

# SOCIAL TRANSFORMATION THROUGH ACCESS TO JUSTICE

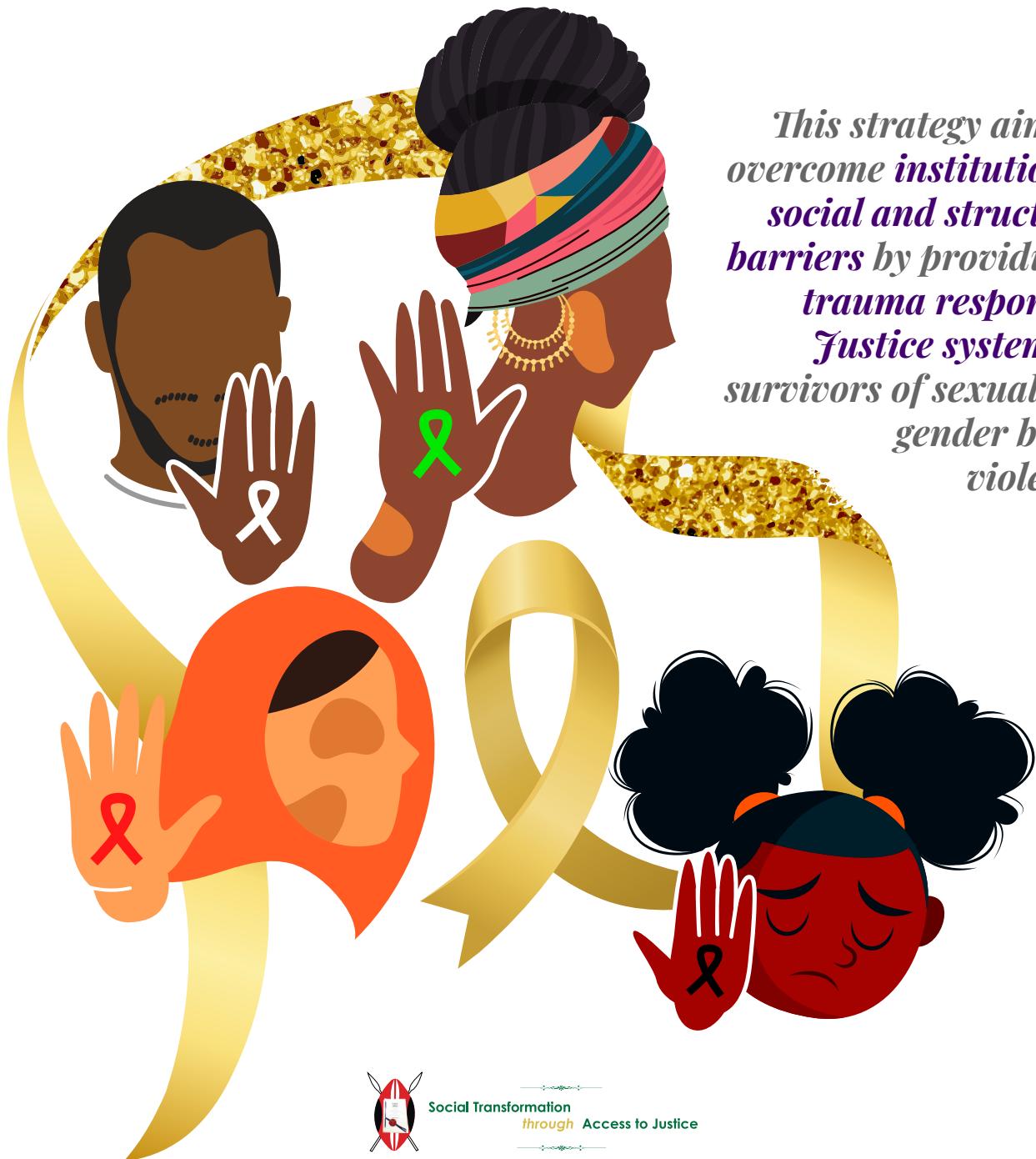
# SEXUAL AND GENDER BASED

# VIOLENCE (SGBV) STRATEGY

2023-2030

## TRAUMA RESPONSIVE JUSTICE

*This strategy aims to overcome institutional, social and structural barriers by providing a trauma responsive Justice system for survivors of sexual and gender based violence.*



Social Transformation  
through Access to Justice



# Contents

Abbreviation/Acronyms .....	2
Executive Summary.....	4
<b>1.0 Introduction .....</b>	<b>6</b>
1.1 Context and Rationale .....	6
1.3 Summary of Promising practices .....	10
<b>2.0 The Framework for Action .....</b>	<b>12</b>
2.1 Overview.....	12
2.2 Purpose of the Strategy.....	12
2.3 Objectives of the Strategy .....	12
2.4 Strategy Strengths and Opportunities .....	13
2.5 Structures for coordination and delivery .....	14
<b>3.0 Implementation Plan .....</b>	<b>16</b>
3.1 Sexual Offenses/SGBV Court Roll criteria.....	16
<b>4.0 Conclusion .....</b>	<b>21</b>
Strategy Roll-Out Implementation Matrix .....	22

## Abbreviation / Acronyms

ACM	Active case management
EU	European Union
GBVAW	Gender Based Violence Against Women and Girls
ICT	Information and Communication Technology
IDLO	International Development Law Organization
IWJA	International Women Judges Association
JTI	Judiciary Training Institute
KHIS	Kenya Health Information System
KMJA	Kenya Magistrates and Judges Association
M&E	Monitoring and Evaluation
NCAJ	National Council for Administrative Justice
OCJ	Office of the Chief Justice
ODPP	Office of the Director of Public Prosecution
ORJ	Office of the Registrar of the Judiciary
PLEAD	Programme for Legal Aid and Empowerment in Kenya
SGBV	Sexual and Gender Based Violence
SJR	State of the judiciary
STAJ	Social Transformation Through Access to Justice
SJT	Sustaining Judiciary Transformation
UNODC	United National Office on Drugs and Crime
WPA	Witness Protection Agency



## Executive Summary

The quest for justice for victims/survivors of Sexual offenses/SGBV has for many years been encumbered by numerous Institutional, social and structural barriers. The state of affairs has manifested in a growing backlog of Sexual offenses/SGBV cases. To address some of the barriers and growing number of case files, the Chief Justice launched the SGBV court at Shanzu, Mombasa. To strengthen the resolve for enhanced justice for victims/survivors, the Office of the Chief Justice in collaboration with the United Nations office on Drugs and Crime (UNODC) undertook a consultative process to guide the roll-out of Specialized Sexual Offenses/SGBV Courts in the country. The development of this Strategy was informed by this detailed consultations and analysis in May and June 2022

Among the notable shortcomings noted therein, included structural barriers whereby court rooms/trial chambers were seen as not conducive enough for the victim/survivor. Worse still, court rooms/trial chambers were not equipped to deal with vulnerable persons such as persons living with disabilities, and children. The absence of infrastructure to support victim interaction in the court room left them exposed. The confidentiality of their matters was not always prioritized. As a result, victims/survivors suffered indignity and trauma of reliving their experience every time they are called upon to narrate the experience. For many victims/survivors living in rural and remote areas, justice was too far away. They face additional challenges due to isolation; lack of transportation; close ties with the community, which affects privacy; and lack of accessible justice institutions.

Other institutional barriers include the long delays in completing cases, lack of adequate legal aid services and lack of empathy by those administrating justice. The institutional challenges also included the equally appalling state of affairs with respect to data, that showed a growing trend with respect to the number of Sexual offenses/SGBV case load for each court in the country. Additionally, there was a perception that the sexual offences/ SGBV trial process was tilted heavily in favor of the offender. Further, However, amidst the challenges, the Judiciary had evolved some useful practices that were critical in navigating sexual offenses/SGBV cases. Another notable element of the consultation was an overwhelming support for a pathway for the establishment of Sexual Offenses/SGBV courts.

This strategy has been framed on the strength of the foregoing discussion and resolve of the Chief justice to establish coherent structure for Sexual offenses/SGBV courts incorporating good practice examples from various jurisdictions. Some of the key actions to be delivered under this Strategy include the roll out of Sexual Offenses/SGBV Courts. Also central to the strategy is the embedding of a victims/ survivors-centered approach. This means placing the needs and priorities of victims/survivors, at the forefront of judicial responses. The Strategy also recognizes and acknowledges the need to provide legal and psychosocial support for all victims/survivors, of sexual offences/SGBV. The strategy roll-out is to be preceded by a sensitization and awareness campaigns to demystify sexual offenses/SGBV courts and raise its public profile. Also envisaged as part of the roll out is the training of judicial officers and staff on SGBV appropriate services for victims/survivors. Some of the planned changes include improving the court room/trial chamber experience of victims/survivors in their quest for justice. The Strategy implementation mechanism includes institutional and governance arrangements with reduced bureaucracy to ensure greater clarity around, and accountability for, delivery of key actions. Alongside, an M&E will be established to ensure regular and intensive tracking of progress towards the agreed goals of the Strategy

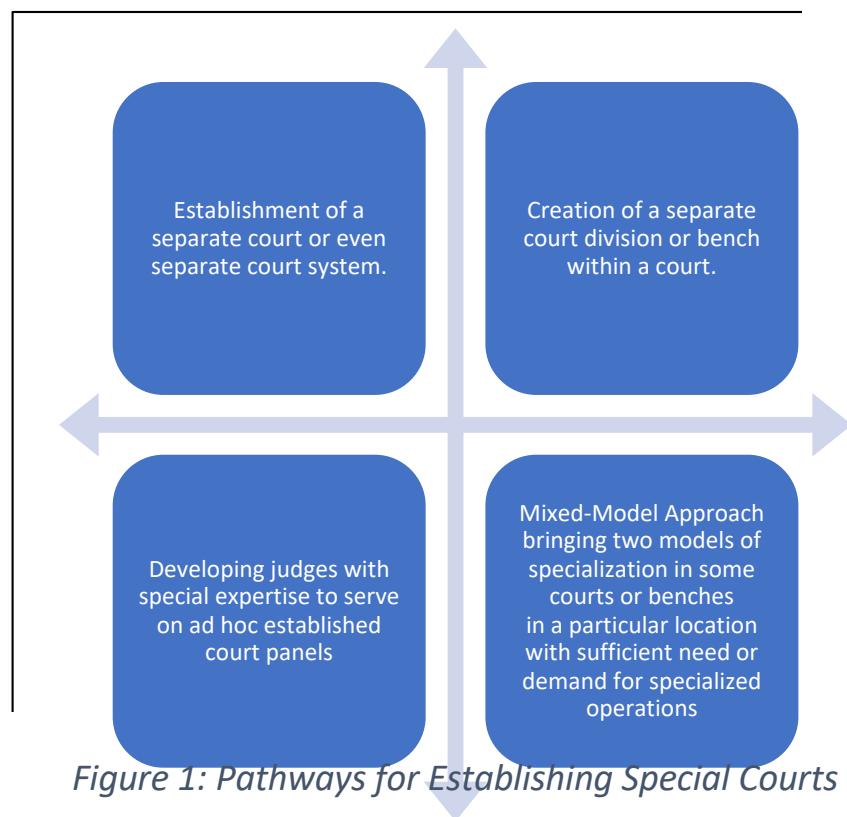


## 1.1 Context and Rationale

Access to justice is increasingly recognized as a critical dimension of tackling gender inequality. A lack of access to justice can impact the social, emotional, and financial outcomes of survivors/victims and their families. Therefore, when justice is unattainable, survivors/victims, who already face gender inequalities and discrimination throughout society, may face further disempowering repercussions. In the last decade, Kenya has put in place mechanisms and frameworks to address SGBV. There is in place an enabling national framework that safeguards the rights of victims and which provides for expeditious disposal of sexual violence cases. Overall, the justice system response to the issue of sexual and gender-based violence has improved over the last few years with innovative practices, programs and services. However, there remain strong calls from advocates, national and community-based organizations, and justice system participants to change the way the justice system responds to the SGBV issue.

On many fronts, Kenya has struggled, to ensure that victims /survivors of SGBV are able to access justice. This is against a backdrop where victims of SGBV are globally recognized as particularly vulnerable and face grave challenges when coming into contact with the justice system. In this regard, Kenya's survivor-centered approach towards enhancing access to justice for SGBV victims/survivors has taken shape through a wide range of piece meal policy and institutional reforms accompanied by a variety of strategies and programmes. Most recently in 2022, the Office of the Chief Justice unveiled the Social Transformation through Access to Justice (STAJ) Vision for the Kenya Judiciary. In particular, the Strategic Plan canvased the issue of access to justice leading to creation of the country's first SGBV court.

Special judicial initiatives that address the scheduling of sexual and gender-based violence cases have been gaining recognition and support around the world to seek better solutions to manage SGBV offenders and Kenya is no exception. Special courts and procedures are a commonly used tool globally to address these issues, provide efficient and sensitive adjudication of SGBV cases and enhance justice for women and girls. Therefore, a strategic approach to specialized courts can ensure a more proactive and coherent approach to planning, coordination, monitoring and administration – including incorporation of established best practices in the development or adjustment of specialized court processes. In furtherance of this agenda, the Office of the Chief Justice of Kenya, with support of the United Nations Office on Drugs and Crime (UNODC) under the PLEAD programme commissioned a consultative process to



*Figure 1: Pathways for Establishing Special Courts*



ascertain the feasibility of establishing Sexual Offenses/SGBV Courts. The process included engagement with stakeholders including victims/survivors, Judicial officers and administrative staff, National Council for Administration of Justice, National Police Service, Witness Protection Agency, Prosecuting counsels, Forensics professionals, Civil Society and other sector specialists.

## 1.2 Summary findings from the consultations

Across the various consultations there were some common themes and clear messages. As such, an equally important body of good practices was emerging. A key theme that emerged from consultations with internal and external stakeholders is that specialized courts need to be developed. This notion was informed by findings that indicated that the Court Room environment was far from being conducive for the victim/survivor in a variety of ways. Notably, the confidentiality of their matters was not always prioritized. Further evidence supporting the creation of Sexual Offenses/SGBV Courts related to the indignity and trauma of victims/survivors reliving their experience every time they are called upon to narrate the experience to the numerous service providers, including giving their testimony in open court.

A running theme across most consultations related to institutional, structural and social barriers within the judiciary, is the limited infrastructure to support victim interaction in the court room. In addition, victim/witness protection inside and outside the Court room was still far from the ideal. The victim/survivor welfare is the least of concerns and with no security, they become easy targets for intimidation and coercion. Further, the Court rooms were encumbered by social cultural barriers. Social and cultural norms are mirrored institutionally in a way that seemingly feminize the sexual offences/SGBV trials by allocating cases to female judicial officers in court stations. A case in point is the recently launched Shanzu SGBV court where the Court Leadership is predominantly female. Social norms are also barriers for men who seek SGBV response services because they face stigma and prejudice.

Another prominent theme, related to inadequate legal aid and information for victims/survivors. As such, many were neither aware of their rights nor provision of legal aid to keep them informed. This was against a backdrop where the Victim Protection Act (VPA) has provisions for the victim to obtain information. In this regard, it is expected that survivors/victims are informed about legal aid and other legal assistance mechanisms and that these mechanisms are responsive to their needs. Conversely, the message captured during consultations related to perceptions that SGBV trial process were tilted heavily in favor of the offender. The offender, it was noted, knew his/her rights, and had access to court files, and in some instances were able to have defense counsel representation. In comparison, victims/survivors often had to rely on information from state counsel from the Office of the Directorate of Public Prosecution (ODPP).

A recurring theme from consultations was the weaknesses of current/past integrated legal and psychosocial SGBV programmes that support access to justice. In many ways, this has impacted negatively on ongoing court cases. Findings related to victim/survivor trauma show inadequate psychosocial response due to the absence of capacities. Consequently, victims/survivors were often reluctant participants in the court process because of the inability to reconcile with the deeply personal and intimate character of the offences, the nature of relationship to the defendant and the high levels of trauma suffered. These factors also impacted on the evidence given, and thus the outcome of cases. A lot of the necessary and much needed care and caution was left to the goodwill of the judicial officer. Although the Sexual Offences Rules of 2014 provide for expedition of cases of sexual violence, there is no specific timeline in which cases ought to be heard and determined. Therefore, cases of SGBV took long to conclude to the detriment of the victims of sexual violence. The State of the Judiciary (SJR) Report 2020/21 notes that Sexual offence cases took long to conclude because victims or witnesses disappear after reporting of the offence.

Across the various consultations a clear message is that there are unique challenges to prosecuting SGBV crimes, including limited utilization of electronic evidence and forensic evidence in SGBV cases, poor medical documentation as well as storage of evidence. In particular, there were no regulations guiding the handling of recordings of virtual court sessions, something that may have discouraged SGBV victims/survivors from utilizing Courts. Compared to other crimes, charges for SGBV crimes are more vulnerable to being dismissed, re-characterized (trivialized) or dropped in the early stages of proceedings. Further, the



victim/survivors' experiences during case proceedings in the trial process was compounded by long trial proceedings. The slow adoption of Active Case Management among prosecuting counsel had occasioned frequent adjournments, as well as unfamiliarity with witnesses and evidence resulting in unjustified delays in adjudication of cases.

A clear message from the consultation was that, currently, survivors of SGBV largely do not receive any measure of assistance to enable them to afford some level of recovery. This was against a backdrop where the Witness Protection Act had established a Victim Compensation Fund for witnesses under witness protection<sup>1</sup>. The absence of socio-economic assistance denied victims/survivors the chance to resume some level of normalcy or become self-sufficient and independent after an SGBV incident, due to lack of resources. Furthermore, the lack of shelters to house victims/survivors presents additional malaise especially since several agencies shared this mandate. In contrast, it was noted that even in the event of conviction, offenders had guaranteed transport, housing, food, protection courtesy of the State. The victim/survivor on the other hand is left to their own devices after trial.

Overall, drawing from the literature review, the available data from the judiciary indicates both an increase in cases of SGBV filed and an equally large backlog of cases. According to the Gender Based Violence caseload statistics for magistrate courts for the FY 2020/2021, the GBV case load is highest in almost all regions with large population concentrations in Kenya. For instance, Nairobi leads in the GBV case load with 6.3% out of the 28,146 cases filed nationally, with the Makadara Station alone accounting for over 70% of this caseload. Other notable caseloads are as follows;

**Table 1: SGBV Case Load in select Counties with high cases**

County	Filed Cases	Resolved cases
Nairobi	1,780	1,036
Meru	1,534	1,298
Nakuru	1,386	726
Kiambu	1,284	949
Machakos	1,177	562
Mombasa	1,161	702
Kisii	1,160	820
Trans-Nzoia	1,016	704
Kakamega	991	704
Kisumu	954	831

Trends from literature, show that increasingly, SGBV cases are being reported which in turn is informing the number of cases filed in courts. For instance, according to the Kenya Health Information System (KHIS) data for January to June 2021, 10,997 females and 717 males were victims of GBV. This is higher compared to a similar period in the year 2020 where 7,291 females and 500 males were victims of GBV. In addition, the recent COVID 19 pandemic amplified the challenge of violence during emergencies. According to the National Council for Administrative Justice (NCAJ), SGBV cases constituted over 35% of the cases reported between March and April 2020. This was shortly after the pandemic began. Similarly, data obtained by the National Crime Research Agency from police reports indicated the number of cases recorded between January and June, 2020 had an increase of 92.2% compared with those between January and December, 2019<sup>2</sup>.

1

Amendment Act No 2 of 2010 s5

2

NCRA, 2020. a study on "Protecting the Family in the Time of COVID-19 Pandemic: Addressing the Escalating Cases of GBV, Girl Child Disempowerment and Violation of Children's Rights in Kenya"



**Table 2: Overall SGBV Caseload Statistics For Courts<sup>3</sup>**

<b>Case type</b>	<b>Filed Cases</b>	<b>Resolved cases</b>
Assault	133	58
Defilement	8071	4,474
Grievous harm	17712	13,869
Incest	326	238
Indecent/unnatural acts	575	480
Kidnapping and abduction	89	88
Rape	1029	647
Sexual assault	211	159
<b>All Case Types</b>	<b>28,146</b>	<b>20,013</b>

<sup>3</sup> Assault cases have been included due to the fact that at court level, it is difficult to distinguish assault cases that are Gender Based in nature from other Assault Cases.



### **1.3 Summary of Promising practices**

Desk research showed that good practice requires cooperative institutional practices that work to eliminate sexual violence/SGBV and provide victims with safety and the ability to successfully uphold and pursue their rights. Good practice includes engaging with victims and responding to their needs through multiagency cooperation on a case-by-case approach. Without a common understanding, little will change, since each agency will simply work in a silo, without an appreciation of how collaborative work can generate better outcomes.

Emerging from the consultative process, Kenya has important good practices, which provide a strong basis for specialized Sexual Offenses/SGBV Courts. As a departure from the past, the justice system has shown genuine change in attitude. Although generally conservative, judicial officials, in the midst of many challenges have evolved some useful and promising practices. In this regard, Kenya having evolved a semblance of a special court in the form of the Children's Courts that handle sexual offence cases where children are either victims or perpetrators. Judicial officers, through their own innovation, have managed to enhance the child friendly court environments that has improved management of child sexual offences. Occasionally, the children's court have held ad hoc special sessions to fast-track SGBV cases. There is also the adoption of ACM, which despite early implementation challenges, has improved court room processes in SGBV cases. The adoption of friendly customer services and good case file management has also helped to accelerate access to justice. Some of these good practices tabulated below now have to be taken on board and institutionalized to underpin the development and implementation of this SGBV strategy.

**Table 3: Emerging good practices from within the Judiciary**

<b>Emerging/existing practices</b>	
Creating a child friendly court environment	<p>Includes the taking of testimonies of the child such that they don't have to come back to court again.</p> <p>Includes the taking of testimonies from children during school holidays to minimize school disruptions</p> <p>In Nakuru Law Courts for instance, it was discovered that children are not comfortable with virtual hearings and may lose interest quickly.</p> <p>Another useful practice relates to reconnaissance for children to a court of law in order to familiarize them with the court environment. This will make it easier for the child to give their evidence.</p>
<b>Adoption of Active case Management</b>	Active Case Management is an emerging best practice that is necessary but applied sparingly in SGBV cases. Active Case management by prosecution counsel has not been embraced well with many citing time constrains to meaningfully apply ACM. This has particularly affected SGBV cases, in many occasions, prosecutors have found themselves not well familiarized with the evidence or witnesses. Prosecution should be familiar with their witness for effective case management. This is a gap, because good prosecution entails knowing the strengths and weaknesses of all your witnesses. This practice enables the prosecutor to adequately predict what is likely to happen with the witness at the dock and how to mitigate any potential negative experiences or outcomes.
<b>Friendly customer service</b>	This includes the introduction of an express service card at the Malindi law courts, whereby when an individual with special circumstances presents themselves at the service desk, such as pregnancy, a sick child, they are provided with an express card that allows the individual to be taken to the front of the queue. Training of judicial officers and prosecutors is required to enhance their competence regarding sensitive handling of individuals requiring assistance. Prosecution should also make the court aware of the special circumstances of a witness so as to enable the court to accommodate them, creating an overall, better experience for all parties involved.



<b>Good Case File management</b>	This includes introduction of color-coded stickers on court files dependent on how long a matter has been in court to help clear backlog for prolonged cases. The stickers are used on the court file, the prosecution file and the defense file. Where a matter has taken too long and a corresponding sticker is attached the court and all parties avoid adjournments and unnecessary delays and encourage expeditious completion of matters
<b>Hybrid court sessions</b>	Includes use of hybrid versions where all the mentions are handled virtually and once matters are confirmed for hearing, there is an agreement as to which witnesses will be heard virtually and which ones will be physical.



## **2.1 Overview**

Access to justice for SGBV victims/survivors is a top priority for the judiciary as indicated in the Social Transformation through Access to Justice (STAJ) Vision for the Kenya Judiciary. This and recent findings of the OCJ with UNODC study highlighted common themes and clear messages that create demand for specialized judicial interventions. These have now been taken on board to underpin the development and implementation of this strategy to enable the establishment and roll out of Sexual Offenses/SGBV Courts.

This strategy details the most suitable modality in view of the prevailing context. The strategy sets out three actions to implement for sexual offences/SGBV courts, focusing on the roll-out of the new court, victim/survivor-centered opportunities, structure and institutional arrangement for proactively implementing, coordinating and managing the courts including the implementation, evaluation and monitoring framework.

### **2.2 Purpose of the Strategy**

- The overall purpose of this strategy is to accelerate access to justice for survivors/victims of SGBV through the establishment of Specialized courts in Kenya

### **2.3 Objectives of the Strategy**

This strategy aims to achieve the following objectives:

- i. To guide the Judiciary to roll out specialized courts to handle Sexual offenses/SGBV matters.
- ii. To develop jurisprudence on sexual offenses/SGBV matters in the country
- iii. To reduce victim/survivor re-traumatisation and re-victimisation while holding perpetrators of sexual offenses/SGBV to account through the justice system
- iv. To enable access to courts, reduce backlog, expedite case work for victims/survivors and realize enhanced victim protection while minimizing sexual offenses/SGBV cases attrition

### **2.4 Strategy Strengths and Opportunities**

This strategy intends to leverage on the strengths and opportunities inherent to the judiciary while minimizing weaknesses and threats. Some of the key strengths and opportunities informing this strategy include;

#### **a. Human Resources:**

Already, the Judiciary has a pool of experienced judicial/legal officers and administrative staff. The judiciary pool of talent is already familiar with court room procedures and processes. To this end, there is sufficient personnel to meet the special demands of SGBV case work. However, only judicial officers who have been trained on gender sensitization and SGBV shall preside in Sexual Offenses/SGBV Courts. The opportunity lies in capacity building these officers and staff on the changing dynamics of SGBV and a victim/survivor-centred approach to managing survivors at court stations.

#### **b. Available Court Infrastructure:**

The Judiciary has presence in all the 47 counties. This includes physical judicial premises and also mobile courts (and circuit courts) that enable the court to provide services closer to the beneficiaries at the most proximate point. The availability of this infrastructure is indicative of reasonable levels of reach for access to justice. The opportunity, in terms of infrastructure for SGBV court establishment, lies in creating adequate space within the court to have in-person hearings where the parties are not in very close proximity to each other, and installation and use of screens or witness boxes to minimize victim/survivor trauma. Additionally, the court must have technology ability that allows survivors to provide



evidence from a different room/location, such as a testifying room. Further, creating a separate registry and waiting bays ( avoiding contact between victim/survivor and suspect) is also critical to enhancing the trial experience for the victim/survivor. Other infrastructure considerations could also include Express cards for pregnant/nursing mothers or persons with physical disabilities as well as child-friendly or survivor friendly arrangement (refer to the prosecutor's guide). This can also include provision of gender specific washrooms for survivors.

**c. Tools:**

The Judiciary has already evolved various tools for purposes of ensuring access to justice for SGBV victims/ survivors. Some of the tools include the Sexual Offences Regulations (2008), and the Sexual Offences Rules of Court 2014. In the same token, the country has also adopted detailed guidelines for the medical and forensic management of sexual violence cases, as well as psycho-social support of victims/survivors. Additionally, Kenya has the enabling law for issuance of protection orders during sexual offences trials. Kenya also has detailed National Guidelines For The Management Of Sexual Violence. These tools form the minimum standards for SGBV court establishment, and can adopt best practices and lessons learned internally and externally to inform the creation and operations of specialized courts.

**d. Information Communication Technology (ICT):**

Technology is a critical enabler of judicial processes. The Judiciary has already made progress in the adoption of ICT for Court processes. Towards this end, technology can be deployed to ensure that SGBV victims/suspects can make meaningful follow-up of their cases from the time of reporting of the alleged incident to the court, without having to physically go to particular locations, easing the trauma involved for victims. Furthermore, in line with the Evidence Act, technology can be deployed to avail pre-recorded testimony to reduce instances of retelling traumatic stories. In view of the new demands of SGBV cases, the strategy proposes in the short term, the development of guidelines on pre-recorded testimonies. In the long-term, the Judiciary may adopt technology assisted Court Room Processes - e justice model - with dedicated e-justice rooms' featuring teleconferencing equipment. This strategy will seek to standardize training surrounding technology and its application within the Sexual Offenses/SGBV Courts.

**e. Victim/Survivor Protection:**

A victim's rights to access justice should not be undermined. The balance between rights of the perpetrator and rights of the victim/survivor require putting safeguards in place. This strategy recognizes that Victim protection approaches are best achieved through a forum that brings on board all stakeholders- at the national and county based; state and non- state actors. To this end, in the short term, the National Council for Administration of Justice already has structures that can be rallied upon to set up coordination mechanisms to fast track implementation of victim/survivor participation and protection at the level of need. In the long term, NCAJ should call upon the support and expertise of the Witness Protection Agency (WPA) to safeguard witnesses.



## **2.5 Structures for coordination and delivery**

The need to have unhindered access to justice by the victims/survivors in a dignified and efficient manner is a desired goal of both the judicial and administrative bodies in Kenya. Any meaningful response to SGBV requires a strong collaboration of actors within the justice system as well as sound working relationships with external organizations. The objective of coordination is to provide efficient response that is victim-centered and addresses impunity. Effective coordination allows the judicial officer, survivor, prosecutor, investigators, defense and psychosocial support workers to work towards a common purpose as outlined in this strategy.

On the other hand, the delivery of justice, is essential for implementation that is efficient, with no delays, and in an empowering environment. A well-designed court process that reflects the needs of victims/ survivors and that is handled by well-qualified and knowledgeable judicial officers and staff require special approaches and expertise. Therefore, to ensure coherent coordination and delivery of services, effective support the following institutions/offices are expected to provide strategic leadership:

**a. Office of the Chief Justice (OCJ):**

The responsibility for defining the Terms of Reference for the SGBV court<sup>4</sup>, and the overall coordination, collaboration of actions and effective implementation will rest in the Office of the Chief Justice. As the strategy's lead agency, the OCJ will be most responsible for robust establishment of national policy and guiding standards and governance arrangements to ensure adherence to the appropriate standards. The OCJ shall also be leading on awareness-raising campaigns designed to raise the public profile of the Sexual Offenses/SGBV Courts.

**b. Office of the Registrar of the Judiciary (ORJ):**

The Registrar's office provides the administrative and operations support for the Judiciary, critical to the attainment of this strategy. The ORJ will be key in securing the human, physical and financial resources needed to make the Sexual Offenses/SGBV Courts a reality. In this regard, the ORJ will in line with this strategy and as directed by the OCJ, avail the human resource and facilities required to realize establishment of Sexual Offenses/SGBV Courts.

**c. National Council for Administrative Justice (NCAJ):**

The NCAJ, for purpose of this strategy will be a coordination secretariat for a multi-agency approach towards supporting victim participation. In line with this strategy or policy issued by the OCJ outlining collaboration of the different bodies concerned with victim participation, the NCAJ's role in the Sexual Offenses/SGBV Courts with respect to victim participation will be to convene relevant stakeholders and to keep the relevant institutions accountable. Through the Court User Committees (CUC), NCAJ will ensure that it cascades its actions to the lowest points of service.

**d. Sexual Offenses/SGBV Courts Registry :**

The Sexual Offenses/SGBV Courts registry is a separate entity established for purposes of realizing the Sexual Offenses/SGBV Courts. The OCJ may issue appropriate directions to guide the Sexual Offenses/ SGBV Courts registry. The OCJ shall mandate the Registrar of the Sexual Offenses/SGBV Courts to oversee the Sexual offenders register in line with the provisions of the Sexual Offences Act.

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<sup>4</sup> The term 'SGBV' has been associated with a wide array of offences, ranging from sexual offences, to child sexual and non-sexual abuse, child neglect, to intimate partner violence (IPV), domestic assault to name a few. A clear definition as to the specific offences that meet the criteria/are eligible to be heard at the SGBV court will eliminate any potential miscommunication.



**e. The Judiciary Training Institute:**

To improve the outcomes and experiences of victims in courts, judicial officers will receive specialized training on gender sensitization. The JTI has collaborated with various NGOs and government agencies, to conduct trainings for judges and magistrates on the SOA, violence against women, and human rights. A notable fruitful collaboration by members of the judiciary is that of the IWJA (Kenya Chapter).

**f. The Office of the Director of Public Prosecutions (ODPP):**

As the office that deals with all public prosecutions, the ODPP is critical on ensuring justice for victims and survivors of SGBV. Toward this end, the ODPP has established the SGBV Offences Division to process and prosecute cases of SGBV. The office also advises government departments on SGBV and treaties/instruments that affect the prevention, control, and prosecution of SGBV cases and advises on victim protection, compensation, and restitution.



### 3.1 Sexual Offenses/SGBV Court Roll criteria

To ensure access to justice for victims/survivors of sexual offenses/SGBV, this strategy provided a side by side comparison of the international best practice against the prevailing state of affairs and made recommendations. Therefore, the roll out of the sexual offenses/SGBV courts will be guided by the following criteria listed in recommendation columns.

Criteria	International Model	Current Model (Shanzu)	Recommended Model
<b>Human Resources</b>			
<b>Judicial Officers</b>	a. Presiding judges who have specialized knowledge of GBVAWG	4 Judicial officers with 1 dedicated Judicial officer	a. 2 Judicial officers to work in a rotatory manner at the SGBV Court
<b>Skilled personnel</b>	a. Court personnel (judges and court staff) who are systematically trained <ul style="list-style-type: none"> <li>• Prosecutors,</li> <li>• Court staff,</li> </ul>	a temporary prosecutor a temporary court assistant	a. 2 prosecutors per court to ensure pre-trial counseling and a detailed needs assessment is conducted. b. A dedicated court clerk. c. A dedicated court administrator
<b>Available Support Services</b>	a. A team of multidisciplinary officers attached to the court, such as <ul style="list-style-type: none"> <li>• psychologists</li> <li>• victim support persons</li> <li>• Interpreters</li> </ul>	Currently Not Available	a. A dedicated security personnel/officer b. 2 Available psychotherapists. c. Research assistant per court. d. A behavioural therapist on needs basis in the event that a mental challenge is suspected in survivors or suspects. e. Sign language interpreter on a need basis.
<b>Physical Facilities</b>			
<b>Court Premises</b>	a. Infrastructure that ensures courts are adequately equipped to reduce victims' contact with the defendant and ensure their safety (e.g. separate waiting rooms and entrances, private rooms to conduct interviews) b. Infrastructure to ensure facilitation of victims' testimony - Permitting the victim to testify in a manner that allows her to avoid seeing the defendant (using screens or CCTV) c. Special units within the court administrative staff for coordinating support for victims throughout the trial	a. Characterized by lack of a court room. The chambers are based on an isolated side of the larger Shanzu court premises that accommodates private chambers for all judicial officers. b. Due to the large number of cases, the parties have to wait outside the private chambers posing a security risk to judicial officers. c. Characterized by lack of waiting bay. The complainants & their families also come into direct contact with accused persons in custody as they are all in the same waiting area.	a. Use of a screen or b. A separate testifying room should be provided where space permits and also be out of the way of ordinary traffic and relatively close to the Court itself.



<b>Instruments &amp; Protocols</b>			
<b>Tools and Protocols</b>	<ul style="list-style-type: none"> <li>a. Targeted tools (e.g. model bench books) which provide relevant case law within a social context analysis of GBVAWG.</li> <li>b. Gender-sensitive guidelines or protocols focusing on ensuring the protection of the rights and safety of victims</li> </ul>	<p>Sexual Offences Regulations (2008), and the Sexual Offences Rules of Court 2014.</p>	<ul style="list-style-type: none"> <li>a. Development of Bench/handbook on Sexual Offenses/SGBV in Kenya.</li> <li>b. Sexual Offences Regulations (2008), and the Sexual Offences Rules of Court 2014.</li> <li>c. National Guidelines for the Medical and Forensic Management of Sexual Violence (tailored and made available for judicial officers)</li> <li>d. Handbook for the Judiciary on Effective Criminal Justice Responses to GBVAW (online by UNODC)</li> <li>e. Access to Justice for Persons with Disabilities, Benchbook for Judicial Officers (available online)</li> </ul>
<b>ICT capacity</b>	<ul style="list-style-type: none"> <li>a. Dedicated CCTV with teleconferencing facilities</li> <li>b. Pre-recorded testimonies</li> <li>c. Remote Testimony guidelines</li> </ul>	Currently Not Available	<ul style="list-style-type: none"> <li>a. Dedicated CCTV with teleconferencing facilities</li> <li>b. Pre-recorded testimonies</li> </ul>
<b>Legal Aid</b>	<ul style="list-style-type: none"> <li>a. Legal assistance for victims</li> </ul>		<ul style="list-style-type: none"> <li>a. Legal assistance for victims</li> </ul>
<b>Victim/Survivor safety at the court</b>	<ul style="list-style-type: none"> <li>a. Available safe space/ waiting area</li> </ul>	Insufficient space for victims and their accompanying families	<ul style="list-style-type: none"> <li>a. Availing a safe space for victims to feel protected, and in collaboration with the Witness protection agency,</li> </ul>
<b>Court and case management</b>	<ul style="list-style-type: none"> <li>a. Expedited procedures for cases involving GBVAWG,</li> <li>b. limiting adjournments,</li> <li>c. Addressing court management challenges in rural and remote areas.</li> <li>d. Limiting the frequency, manner and length of questioning</li> <li>e. Allowing a video-recorded interview as evidence in chief</li> </ul>	Available space to house a sub-registry for SGBV files	<ul style="list-style-type: none"> <li>a. Active Case Management (ACM)</li> <li>b. Independent SGBV Registry for SGBV cases.</li> <li>c. Limiting the frequency and manner of the line of questioning</li> </ul>



The successful implementation of the Strategy and its accompanying implementation Plan will equally rely on;

- **Court Processes and Procedures:**

Streamlined court processes and procedures detailing the case cycle time from the time of reporting up to the finalisation of the case in court.

- **Human Resource:**

The creation of specialist posts for personnel in the Sexual Offenses/SGBV Courts to attract and ensure the sustainable skills capacity. In addition, design of an appropriate and recognized training programme on Sexual Offenses/SGBV.

- **Physical Facilities:**

The Judiciary must give priority to the immediate upgrading of the magistrate's courts that have been identified as being resourced closest to the Sexual Offences Court Model. This upgrading process must be done against available resources, and must commence in the 2022/2023 financial year. The rest of the identified courts may be progressively resourced over a period of two years.

- **Budgetary resources:**

The costing of the implementation of the Model must be finalized. It must be done against the available resources identified.

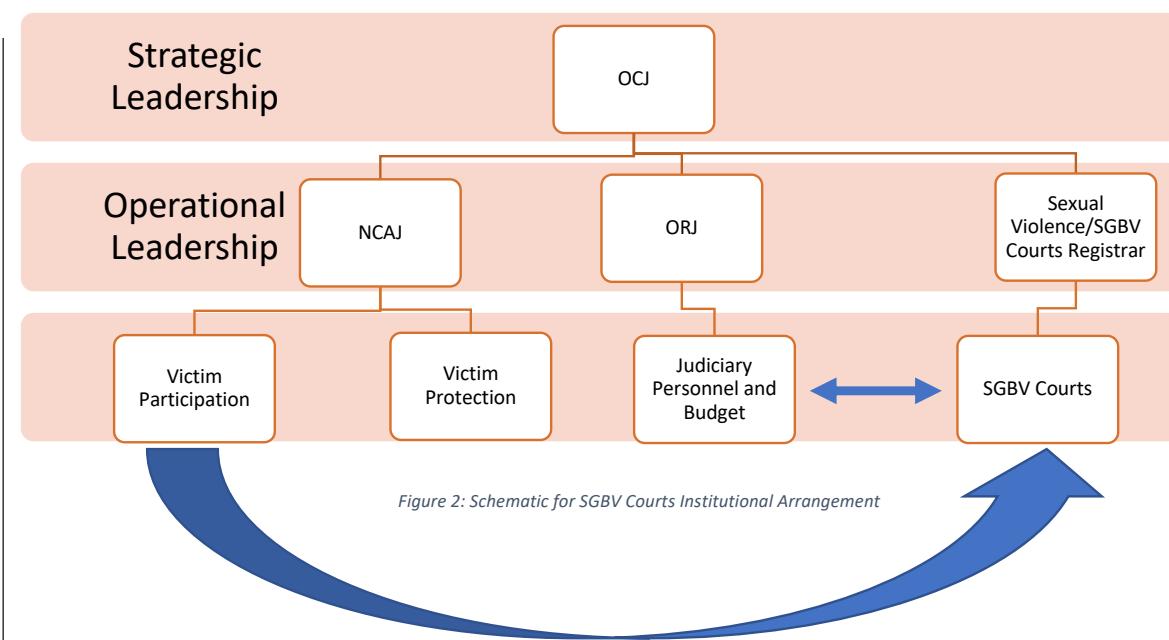
- **Stakeholder engagement:**

The Court User Committees must be revitalized at all stations to ensure an all-inclusive consultation with state and non-state actors' stakeholders.

- **Monitoring and Evaluation:**

An integrated monitoring and evaluation framework must be developed to ensure the successful implementation of the Strategy and its accompanying Implementation Plan. This framework must set out performance standards and indicators towards the agreed goals of the Strategy.

- Sexual Offenses/SGBV Courts Governance & Institutional arrangement



The Judiciary is often the last actor in the long chain of justice. In the context of sexual offences/SGBV cases, the minimum that the judiciary can offer is a fair trial for all parties, where victims/survivors can access justice in a conducive environment that is sensitive of their needs. Even with the resource's basket being overstretched, the Judiciary intends to go the extra mile to make available the services, infrastructure and processes that will enhance justice for victims/survivors. Where needed, the Judiciary will collaborate with other actors in the justice chain to implement this strategy to achieve the actions and outcomes stated herein. The success, lessons and experience of these dedicated Sexual Offences/ SGBV Courts will be a valuable guide that will to a certain extent bring closure to many victims/survivors.



## JUDICIARY SPECIFIC STRATEGY ROLL-OUT IMPLEMENTATION MATRIX

<b>Strategic Intervention</b>	<b>Activities</b>	<b>Timeframe</b>	<b>Responsibility</b>	<b>Tools/Output</b>
1. Demystifying of Sexual Offenses/ SGBV Courts	Media Activation to debunk myths and state the facts of sexual offenses /SGBV in Kenya - civic education  Legal clinics- conducted at regular intervals, leverage on 16 days of activism  SGBV Service weeks	Immediate/Short term (1-2 months)  Continuous engagement	OCJ  ORJ  NCAJ/CUCs  Development partners support	A Communication strategy - including television, radio, barazas  TORs for media agencies  SGBV Service weeks SOPs  Fact sheets on Sexual offenses/SGBV case load and SGBV Court case types in Kenya  Global best practice based on Kenyan contexts  IEC material/booklets for public consumption  Must be consumable by PwDs.  (guidance relevant to specific target groups focused on all forms of sexual violence)
2. Conduct a desk assessment in each county to determine the demand and supply for SGBV access to justice	Status of Court stations with the highest load  Status of Court stations with the highest backlog,  Types of Sexual Offences/ SGBV  Status of Counties with high sexual offence cases with low access to judicial services  Status of courts with adequate/inadequate judicial decisions for SGBV cases**	Immediate/Short term (1-2 months)	OCJ  ORJ  NCAJ/CUCs  ODPP*  Development Partners  County complaints Referral Mechanism	Desktop Analysis Report  Reporting of magistrate decisions to Kenya Law.
3. Reconnaissance of Court Stations with the highest/ lowest case load.	Recommendations for Rapid Results Initiative to reduce Sexual Offences/ SGBV case burden.  Draw lessons on priority processing of Sexual offenses /SGBV cases.  Design a Rapid Results Initiative for reducing backlog ( eg 16 days of Activism, SGBV Service weeks).	Immediate/Short term (1-2 months)	OCJ  ORJ  NCAJ/CUCs  Development Partner Support  County complaints Referral Mechanism	Field visit report  Rapid Results Initiative to reduce backlog



4. Assessment of each court station to determine suitability for conversion to a Sexual Offences/ SGBV dedicated court (baseline to inform Strategy no.9)	<p>Status of physical Access to courts (location, infrastructure catering for disabled persons; ramps, lifts, toilets)</p> <p>Status of trial chambers/ court room infrastructure is adequate (a testifying room, waiting bay (victim protection)</p> <p>Status of trial chambers/ Court rooms are child friendly (play area, therapy area or potential for a therapy / play/art activities)</p> <p>Status on the availability of Witness booths (screens)</p> <p>Status of availability of Expert Witnesses</p> <p>Status of staffing levels- (court officers capable of focusing purely on SGBV available)</p> <p>Status of proximate shelter/rescue centers and other key services (police station,medical facility)</p> <p>Status/Availability of Court case documentation services</p>	Immediate/Short term (1-2 months)	OCJ ORJ NCAJ/CUCs KMJA/IWJA Development Partners	Capacity Assessment Criteria Status Report
5. Conduct SGBV mobile court suitability studies	<p>Logistical considerations -Distance, Location, Safety, Geographical considerations (Terrain)</p> <p>Availability of Victim protection &amp; participation mechanisms</p> <p>Availability of judicial officers for this process</p>	Medium term (3-6 months)	OCJ ORJ NCAJ/CUCs KMJA/IWJA Development Partner support	Suitability Assessment Criteria  Operational guidelines for remote participation in court proceedings  Development of SGBV-specific mobile courts guidelines
6. Development of SGBV Bench book	A review of the jurisprudence on Sexual Offences/ SGBV cases and norms regarding the particular needs of victims of sexual violence and barriers to access justice.	Immediate/Short term (1-2 months)	OCJ KMJA/IWJA Development Partners	Model Hand/Bench Book on Sexual Offenses/SGBV for judicial officers



7. Capacity building of Judicial officer & staff	Conducting multidisciplinary Sexual offenses/SGBV training covering a broad range of topics across the justice providers in close cooperation with women's rights organizations and civil society	Immediate/Short term (1-2 months)	OCJ ORJ JTI KMJA/IWJA Development Partners support	Sexual Offenses/SGBV cases training curriculum
8. Leveraging on emerging ICT in Sexual Violence/ SGBV Courts	<p>Developing guidelines on CCTV witness testimony</p> <p>Developing guidelines on SGBV pre-recorded testimonies</p> <p>Provision of ICT infrastructure</p> <p>Collaboration with telecommunication service providers for automated reminders for victims/ suspects -USSD Codes</p> <p>Development of confidentiality safeguards</p>	Medium term (3-6 months)	OCJ ORJ JTI KMJA/IWJA Service Provider	Dedicated CCTV rooms  SGBV Court Practice Guidelines  MoU with telecommunication service providers (eg safaricom)
9. Selection and pilot for one of each of the counties where the shortlisted courts are identified	<p>Establishment of:</p> <p>Availability of human resources (Judicial officer, Administrative staff, Prosecutor, Defense counsel)</p> <p>Availability of relevant Parties (Victims/Survivors; Suspects,defence counsel)</p> <p>Availability of witnesses (including Expert witnesses)</p> <p>Availability of Court case documentation services</p>	Medium term (3-6 months)	OCJ ORJ KMJA/IWJA ODPP	SGBV Cause list  MoU with Ministries/ institutions for specialist services through secondment ( e g Psychotherapists,Court support officers eg gender officers)



10. Victim Participation and Protection	<p>Status of qualified personnel/organizations to provide victim advocacy, legal aid and support services</p> <p>Mapping and Status on providers of Shelters/Rescue centers</p> <p>Mapping of Pro bono legal professionals</p> <p>Engagement with Survivor networks to identify opportunities</p>	Long term (throughout)	OCJ ORJ NCAJ/CUCs KMJA/IWJA Development Partner support	Operationalization of a Protocol of Assistance to Survivors Database of Pro bono lawyers Database of Shelters Guidelines Booklet for Pro bono lawyers Guidelines for LSK (defense counsel on Trauma informed care to address inappropriate line of questioning) Memorandum of Understanding (MoU) with Shelters/Rescue Centers
11. Monitoring and Evaluation	<p>Development of a functional M&amp;E Mechanism</p> <p>Institutionalized gender disaggregated statistics</p> <p>Gender Responsive Budgeted Actions Monitored</p>	Long term (throughout)	OCJ ORJ JTI KMJA/IWJA Development Partner Support	Gender Sensitive Indicators Establishing key performance indicators for accountability Data hub for all strategic interventions

\*The Office of the Director of Public prosecution (ODPP) is an independent institution mandated to exercise powers of prosecution. While the ODPP is independent, the optimal function and success of the SGBV Courts cannot be achieved without ODPP participation concerning the provision and training of prosecuting counsel

\*\* Determination of the quality of judicial outcomes may be best placed at the Court of Appeal.







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## STRATEGIC PLAN 2021-2025



*This strategy aims to overcome institutional, social and structural barriers by providing trauma responsive Justice system for survivors of sexual and gender based violence.*



Social Transformation  
*through* Access to Justice