

# SIX-POINT CHECKLIST ON JUSTICE FOR VIOLENCE AGAINST WOMEN

STOP VIOLENCE  
AGAINST WOMEN

AMNESTY  
INTERNATIONAL



## **QUICK REFERENCE GUIDE**

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# SIX-POINT CHECKLIST ON JUSTICE FOR VIOLENCE AGAINST WOMEN

**Amnesty International's checklist for identifying obstacles to justice for women or girls who are victims and survivors of sexual and other forms of gender-based violence.**

Sexual and gender-based acts of violence are always a crime and a fundamental violation of human rights. Sadly, violence is a daily reality for many women in every country in the world. International human rights standards oblige states to criminalize rape and other forms of sexual and gender-based violence and to address those crimes. States cannot use the excuse of domestic laws which fail to reflect the reality of sexual violence and women's right to reparation, as a reason for failing to take measures to prevent violence, to investigate cases and prosecute alleged perpetrators, and to provide reparations to women.

In the case of violence committed by state actors, such as the police, armed forces, or in custodial settings, rape and other sexual violence constitute torture. In the case of other perpetrators who hold a position of trust, such as teachers, religious leaders or doctors, sexual violence is a crime and also a breach of a duty of care.

Amnesty International's Stop Violence against Women campaign aims to build on its earlier successes which have contributed to positive changes in laws, policies and practices that address sexual and gender-based violence at the regional, national and international levels. This includes laws that criminalize sexual violence, including in armed conflict, laws which address rape and other forms of violence within marriage, and laws of evidence and rules of procedure that eliminate previous discriminatory practices which made women unequal before the law.

However, despite these successes, Amnesty International is acutely aware of how little difference they have made to the lives of women and girls who are victims and survivors of sexual and gender-based violence. (Amnesty International recognizes that men and boys also face sexual and gender-based violence and may face the same or similar obstacles when seeking justice.)

This checklist is intended to help activists and advocates to identify:

- laws, policies and practices which still need to be reformed and
- obstacles to the successful implementation of laws and policies.

The checklist is based on international human rights law and standards. It is organized according to the steps that victims would need to take in order to report a crime and seek redress for sexual and gender-based violence through the criminal justice system.

In each national context, it is important to ask six main questions:

- 1) Are the existing laws adequate?
- 2) Is it safe for a victim to report a crime of sexual or gender-based violence?
- 3) Are collection of forensic evidence and provision of medical care appropriate and adequate?
- 4) Are there specific obstacles which prevent a victim from accessing appropriate services in a timely way?
- 5) Is investigation of crimes efficient and thorough?
- 6) Are trials fair, competent and efficient?

The six key questions that form the basis of this checklist are interrelated. Using this checklist should allow activists to identify what changes are needed, in law or in practice, to ensure that victims and survivors of sexual or gender-based violence have meaningful access to services and justice. However, depending on the jurisdiction, activists are likely to identify different obstacles under different elements of the checklist.

# 1/ARE THE EXISTING LAWS ADEQUATE?

## **Sexual and gender-based violence must be criminalized.**

- Rape and other forms of sexual violence should be defined as sexual conduct in which the victim involved was coerced, by violent or non-violent means, and therefore her agreement to engage in sexual acts was not truly and freely given. There should be no assumption in law or in practice that a victim gives her consent because she has not physically resisted the unwanted sexual conduct regardless of whether or not the perpetrator threatened to use or used physical violence.
- Criminal law should identify rape and other sexual violence as crimes against the physical and mental integrity of the victim, rather than as a crime against morality or honour. The law criminalizing the conduct should be gender-neutral.
- Criminal law should enable the effective prosecution of any perpetrator for acts of sexual violence, and there should be no exemptions for certain perpetrators (such as a marital rape exemption which assumes that married women automatically consent to sexual contact with their husbands).
- Crimes of sexual and gender-based violence in situations of armed conflict should be investigated and prosecuted based on the understanding that acts of sexual and gender-based violence in conflict are war crimes. Furthermore, superior orders are not a defence and the issue of command responsibility should be investigated. Where the violence is widespread or systematic, it should be investigated as a possible crime against humanity.
- There should be no discriminatory defences for perpetrators available on the grounds of “honour”, “passion” or “provocation” that can be used to limit criminal liability for sexual violence.
- Gender-based violence, for example violence in an intimate partner relationship, should be

criminalized and treated within the criminal justice system with the seriousness afforded comparable acts of violence between non-family members. There should be no assumption that a partner, parent, spouse, sibling or child has the right to “discipline” a woman or girl through the threat of or use of physical violence.

**The legal framework must not discriminate against women or girls seeking justice and must not lead to further violations of their rights.**

- All victims should be equally protected in the law from violence with no discrimination on the basis of age, race, ethnicity, religion, marital status, social status, caste or descent, migration status, employment (including sex work), sexual practice or sexual orientation (for example, lesbians), gender identity (for example, transgender women) or appearance (for example, the way a woman is dressed).
- A victim who reports sexual or gender-based violence must not run the risk of being charged with a crime such as adultery, prostitution, fornication, homosexuality, being in a country irregularly and so on. She must also not run the risk of losing custody of her children (for example, in cases of marital rape).

- There must be no legal provisions that undermine or devalue the testimony of women or girls so long as it is clear that they are competent to testify. In particular, there must be no requirement that the victim’s evidence must be corroborated by other evidence; no use of the “cautionary rule” (which requires judges to warn juries that complainants may be motivated to lie about the case, are prone to exaggeration or fantasy, or that their evidence may therefore be unreliable); no inference that a woman or girl who was under the influence of alcohol or drugs (even minimally) at the time of the offence against her is responsible for the violence; no inference that a woman or girl is to blame because of how she was dressed, no inference that a woman or girl is to blame because of where she was. Sex workers or women in the entertainment business should not be subjected to disparate treatment because of their employment. Furthermore, there should be a strong presumption that evidence of sexual history should not be introduced into the trial, in order to avoid discriminatory inferences being made about a complainant’s credibility, character or predisposition to sexual availability.

# 2/IS IT SAFE FOR A VICTIM TO REPORT A CRIME OF SEXUAL OR GENDER-BASED VIOLENCE?

**The state must ensure that victims and survivors of sexual or other forms of gender-based violence have access to safe and timely avenues to report the crime.**

- States must ensure that the police and other law enforcement officers in no way intimidate, threaten or humiliate victims of sexual or gender-based violence, either when they file their complaint or during the subsequent investigation. The police should immediately ascertain if the complainant is at risk of further violence and if so, ensure that the victim receives appropriate protection.
- There should be enforceable codes of conduct guaranteeing that police officers work professionally with victims of sexual or gender-based violence. This should include a prohibition against dismissive, discriminatory, aggressive, unduly sceptical or unprofessional attitudes. Codes of conduct should include provisions for holding officers

accountable in cases where survivors have not been treated appropriately.

- Victims should be allowed to bring an advocate into any meetings with the police or other investigators.
- Police officers should be trained (as part of their basic training and as ongoing professional training) in best practice methods of interviewing and supporting victims who have been subjected to sexual violence.
- Victims should be interviewed in a secure and private environment. Police officers should, as routine practice, assess the safety of the complainant and implement measures to ensure the victim's safety during the ongoing investigation (for example by enforcing a civil injunction if available to forbid a perpetrator from approaching the complainant). In no case should a complainant be put in "protective custody".

- All cases must be registered immediately and full information about the progress and regular updates provided to the complainant and the victim's advocate. The police should issue a unique case number which facilitates tracking.
- Victims who are in any form of state custody or other institutional settings must have a secure means of making a complaint to an appropriate entity outside the institution. In no case should the investigation be handled internally. For example, prison officials should not investigate allegations of abuse by prison staff but should refer such cases to police who specialize in investigating sexual and gender-based violence.

# 3/ARE COLLECTION OF FORENSIC EVIDENCE AND PROVISION OF MEDICAL CARE APPROPRIATE AND ADEQUATE?

**Collection and processing of forensic evidence must be effective, must not exclude victims on grounds of cost or location and must not further traumatize the victim.**

- Medical professionals should be trained in the World Health Organization (WHO) protocol on the collection of forensic evidence in cases of sexual and gender-based violence. They should take notes and collect samples in a way that ensures that the evidence can be used in criminal trials, for example, protecting the chain of custody of evidence.
- Medical professionals should be trained in citing appropriate facts in the forensic medical report in a format that could be used by police and prosecuting authorities in taking actions against perpetrators. Forensic medical experts should never draw conclusions of law.
- Medical professionals should refer survivors to appropriate support services.
- The criminal justice system should not require that victims reporting rape or sexual violence receive a separate forensic medical examination. The separation of treatment from evidence collection violates the right to health and raises serious ethical issues. The initial examination at any health services should be done in such a way as to ensure that forensic evidence which could be used for the investigation and trial is collected at that time.
- If a separate forensic medical examination is required, the medico-legal examiners should be trained in the WHO protocol on the collection of forensic evidence in cases of sexual and gender-based violence.
- The forensic medical examination should be accessible to the survivors, both physically and geographically. Financial assistance for travel costs should be available and examinations should be free of charge. In no case should a victim's inability to pay preclude the victim from getting the examination and appropriate medical care.

- Examination should take place as soon as possible as some types of evidence must be collected within hours. If a victim is unable to access a forensic specialist in a timely manner, that fact should in no way be used to undermine the complaint.
- Survivors should not be charged for collection of samples (such as the cost of “rape kits”) or for documenting the results of the testing in a medical report.

# 4/ARE THERE SPECIFIC OBSTACLES WHICH PREVENT A VICTIM FROM ACCESSING APPROPRIATE SERVICES IN A TIMELY WAY?

## **Victims of sexual or other gender-based violence must have immediate access to appropriate health services.**

- Health services should be physically and geographically available and accessible to all victims of sexual or gender-based violence. The patient should be reimbursed for travel costs if she cannot afford them. If the health facility charges user fees, the inability to pay the fee should not preclude treatment. Fees should be waived for anyone who otherwise would not be able to access the services.
- Victims seeking health services after an act of sexual or gender-based violence should be able to see a medical practitioner of their choice (a woman or a man).
- Health services should provide a woman or girl who has been raped with appropriate medical care, such as emergency contraception; HIV post-exposure prophylaxis; gynaecological care for injuries sustained in the assault, as well as general

medical care for other injuries; and initial psychological support.

- Medical professionals attending survivors immediately after an act of sexual or gender-based violence should be trained to deal with survivors' needs professionally and supportively, and treat them confidentially and with no discrimination. Health service providers should be able to refer patients to other appropriate services such as psychological counselling and legal services.
- Accessible and appropriate services including abortion should be available to women and girls who have become pregnant as a result of rape or incest.

# 5/IS INVESTIGATION OF CRIMES EFFICIENT AND THOROUGH?

## **Investigation must be conducted in a timely manner and explore all relevant evidence to support appropriate prosecution.**

- The investigating authorities should protect the identity of the survivor if that is what the survivor wants.
- The police must not pre-judge the evidence before the investigation has even started (for example, by disbelieving the complainant's version or by informally encouraging them to drop the complaint "for their own good").
- There should be clear criteria defining when the police must refer a case to the prosecutor. When they do not take further action on a case, they should be required to record the reasons and inform the complainant. Their reasons and decision should be available for appeal to the prosecuting authorities.
- The police should not mediate agreements between perpetrators and victims, they should not

facilitate informal payment of compensation and they should not encourage resolution through a parallel legal system such as a tribal court.

- Statistics on the resolution of investigations should be gathered and published. They should provide information on cases disaggregated by factors such as the sex, race and age of the victim.

## **Prosecutors must initiate criminal proceedings against suspects where probable cause exists.**

- If prosecutors take the decision to discontinue a case, they should record the reasons for this and promptly inform the complainant. Prosecutorial discretion should not be used to dismiss cases in which there is sufficient evidence to proceed and if the complainant wishes to go forward.
- The investigation and prosecution must be carried out in compliance with the principles of due diligence.

- The office of the prosecutor should routinely publish statistics on the resolution of cases referred to its office. It should provide information on cases disaggregated by factors such as the sex, race and age of the victim, and on cases that have not been pursued.
- The lawyers and investigators within the office of the prosecutor should be trained in dealing with victims of sexual or gender-based violence, especially in the appropriate use of medical evidence, and use of expert evidence, such as psychological or psychiatric reports.
- Prosecutors should ensure that witnesses are properly protected from further violence through witness protection measures, irrespective of whether the threat comes from the alleged perpetrator, or others, including relatives of the complainant who may be acting in the name of family “honour”. Under no circumstances should protection take the form of “protective” custody in a jail or prison.
- Prosecutors should preserve the dignity of victims and witnesses in the courtroom by ensuring that defence lawyers cross-examine witnesses professionally, without using bullying tactics to undermine the credibility of witnesses; and by ensuring that witnesses and victims can use equipment such as closed-circuit cameras to give their evidence, or can give their testimony *in camera* (in a closed courtroom).
- There should be independent oversight of the prosecutors’ work to assess how cases relating to sexual or gender-based violence are being managed.

# 6/ARE TRIALS FAIR, COMPETENT AND EFFICIENT?

## **Trials must be fair, free of discrimination and the rights of the victim and defendant must be protected.**

- Judges are responsible for maintaining the privacy of the victim's identity if the victim so chooses.
- Judges and lawyers should be trained in understanding crimes of sexual and gender-based violence.
- Judges should be trained to preside over cases of sexual and gender-based violence. They should be held responsible for maintaining a safe and respectful environment within the courtroom, in particular ensuring that witnesses are protected from abusive or demeaning treatment by the defence. Judges must give clear directions on the law to jurors.
- Judges should not allow evidence about the previous sexual history of a complainant to be raised in court, apart from in very exceptional cases where such evidence is necessary to avoid a miscarriage of justice, for example, if a complainant says she had

not met the accused before, when in fact they had been living together.

- If jury trials are routinely used in cases of sexual violence, jurors should be screened for any bias against women or victims of gender-based violence. They should be drawn from diverse backgrounds, sworn to keep the details of the case confidential and properly guided on the law by the judge.
- Sentences imposed on perpetrators found guilty of rape and sexual violence should be proportionate to the crime. In no case is imposition of the death penalty appropriate or acceptable.
- Survivors should be informed when their attackers are to be released or paroled from prison; and updated safety assessments should be carried out.
- Perpetrators convicted of crimes of sexual or gender-based violence should be given access to appropriate rehabilitation programs; such programmes should be carefully monitored for effectiveness.

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Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

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