JUDICIAL SYSTEM MONITORING PROGRAMME

PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

ARTICLE 125 OF THE CRIMINAL PROCEDURE CODE; CREATING A DILEMMA FOR VICTIMS OF DOMESTIC VIOLENCE

SUPPORTED BY:

FORUM FOR WOMEN AND DEVELOPMENT
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Giving evidence in cases of family violence: Article 125 of the Criminal Procedure Code

Introduction

Violence against women is an international problem. Too often, women are the victims of frustration, exploitation, abuses of power, and gender stereotyping. As is the case in many other countries, violence against women in Timor-Leste is an endemic problem, with dynamics relating to gender and power often being compounded by the exacerbating influences that arise in a post-conflict setting.

Due to the particular vulnerability of women in the domestic context, gender-based violence against women in the home has frequently been identified as a particular concern of the international community. Noting that 'family violence is one of the most insidious forms of violence against women', the Committee on the Elimination of Discrimination Against Women has recommended that:

> States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention.[1]

In Timor-Leste, there are frequently a number of obstacles that prevent perpetrators of family violence being brought to trial. Since the solidarity of the family unit is typically regarded as the bedrock of Timorese society, many families do not consider domestic violence as a public crime, and often persuade the victim to resolve the situation privately, or through the traditional justice system.

Where cases do enter the formal justice system, a number of further obstacles may prevent the successful prosecution of perpetrators. Victims of violence often have little legal knowledge about legal processes, and are unlikely to understand many of the procedures governing the evidence presented in their case. In the past, there have also been few mechanisms available to protect women giving evidence against their partners in cases of domestic violence.

The drafting and passage of the Criminal Procedure Code, promulgated in February 2006, and the Criminal Code, promulgated in April 2009, have been welcome steps towards the creation of a strong domestic legal framework in Timor-Leste. In many respects, these laws implement and clarify a number of Timor-Leste's obligations under international law to protect the rights of women to be free from violence.

Notwithstanding these changes, the monitoring work done by JSMP since the introduction of the Criminal Procedure Code has demonstrated that there remain a number of discrete areas in which further law reform is needed. In particular, JSMP believes that it is particularly important that the formal procedures governing evidence given in court are designed to take account of the

[1] Committee on the Elimination of Discrimination Against Women, *General Recommendation 19: Violence Against Women*, 1992, Articles 23-24.

particular vulnerability of victims of family violence when they are called as witnesses. This report focuses primarily on one such area of law: the criminal procedure laws governing witness evidence in Article 125 of the Timor-Leste Criminal Procedure Code.

Competence and compellability under the Criminal Procedure Code

According to Article 118 of the Criminal Procedure Code, statements made in court by the victim of crime are subject to the ordinary rules governing witness evidence. These rules provide that if a person is competent to serve as a witness in a case, they are also generally compellable to give evidence. Specifically, Article 122(1) of the Criminal Procedure Code provides:

> Any person who is not impeded to do so on grounds of a mental disorder is eligible to serve as a witness and may only refuse to do so in the cases stated in the law.

The general principle underlying witness compellability is that courts must have the power to summon all of the witnesses to a crime and hear their evidence, in order to ensure that any information relevant to a case is heard before the court. Typically, where witnesses refuse to give evidence, they may be subject to penalties or charged with contempt of court proceedings.

However, the Criminal Procedure Code provides a number of exceptions to the general principle of compellability. For example, in cases where a competent witness is the spouse or a family member of the accused, such a person may lawfully refuse to give a deposition. Article 125(1) provides:

1. The persons below may refuse to give a deposition as witnesses:
    (a) progenitors, siblings, descendants, relatives up to the second degree, adopters, adoptees, and the spouse of the defendant;
    (b) a person who has been married to the defendant or who cohabits, or has cohabited, with the latter in a relationship similar to that of spouses, in relation to facts that have occurred during marriage or cohabitation.

The rationale underlying this exemption is the public policy concern that individuals should not be forced to testify against members of their family. Traditionally, lawmakers in many jurisdictions have been particularly concerned that spouses and other family members should not be forced to testify against each another, thereby risking domestic disharmony.[2]

However, the Criminal Procedure Code gives little guidance about whether this exemption should apply where the witness is also the victim of the crime before the court. Concerning statements made by victims, Article 118(2) provides only that 'provisions in relation to witness testimony are correspondingly applicable'.

In general terms, it may be considered logical and fair to treat the evidence of victims in the same way as that of other witnesses, and to judge the merit of that evidence accordingly. However, in the particular situation of the non-compellability of family members in cases of

[2] Regarding the traditional common law position, see Hoskyn v Commissioner of Police for the Metropolis [1979] AC 474.

domestic violence, such an approach can create a serious structural barrier to justice being rendered.

Victims of family violence often face much greater difficulty in giving evidence about their case in court than do other witnesses. As such, when victims of violence are given the option not to testify, they may take up the exemption offered by Article 122(1) in order to avoid the considerable pain and stress associated with making a deposition, rather than because they are concerned about preserving family relationships.

However, family members, including the victims themselves, are frequently the only relevant witnesses to public crimes occurring within the home, such as domestic violence. As such, when these witnesses elect not to give a deposition, there is little evidence available with which the perpetrator may be prosecuted. When this is the case, it is common for charges to be dismissed, and for no further action to be taken in the formal justice system.

The fact that the non-compellability of family members may result in low rates of prosecution for domestic violence clearly gives rise to the question of whether legal reform in this area is necessary. The need for such reform is further illustrated by examining a number of cases that have recently come before the courts in Timor-Leste, which have demonstrated that the application of Article 125 is often contrary to the best interests of witnesses and victims.

Cases before the courts

The cases described below involve the application of Article 125 in cases involving family violence. Each of the cases listed in this report were monitored either by JSMP, FOKUPERS or by both. However, it is clear from JSMP's consultation with both court actors and other victim support services that these cases are not unique. Indeed, it is clear that the cases described below are typical of those that have involved the application of Article 125 since the introduction of the Criminal Procedure Code in 2006.[3]

Case 1 – Dili District Court, October 2007

In 2007, JSMP's Victim Support Service (VSS) Unit gave legal advice and assistance to a female victim of domestic violence. The victim explained that the incident for which her husband had been charged had happened in 2004, in their home in Metiaut, Dili. Following an argument between the victim and the defendant, the defendant had thrown the victim to the ground and punched her in the face. The victim immediately reported the incident to the police, saying that she wanted charges pressed against her husband.

When the case came before the court in October 2007, the presiding judge read out the charges, and asked the defendant if he would like to say anything in his defence. The defendant remained silent. The judge then asked the victim if she would give a deposition, informing her that in accordance with Article 125 she was not obliged to do so, and could exercise her 'right to

[3] Although Timor-Leste's Criminal Code was not promulgated until April 2009, the Criminal Procedure Code was finalised in 2006. From 2006 until April 2009 it was used in conjunction with the Indonesian Criminal Code.

silence'. The victim indicated her decision not to make a statement, and the case was therefore immediately dismissed because of a lack of evidence.

Case 2 – Dili District Court, November 2007

In 2007, JSMP's VSS Unit gave legal advice and assistance to a female victim of domestic violence. According to the victim, the incident had occurred in January 2006, when the victim and her husband were driving in their car. The victim took a phone call, but when asked by her husband, she refused to tell him who had called her. The victim's husband stopped the car, dragged the victim out, punched her in the face, and threw her on the car bonnet, breaking the windscreen.

When the trial began, WJU monitors noted that, as is common in the Dili District Court, the victim and the defendant sat in close proximity to each other. When calling upon the victim to make her deposition, the trial judge explained to the victim that according to Article 125 of the Criminal Procedure Code, she had the 'right to remain silent'. However, the judge also clearly explained that if the victim did not give evidence, it was likely that the case may be dismissed for a lack of evidence. After exchanging glances with the defendant, the victim nevertheless remained completely silent, and the case was dismissed.

Case 3 – Civil Mediation, February 2008

In February 2008, FOKUPERS was approached to support a female victim of domestic violence. Although the case began as a criminal matter, the families of the victim and the offender eventually agreed to resolve the matter through civil mediation.

In the lead-up period to the mediation process, FOKUPERS gave the victim considerable assistance, and prepared her for the process of mediation. However, when the victim was called upon to give her statement, she was told that as was the case in criminal proceedings, as a family member of the accused she retained a 'right to silence'. Having been given that information, the victim stayed entirely silent throughout the mediation process. Since no evidence was given of the violence that had occurred, no recommendations for dispute resolution were given, and the case was dismissed by the mediator.

Case 4- Dili District Court, June 2008

In 2008, VSS gave support to a female victim of domestic violence who complained that in 2007, her husband had thrown her to the ground, punched her repeatedly in the face, and verbally abused her. Immediately after the attack, the victim had reported the incident to the police, telling them that she wanted charges to be pressed against her husband.

When the case came to trial, WJU monitors observed that the victim and defendant were seated and talking together. When calling upon the victim to make her deposition, the trial judge explained to the victim that according to Article 125 she had the right not to make a statement. Since the victim remained silent, the case was dismissed, and the victim and defendant were seen leaving the court together.

Case 5 – Dili District Court, September 2008

In early 2008 a female victim of domestic violence approached FOKUPERS to seek legal assistance after being informed that the police intended to press criminal charges of assault against her husband. In the months leading up to the trial, FOKUPERS gave the victim considerable support, informing her about her rights as a victim, discussing her testimony, and preparing her for the procedures she was likely to encounter when the trial began. FOKUPERS also informed the victim of the importance of her testimony in assuring that a criminal conviction would be handed down.

When the trial was heard in September 2008, the victim presented to make her statement as a witness for the prosecution. In accordance with his duty under Article 125(2) of the Criminal Procedure Code, the trial judge informed the victim that as a spousal witness, she was lawfully permitted to refuse to give a deposition. Specifically, the victim was informed that in accordance with article 125(2) she may choose to exercise her 'right to silence'.

After she was given this information, the victim remained completely silent throughout the trial. Since she was the only witness for the prosecution, the case was dismissed because of a lack of evidence.

Case 6 – Dili District Court, January 2009

In January 2009 WJU monitored a case in the Dili District Court relating to an incident that had occurred in 2004. According to the charges read out by the judge, the defendant, who was employed by the *bombeiros* in Alieu, had entered the workplace of his wife and made a number of physical threats to her. After dragging her outside, the defendant then beat the victim until she fell to the ground. After being accompanied by her colleagues to hospital, the victim then made a full statement to the police about the incident.

When the judge called upon the victim to make a deposition, the judge explained that according to Article 125 the victim had the right to 'silence'. The victim told the judge that she elected to take up that right. Since no other witnesses came forward to testify about the incident, the case was dismissed.

After the trial, WJU monitors spoke with the victim and asked her why she had remained silent. The victim replied that the incident had happened a long time ago, and that she planned to keep living with her husband in the future.

Problems identified

Contextual issues

The majority of Timor-Leste's Criminal Procedure Code was adopted *ipsis verbis* from the Portuguese Criminal Procedure Code, in which Article 134 is the direct equivalent of Article 125 of Timor-Leste's Criminal Procedure Code. Although JSMP is not aware of any recent initiatives

to reform Article 134 of the Portuguese Criminal Procedure Code, a number of unique issues arise in the application of Article 125 in the Timorese context that warrant a different analytical approach to the two articles being taken.

Timor-Leste's formal legal system has developed at a rapid pace, with a number of significant pieces of legislation being passed over the past five years. However, the level at which most ordinary citizens are able to comprehend these legal changes has not kept pace with the promulgation of legislation. Those living outside of Dili have had little opportunity to become familiar with their rights and responsibilities under the new system. Many people are unaware of the existence of the court system, and are entirely unfamiliar with the judicial processes that govern it. Against this background, it is clear that many ordinary people in Timor-Leste might also have considerable difficulty understanding legal formulae such as the concept of a standard of proof in a criminal trial.

In the Portuguese context, Article 134 of the Portuguese Criminal Procedure Code is clearly drafted in a way that is designed to enhance witnesses' freedom of choice. By allowing witnesses and victims to give evidence, but also permitting them to decline to do so if their conscience so dictates, individuals are given greater control over how their depositions may affect their family relationships in the future. However, in the Timorese context witnesses and victims may often have a lower capacity to make an informed choice about what the likely consequences will be, should they elect not to give evidence.

Structural barriers

According to the observations of both FOKUPERS and JSMP, judges generally give clear explanations to witnesses as to the likely consequences, should they decline to give evidence. However, JSMP believes that a number of other structural issues make it extremely difficult for victims to testify about their experiences in a courtroom setting. These issues include, *inter alia*:

- the emotional and psychological trauma often incurred as a result of domestic violence, which may make victims unwilling to publicly relive their experiences;
- the likelihood that in many cases, the victim may face social pressure to continue living with the perpetrator;
- the unequal socio-cultural division of power between men and women in Timorese society, which may make it more difficult for women to feel sufficiently empowered to testify about their experiences in a male-dominated courtroom setting – particularly when the perpetrator is present;
- the unequal power relationship between highly educated court actors and victims, many of whom have significantly lower rates of education than that of judges and lawyers;
- internalised cultural norms, which may negatively affect a victim's belief that they have the right to be free from gender-based violence; and
- the difficulties inherent in multiple translations being made during criminal trials, which may further disempower and disengage victims that do not understand either Tetum or Portuguese.

A 'right to silence'?

A separate, though closely related problem that has been identified by JSMP is the way in which victims may come to understand their rights and responsibilities in accordance with Article 125 during the course of a trial. Article 125(2) of the Criminal Procedure Code provides that a trial judge must inform a spousal or familial witness that they are lawfully permitted to refuse to give a deposition. In the monitoring work conducted by JSMP and other organisations, it has been observed that this information is most commonly explained to the witness in terms of a 'right to silence'.

JSMP believes that describing a witness' lawful opportunity to decline to give evidence as a 'right to silence' is problematic. In reality, the 'right to silence' is an altogether different kind of legal privilege belonging only to defendants. The right gives defendants the ability to remain silent in the face of court questioning, in order to protect themselves from self-incrimination. In contrast, telling a victim that they have a positive right to silence may incorrectly give them the impression that the exercise of that right is likely to assist their case. When considered alongside the structural issues enumerated above, it is foreseeable that many individuals might gratefully choose to take up what they believe is their 'right to silence' without fully comprehending the effect that it may have on their case – even where a competent explanation has been given to them by a judge.

Competence and compellability in external jurisdictions

In response to the structural problems described above, a number of countries have undertaken law reform initiatives to reverse the presumption of non-compellability of family members in situations involving family violence. In a country such as Timor-Leste, where high rates of domestic violence are matched with low rates of prosecution, JSMP believes that many of these initiatives warrant immediate consideration.

As is the case under the Timor-Leste Criminal Procedure Code, the majority of international jurisdictions now recognise that spouses and family members are competent to give evidence against their relatives. However, the question of compellability is more controversial, with different countries following different approaches in their attempts to effect justice for family violence victims.

In general terms, countries governed by civil law systems have followed the approach of Portugal and Timor-Leste, making family members competent, but not compellable to give evidence. For example, the Criminal Procedure Codes of Columbia,[4] Chile[5] and Cape Verde[6] closely mirror that of Portugal and Timor-Leste. In contrast, while countries governed by common law systems have not taken a universal approach to issues of competence and compellability,[7] the trend towards reform followed by countries such as the United Kingdom,[8]

[4] Criminal Procedure Code of Columbia, Article 267.
[5] Criminal Procedure Code of Chile, Article 302.
[6] Criminal Procedure Code of Cape Verde, Article 302.
[7] Examples of common law jurisdictions in which legislation does not explicitly make spouses and family members compellable to give evidence in cases of family violence include Canada and Scotland. See, for example, *Canada Evidence Act* s 4(5) and *Criminal Procedure (Scotland) Act 1995* s 264. .
[8] *Police and Criminal Evidence Act 1984*, s 80.

Ireland,[9] Australia[10] and Cyprus[11] is to make spouses and family members compellable to give evidence in cases involving domestic violence or the protection of children.

The approach taken by the United Kingdom and Australia is explained in further detail below.

United Kingdom

As is the case under the Timorese Criminal Procedure Code, family members and spouses in the United Kingdom are regarded as *prima facie* competent to give evidence against other family members, but are not compellable in cases where they do not wish to give a deposition.

However, section 80 of the *Police and Criminal Evidence Act 1984* provides that while such witnesses may elect not to give evidence in cases of ordinary crime, exceptions to this privilege exist. For example, the family privilege immunity is not available in cases that involve:

- an allegation of violence against the spouse or civil partner;
- an allegation of violence against a person under the age of sixteen years;
- an alleged sexual offence against a victim under the age of sixteen years; or
- attempting, conspiring or aiding and abetting, counselling and procuring to commit the offences in the categories above.[12]

Australia

Section 18 of the *Uniform Evidence Act 1995* (Cth) governs the competence and compellability of spouses in criminal proceedings in Australia.

In general criminal cases, spouses and other family members are regarded as competent witnesses for the prosecution. As is the case under Timorese law, these individuals do, however, have the right to object to giving evidence against a family member.

Unlike the Civil Procedure Code, however, the regime of the Evidence Act leaves the ultimate discretion on questions of compellability to the judge. In considering whether or not to accept a family member's election not to give evidence, a judge must take into account:

- the community's need for evidence;
- the gravity of the crime;
- the weight of the proposed victim's evidence; and
- where the victim evinces an intention to preserve the marital or familial relationship, the likely damage to that relationship if evidence is given.[13]

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[9] *Criminal Evidence Act 1992*, s 22.
[10] *Uniform Evidence Act 1995*, s 18.
[11] Criminal Procedure Code of Cyprus, Article 341.
[12] *Police and Criminal Evidence Act 1984* s 80(3).
[13] *Uniform Evidence Act 1995* s 18.

In a further departure from the Timorese approach, the Evidence Act also specifies particular situations where a spouse may not refuse to give evidence. Section 19 of the Evidence Act provides that in cases of violence to children and spouses, a witness is compellable and may not elect not to give evidence.

As is evident from the above analysis, family members and spouses are now frequently compellable in the same way as other witnesses in court in cases involving domestic violence in Australia and the United Kingdom. These reforms came about in recognition of the fact that without the evidence of family members and spouses, the likelihood of bringing perpetrators to justice in such cases was extremely remote. Since family violence is, like other types of assault, a public crime, the community's need for evidence in both jurisdictions is now thought to outweigh any private considerations occurring within the family unit.

Additionally, lawmakers have recognised that the public policy considerations underlying the family immunity privilege sit uncomfortably with cases involving serious crimes such as assault and domestic violence. First, because in cases where victims are in a particularly vulnerable situation within their family unit, the privilege is unlikely to operate to give victims true freedom of choice, in the way that it is intended. Second, because the desirability of protecting the family unit in situations where there is an allegation of serious violence is highly questionable. Third, because in order for a State to adequately protect the human rights of individuals, some encroachment into the structures of family units may be necessary where allegations of violence are present.

International Law

In considering reform to criminal procedure laws, it is also useful to examine Timor- Leste's obligations under international law to prosecute violence against women. With regard to the promotion of gender equality, the most important international convention to which Timor-Leste is a party is the Convention on the Elimination of Discrimination Against Women ('CEDAW') which Timor-Leste ratified without reservation in 2003. Timor-Leste's commitment to gender equality is also enshrined by in Article 17 of Timor-Leste's Constitution, which guarantees equal rights for both men and women in all areas of family, political, economic, social and cultural life.

Fundamentally, CEDAW requires that State Parties take immediate steps to eliminate all aspects of discrimination in women's lives. In order to fully implement its obligations under CEDAW, Timor-Leste must therefore take steps to adopt and to incorporate the CEDAW principles in national legislation, national policies and the national development plan.

The CEDAW Committee has explained through its jurisprudence that violence against women is a form of discrimination, since 'gender-based violence… seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men'.[14] With respect to the prosecution of violence against women, including domestic violence, the Committee has also given clear instructions for State Parties to CEDAW, stating that 'States may also be responsible for private

[14] Committee on the Elimination of Discrimination Against Women, *General Recommendation 19: Violence Against Women*, 1992, Article 1.

acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence'.[15]

According to this analysis, it is evident that where it can be proven that a structural obstacle exists which prevents the due prosecution of criminal acts of violence, international law places an impetus upon State Parties to remove that obstacle. Indeed, if States fail to undertake legal reform measures to adequately punish acts of violence against women, they should be viewed as bearing responsibility for those acts.

In its concluding observations on Timor-Leste's first State Party Report to the CEDAW Committee in 2009, the Committee noted that in addition to legal reform, preventing violence against women in Timor-Leste also requires that:

- the judiciary is made familiar with the CEDAW convention and with Timor-Leste's obligations under CEDAW;
- more extensive legal aid and protection services be made available to female victims of domestic violence, especially in the districts; and
- further information and education is disseminated about women's rights and human rights at the community level.[16]

What approach should be followed in Timor-Leste?

As recognised by the CEDAW Committee in its concluding observations on Timor-Leste's first State Party Report in 2009, Timor-Leste has already begun to take considerable steps to effect the realisation of of women's rights at the domestic level. JSMP notes that the passage of the *Law for the Protection of Witnesses*[17] in May 2009 may considerably assist victims wishing to make depositions in cases of domestic violence. In particular, JSMP commends the measures outlined by Articles 19 and 20 of the law, which offer protection to witnesses and family members whose security may be endangered as a result of trial proceedings.

JSMP also welcomes progress made during 2009 on the Proposed Law Against Domestic Violence, which goes some way to addressing domestic violence as a public crime alongside other acts of assault. The promulgation of this legislation, which recognises 'that the policy of non-intervention in private matters and traditional values and customs must not justify the disinterest or inertia of public authorities in the fight against domestic violence'[18] will be a welcome step in the protection of women's rights in Timor-Leste.

In the context of these two laws, it is clear that Timor-Leste has now made the problem of violence against women an important priority. Having developed these new protective

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[15] Committee on the Elimination of Discrimination Against Women, *General Recommendation 19: Violence Against Women*, 1992, Article 9.
[16] *Concluding observations of the Committee on the Elimination of Discrimination against Women: Timor-Leste* UN Doc CEDAW/C/TLS/CO/1, 44th session of the CEDAW Committee, 20 July -7 August 2009, Articles 22 – 30.
[17] *Law for the Protection of Witnesses*, Law number 2 / 2009.
[18] Proposed Law Against Domestic Violence (Draft Circulated May 2009) Article 8.

mechanisms for women facing domestic violence, it would be ironic indeed if structural barriers to the prosecution of perpetrators remained in the Criminal Procedure Code.

JSMP believes that the reluctance of one family member to testify against another in court can by no means always be interpreted as a consensual action to preserve the family unit. Rather, in cases of domestic violence, the issues of power imbalances common in violent relationships means that the pressure upon a victim not to testify against their partner plays a prominent role in their refusal to do so. In addition, the trauma for victims of reliving their experiences of violence in a courtroom setting, coupled with the multiple barriers that victims may face in accessing justice undermine the notion of 'freedom of choice' that the family relationship exemption supposedly preserves.

JSMP understands that both the community and legislators in this area are particularly concerned with maintaining the structure and efficacy of the family unit in Timorese society. However, JSMP believes that in cases of domestic violence, that unit has been fractured by the commission of a public crime, and that it is the primary responsibility of the state to prosecute that crime in defence of the human rights of its citizens. Indeed, JSMP believes that an idealised construction of a family unit cannot be defended in cases where violence is being perpetrated within that unit.

The successful prosecution of crimes involving serious violence to the person is too important an issue to ignore. As such, JSMP believes family members should be made compellable to give evidence against their partners in cases where the crimes alleged against that person are grave in nature, and there is little likelihood that evidence of the crime may otherwise be available to the prosecutor. It is in this spirit that JSMP makes the following three recommendations, directed at the justice sector actors and legislators.

Recommendations:

1. Reform should be made to Article 125 of the Criminal Procedure Code

JSMP believes that Article 125 of the Criminal Procedure Code should be modified to clarify that the family relationship exception to the principle of compellability should not apply in cases involving family violence. It would also be beneficial to clarify the instructions that judges must give to witnesses when informing them about their right to refuse to give a deposition.

JSMP proposes the following amendment be made to Article 125 of the Criminal Procedure Code:

Article 125
Lawful refusal to give a deposition

1. The persons below may refuse to give a deposition as witnesses:
    (a) progenitors, siblings, descendants, relatives up to the second degree, adopters, adoptees, and the spouse of the defendant;
    (b) a person who has been married to the defendant or who cohabits, or has cohabited, with the latter in a relationship similar to that of spouses, in relation to facts that have occurred during marriage or cohabitation

2. The authority competent to take the deposition shall, under penalty of nullity, advise the persons referred to in subarticle 125.1 that they are allowed to refuse to give a deposition. *The competent authority must also clearly advise such persons of the likely legal consequences for their case should they refuse to give a deposition.*
3. *The exemption referred to in subarticle 125.1 shall not apply in cases in which the crime alleged relates to:*
    (a) an allegation of violence against the witness themselves; or
    (b) an allegation of family violence against a person under 18 years of age.

2. Courtroom procedures should be modified to encourage vulnerable complainants to give evidence

JSMP encourages the judicial system to adopt more flexible practices in relation to the ways in which vulnerable complainants may give evidence, so that they are not forced to confront their attacker directly in court.

JSMP believes that a mechanism for these practices to be employed by judges is already available. The *Law for the Protection of Witnesses* provides that protective measures may be given to witnesses in criminal cases who face threats to their physical and/or psychological wellbeing because of their depositions.[19] The law also provides that a range of other measures may be used in collecting the evidence of witnesses under threat, such as the use of teleconference and the recording of testimony in a secure location. When these measures are employed, it is incumbent upon a judge to supervise the witness' testimony, and to guarantee its authenticity.[20] JSMP encourages court actors to make victims aware of their rights to have their evidence heard in this way.

JSMP also believes that other simple changes could be made to the layout of courtrooms to lessen the intimidation that may be felt by victims giving evidence. For example, JSMP believes that the victim and defendant should not be seated together throughout the trial process, and that the victim should be given a secure location to sit where she can be supported by those assisting her. JSMP also suggests that a mobile screen could be placed between a witness and the defendant to prevent visual contact between them in the courtroom.

3. Ongoing gender rights training should be given to judicial actors

JSMP believes that comprehensive training on women's rights at the international and domestic level should be incorporated into the curriculum of Judicial Training Center. This may involve creating specific, tailored training activities about gender sensitivity and women's rights, as well as concrete examples of how power and gender considerations may affect the capacity of female victims to give evidence in court.

[19] *Law for the Protection of Witnesses*, Law number 2 / 2009, Chapter 1.
[20] *Law for the Protection of Witnesses*, Law number 2 / 2009, Chapter 2.

JSMP also suggests that serving judges be given the opportunity to attend these training courses, so that they can build upon their existing understanding of how judicial interactions with victims may affect the realisation of their rights in court.