



# ADDRESSING GENDER-BASED VIOLENCE IN TIMOR-LESTE A MANUAL FOR LEGAL AID LAWYERS

## VOLUME 2: STEP-BY-STEP GUIDE TO REPRESENTING VICTIMS



**USAID**  
HUSI POVO AMERICANO



JUDICIAL SYSTEM MONITORING PROGRAMME  
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL



**The Asia Foundation**



## Contacts

The Asia Foundation  
 Rua de Nu Laran No. 20  
 Bairro dos Grillos  
 Dili, Timor-leste  
 Tel: (670) 331-3457  
 Mobile: (670) 723-0922

Judicial **System** Monitoring Program  
 Rua Setubal, Colmera, Dili - East Timor  
 Postal Address: PO Box 275, Dili, East Timor  
 Tel / Fax : +670 3323883  
 Web Site : [www.jsmp.minihub.org](http://www.jsmp.minihub.org)  
 Email : [info@jsmp.minihub.org](mailto:info@jsmp.minihub.org)



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## **FOREWARD BY HER EXCELLENCY SECRETARY OF STATE FOR THE PROMOTION OF EQUALITY**

It is with pleasure that I write a few words to introduce this publication of a Gender-Based Violence Legal Manual for private lawyers produced by The Asia Foundation for the Judicial System Monitoring Program's Victim Support Service with support from the United States Agency for International Development (USAID).

The Secretary of State for the Promotion of Equality welcomes efforts to support the application and enforcement of laws to prevent gender-based violence. In 2010 the National Parliament passed the Law Against Domestic Violence recognizing that domestic violence is a long standing problem and one of the most complex social issues of our time. The enactment of the Law Against Domestic Violence is a step in the right direction towards addressing structural gender inequalities that underlies the disproportionately higher level of violence that is committed against women and children.

In accordance with Article 25 of the Law Against Domestic Violence, every victim of domestic violence now has the right to legal assistance by a Public Defender or private lawyer irrespective of the victim's financial capacity to retain a lawyer. Conversely, private lawyers now have a recognized legal right to accompany the victim of domestic violence at every stage of the criminal prosecution process. Engagement of the victim in the prosecution of crimes is essential to ensuring a meaningful and just outcome for the victim, the community and the state.

Private lawyers play a crucial role in promoting gender equality through their assistance to, and representation of victims of gender-based violence. We believe it is imperative that private lawyers equip themselves with a solid understanding of the legal framework for the prosecution of gender-based violence crimes, as well as the practical skills to provide meaningful legal assistance to victims.

The passage of laws is only the first step to addressing social inequalities. It is the ongoing application of laws to real-life cases and the meaningful enforcement of laws through the justice system that will see long-term changes. Private lawyers alongside police, prosecutors and judges all play a key role in addressing gender-based violence through the justice system. Our office remains committed to continuing to work together with all those seeking to address the challenges of gender-based violence in Timor-Leste.



**Dra Idelta Maria Rodrigues**

**Her Excellency Secretary of State for the Promotion of Equality**



## ACKNOWLEDGEMENTS

With the production of this practical manual on providing legal assistance for victims of crimes of gender-based violence, The Asia Foundation (the Foundation) is proud to contribute to the many activities underway to eliminate gender-based violence in Timor-Leste.

Violence against women and children remains prevalent in the country with 38 percent of women claiming to have experienced violence at some point in their lives. There are positive signs however, in particular the promulgation of the Law Against Domestic Violence in 2010 has made it clear that domestic violence is a crime and has significantly increased the responsibility of the state to protect women and children and prosecute crimes of domestic violence. With the promulgation of the law, Timor-Leste has also recognized the need for legal assistance for the victims of domestic violence. Without such support, women, and in particular children, face significant hurdles in seeking prosecution for crimes committed against them and for being protected from ongoing violence.

This manual seeks to provide guidance to those lawyers assisting women and children victims of gender-based violence crimes. Volume One of the manual lays out the legal framework in Timor-Leste in relation to gender-based violence, while Volume Two provides a practical step-by-step guide to lawyers. The manual was produced at the request of the non-governmental organization Judicial System Monitoring Programme (JSMP), a long term implementing partner of the Foundation's USAID-funded Access to Justice Program. Apart from being Timor-Leste's leading legal NGO, providing critical commentary on the development of the judicial system in the country, JSMP provides free legal services to women and children subjected to gender-based violence, through its Victim Support Service (VSS). VSS was founded in 2005 and has grown to become a national service with an annual client base of around 250 clients. The service provides critical support to women and children who are taking the brave step of wanting to see justice for the crimes committed against them.

While VSS remains the only specialized legal support service for women, the organization is fortunately not alone in providing legal assistance to women and children victims of violence. Community legal aid organizations across the country, including Fundasaun Edukasaun Comunidade Matebian (ECM), LBH-Liberta and Fundasaun Fatu Sinai Oecusse (FFSO) are also providing legal services and the Foundation hopes that this manual will assist them and other organizations in their endeavors.

The Foundation has many individuals and organizations to thank for their support and collaboration in developing the manual. First and foremost, the Foundation would like to express appreciation to USAID who has funded our Access to Justice Program in Timor-Leste since October 2002 and through which this manual was produced. The manual was written by Carolyn Graydon, and reviewed by Ruth Hugo. Foundation Legal Officer Lillian Dang managed the production of the manual, including incorporation of technical comments. The manual benefitted from collaborative discussion and input from other agencies and organizations working on gender-based violence, including the Justice Facility, UNFPA, the United Nations Mission in Timor-Leste (UNMIT), and the Association of Lawyers of Timor-Leste (AATL).

Critical technical input was provided by Bernardo Fernandes, Legal Adviser to the Judicial Training Centre. The Foundation would like to thank the Prosecutor-General, Her Excellency Dra. Ana Pessoa for her technical comments on the manual and her support for the Foundation's capacity building and legal

education activities. The Foundation would also like to thank the Secretary of State for the Promotion of Gender Equality, Her Excellency Dra Idelta Rodrigues, for endorsing the manual and the provision of technical comments on the draft manual from her office.

Finally the Foundation thanks the legal aid lawyers who will use this manual to help women and children seeking justice for the crimes of violence perpetrated against them. We hope the manual meets your needs.

**The Asia Foundation, Timor-Leste**







## Contents

<b>FOREWARD BY HER EXCELLENCY SECRETARY OF STATE FOR THE PROMOTION OF EQUALITY.....</b>	<b>v</b>
<b>Acknowledgements.....</b>	<b>vii</b>
<b>PART 1: INTRODUCTION.....</b>	<b>13</b>
1.1 Purpose of the Step-by-step Guide.....	13
1.2 Ethical and professional obligations of lawyers.....	13
1.3 Private Lawyers Law (Law No. 11/2008).....	13
1.4 Law Against Domestic Violence (Article 25) .....	15
1.5 Other professional standards.....	15
<b>PART 2: PROVIDING INITIAL ASSISTANCE TO VICTIMS OF GBV .....</b>	<b>17</b>
2.1 Dealing with emergencies .....	17
2.2 Preparing for interviews with adult victims of GBV .....	17
2.3 Starting the interview.....	18
2.4 Getting a detailed statement of your client’s experiences .....	19
2.5 Special focuses for domestic violence cases.....	20
2.6 Get an overall picture of client’s resources and vulnerability .....	21
2.7 Find out what your client’s immediate needs are .....	21
2.8 Providing legal advice to your client.....	21
2.9 Present your advice as choices to be made by your client.....	22
2.10 Personal safety plans .....	24
2.11 Leave ultimate decision to client .....	24
<b>PART 3: DEALING WITH POLICE .....</b>	<b>27</b>
3.1 Supporting your client in making a complaint.....	27
3.2 Monitoring police investigations and collecting evidence .....	27
3.3 Police powers of arrest and detention .....	28
3.4 Rights of the defendant (Article 60 CPC).....	28
3.5 Conditions for Pre-trial detention.....	29
<b>PART 4: LIAISING WITH PROSECUTORS.....</b>	<b>31</b>
<b>PART 5: LAWYERS’ OTHER ONGOING ROLES IN REPRESENTING VICTIMS OF GBV .....</b>	<b>33</b>
<b>PART 6: SUPPORTING YOUR CLIENT AT COURT .....</b>	<b>35</b>
6.1 Preparing your client before court .....	35
6.2 Supporting your client during the hearing and explaining/advising on court decisions ....	35

PART 7: POST JUDGEMENT SUPPORT TO CLIENTS .....	37
PART 8: PARTICULAR ISSUES IN WORKING WITH CHILD VICTIMS.....	39
8.1    Be clear that the child is your client .....	39
8.2    Get background only from accompanying adult .....	39
8.3    Determine whether the child is capable of giving you instructions.....	39
8.4    Interviewing child client .....	40
8.5    After your interview with child client .....	41
PART 9: CONCLUSION .....	43

# PART 1: INTRODUCTION

## 1.1 Purpose of the Step-by-step Guide

The purpose of this Step-by-Step Guide to Representing Victims is to provide lawyers with practical guidance on how to provide legal assistance to victims of gender-based violence. This manual should be used in conjunction with Volume 1: The Legal Framework.

Knowing the law is only one aspect of your duty as a private lawyer. As a private lawyer you are bounded by the ethical and professional obligations of your profession which you must uphold in the conduct of your work. This is vital if you are representing vulnerable clients including women and children victims of gender-based violence. You must further possess the relevant practical legal skills to provide effective legal assistance.

This ‘Step-by-step guide’ aims to equip private lawyers to:

- legally empower their clients to make and act upon informed decisions regarding their justice options
- support their clients in pursuing their justice goals, especially through the formal criminal justice system
- monitor and support the performance of formal justice actors (police, prosecutors and the courts) to increase the chances of evidence being collected, cases being brought quickly to court and convictions secured
- support all clients in obtaining help from other services regarding their broader needs, and ensuring coordination amongst service providers

## 1.2 Ethical and professional obligations of lawyers

Professional obligations provide the basic framework within which you must always operate, whether in working on cases of GBV or other legal matters. There are a number of sources of professional obligations for lawyers in Timor-Leste which you should know and always comply with.

## 1.3 Private Lawyers Law (Law No. 11/2008)

All private lawyers acting for victims of GBV are bound by the *Law On the Juridical Regime Governing Private Legal Profession and Lawyers Training* (‘Private Lawyers Law’ Law 11/2008) which outlines numerous **professional obligations**.

### 1.2.1 General Obligations

Private lawyers must:

- Behave as ‘servers of justice and the law’ (Article 39(1) Private Lawyers Law).
- ‘Maintain highest independence’ and not exploit privileges of profession for own gain (Article 39(2) Private Lawyers Law).
- Be punctual and respectful to other colleagues in the profession, their clients and others (Article 39(3) Private Lawyers Law) and comply with their ‘duty of civility’ (Article 44 Private Lawyers Law).
- Behave with honesty, loyalty, courtesy and sincerity (Article 39(4) Private Lawyers Law).
- Strive for the good enforcement of law, quick and effective administration of justice and improvements (Article 40(a) Private Lawyers Law), fight against human rights violations (Article 40(b) Private Lawyers Law), not use illegal means to get information (Article 40(c) Private Lawyers Law), refuse pleadings in cases you consider unjust (Article 40(d) Private Lawyers Law)

or where client has illegal purpose (Article 40(g) Private Lawyers Law), and not attract publicity (Article 40(f) Private Lawyers Law).

- Comply with their duty to communicate complaint to another lawyer or ‘magistrate’ before lodging official complaint against them (Article 45 Private Lawyers Law).
- Comply with their duty not to interfere with witnesses (Article 54 Private Lawyers Law).

### 1.2.2 Confidentiality (Article 41 Law No. 11/2008)

Lawyers must observe strict confidentiality of:

- **client information** (Article 41(1)(a) Law No. 11/2008). You cannot disclose client/case information to client’s relatives or any other person without the client’s explicit permission.
- **information provided by other lawyers**, co-parties or the opposing party where negotiations are underway (Article 41(1)(b)(c)(d) Private Lawyers Law).

Confidentiality obligations apply whether or not the case is in court, whether fee is charged for service or not, whether lawyer is directly involved in the case or not (Article 41(2) Law No. 11/2008).

Confidentiality **covers documents too** (Article 41(3) Law No. 11/2008).

Do not **identify publicly clients by name** (Article 42(1) Law No. 11/2008), use publicity to affect court outcomes (Article 42(3) Law No. 11/2008) or use the media to discuss matters still before the courts (Article 42(4) Law No. 11/2008).

### 1.2.3 Duties to client (Article 46 Law No. 11/2008)

Lawyers have the following duties towards their clients:

- To decline a case where you have a conflict of interest (see below)
- Provide careful competent advice on the law
- Provide regular updates to clients
- Observe confidentiality
- Maintain representation of client wherever possible and not abandon representation of client before critical stages
- Explain costs and fees implications and to provide written accounts
- Discourage client from attacking opposing lawyer or party, to decline a case where you have a conflict of interest

### 1.2.4 Conflict of interest (Article 36 Law No. 11/2008)

Lawyers cannot act for a client where:

- they have advised or assisted the opposing party in the same case or a related case
- they have had previous involvement in the case but in a different capacity (i.e. as police, judge, mediator)
- a close family relative (spouse or second degree) is the judge, defender, or defendant in the case

### 1.2.5 Duties to judges (Article 53 Law No. 11/2008)

Lawyers have duties to the judge:

- Not to interfere with judges decisions
- Not to use ‘disloyal methods’ to defend client’s interest

### 1.2.6 Duties to other lawyers (Article 55 Law No. 11/2008)

Lawyers also have duties to other lawyers not to:

- contact opposing party directly when they have a lawyer

- publicly comment on another lawyer's case
- personally attack or insult other lawyers

#### 1.2.7 Discipline of private lawyers

- Lawyers who breach the Private Lawyers Law can be disciplined by the Legal Professional Management and Discipline Council (Article 58(g) Law No. 11/2008).
- Punishment can be admonishment, fine, suspension (up to 15 years) (Article 60 Law No. 11/2008).
- Decisions can be appealed to the Court of Appeal (Article 64 Law No. 11/2008).

### 1.4 Law Against Domestic Violence (Article 25)

If your client is a victim of a crime under the Law Against Domestic Violence, you have additional obligations to (Article 25(2) Law Against DV):

- report domestic violence to police or prosecutor where it does not breach client confidentiality. This means getting the client's consent to report or a waive of confidentiality.
- give case progress updates to victims, witnesses and family members (again without breaching confidentiality to client)
- monitor the work of police, prosecutors and courts in relation to case
- advise clients of services and make relevant referrals
- inform client of relevant laws

### 1.5 Other professional standards

#### 1.4.1 Acting on client's instructions and consent

- While not mentioned by the Private Lawyers Law or the Law Against DV, a **fundamental principle of providing legal representation is that you act on the instructions of your client.**
- You cannot do something in your client's name unless they have instructed you to, or consented to your proposed action (One exception is where you are acting for a client without capacity to instruct, such as young children or those with mental disabilities).
- You need your client's consent/instructions (**preferably written**) to make a referral, contact the police or prosecutor about the case, make any kind of application or submission before a court, to withdraw client's complaint, to contact or discuss the case with any other party etc.
- Where a client provides oral instructions to act it is important that a file note is quickly and accurately prepared and placed in the client's file (see below).

#### 1.4.2 Maintaining a professional file

An essential element of being a professional lawyer is **properly maintaining client files and records**

Each client should have their own file which contains all relevant information for the case including:

- Easily found contact details for a client, any special instructions about contacting client, clear identification of who the client has authorized you to discuss case with.
- A file summary table/index pinned at the front of the file where you briefly record all relevant activities on the file.
- Organised chronologically; file notes and records of all client attendances including their instructions, telephone call records, actions you have taken, conversations you have had,
- Your notes taken during police, prosecutor interviews, or hearings
- Written consent authorities for each action taken involving a third party (i.e. referrals)
- Copy of the case file from the prosecutor.

- Any documentation provided to you by the client, police, prosecutor or any other person.
- Any evidence carefully stored (e.g. photographs of injuries).
- Client files should be securely stored and lawyers must ensure that they are not lost and remain confidential.

## Note: Part 1



# PART 2: PROVIDING INITIAL ASSISTANCE TO VICTIMS OF GBV

## 2.1 Dealing with emergencies

- Often clients will arrive spontaneously or in emergencies and need to be seen to immediately. The first priority is to attend to any **medical needs** the client may have. If she is injured or has been sexually assaulted, **accompany your client to the hospital**. This may also be important for preserving evidence.
- Prepare your client for any medical examinations by comforting her and explaining that the doctors will treat her injuries, but that they will also document her injuries and (if appropriate) collect samples for running forensic tests.
- Explain to your client that under the law, the hospital must mandatorily report incidents of domestic violence to the police (Art 22(c)(d)(e) of the Law Against DV **See 6.1.1**).
- Discuss with the doctor the need to treat injuries but also for them to document injuries including providing an opinion as to their cause, and if appropriate, collect samples for forensic testing. In requesting these, refer the doctor to Article 22(b) & (e) of the Law Against Domestic Violence which requires hospital services to **preserve evidence through forensic tests or medical examinations, and prepare reports on injuries**.
- Remain with your client during the examinations/procedures if she wants you there.
- If your client wants to report the incident to the police, explain to her what that will involve, (See below, 'dealing with police') and accompany her there. Make sure you get a copy of any statement she gives.
- Assess whether she or her family members (particularly children) remain at risk of violence (i.e. is the perpetrator 'at large' or someone she normally lives with?) If she or her family members remain at risk of further violence, then make arrangements for her to stay at a Safe House/Refuge and if possible, accompany her there. If she is not at risk, then accompany her home and make sure there is someone there she trusts to care for her. Make arrangements to meet with the client soon after to conduct a detailed interview.

## 2.2 Preparing for interviews with adult victims of GBV

**NOTE: PREPARATION IS VERY IMPORTANT.**

- Where a client spontaneously arrives for an interview, do your best to cancel other commitments so you can give the victim your full attention. Make them feel as comfortable as possible by offering a comfortable chair, drink or food and tissues.
- In other cases, decide how you will set up the interview. This may involve decisions about how to make contact with your client without endangering them. If client has been referred, then ensure you get detailed information from the referral point about the safest way to contact client. This is especially important in domestic violence cases where the perpetrator is closely monitoring the victim's movements/contacts.
- Arrange the interview at a place and time of the victim's choosing if possible. This is especially important if she is still at risk but not in a safe house. Ensure that it is a place where she will be as comfortable as possible, that is private and without distractions.

- Before any interview, be clear about what you need to achieve. **Prepare a list of your questions and other matters that you need to discuss so that you don't forget things. Make sure you know the elements of the relevant crime/s and that you direct your questions to these. Make sure you know whether the crime is one falling under the Law Against Domestic Violence or not, as this will affect your client's rights and your advice (See 3.2 and 3.3).**
- Leave plenty of time for the interview. It nearly always takes longer than you expect.
- Make sure you have everything you need for the interview; the room set up, water for yourself and the client, tissues ready, pen, paper etc. The less interruptions the better.

### 2.3 Starting the interview

- ☐ **Introduction:** Introduce yourself and clarify how client would like you to address them.
- ☐ **Rapport:** Establish rapport with your client and try to build their trust from the first moment. Gently comfort them if you feel it is appropriate. Be empathetic; imagine you were them and how you would like to be treated in their position. Assure them that you are to help them, not judge them. Anticipate and articulate difficulties you predict your client may have, so that she knows she can discuss those issues or other personal and sensitive issues, with you.
- ☐ **Purpose and ground rules:** Explain purpose of interview and how long likely to take. Check that your client has time for the interview too (i.e. doesn't need to race off to pick up children etc). Ask client to let you know whenever she wants to stop for a break but you should factor in regular breaks anyway.
- ☐ **Confidentiality:** Assure client that all information they provide you is confidential, unless they give permission for you to tell others. Assure them confidentiality includes not telling your friends, family, colleagues not working on the case. **Explain mandatory reporting obligations of certain professionals (See 6.1.1).**
- ☐ **Professional obligations and conflicts:** Explain other ethical and professional obligations as her legal representative. Check for no conflicts of interest (**See 12.1.4**).
- ☐ Ask client what she hopes she can achieve by coming to see you to give you an idea of your client's expectations and knowledge.

## 2.4 Getting a detailed statement of your client's experiences

- ☐ Explain to your client why their story is so important and why you need to ask so many questions (i.e. her testimony is likely to be the key evidence in the case).
- ☐ **Listen** to your client's story and give them maximum space and time to tell you what happened without being questioned or channeled in a particular way. While you should take brief notes of points you want to come back to for further exploration, **try to maintain eye contact and actively listen. Follow up with more specific questions afterwards.**
- ☐ **Use non-leading open questions** (i.e. questions that allow the client to tell you from their own words the facts of what happened for example, "what happened next?") and then once they have responded, use more targeted questioning to clarify particular details (for example "and then what did you do?"). **Always double check how a client knows something;** is it first- hand experience, or did they see/hear it, or did someone else tell them etc so that you can properly assess the weight of each aspect of their testimony.
- ☐ Ask relevant questions to the context. For example, rather than asking "what time did so and so happen?" Use contextual questions such as "was it before or after x?"
- ☐ To make sure you have understood the chronology, **repeat your understanding of client's step-by step explanation, to make sure you have understood** the events are in the correct order and time-frame. It may take some time and patience to iron out misunderstandings, as traumatized victims often don't describe/see things chronologically.
- ☐ **Securing evidence** may be an important part of your role. Ask your client lots of questions about what **forms of evidence** might be in existence. Ask about:
  - whether there were **any other people around who may have seen or heard the incident** or already given statements.
  - whether she or other persons has **physical injuries** (and whether they have been documented/examined at hospital),
  - whether there is any **evidence of sexual assault from a medical examination,**
  - whether any **property was destroyed during the incident** and where it is now,
  - whether any **weapons** were used and where they are now,
  - whether there were any **blood, semen or other stains on the weapon, clothing, bedding, floors.**
- ☐ Always get a detailed chronology about what happened after the incident too, and what steps have already been taken or people informed and their responses.

You may want to use the following template:

***Short sample of chronology of rape case***

<b>Date/time</b>	<b>Fact</b>	<b>Supporting evidence</b>
June 12, 2011 About 4:00pm	Client X went to the perpetrator's house (who is her friend's husband) to pick up her son.	Witness testimony of a neighbor who saw client X walking to the perpetrator's house.
After 3:00pm	The perpetrator comes to the door and pulls Client X into the house. He pulls her into the bedroom and shuts the door behind him.	
After 3:00pm	The Perpetrator then proceeds to rape her.  (Set out specific details of what happened).	Medical evidence of rape.
About 4:00pm	Perpetrator then lets Client X go. Client X collects her clothes and leaves through the front door.	Witness testimony of a neighbor who saw client X leaving the perpetrator's house.

**Please note** this is a brief example. You should make a detailed and completed chronology of the facts of the client's case and the supporting evidence.

## 2.5 Special focuses for domestic violence cases

- **Get a full history of the problem.** There have most likely been many previous incidents. Find out how long violence has continued for, what are the main triggers and patterns of the violence, and whether children or any other persons have also been harmed or are at risk.
- **Find out what steps if any client has previously been taken to address the problem.** What were the outcomes, and the strengths and weaknesses of these approaches and why did she choose them? What is she hoping she can achieve this time?
- Don't forget to ask about **all forms of domestic violence**. Most Timorese only think of domestic violence as being non-sexual physical violence. Ask client if she has been raped or sexually assaulted by her husband/relative. She is unlikely to raise this herself. Ask her about any forms of psychological controlling behavior such as not letting her leave the house, visit her family, or talk to male neighbours etc. Ask her about whether he withholds resources from her for the family. Find out whether alcohol abuse plays a role.

- At some point during the interview, discuss also non-criminal aspects of the case. I.e. options of divorce, 'judicial separation', maintenance, custody, property divisions under Civil Code to determine whether you need to make a referral to a specialist family lawyer.

## 2.6 Get an overall picture of client's resources and vulnerability

- Identify client's overall social and economic context focusing on particular vulnerability. Identify all sources of support for the victim (i.e. supportive family members, neighbors, friends, Church, service providers etc) and resources available to her (i.e. alternative place to live, money, etc).
- Identify constraints upon the victim (i.e. no family support, no allies, economic dependency, fear of loss of custody of children etc)

## 2.7 Find out what your client's immediate needs are

- ☐ **Medical assistance** – if your client has injuries, or is in any pain you can refer her to a doctor. This is for your client's well being, but it will also help to have a statement from the doctor about the injuries to enter into evidence.
- ☐ **Safe house** – talk to your client about whether she feels safe to go home. If not, you could refer her to a safe house in her area or further away.
- ☐ **Maintenance** - find out what means of economic support your client has. Advise of her rights to claim maintenance from perpetrator or from State if perpetrator is unable to pay.
- ☐ **Psycho social support** – if your client needs counseling or other support you can refer her to an organization in the area which can offer this support.
- ☐ **Police/Prosecution** – if your client is in immediate danger or there is a threat of further violence, you should talk to her about whether to contact the police or prosecution at this stage. This may include asking the police or prosecutor to impose restrictive measures on the defendant to help protect the victim (**see Parts 14 and 15, dealing with police and prosecutors**).

## 2.8 Providing legal advice to your client

- **Background:** Be conscious of what your client has been through. Victims of GBV have often experienced **extreme personal disempowerment** caused by a continuous pattern of degradation which can make a woman feel she has no escape options, no choices, no autonomy and no power over her situation. Victims of DV are commonly scared, but also depressed and de-motivated. This can be compounded by social conditioning of women to accept their treatment. For women to pursue justice, they have to believe that another life (i.e. one without violence) is possible and that they can take steps to achieve it.
- One practical exercise you can do with clients is encourage them to **imagine a life without violence, and then work backwards** to try to identify what she needs to make the imagined life a reality, what steps or choices she can make to work towards this goal, with you focusing upon the legal aspects of that journey.

## 2.9 Present your advice as choices to be made by your client

- Setting out options and choices is a very important part of rehabilitating disempowered victims and re-engaging them with their own agency.
- Ask client what she thinks she wants to do about the situation. Help her work out what she wants. Present her options, and the advantages and disadvantages of each. Provide realistic suggestions as to how risks associated with each option, could be mitigated. Ask her a lot of questions.

### 2.9.1 Option 1: criminal prosecution/civil compensation option

Provide her with an overview of the legal process and what her role in it would be. Explain to client:

- That taking the case to court **can achieve three things**: punishment of the offender, civil compensation for her and public message to others not to commit the same crime.
- **The elements of the crime and what needs to be proven in court (see 3.2 and 3.3).**
- Investigation/evidence collection phase and the main roles of police and prosecutors (see Parts 14 and 15).
- Availability of **interim protection/restrictive measures** (i.e. detention, ‘no contact’ or residence orders etc (see 6.5).
- Availability of **maintenance** at any time. (See 6.5.7 and 9.4).
- Availability of **witness protection** before during and after trial (see 6.4).
- **Trial process and client’s role** (i.e. she will need to tell her story and face questions from the suspect’s lawyer and the judge/s. Can give evidence in advance. Can be exempt from giving evidence if she is a close relative, but case likely to collapse (See 6.3). Tell her court is normally public but can be closed in sensitive cases (see 6.4).
- **Range of sentences available** and that while the court may take her a view into account, her agreement to a sentence is not needed (See Part 7).
- That the process is usually long, difficult and gives uncertain results.
- Explain what steps you could take to **speed up the process** (is expedited trial process available? Press for legal timeframes to be complied with and lobbying police/prosecutor) or to accelerate client’s involvement (i.e. apply to court for client to give early evidence etc) (See 6.6).
- Explain what is involved in applying for **civil compensation** from perpetrator, or where no means, from the State, as part of criminal action, or separate civil action (See 9.2 and 9.3).
- Explain what other support you can provide client; i.e. attending all interviews with police/prosecutor, and hearings in court, providing ongoing advice, helping to collect evidence, liaising with other support services, helping client’s re-integration into her own community through addressing local leaders etc.

### 2.9.2 Option 2: Customary law

- **Outline process** which client probably already familiar with.
- **Outline pros and cons.** I.e. Customary law offers higher level of community acceptance which reduces the risks to victims of relationship breakdown, social stigma and adverse economic consequences. However it often fails to deliver justice to women or protect them from future violence because violence against wives is seen as “normal”, perpetrators are not compelled to take responsibility for their violence, or to change. **Women are at high risk of being partly or wholly blamed for the violence, and not receiving ongoing protection from future violence.**
- Explain that while you could provide support and advice, you could not provide representation to her before customary law hearings, but that a women’s organization may be willing to, and you could offer her a referral.

- Explain you can still help her with other aspects of her case not related to the crime (such as maintenance, custody etc).

### 2.9.3 Option 3: Self-help strategies

- **Overview:** Many domestic violence victims try for a long time to find their own solutions within their relationships and families. These are referred to as ‘self-help strategies’. Women often do this by maneuvering to improve their bargaining strength within the relationship, or using other practical strategies to make themselves safer. Usually, if clients have come to you, they are looking for solutions/help beyond these, but often clients will still find it very hard to take the next steps. It is important that you are aware of self-help measures that victims often use and their limitations.
- Although ‘self-help’ measures cause less disruption and risk to women’s economic and social lives, they (and often their children) remain at risk of further violence, serious injury and even death. Domestic violence typically escalates and does not usually get better by itself.
- **Discussing risks to children is an important angle as women may feel more comfortable acting to protect their children than acting to protect themselves.**
- You should be aware of some ‘self-help’ measures that women in violent relationships use. They include:
  - **Temporarily leave relationships:** Some women temporarily leave a relationship and return to own families (ideally with children) and then negotiate favourable conditions of return to the family home. If she has chosen this course, talk to your client about what these return- conditions should be (i.e. end of violence, reformed behavior, threat of prosecution ‘next time’ etc). In some countries lawyers assist victims by drawing up contracts between a woman and her husband containing the terms of her return to the relationship, underpinned by the threat of prosecution, compensation or permanent separation with a fair property distribution and maintenance obligation, should further violent incidents/controlling behavior occur. **Your client should be aware that this strategy of leaving can be dangerous as statistically, more women are murdered by their husbands when they try to leave or after they have left the relationship, than at any other time.**
  - **Protest:** Some women protest within their relationships by refusing to cook meals, performing other domestic roles etc until husband commits himself to ending violence and controlling behaviors. In some communities women have protested collectively and punished individual men for violence through some shaming action, supported by local leaders. **Again, this strategy can help reduce violence, but it can also provoke further violence when the husband becomes enraged.**
  - **Avoid flashpoints in relationship, remove self from possible scenes of violence, negotiate to pacify.** Some women try to make themselves safer by avoiding known flashpoints/arguments in the relationship, leaving the house for a period if violence is likely brewing or trying to negotiate with and pacify their husbands, as **ways of avoiding violence.**

## 2.10 Personal safety plans

- If your client is living in a violent relationship or is at risk from people living in the household, (and does not want to move to a safe house or elsewhere, and perpetrator has not been ordered to live elsewhere), **make sure you develop a personalized safety plan with them.** This should include:
  - Removal of potential weapons from the house if possible,
  - Setting up help or alert system in advance with neighbors or police ,
  - Strategies for being in the safest room during confrontations (usually not the kitchen or bathroom).
  - Develop an escape plan including where to go, how to bring the children, having a bag of essential items ready, preferably somewhere outside house such as with family or neighbors, collecting or copying key documents, accessing any savings in preparation for escape, in case it becomes necessary.

## 2.11 Leave ultimate decision to client

- Your client may need some time to consider her options and make a decision as to what she wants to do.
- Once she has made a decision, map out a legal strategy for her. Even if she decides not to pursue criminal prosecution, document her story in a statement and obtain information about possible evidence available, in case she later changes her mind.
- Also explain what happens if she later changes her mind (i.e. legal impact of withdrawing complaint (**See 6.2**)), difficulties of moving from customary law to criminal prosecution **due to loss of contemporaneous evidence**, and statute of limitations (or time limits) for pursuing prosecution (**See 4.4**). Expect that client's resolve will waiver along the way.
- **Write detailed file notes of your interviews and all other steps that you have taken, while it is still fresh in your mind. Make a list of all follow-up you need to do.**



## Note: Part 2



## PART 3: DEALING WITH POLICE

### 3.1 Supporting your client in making a complaint

- Victims of crimes have standing to make complaints of crimes (**See 6.1**). Police have obligations to receive complaints and, directed by the prosecutor, investigate them (**See 5.1 and 5.2**). Police usually start by taking a statement from the victim.
- You should prepare your client for the police interview.
  - Explain the types of questions the police will ask and **why** they need the information.
  - Explain the concept of evidence and how her statement is important evidence
  - Explain the importance of telling the police **everything** she remembers and not holding back any important information, even if it is embarrassing to talk about.
  - Reassure your client that you will be there to provide support and to monitor the police actions during the interview.
- At police station, make sure it is Vulnerable Persons Unit police (who have more training in GBV), dealing with the case.
- You can help your client **during the interview** by:
  - Attending and supporting your client during the interview;
  - Offering to clarify police questions which are not clear or which your client does not understand;
  - Making sure police are asking questions to get relevant information from your client;
  - Making sure police are treating your client with respect and dignity; and
  - Keeping detailed notes of what your client said during the interview.
  - Don't be afraid to interrupt and stop the interview to talk to your client in private
- Usually in a GBV case, your client's statement is the most important evidence in the case. After the interview **get a copy of your client's statement prepared by police and check it with your client and with your notes from the interview.**
- **If the police took a statement from your client before you met her, get a copy of it and check it with your client to make sure it contains all relevant information.** If something is not correct or your client forgot to include something, you can accompany her back to the police station to clarify or add further information to her statement. **Prepare your client to explain why she has changed her story or why she omitted information earlier.**

### 3.2 Monitoring police investigations and collecting evidence

- One of your jobs is to monitor the investigation being conducted by the police to make sure they are actively investigating and collecting evidence. Where the perpetrator is in detention, it is important that police are very actively investigating during the maximum 72 hour detention period so that the evidence collected so far can be considered by the court in deciding whether to release or continue the detention of the suspect.
- You can regularly talk to the police to follow what they are doing. **Request that you and the victim participate in examination of the crime scene** pursuant to Art 145 of the CPC, as per the victim's right. **Make sure the police search carefully for evidence** concerning physical injuries, blood stains, broken glass or other objects at the crime scene, or anything else which can support your client's story.
- If the police haven't collected the evidence,
  - Remind the officer of his/her legal obligations and ask him/her to take action.
  - Approach the police officer's senior officer and ask them to become involved.

- Write a complaint detailing the police inaction and send it to the officer’s superior (**See Part 5.1.1**).
  - Approach the prosecutor directly and ask them to become involved in the investigation.
- Given the importance of collecting evidence quickly, then you should work with your client to make sure all the relevant evidence is available so that the case won’t be prejudiced later when it reaches court. **If the police have not done so, you can:**
  - Approach witnesses and ask them to write some notes before they forget what happened
  - Arrange for photographs to be taken of your client’s injuries or the crime scene, (see below)
  - Arrange for a doctor to examine, treat your client’s injuries, run any forensic tests and document injuries including providing an opinion as to what may have caused them.
- In collecting evidence, **try not to become a witness yourself**. For example, if your client has physical visible injuries, arrange for someone else responsible to photograph them and who would be willing to explain to the court how they took the photographs. Ask them to take overview shots as well as close-ups. Lie a ruler next to objects being photographed to give a sense of scale. Get the person to write a statement containing their name, contact details, date time and location of where the evidence was photographed and any observations they may have. Similarly, arrange for a reliable and neutral person to collect any other evidence that needs to be, rather than doing it yourself or getting the victim to do it. **If you become a witness (by being directly involved in collecting evidence) this may result in conflicts of interest for you, or exclusion of the evidence from the trial, on the grounds it was not impartially collected.**
- Even if your client later withdraws her complaint, it is important that the police thoroughly investigate it while evidence is fresh. **Many crimes of GBV are public crimes, so the prosecution need not rely upon a complaint from a victim where there is strong independent evidence.**

### 3.3 Police powers of arrest and detention

- Police can arrest if crime in progress (Article 220 CPC).
- Other cases require warrant by judge (copy of warrant must be given to suspect and contain name of person, authority of person arresting, grounds for arrest and identification of case file (Article 221 CPC).
- Exception is that police or prosecutor can arrest where:
  - Pre-trial detention may be possible (i.e. for crime penalty greater than 3 years) AND
  - Evidence suspect has plan to escape AND
  - Emergency or dangerous situation where judge’s intervention would come too late.
- The defendant has the right to be informed his or her rights (Art 60 CPC).

### 3.4 Rights of the defendant (Article 60 CPC)

- Defendants have the right to be presented to the judge for the first questioning within seventy two hours from the arrest
- A person should be released from detention as soon as police become aware:
  - Mistaken identity of suspect;
  - After 72 hours or where arrest was unlawful; or
  - As soon as becomes unnecessary (because risk of flight gone) and police must report such cases to the prosecutor to facilitate disciplinary proceeding against police (Article 223 CPC) and suspect eligible to claim compensation (Article 351 CPC)

### 3.5 Conditions for Pre-trial detention

According to the CPC, preventive detention can be ordered only if **four requirements** are met:

- Reasoned fear of flight, or reasoned fear that the investigation will be disturbed or reasoned fear of continuance of committing crime or danger of disturbing the public order and public peace (Article 183 CPC);
- Relates to a crime which can be punishable with more than three years imprisonment (Article 194(1)(a) CPC);
- Strong evidence that the accused committed an intentional crime (Article 194(1)(a) CPC); and
- Inadequacy or insufficiency to impose any other coercive measures (Article 194(1)(b) CPC).

In relation to other coercive measures other than preventive detention, for example regular reporting or house arrest, only one of the requirements under number 1 above needs to be fulfilled.

## Note: Part 3

## PART 4: LIAISING WITH PROSECUTORS

- Prosecutors represent the victim in court and direct the police investigation. **(See 5.2)** Therefore they play very critical roles to your client's case. You should invest energy in establishing and maintaining friendly and productive relations with the prosecutors. At the same time, you need to monitor their work. You can;
  - Make sure the case gets from the police to the prosecutor's office;
  - Monitor the investigation and make sure that all the evidence is secured and collected
  - Check the penal code and make sure the prosecutor is working with the appropriate charge. Write out the crime's elements and check them against **the facts your client has told you**. Don't assume the prosecutor picked the right charge. Another charge may be more appropriate (see CPC provisions on multiple crimes and choosing charges) and Art 42 Penal Code **(See 4.1.2)**
  - Make sure the prosecutor has sought appropriate restrictive measures upon suspect to protect the victim **(See 6.5)**.
- Discuss with prosecutor whether **witness protection** measures are necessary. If prosecutor doesn't seek measures but you think they are needed, then you can directly request the court for witness protection measures **(See 6.4)**.
- Consider whether **expedited process** could be used **(See 6.6.1)** and if so, discuss with prosecutor.
- Discuss with the prosecutor whether your client can give **early evidence** to reduce their trauma. If the prosecutor does not want to make this request to the Court, (but you believe it would help your client), **you can approach the court directly to request this (See 5.5.5)**.
- Discuss whether the prosecutor will make a request to the court **for maintenance** where appropriate. If not, and it is necessary for your client, **make the request directly to the court yourself (See 5.5.4, and 9.4)**.
- Discuss with the prosecutor the steps being taken to investigate client's claim for **civil compensation**. Monitor this aspect of evidence collection. Ensure grounds for civil compensation are included in the indictment or request that it be amended, if they are not **(see 9.2)**.
- **Obtain a copy of the case file** and any other documentation relating to the case from the Prosecutor **(see 5.5.3)**.
- Discuss the case and the legal situation with the prosecutor regularly and make suggestions where appropriate. Continuously follow up on the case.
- In the event that **prosecutors are not being co-operative**, remind them of their professional obligations **(see section 5.2 Guideline)**. If they are obstructing your involvement remind them of the requirement that your client be assisted by a lawyer during the legal proceedings (if a crime falls under Law Against DV, Art 25). Advise your client to abandon any interview the prosecutor will not admit you to. If prosecutor not fulfilling functions or obstructing your role, consider taking the case up with their supervisor and if this fail, to the Superior Council for the Public Prosecution **(See 5.2.1)**.

## Note: Part 4





## PART 5: LAWYERS' OTHER ONGOING ROLES IN REPRESENTING VICTIMS OF GBV

- Identify ongoing legal and non-legal aspects of client's problems. Identify who else should be involved in supporting client with non-legal aspects of her problems, and **discuss referral options** with client. Obtain written authority to make referrals. Provide relevant background to referring agency and if possible, attend at least first appointment with client.
- **Liaise closely with other service providers** assisting the victim to ensure ongoing coordination.
- Emphasize your availability to help should your client feel unsafe or her circumstances change. Providing client with multiple contact details for yourself or others who could help in an emergency. If client is in ongoing violent relationship or other dangerous situation and will not go to safe house, develop with them a personal safety plan.
- Provide **regular updates** to your client and make yourself available to answer questions.
- **Prepare client before each major stage** with detailed information as to what can be expected of her including rehearsing questioning or doing role-plays to help prepare her.
- Provide **additional statements/information** from clients where appropriate.
- Should a client wish to **withdraw their complaint**, discuss the legal implications (**see 6.2**) the reasons and attempt to address those reasons. Make sure you have her consent to withdraw her complaint in writing and go with her to the police station/prosecutor's office to effect the withdrawal.
- **With client's consent**, help with **social re-integration of client** through liaison with local community members.
- Act upon client's instructions regarding other legal issues re divorce, separation, property division, custody etc.

## Note: Part 5

# PART 6: SUPPORTING YOUR CLIENT AT COURT

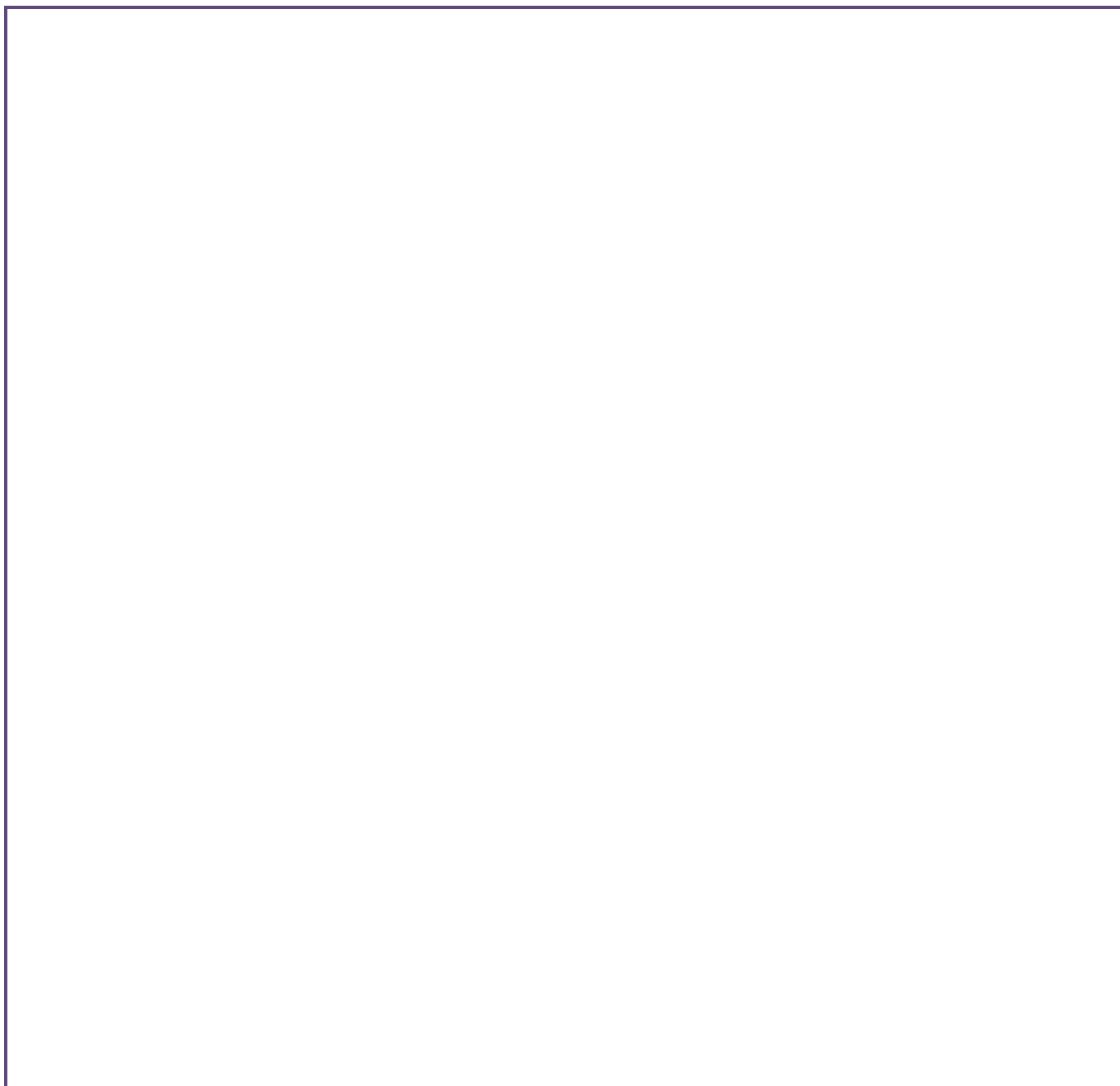
## 6.1 Preparing your client before court

- Before the hearing you can prepare your client to give evidence by **explaining what questions to expect**, what information is relevant and why the court needs the information. Prepare your client for defence questions and **role-play questions** and responses. Reassure your client if she is nervous or frightened about giving evidence.
- Please note there is a recent Court of Appeal decision that determines that a victim cannot refuse to testify and will be compelled to give evidence (See Part 6.4 in Volume 1: Legal Framework). This decision is not binding on district courts, meaning that the district court judge can choose not to follow this decision. But if the district court decision is appealed, then the Court of Appeal will be bound to follow its previous decision. Explain to your client that a district court judge may choose whether or not to compel your client as the victim to give evidence based on whether or not they choose to follow the Court of Appeals decision.
- Emphasise to your client that if she does not understand the questions, or the **translation is bad**, to not be shy to tell the judge, so the question can be asked more clearly, or a better translator provided.
- Meet your client at the office and go together to the court. Ask the court staff where you can wait with your client until they are required, away from the suspect and the public.

## 6.2 Supporting your client during the hearing and explaining/advising on court decisions

- Even if the court is closed to the public, insist that you be permitted to attend or advise your client not to attend. Argue your client has a right to legal representation (if crimes falls under Law Against DV, Article 25 and see 5.5.1).
- During the hearing you can explain to your client what is happening and the function of each of the court actors.
- Alert the prosecutor to any intimidating behavior by the suspect against your client so that the court can remove the suspect from the court if necessary (Art 253 CPC, See 5.5.2).
- Stay with your client during breaks outside the court room to ensure she feels safe.
- Explain the decision of the court and why they decided the way they did.
- Examine the final decision, assess whether there is any prospect of **appeal (See 7.3)** and advocate with the prosecutor to lodge an appeal, if your client is not happy with the result.

## Note: Part 6

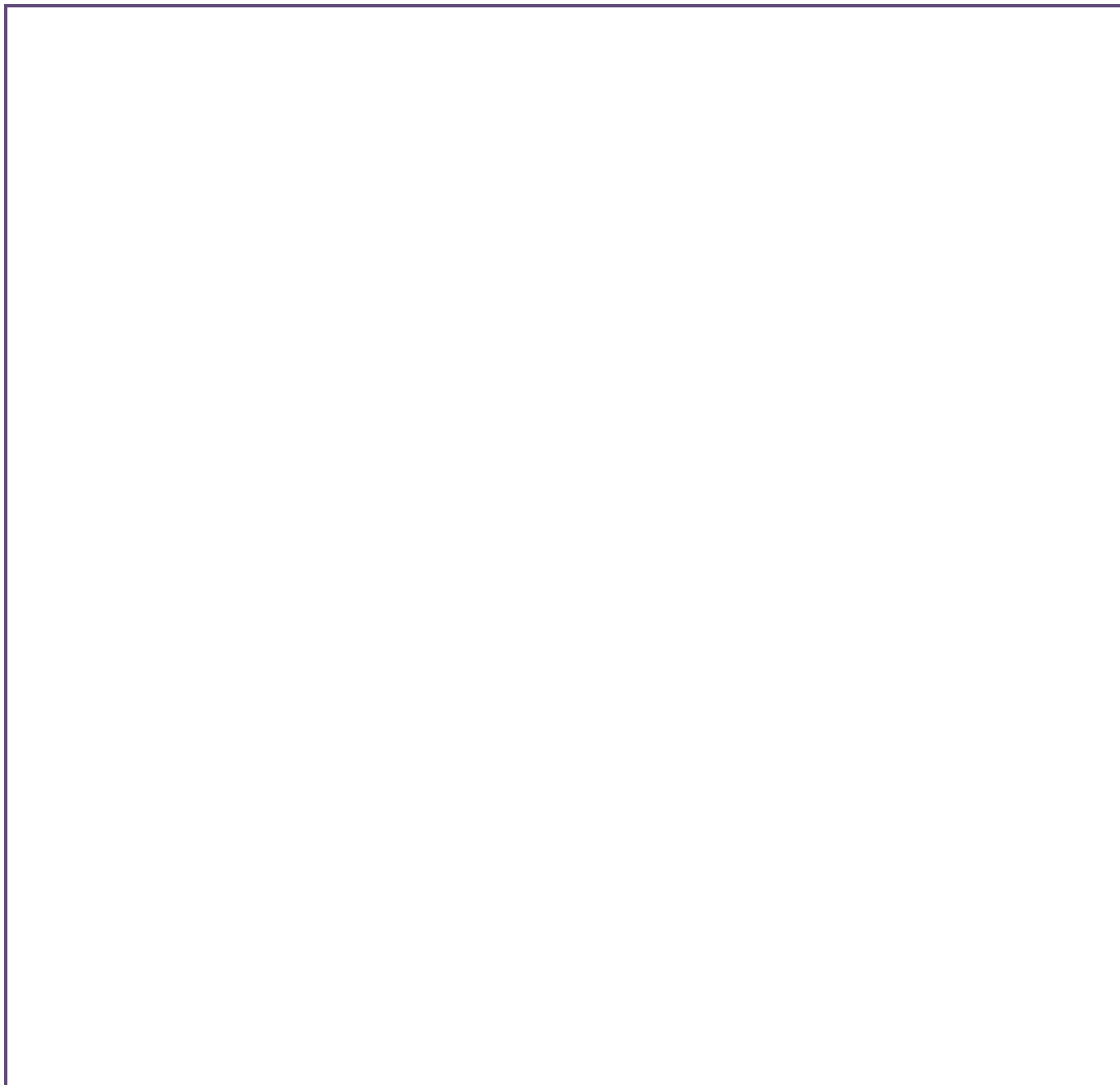


## PART 7: POST JUDGEMENT SUPPORT TO CLIENTS

Your client's difficulties are unlikely to end after the Court has made a decision, even if it is a 'success' or a decision to convict the perpetrator and an appropriate sentence. You will most likely need to continue working with your client and other support services to help her with:

- Maintenance or other economic support issues (**see Gender Based Violence Legal Guideline Part 9.4**)
- Other family law issues (such as divorce, judicial separation, custody and property division) plus social reintegration strategies, and (**see Gender Based Violence Legal Guideline Part 9.5.**)
- Where the client wishes to, reconciliation with the perpetrator once they have completed their sentence. This might be best done in collaboration with local justice leaders.

## Note: Part 7



# PART 8: PARTICULAR ISSUES IN WORKING WITH CHILD VICTIMS

Lawyers working with children should receive specialist training in children's development and cognition, and in interviewing children. This guide is no substitute for training, but merely offers a few basic tips.

## 8.1 Be clear that the child is your client

If the child is the victim of the offence, then the child is your client, and not any other person speaking for the child. Do not take instructions from the child's parent or guardian.

## 8.2 Get background only from accompanying adult

Without the child present, you should talk to any adult accompanying the child, but just to get some background and context. Find out:

- Whether or how they are related to the child, what they know about the case and the steps already taken, (i.e. are police involved, have police interviewed the child?), how they came to be informed about the case (i.e. did they witness it? Did the child tell them? Did someone else tell them? etc). This is so you can start to establish a picture of the adult's involvement and whether they have any conflict of interest in supporting the child's involvement in the legal process. This is especially important where the perpetrator is a family member because he/she may seek to influence other family members to block prosecution of the case. Family members themselves may also have an interest to protect the family from 'scandal' or disruption.
- Ask the adult where the perpetrator is now and other questions to assess whether the child is still at risk of further violence.
- Explain to the adult that you would like to speak to the child alone. Assure them you will be very sensitive and respectful.
- If the child wants another person present, then first make sure they do not have a conflict of interest, and clearly explain that they should not intervene in the interview by answering questions for the child or prompting the child.

## 8.3 Determine whether the child is capable of giving you instructions

- Even where a child cannot fully comprehend the legal process and its implications, (remember that many adults cannot either!), if the child is capable of forming his/her own views, you should try to act consistently with those views. This is because Article 12 of the CRC sets out the child's right to participate in legal proceedings. It requires that a child capable of forming his or her own views has the right to express those views freely and that they be given due weight in accordance with the child's age and maturity. It requires that the child be provided with the opportunity to be heard in any judicial and administrative proceedings affecting the child – either directly or through a legal representative.
- Therefore, a lawyer representing a child is responsible either:
  - for **being the voice of the child** where they are old enough to understand and express their own views, **OR**
  - **representing the 'best interests of the child'**, where they are too young to understand and express their own views. This involves the lawyer forming their own view as to what are the child's 'best interests' and acting according to those.

## 8.4 Interviewing child client

- Try and **interview the child as soon as possible after the incident** so it is clear in their memory and there has been less time for misinformation from others. **Be prepared, and plan your questions. Make sure you have planned for plenty of time.**
- **Try not to have pre-conceived ideas of what happened.**
- Conduct the interview **somewhere comfortable for the child**, (i.e. preferably not an office) but somewhere that is **private and without distractions** (i.e. switch off your mobile phone).
- Try to interview **them alone and without the presence of parents or guardians** because they sometimes cue children to give specific answers and children might feel pressured to distort or omit details when their parents are present.
- If the child is small, **sit on the floor/ground with him/her** or find another way to get down to their level so that they don't have to look up to you. They are more likely to open up to you this way.
- Spend time first **establishing a rapport with the child**. Introduce yourself. Find out and use their preferred name throughout the interview. Talk about other things first. Find out what they are interested in. Do they like sports, a particular movie character or TV show? Or talk about school or friends. Talk about what they are interested in until you have a connection going. From there, lead into the subject of your interview.
- **Explain purpose:** that you are going to ask them some questions and why. Emphasise that they have not done anything wrong. Explain how the information they give will be used, i.e. will it be kept confidential or shared with police or other persons?
- **Use familiar, simple and age-appropriate language throughout the interview.**
- **Use short, clear questions. Ask only one question at a time.**
- **Use open ended questions.** For example 'Tell me about that day when.....' Let the child answer and then follow up with further questions where necessary to narrow details. "Did he do anything to you to hurt you?" Try to avoid questions that require a 'yes' or 'no' answer and do not use leading questions that suggest an answer. Preschool aged children are most likely to provide misinformation if they are asked leading questions.
- **Constantly assure the child that they have done nothing bad.**
- **Keep the interview short.** If you need to cover a lot of events/material, plan for regular breaks or conduct the interview over several sessions.
- **Never bribe** or use incentives to get a child to cooperate or disclose more.
- Remember it is also your job to **explain in simple terms** the child can understand, **the legal process and what will be expected of the child.**
- Where the child has capacity, **obtain his/her consent to make referrals** to other agencies who can assist with trauma issues and ongoing psychological support for the child. **If the child does not have capacity** to consent, then act in what you consider to be the **child's best interests.**
- **Always be clear about what will happen next.** Explain the next steps or arrange for another meeting. If the next step is for the child to provide a statement to the police, prepare the child for the interview by explaining that (most likely a woman) police officer will ask similar questions and the child should just speak freely and explain what happened. Assure them not to be afraid, that they have done nothing wrong, and that the police will try to help them.



## 8.5 After your interview with child client

- **Discuss ongoing support for the child.** Where the accompanying adult does not have a conflict of interest, **discuss how they, or other close trusted adults, can best support the child in pursuing the case, and work on the social reintegration of the child in his or her community.** (i.e. by ensuring as far as possible that the child is treated normally in the community and continues at school and with their daily activities). Ask whether there are others (who also do not have a conflict of interest) who could help to support the social reintegration of the child in his or her community.
- **If appropriate, accompany child for police interview.** If the case has not been reported to the police, and either the child (old enough to decide) or you, (if child is not old enough to decide but you think it is necessary for the child's best interests) **decide to report the case to police, then accompany the child to the police station and remain present throughout the interview** while the child provides a statement. **(see Part 14)**
- **Make referrals to support services and liaise to make arrangements for the child and support person to stay at a safe house if necessary. Decide whether interim protective measures need to be taken** (i.e. no-contact or residence order if offender is not detained). Liaise with the prosecutor and advocate that the relevant order be obtained.
- **Write detailed file notes of your interviews and all other steps that you have taken, while it is still fresh in your mind. Make a list of all follow-up you need to do.**
- **Use the law to reduce the trauma of the process for the child.** For example you can petition the court directly on behalf of the victim to take early evidence from the child under (Article 230(1) CPC), and or you apply directly for copies of the case file under Article 77 CPC so that you can monitor what the prosecution has/hasn't done, anticipate what the defence will say and using this information, best prepare the victim by clarifying any issues or facilitating the child providing further statements to police if necessary. If necessary, make arrangements for the child and non-conflicted support person to stay at a safe house.
- **Keep the child regularly informed** of what is happening with the case or what might be coming up.
- Monitor investigation by police and ensure evidence is collected **(See Part 14).**
- Continue to liaise with prosecutor to push case along, and coordinate with relevant support services **(See Part 15).**
- Support child during court case and afterwards **(See Part 17 and 18).**

## Note: Part 8

## PART 9: CONCLUSION

As a private lawyer representing victims of gender-based violence it is vital that you understand and uphold your ethical and professional responsibilities. This is because you are working with the most vulnerable persons to handle the most sensitive cases. Therefore, it is also essential that you take the necessary steps to provide your client with the highest level of care when handling a case of gender-based violence.

We hope that this Step-by-step guide will be a helpful tool for you in assisting victims of gender-based violence to achieve a just outcome. This Step-by-step guide should be used in conjunction with Volume 1: Legal framework.



## Note: Part 9

