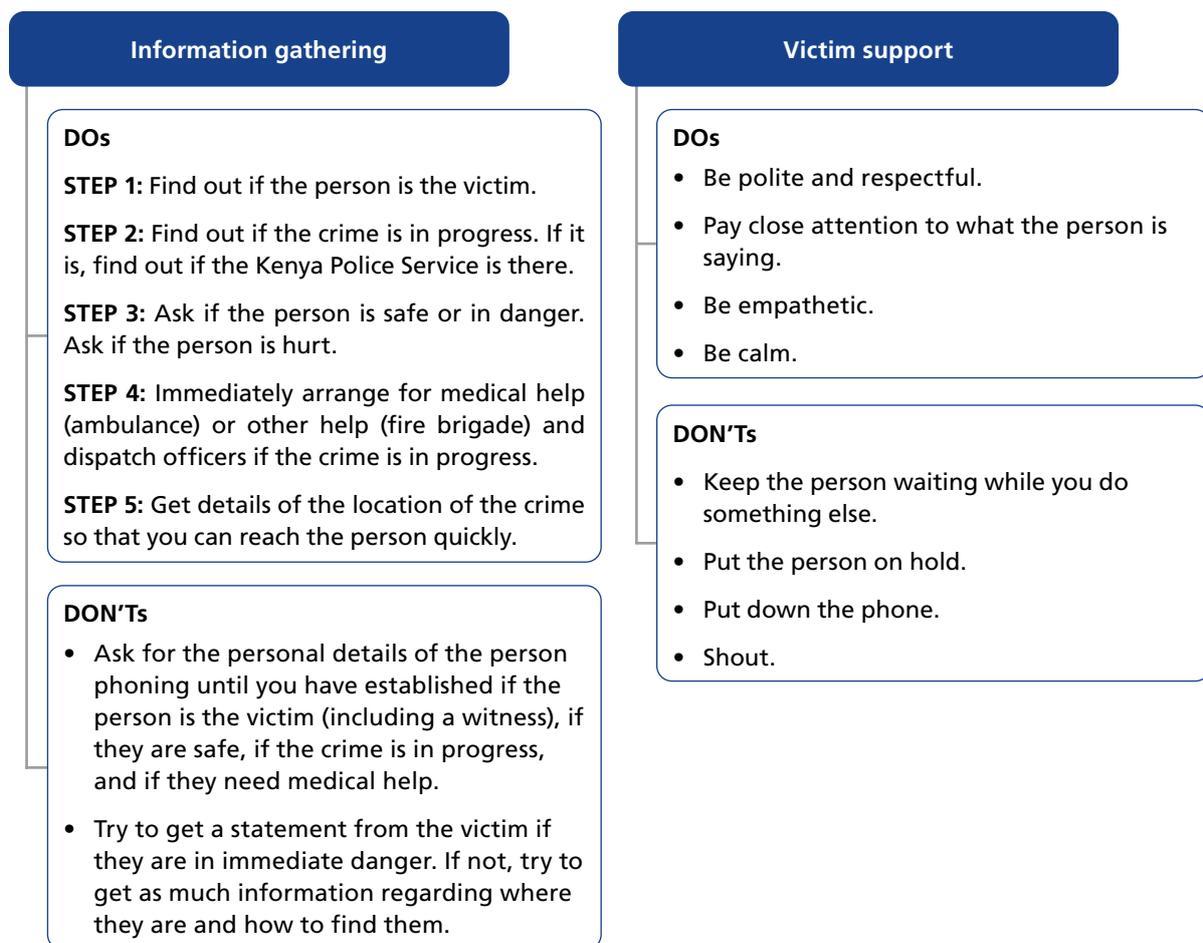
Receiving complaints by phone

When a victim phones the offices, they may be doing something quite courageous. They may be in fear or in pain.

They cannot see your face or your reactions, so you need to transmit all the features of a professional and empathetic officer through your manner and your voice.

In Figure 6.1, we have set out some dos and don'ts when dealing with phone calls from victims. We have also created a group for the information that you need to gather at the same time as supporting the victim.

Figure 6.1: Dos and don'ts when dealing with complaints by phone



EXERCISE 16 Role play

Participants are grouped in pairs. The scenario: A mother calls to complain that her son is being assaulted.

Group A: One person is the victim and the other an officer whose actions and behaviour towards the victim are supportive.

Group B: One person is the victim and the other an officer whose actions and behaviour towards the victim are not supportive.

Receiving complaints by email

When replying to email complaints, you need to respond to the actual complaint and not issue a pro forma one-liner.

Think again about how you felt when you were treated badly by the company. Did you write an email? How did the company respond?

Two examples of responding to emails are given in Figure 6.2.

Figure 6.2: Sample emails in response to an email complaint

LETTER A

Subject line: Case no. #39291

To whom it may concern

We acknowledge receipt of your complaint. It is being investigated. Someone will contact you in due course.

Sgt (NAME)

LETTER B

Subject line: Mr R Otieno: Case no. #39291

Dear Mr Otieno

Thank you for submitting your complaint about your son being beaten, whom you name as Sergeant (NAME). We investigate all complaints that fall within our mandate. We can therefore investigate this complaint.

Please send your cell number so that officer (NAME) can contact you in order to interview you. Or you can call her on (CELL NUMBER).

If you or your son need to see a counsellor for emotional support, we can refer you to (NAME OF INSTITUTION/NON-GOVERNMENTAL ORGANISATION, PHYSICAL ADDRESS, PHONE NUMBER, EMAIL ADDRESS).

For medical support, contact (NAME OF INSTITUTION/NON-GOVERNMENTAL ORGANISATION, PHYSICAL ADDRESS, PHONE NUMBER, EMAIL ADDRESS).

Sgt (NAME)

Phone number (OFFICE):

X Branch

Tel.: (NUMBER)

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EXERCISE 17 Read and discuss

- How would you feel if you were the victim and you received Letter A?
- Would you feel different if you received Letter B?
- Which letter is more impersonal? In what ways?
- Which letter is more personal? In what ways?
- Point out other difference in the letters.
- Finally, say which letter better reflects the action of victim support?

MODULE 7

REFERRAL TO VICTIM SUPPORT SERVICES

Investigators should make sure that there is a complete and updated referral list with the details of the government/non-governmental organisations (NGOs), medical institutions, or any other groups in the area which provide medical, legal, social and counselling services for victims.

You are in an ideal position to refer the victim to victim support services such as victim counselling and other support services.

The information indicated above should be kept in the national office and in all regional offices. The list must contain up-to-date information on:

- Services provided;
- Telephone numbers;
- Street and postal addresses;
- Email addresses; and
- Contact person.

Each office should have Memorandums of Understanding (MoUs) with the various legal, medical and psychological government and non-government institutions in their area.

Procedure to be followed when referring a victim of crime to a professional service provider

Members who refer a victim for victim support services and/or counselling (legal, social or medical) must explain to the person that being a victim of crime can be a traumatic experience and that people often need counselling and other support services to cope with the impact of this experience, or to participate effectively in the criminal justice process.

- Ask the person whether he/she wants to be referred to these services for assistance.
- Consult the support services referral list and select appropriate service providers. (If possible, provide the victim with the names and contact numbers of at least two service providers so that the victim can make the final choice.)
- Call or mail the service provider, that is, if the victim wants you to.

- Give the following information to the provider when referring someone:
 - The name, address, contact number and age of the victim;
 - A very brief description of the victim's problem(s); and
 - All other necessary information, depending on the type of service provider that the victim is referred to, e.g. a lawyer, social worker or medical doctor.
- Do not provide more information than is strictly necessary, as this would violate confidentiality and trust with regard to the victim.
- Do not provide a victim with any victim support services, e.g. counselling. Leave this to the professionals, as rendering such services falls outside your mandate. All traumatised victims must be referred to professional service providers.

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EXERCISE 18 Brainstorm

- Which service providers could you draw on in your jurisdiction?
- What services do they offer?

MODULE 8

INTERVIEWING VICTIMS

Interviews are a crucial element of any investigation. If done well, they provide accurate, reliable and complete information and context for other evidentiary materials. If they are not done well, they undermine your investigation, put people at risk and erode public trust. In this module, we therefore discuss the interview process in detail.

To prevent secondary victimisation, you should provide support for the victim throughout the process.

Interviews should be conducted by trained individuals who apply the highest professional and ethical standards in order to obtain accurate information while respecting the rights and well-being of the interviewee. (Para 85, Minnesota Protocol, 2016)

EXERCISE 19 Discuss

- What is the difference between an interview and an interrogation?

Interviewing children and people with disabilities

Children who are victims

EXERCISE 20 Discuss

Children and people with disabilities require extra consideration when they are being interviewed.

- Why is this?
- How would you deal with children as opposed to adults?
- How would you deal with people with disabilities?
- With regard to children who are victims:
 - Always consider the best interests of the child;
 - Make sure that the parents or guardians are informed;

- If the child asks for their parents or guardians to be with them, you may allow this;
- Make sure the child understands and really consents to the interview;
- If there are language barriers, someone who speaks the child’s language should conduct the interview;
- Speak simply and clearly. Use simple words;
- Children get tired and lose focus quickly. Take frequent breaks and make sure the child is not hungry or thirsty; and
- If a child needs support, such as mental or emotional support from professionals, be sure to make a referral.

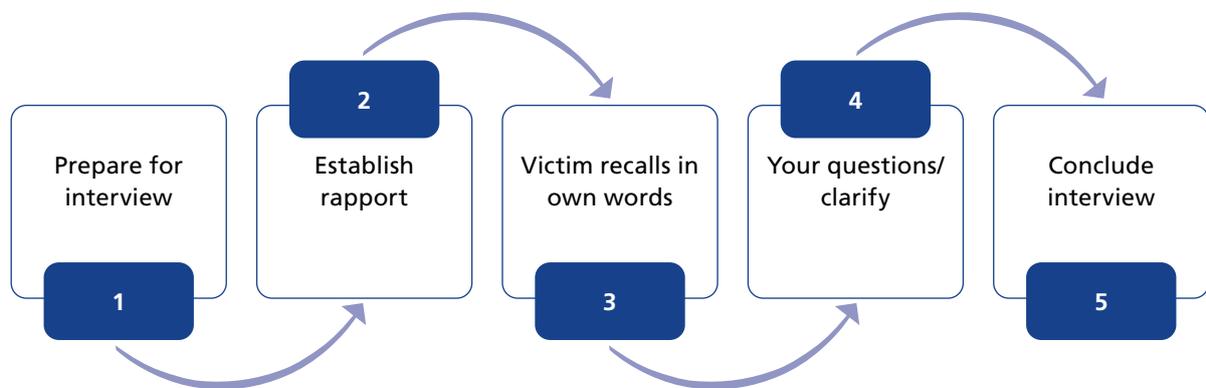
People with disabilities who are victims

Clearly explain, and repeat if necessary, the purpose and intended use of the interview. Also use simple, accessible language. Allow the interviewee sufficient time to make a decision about the matter of consent to the interview.

The five phases of an interview

Following a series of steps when interviewing victims will help to make sure you follow best practice when supporting victims. The five steps set out in Figure 8.1 are easy to follow:

Figure 8.1: The five phases of the interview



Phase 1: Preparing for the interview

Good preparation will inevitably lead to a better interview. The more prepared you are, the smoother the interview process. Some steps to take in order to get ready for the interview are set out in Figure 8.2:

Figure 8.2: Some steps to take in preparing for the interview

Purpose	{	<ul style="list-style-type: none"> Identify the purpose of the interview and how it fits into the overall investigative strategy.
Pre-information	{	<ul style="list-style-type: none"> Learn as much as you can about the interviewee (connection to events, possible biases, potential security risks, etc.).
Useful information	{	<ul style="list-style-type: none"> Gather documents, photographs and other information that may be referred to during the interview.
Location, privacy, safety	{	<ul style="list-style-type: none"> The location of the interview is important. The key here is privacy and safety, and as few distractions as possible. For example, you could: ask interviewees to turn off their cell phones; hang a 'Do not disturb' sign on the interview room door; conduct the interview in a room with a desk and chairs, and with no signs of a law enforcement presence, such as handcuffs; etc.
Time	{	<ul style="list-style-type: none"> You need enough time for the interview. Since you want to arrive at the truth, you may need to give the witness time to process what they are saying.
Equipment for recording	{	<ul style="list-style-type: none"> Make sure that you have all the equipment (e.g. pens and paper) that you need to record the interview.
Special circumstances	{	<ul style="list-style-type: none"> Be aware of the unique socio-economic circumstances that hinder the victim's availability or willingness to subject themselves to an interview. An example is if they are dependent on the accused police officer.

Phase 2: Establishing rapport

All interviews should have a rapport phase during which relationships are established between the victim and the investigating team. Towards the end of this phase, the aims and conventions of the interview are explained.

Figure 8.3: Aims of the rapport phase

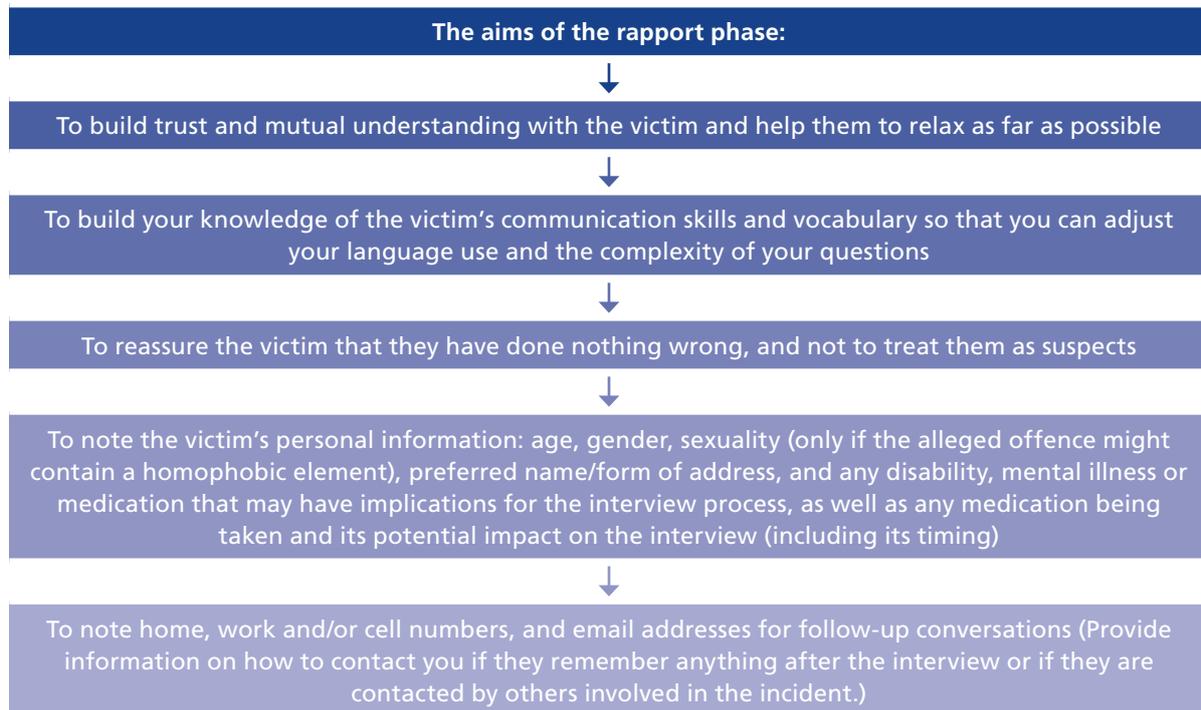


Figure 8.4: Explanation of the aims and conventions of the interview

- Explain the interview process and how it fits in with the investigative process.
- Introduce yourself and others in the room.
- Clearly communicate the purpose of the interview.
- Explain how the information will be used. Explain what you can and cannot do with information or the case.
- Do not make promises that you cannot keep (such as guaranteeing an outcome) in order to get cooperation.
- Get the victim's informed consent to be interviewed and to have the interview recorded or written down. Explain the purpose of recording or writing down the statement.
- Ask about domestic circumstances, including whether the victim is currently in a 'safe' environment and if the victim has any dependants or carer responsibilities.
- Ask about the relationship of the victim to the alleged perpetrator.
- Ask about, and assess, the current emotional state of the victim, including aspects such as trauma, distress, shock, depression, and fear of intimidation.
- Check what kind of protection the victim or their family needs. In torture and sexual assault cases, victims often feel a devastating sense of powerlessness.
- Ask about current or previous contact with public services, including previous contact with the police, health officials, etc.

EXERCISE 21 Discuss

The actual words we utter are only one part of our communication. Another part is our non-verbal communication. Sometimes, there is a mismatch between what you say and what your body or voice is saying. Victims are quick to pick up discrepancies. For example, you could say, 'I am listening', but, if you are yawning, the victim knows you are bored or tired.

The following are some examples of non-verbal communication. Which ones are positive (show empathy and sincerity) and which are not? Can you think of other ways of showing empathy non-verbally with victims?

- Raising your hand;
- Tapping your fingers on the table;
- Cracking your fingers;
- Rubbing your hands;
- Keeping your hands behind your back;
- Crossing your arms;
- Not looking at the person when they talk;
- Putting your hands in your pockets;
- Yawning; or
- Winking.

Phase 3: Asking the victim to recall the event

This phase involves the victim recalling what they remember of the event. To extract the optimal benefit from this phase, you should:

Ask the victim to reconstruct the event, including:

- How the incident began;
- The circumstances surrounding it;
- Details of the environment, such as the weather, the lighting and the condition of the area; and
- Their emotional state at the time of the incident. (e.g. 'How did you feel when...?')

Encourage the victim to report everything and not to leave out any details, regardless of how small they may seem.

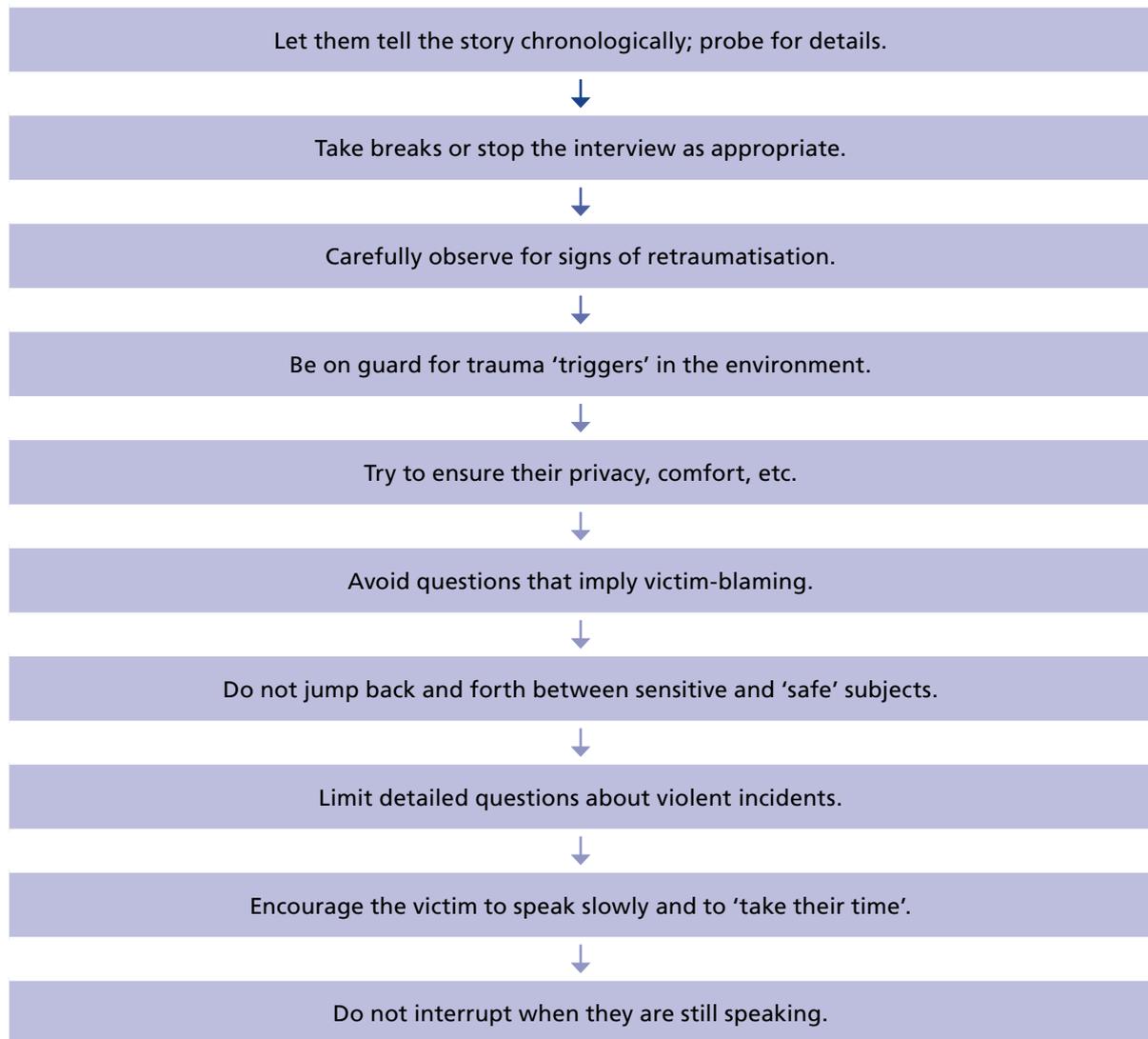
To establish truthfulness:

If the victim is not traumatised (e.g. immediately after a rape or torture), you can ask the victim to recall the events in a different order.

They should describe the event backwards, or they could describe it from a point in the middle and then relate the event either forward or backward from that point.

If a person is fabricating a story, it will be almost impossible to tell the story out of sequence.

However, do not do this at this point if the victim is still suffering from trauma.

Figure 8.5: Steps for recalling the event***Phase 4: Questioning the victim***

After a victim has freely recalled an event, you will probably need to follow up with other questions to clarify information, to confirm information, to weed out contradictions, or to obtain information that the victim may have left out.

Before you begin the questioning phase, it is important to establish some ground rules for the interview.

Figure 8.6: Ground rules relating to the interview

Make sure the victim feels comfortable and safe.
Speak directly to the person and maintain eye contact rather than speaking to the support person or interpreter.
If you ask a question that the victim does not understand, the victim should feel free to say: 'I don't understand.'
If you ask a question to which the victim does not know the answer, they should say: 'I don't know.' Many people regard investigators as figures of authority and may feel compelled to provide an answer to all questions, even if they do not know the answer.
If you misunderstand what the victim has said or summarise incorrectly what has been said, they should point this out, for example by saying 'That's not what I said.'
Do not be tempted to fill pauses by asking additional questions or making irrelevant comments. Sometimes, silence is the best cue for eliciting further information.
Subdivide the victim's account into manageable topics or episodes. Deal with each systematically using different types of question (starting with open-ended questions).
Do not interrupt the victim, as this may disempower them. It may also suggest that only short answers are required.
Keep your questions as short and simple in construction as possible. Avoid complex questions for witnesses of all ages.
Each question should contain only one point.
The younger the victim, the shorter and more simply phrased the question should be.
Avoid double negatives ('Did John not say later that he had not meant to hurt you?') and double questions ('Did you go next door and was Jim waiting for you?').
Avoid unfamiliar vocabulary.
Make sure you know what the elements of the offence are so that you cover all elements about which the victim is able to provide you with information.

Phase 5: Closing the interview

People remember the last few moments of an interaction better than the beginning, as it is closer in time. So, how you end the interview can give a positive or negative perception to the whole process. Proceed slowly and thoughtfully when you are coming to the end of an interview.

Figure 8.7: Steps in ending the interview

Provide an account of what the victim has said during the interview. As far as possible, this should be done in the victim's own words. This allows the victim to check the investigator's recall for accuracy.

Take care not to show that you do not believe something. Rather ask the victim if they have missed anything out or have got something wrong.

Always try to ensure that the interview ends appropriately. Make sure that the victim is not distressed but is in a positive frame of mind.

Explain what, if anything, might happen next. However, do not make any promises that cannot be kept.

Thank them for their time and effort and ask if there is anything more they wish to communicate (e.g. by saying to the victim, 'Is there anything else you want to say?', or 'Is there anything you think you've missed out?', or 'Is there anything else you think I should know?').

From the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Istanbul Protocol

In cases of torture, get the following information through the testimony of the alleged victim:

- (i) The circumstances leading up to the torture, including arrest or abduction and detention.
- (ii) Approximate dates and times of the torture, including when the last instance of torture occurred.
Establishing this information may not be easy, as there may be several places and perpetrators (or groups of perpetrators) involved. Separate stories may have to be recorded about the different places. Expect chronologies to be inaccurate and sometimes even confusing; notions of time are often hard to focus on for someone who has been tortured. Separate stories about different places may be useful when trying to get a global picture of the situation. Survivors will often not know exactly where they were taken to, having been blindfolded or semi-conscious. By putting together converging testimonies, it may be possible to 'map out' specific places, methods and even perpetrators.
- (iii) A detailed description of the persons involved in the arrest, detention and torture, including whether he or she knew any of them prior to the events relating to the alleged torture, clothing, scars, birthmarks, tattoos, height, weight (the person may be able to describe the torturer in relation to his or her own size), anything unusual about the perpetrator's anatomy, language and accent, and whether the perpetrators were intoxicated at any time.
- (iv) The contents of what the person was told or asked.
This may provide relevant information when trying to identify secret or unacknowledged places of detention.
- (v) A description of the usual routine in the place of detention and the pattern of ill-treatment.
- (vi) A description of the facts of the torture, including the methods of torture used.

This is understandably often difficult, and investigators should not expect to obtain the full story during one interview. It is important to obtain precise information, but questions related to intimate humiliation and assault will be traumatic, often extremely so.

- (vii) Whether the individual was sexually assaulted.

Most people will tend to answer a question on sexual assault as meaning actual rape or sodomy. Investigators should be sensitive to the fact that verbal assaults, disrobing, groping, lewd or humiliating acts, or blows or electric shocks to the genitals are often not seen by the victim as constituting sexual assault. However, these acts all violate the individual's intimacy and should be considered as being part and parcel of sexual assault. Very often, victims of sexual assault will say nothing or even deny any sexual assault. It is often only on the second or even third visit – if the contact made has been empathic and sensitive to the person's culture and personality – that more of the story will emerge.

- (viii) Physical injuries sustained in the course of the torture.

- (ix) A description of weapons or other physical objects used.

- (x) The identity of witnesses to the events involving torture. The investigator must use care in protecting the safety of witnesses and should consider encrypting the identities of witnesses or keeping these names separate from the substantive interview notes.

Supporting family members as victims

Think back to the definition of 'victim' that we discussed at the beginning of this training session. In the United Nations (UN) Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, family members are included in the category of victim.

The loss, harm or damage suffered by family members may be indirect, but they are also victims. As an investigator, you need to be especially aware of your attitude and behaviour towards these victims.

When dealing with family members who are close relatives of a dead person, you need to:

- Treat them as victims when you work with them;
- Allow and encourage them to participate in the investigation;
- Recognise that they are an important part of the investigation;
- Allow them to make suggestions and arguments as to what investigative steps are necessary;
- Afford them the opportunity to provide evidence;
- Allow them to assert their interests and rights throughout the process;
- Ensure that they are informed of, and have access to, any hearing relevant to the investigation;
- Ensure that they are given information relevant to the investigation in advance of the hearing;
- See to it that they are protected from any ill-treatment, intimidation or sanction as a result of their participation in the investigation or their search for information concerning a deceased or disappeared person;
- Take appropriate measures to ensure their safety, physical and psychological well-being, and privacy;
- Ensure that family members are provided with funding for a lawyer if necessary in order to ensure their effective participation; and
- See to it that a family member or someone who is not related to the deceased is appointed to represent the best interests of a child, if the child's parents or guardians are dead.

However, be careful not to compromise the integrity of the investigation. In some instances (e.g. when family members are suspects), these rights may be subject to restrictions – but only where, and to the extent, strictly necessary to ensure the integrity of the investigation.

*Note that family members have specific rights in relation to **human remains**:*

- *When the identity of a deceased person has been determined, family members should be informed immediately, and, thereafter, a notification of death should be posted in an easily accessible way;*
- The family should be consulted prior to an autopsy (to the extent possible);
- The family should be entitled to have a representative present during the autopsy; and
- Upon completion of the investigative procedures, human remains should be returned to family members, allowing them to dispose of the deceased according to their beliefs.

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EXERCISE 22 Personal reflection

Think back to a case you investigated in which the family wanted to participate.

- Were you aware that the family fell under the category of victim?
- How did you treat them? Did you encourage them to participate?
- Where there any difficulties with this?

EXERCISE 23 Role play

Divide participants into two or three groups, depending on the size of the class. Let them read through the scenario below. They are going to act out the situation below, showing what they have learnt in this course.

SCENARIO

Cast:

Maria, the victim

Julia, Maria's older sister

Sergeant Otieno, the intake official

Detective X and Detective Y, investigators who will conduct the interview

Maria was arrested on 15 December 2016 on suspicion of theft and shoplifting and sentenced to two years in prison.

The day after her release, she makes a complaint that she was tortured and raped while in prison. Maria is accompanied by her older sister, Julia.

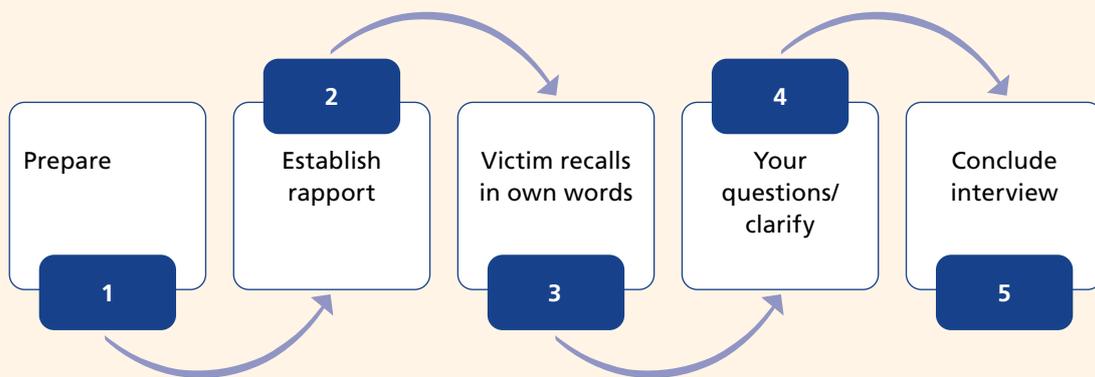
Maria is in fact seven months pregnant. She says that a certain Constable John Mwangi is responsible for her torture and rape. He started to chat her up one night. The next night he came to her cell and said he was coming inside. He unlocked the cell and then locked himself inside. He told her she would never get out of detention, and that her family had abandoned her. He put handcuffs on her and stuffed a sock in her mouth. He raped her vaginally and sodomised her. He did this on many nights and threatened to kill her family if she told anyone.

Maria says she was terrified to come forward but that her sister, Julia, has encouraged her to speak out. Julia says she is shocked and horrified by what happened to her sister and that she wants to be part of the investigation.

Each group acts out the scenario above. One person is the intake officer, another Maria, another Julia, and two others are the interviewing officers.

After the role play, the other groups give constructive feedback from a victim support perspective:

- How did the intake officer handle the victim/victims?
- How was Maria treated? Was she treated in line with the definition of 'victim'? Was she supported or blamed?
- How did the intake officer deal with her sister, Julia, and Julia's request to be part of the investigation?
- When the two women were interviewed, were the five phases of the interview process followed, namely:



- During the interview, was the victim allowed to tell her story?
- Were the interviewers' questions open and clear?
- What characteristics did the intake officer display?
- What characteristics did the detectives display? Were they good or bad?

EXERCISE 24 Discuss

- What are the current practices with regard to providing victim support during the trial?
- Based on everything you have learnt, would you support victims differently now?

MODULE 9

TAKING STATEMENTS

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An important part of your investigation is taking down a statement from a witness. A statement is a record of what a victim has said and should be as accurate a record as possible. In this module, we consider the three aspects of a statement.

A statement consists of:

- Personal information;
- The contents; and
- The certification.

Personal information

Here, you will record the victim's/witness's:

- Full name, including nicknames;
- Age;
- Sex;
- Occupation;
- Home language and whether the statement has been translated and, if so, from which language;
- Address;
- Telephone numbers (including home, work and cell phone numbers, or the numbers of a neighbour or relative if the victim or witness does not have access to a phone); and
- Email address.

You will also record:

- Any other information that will help you find the person again; and
- Any reference or case number for the case.

We recommend that you write this personal information on one page, which is separate from the rest of the statement. The reason for this is to avoid giving the accused (the defence) this information about the victim/witness, which the accused may use to intimidate the victim/witness. If the defence asks for the statement, you can give it to them but without the page with the personal details.

Contents

This is the 'body' of the statement, that is, where the story is told.

Ideally, it should cover all information relating to the elements of the offence that the victim/witness is able to provide. If the victim/witness has information dealing with a number of different offences, the elements of each of these need to be included in the statement, insofar as the victim/witness is able to provide information on them.

The statement should also cover:

- The victim's/witness's involvement in the matter, if any.
- Basic information about the offence, such as:
 - The time at which it took place;
 - Who was involved (Was it just one person or more than one?);
 - Who else saw it;
 - What injuries were sustained; and
 - Who the suspect is.

If the victim does not know the suspect, the victim should say what the suspect looked like, what he or she was wearing, and anything else that will help to identify the suspect.

Certification

Each statement should end with a certification stating that the victim:

- Knows, agrees to and understands the contents of the statement; and
- Has no objection to taking an oath verifying that what they said is true.

POST-ASSESSMENT

Has your understanding of what victim support entails grown since the start of this course? Do you feel you have a better grasp of some of the national laws regarding victims? If so, in what ways?

Do you think you would do things differently now when you deal with victims? If so, in what ways.

Let's look back at the questions you thought about at the beginning of the course. Answer them now and then compare your answers with those in the pre-assessment.

Table A: Questions to consider and answer now that you have worked through the modules of this course

<p>'Only a person directly affected by police action is considered a victim.' Do you agree or disagree with this statement? Explain your thoughts.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>'I have a pretty good idea of what victim support entails.' If you do, explain what you know about such support.</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>'When a person phones in a complaint against a police officer, the first thing to do is get the name of the complainant. The rest can come later.' Do you think this is correct? Explain your reasoning.</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>'Secondary victimisation' refers to the victimisation experienced by a person who witnesses a crime. Can you think of other forms of secondary victimisation?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

A male police officer strip-searches a woman who is in detention. She lays a complaint, stating that the police officer infringed her dignity, which she claims is a fundamental right.

Does this constitute victimisation because:

- A male may not strip-search a female?
- Her dignity has been infringed?
- Both of the above?

And why?

.....

.....

.....

‘Treating victims with sincerity, empathy and compassion cannot help solve cases. It is simply a waste of time. We just need the facts.’

Do you agree with this statement? Explain your reasoning.

.....

.....

.....

Is the Victim Protection Act the only Kenyan law that promotes the rights of victims?

Give examples of other Kenyan laws that promote such rights.

.....

.....

.....

Names as many categories as you can of people that the law considers to be vulnerable.

.....

.....

.....

Do you have an understanding of international law relating to victim support?

Explain briefly what international law makes provision for in this regard.

.....

.....

.....

‘There is no need to pay attention to the psychological, emotional, physical, economic or social impact of offences so long as evidence gathered is secure.’

Do you agree with this or not? Explain your reasoning.

.....

.....

.....



ANNEXURE 1

DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER

A. Victims of crime

1. 'Victims' means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.
2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term 'victim' also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.
3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

Access to justice and fair treatment

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.
5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.
6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:
 - (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
 - (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
 - (c) Providing proper assistance to victims throughout the legal process;
 - (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
 - (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.
7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

Restitution

8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.

10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

Compensation

12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

- (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
- (b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

Assistance

14. Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.

15. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.

16. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.

17. In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in paragraph 3 above.

B. Victims of abuse of power

18. 'Victims' means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognised norms relating to human rights.

19. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support.

20. States should consider negotiating multilateral international treaties relating to victims, as defined in paragraph 18.

21. States should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, should enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts.

ANNEXURE 2

MINNESOTA PRINCIPLES' DETAILED GUIDELINES ON INTERVIEWS

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B. Detailed Guidelines on Interviews

1. Introduction

183. These Guidelines look in detail at the conduct of an interview: how to prepare, how to start one, how to elicit facts and how to conclude. They also deal with how to interview a suspect, the role of interpreters, and recording an interview.

2. Preparation and setting

184. Identify the purpose of the interview and how it fits into the overall investigative strategy.

185. Learn what you can about the interviewee prior to the interview, such as their relationship to events, possible biases and potential security risks.

186. Gather information, including documents and photographs, that might be referred to during the interview.

187. Prepare the best possible strategy and interview structure to elicit information, but remain flexible. Compile a list of key points to cover during the interview.

188. Consider the gender, ethnicity, religion and other profile factors of interviewers and interpreters, to respect the interviewees' culture and to help put them at ease. When interviewing people about sexual or gender-based crimes, consider the gender of interviewers and interpreters. Consult with experts before interviewing victims of sexual violence.

189. Consult with experts on approaches to interviewing children, people with disabilities, the bereaved and others who are vulnerable or potentially prone to retraumatization. Examples include holding shorter interviews, using simpler language and having trusted support persons present.

190. Whenever possible, conduct the interview in a secure and private place where the likelihood of disruption is minimized as far as possible.

191. Whenever possible, conduct the interview in a one-to-one setting, considering the interviewee's preferences and needs. In some circumstances the protection of human rights and the quality of the investigation may call for more than one interviewer, or the presence of a support person for the interviewee.

192. Allocate enough time to conduct a thorough interview without rushing, and allow time for breaks.

3. Starting the interview

193. Record the interview from the very beginning using the means chosen.

194. The interviewers should introduce themselves and their affiliation and should clearly communicate the purpose and intended use of the interview.

195. Informed consent should normally be sought from the interviewee before proceeding. This requires:

- (a) Discussing any risks associated with the interview
- (b) Agreeing on security measures to protect the interviewee and others, without offering assurances that cannot be guaranteed. This includes whether a person's identity will be kept confidential and if so, how this will be done
- (c) Explaining that participation is voluntary and that the interviewee may stop the interview at any time, or may choose not to answer any questions, without adverse consequences
- (d) When interviewing children, consider the best interests of the child, including whether there are other ways to obtain the information than through the interview. Ensure that the child understands the purpose and intended use of the interview, and obtain his/her consent. Whenever possible, inform the child's parents or legal guardians of the interview, unless there are reasonable grounds not to do so. The child's parents or legal guardians, or another trusted person, may be present during the interview if the child so requests
- (e) When interviewing people with mental or intellectual disabilities, clearly explain, and repeat if necessary, the purpose and intended use of the interview. Use simple, accessible language (orally and/or in written format) and allow the interviewee sufficient time to make a decision.

196. Ask the interviewee to describe everything that he/she knows to the best of their ability, and to make it clear when they are talking about something they have observed or heard directly versus information they have obtained from others.

197. Act fairly and with integrity. The use of duress, deception or unfair means to elicit information or to obtain a confession could result in evidence being excluded from consideration by a court. It is not permissible in any circumstances to use torture or cruel, inhuman or degrading treatment to obtain information from an interviewee.

198. For interviews with people who may be traumatized, try to ensure their privacy and comfort. Avoid questions that imply victim-blaming; avoid jumping back and forth between sensitive and "safe" topics; and limit detailed questions about violent incidents, especially sexual and gender-based crimes, to what is essential for the investigation.

199. Build rapport and show empathy as appropriate.

200. Use neutral and culturally sensitive language.

201. Keep an open mind, be objective and remain non-judgmental.

4. Fact-finding

202. Record the interviewee's identity, personal and contact details in a way that takes into account any security concerns.

203. Record the identity, personal and contact details of all others present at any time during the interview, taking into account security concerns.

204. Begin with non-controversial and less sensitive questions, to establish a rapport before addressing difficult topics.

205. Establish the interviewee's relationship to events (e.g. is the person an eyewitness, a relative, an expert?).

206. Ask open-ended questions to understand the overall picture, such as "describe", "explain" and "what happened next?".

207. Avoid questions that imply a certain answer (leading questions) or that elicit yes/no answers (closed questions).

208. Keep questions as short and simple as possible; repeat or rephrase a question if the answer was unclear.

209. As the interview progresses, ask for details to establish timelines, identify relevant individuals and elicit facts that can later be checked.

210. Do not always accept the first answer given: persistent questioning, done respectfully, helps to obtain accurate information.

211. Test information obtained from an interviewee against what the interviewer already knows or what can reasonably be established.

212. Ask interviewees to support their assertions with documents and other corroborative material.

213. Ask interviewees to draw maps and diagrams for clarification and, when safe, to show the interviewer locations relevant to the investigation.

- 214.** Ask a wide range of questions to obtain information, but keep questions appropriate to the case.
- 215.** When interviewing more than one person at a time is unavoidable, clearly record which person has provided what information.
- 216.** Carefully observe the interviewee for signs of retraumatization. Take breaks or stop an interview when appropriate. Traumatized interviewees may have gaps or inconsistencies in their recollection of events.
- 217.** The interviewee should be observed for any inappropriate or inconsistent responses to questions, which may transform the interviewee into a suspect.
- 218.** When interviewing children – which, preferably, should be undertaken by a specially trained interviewer – use plain language, ask short questions and take frequent breaks. Stay attuned to the child’s medical and psychosocial needs, and provide service referrals as appropriate.
- 219.** When interviewing people with disabilities, make sure they feel comfortable and safe. Speak directly to the person and maintain eye contact rather than interacting directly with a support person or, if present, the sign language interpreter. When interviewing someone who is blind or has limited vision, the interviewers should identify themselves and any others present. When interviewing someone with a mental or intellectual disability, ask simple questions and repeat them until understood. Provide referrals for medical and psychosocial needs as appropriate.

5. Concluding the interview

- 220.** Read or play the record of interview back to the interviewee and allow the person to correct or clarify the contents. Ask if the interviewee has anything to add.
- 221.** Ask if the interviewee can suggest others to interview.
- 222.** Obtain, with permission, any material referred to in the interview, such as photographs, medical reports and court records.
- 223.** With the interviewee, review security measures and ways to stay in contact after the interview.
- 224.** Ensure that the interviewee certifies in writing or on audio or video that:
- (a) The interviewee’s statement has not been made under any form of unlawful duress
 - (b) The content of the interview is true and correct to the best of the interviewee’s knowledge and recollection
 - (c) The interviewee was not threatened or forced to give the statement, nor were any promises or inducements offered in this regard
 - (d) The interviewee is aware that the statement may be used in legal proceedings and that they may be called to give evidence
 - (e) The interviewee may be liable to prosecution for contempt of court, for interfering in the administration of justice, or for giving false testimony if they say anything in the statement that they know to be false or do not believe to be true.
- 225.** Ensure that the interviewee signs and dates every page of a written interview record. Any document or material, such as diagrams and photographs, to which the interviewee refers or which s/ he creates during the interview should also be signed or otherwise authenticated and should be attached to the interview record.
- 226.** Ensure that all records from the interview are stored securely to protect privacy and to maintain security.
- 227.** Identify points arising from the interview to follow up in the investigation, including other people to interview and potential lines of inquiry.

6. Additional guidance when interviewing a suspect

- 228.** In addition to the guidance set out above, suspects must be granted and informed of at least the following rights:
- (a) To be presumed innocent until proven guilty, which includes a fair opportunity to provide their account of relevant events
 - (b) Not to be compelled to incriminate themselves
 - (c) To remain silent

- (d) To the presence and assistance of a lawyer during questioning, and to consult the lawyer in private
- (e) To have the interview recorded, including place(s) and date(s) of questioning; the place of detention, if any; the start and end times of each interview session; the intervals between sessions (including rest periods); the identities of the interviewer(s) and all others present; and any requests made by the individual being questioned
- (f) To be interviewed in a language he or she understands
- (g) If the person is arrested or detained, to be informed immediately of the reason for the arrest and to be told promptly of any charges
- (h) For foreign nationals, to access consular officials of their State of nationality; or, in the case of stateless persons, refugees, or asylum seekers, their relevant national authorities or UNHCR.

7. The role of interpreters

229. In some situations an interpreter may be required to assist with the interview of a witness, victim, suspect, or other person relevant for the investigation. The interpreter's role is to facilitate communication in a neutral and objective manner. Interpreters should be limited to that role, have appropriate interview training, be accredited by the relevant authorities, understand the terminology specific to the investigation, and apply internationally agreed standards and best practice. The interpreter should declare any potential conflict of interest in advance.

230. When selecting an interpreter, consider the interviewee's gender, sexual orientation, gender identity, nationality, ethnicity, religion, education, literacy, language and dialect, and any of their preferences. An interviewee should have the right to express the wish for a different interpreter.

231. An interpreter should:

- (a) Only interpret for the language(s) for which they are qualified, authorized, or accredited
- (b) Provide a complete and accurate interpretation without alterations or omissions
- (c) Demonstrate a high level of professionalism and ethics and maintain their integrity, impartiality and independence
- (d) Disclose any real or perceived conflicts of interest, including prior knowledge of, or dealings with, the person being interviewed
- (e) Avoid soliciting or accepting any gratuities or taking personal advantage of any information obtained in the course of their work
- (f) Maintain confidentiality, and protect information obtained in the course of the work from unauthorized individuals
- (g) Sign and give any notes they have made during the interview to the primary interviewer.

232. An interpreter's qualifications should be certified prior to the start of a session. At the end of the interview, the interpreter should certify, either in writing or on audio or video, that they have read the record of the interview back to the interviewee and that the interviewee has confirmed its accuracy.



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