



REPORT

**LAW AND PRACTICE
OF THE CRIMINAL
PROCEEDING IN CASES
OF GENDER-BASED
VIOLENCE IN
TIMOR-LESTE**

OCTOBER 2022



Inisiativa
Spotlight

The Law and Practice of the Criminal Proceeding in Cases of Gender-Based Violence in Timor-Leste has been developed by the United Nations Development Programme (UNDP) as part of Spotlight Initiative, in close collaboration with JU,S Jurídico Social.

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For further information, please contact:

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LAW AND PRACTICE OF THE CRIMINAL PROCEEDING IN CASES OF GENDER-BASED VIOLENCE IN TIMOR-LESTE

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COORDINATOR AND EDITOR

Bárbara Nazareth de Oliveira

RESEARCHERS AND WRITERS

Maria Agnes Bere

Hildegardis Wondeng

Olívio Barros

Ediana Castela Gonçalves

Jonato Xavier

Rute Baptista

Rita Páscoa dos Santos

Sofia Larriera Santurio

Paula Mamede

Marta Machado

Maria João Teixeira

Melina Moreira Campos Lima

Tassia Scudeler Prevedel

Inês Migueis da Silva Pinto

Subha Nivedha Shanmuga Sundaram

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TIMOR-LESTE SPOTLIGHT INITIATIVE

The Spotlight Initiative will accelerate Timor-Leste's progress toward reaching its targets under the 2030 Agenda, particularly SDG 5 on Gender Equality, but also SDG 3 "Health and Well-Being", SDG 4 "Quality Education", SDG 8 "Promote inclusive and sustainable economic growth, employment and decent work for all", SDG 10 "Reduced Inequalities", SDG 11 "Sustainable Cities and Communities", SDG 16 "Peace, Justice and Strong Institutions", and SDG 17 on "Partnerships". It will contribute to the National Strategic Development Plan and reinforce Timor-Leste's implementation of commitments under the Beijing Platform for Action, the Concluding Observations of the CEDAW Committee, Convention on the Rights of the Child, among other international obligations.

The Spotlight Initiative in Timor-Leste is implemented through five UN agencies (UN Women, UNFPA, UNDP, UNICEF, and ILO) with a focus on addressing intimate partner violence and domestic violence. In addition to the five agencies above, the Programme involves collaboration with the International Organization for Migration, the Human Rights Advisor's Unit, and the World Health Organization.

The overall vision of the Spotlight Initiative in Timor-Leste is that women and girls enjoy their right to a life free of violence, within an inclusive and gender-equitable Timor-Leste.

The program, aligned to the Timor-Leste "National Action Plan on Gender-based Violence (2017-2021)" will contribute to the elimination of domestic violence/intimate partner violence (DV/IPV) by responding to the needs of women and girls and addressing the underlying causes of violence against women and girls using a multi-sectoral and intersectional approach to implement intervention on the following six outcomes areas:

Pillar 1: Legislation and Policies

Pillar 2: Institutional strengthening

Pillar 3: Prevention of violence

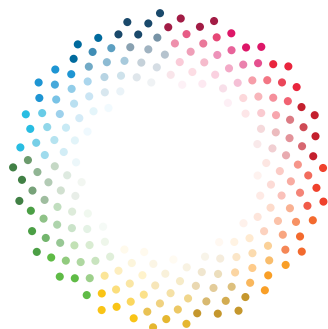
Pillar 4: Available, accessible, and acceptable, quality services

Pillar 5: Quality and reliable data

Pillar 6: Supporting women's movements and relevant civil society organizations

The Programme is grounded on the core principle of leaving no one behind and reaching the furthest behind first. The interventions have been designed to target women and girls most marginalized (rural, poor, with disabilities), at higher risk of intimate partner violence, and groups that face multiple or intersecting forms of discrimination.

To ensure the effective and meaningful impact of the Spotlight Initiative in Timor-Leste, the Programme focuses on a comprehensive set of actions at the national level, alongside community-based interventions in 3 municipalities (of the country's 13 municipalities). Based on a preliminary analysis of needs, gaps, and opportunities, from a thematic and geographic lens and consultations with various stakeholders, the Programme focuses its community-level efforts in Ermera, Viqueque, and Bobonaro municipalities.



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To ensure access to services for survivors of GBV, there is a need for real-time incidence data on the cases of GBV and a well-established case management system with comprehensive GBV referral pathways. In addition, the enhanced capacity of all the stakeholders along the GBV referral pathway to manage GBV cases as per the required standards. However, gaps exist in the generation of comprehensive, gender/age data, and disaggregation forms of violence against women, girls, and children. This poses a barrier to fully understanding the scope and scale of violence against women and girls in the Country.

The Spotlight Initiative comes at a key moment in Timor-Leste's history and can make a significant contribution to the Government's efforts to achieve its vision that by 2030 *"Timor-Leste will be a gender-fair society where human dignity and women's rights are valued, protected and promoted by our laws and culture"*¹. Building on European Union's (EU) *"commitment to gender equality, human rights, the empowerment of women and girls and the eradication of gender based violence"* (EU Gender Action Plan GAP II)² it will leverage the existing political will and EAWG efforts done to date, while contributing a new way of collaborating, and a focused set of impact-oriented investments to fill important gaps in the struggle to end VAWG in a holistic and sustainable way.

1. Strategic Development Plan 2011-2030

2. EU Gender Action Plan 2016-2020



LIST OF ABBREVIATIONS

CAC	Anti-Corruption Commission
CPC	Code of Criminal Procedure Code (Decree-Law No. 13/2005, of 1 December 2005)
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women, ratified by Timor-Leste in 2003 by Parliament Resolution No. 11/2003, of 17 September
CDRTL	Constitution of the Democratic Republic of Timor-Leste
GBV	Gender-based violence
JSMP	Judicial System Monitoring Programme
LADV	Law against Domestic Violence (Law No. 7/2010, of 7 July)
LGBTQI+	Lesbian, Gays, Bisexual, Transgender, Queer, Intersex and others
NAP GBV	National Action Plan to Combat Gender-Based Violence 2017-2022, Government Resolution No. 25/2017, of 17 May
PC	Penal Code (Decree-Law No. 19/2009, of 8 April)
PNTL	National Police of Timor-Leste
UN	United Nations
VPU	Vulnerable Person's Unit of the PNTL

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EXECUTIVE SUMMARY



EXECUTIVE SUMMARY

In Timor-Leste, the journey of victims of gender-based violence in the judicial process is often arduous and lengthy. A victim of gender-based violence must retell the experience numerous times, live with the consequences of the violence suffered and participate in a system that is usually unfamiliar and difficult to access. It is the duty of any State through its institutions to take specific steps to establish effective, trauma-informed and victim centred processes to hold perpetrators accountable.

Despite some progress in promoting gender equality and recognising victims' rights, common practices persist in the Timorese justice system that exploits victims' vulnerabilities, re-victimises them and reiterates gender stereotypes.

The Code of Criminal Procedure secures, albeit not in ideal terms, the participation of the victim as an "assistant" to the public prosecutor, granting them status as one of the key participants during the proceedings and formally acknowledging victims' vested interest in the outcome of the case.

However, in practice Timor-Leste fails to fully and systematically respect legally entrenched guarantees for victims' participation in the proceedings based on gender equality and human rights standards. While there are good practice methods currently practiced, the national justice system still has a long way to go to be more equitable and victim-centred.

Frequent violations of victims' rights are identified from the time of the reporting of the crime to the execution of the sentence of the perpetrator of violence. This includes judicial decisions that excludes victim's representatives from trial hearings, limited efforts to ensure right of privacy for victims at all stages of the process and the use of confrontation face-to-face procedures between accused and victims of sexual crimes, including children. Judicial authorities also fail to effectively communicate to the victims relevant information regarding the progress of the proceedings and the options available to aid their physical and psychological integrity during the long process. Additionally, gender stereotypes are noted at all levels of the process; words and actions of the police and judicial authorities contribute to a slow-paced progress toward gender-responsive justice.

This report is curated after a year of desk-based research of the practices of the courts, analysing cases, interviewing different stakeholders in the court, civil society organisations and victims/survivors. The report recognises the need for imminent legislative changes to meet the international standards in strengthening victims' rights. Several similar civil law jurisdictions across the world have evolved by legislating the protection of victims' rights and recognizing the need to take positive measures to ensure effective gender equality before the courts. Legislative amendments to the Timorese criminal procedure tailored to meet the specific needs of victims of gender-based violence would bring the national legal system closer to other civil law jurisdictions fostering a victim-centred criminal justice system.

Despite the need for specific legislative reform, it is unequivocal that more significant improvements can be made meanwhile. Increasing court and law

enforcement's capacity, formally approving operational instruments and developing guidance on gender-based violence and victims' rights. There is nothing in the Timorese legal system that prohibits judicial authorities, especially the public prosecution and the courts, from taking more meaningful steps to empower victims and contribute to more trauma-informed approaches. This report shows that small effective actions have significant potential in creating better investigative and judicial processes for victims.

The number of women and girls accessing the criminal justice system, especially as victims has increased in the past ten years. In late 2022, about forty percent of male inmates were imprisoned for sexual violence crimes as per prison records, and close to fifty per cent of criminal cases were related to domestic violence. These remarkable numbers are recorded despite most survivors of gender-based violence never reporting to authorities. Gender-based violence is an undeniable reality of Timor-Leste. If Timor-Leste aspires for a fair, effective and efficient criminal justice system for all, police and judicial authorities must respond victim's needs, including women's unique needs.

INTRODUCTION



I. INTRODUCTION

This Law and Practice of the Criminal Proceeding in cases of Gender Based Violence in Timor-Leste is based on an in-depth analysis of the criminal process in gender-based violence cases in Timor-Leste, particularly of incidents of domestic violence.

This Report looks at the scope of the current legal framework, identifies the main legal provisions from a victim-centred perspective and presents effective current practices at international and national levels. It further provides information on the current practice related to gender justice, identifying several areas that can be strengthened without requiring legal reform.

This report identifies positive effective victim-centred practices that meet recognized standards and practices. It also identifies areas that require improvement because they violate or do not effectively and adequately promote the rights of victims. The findings included in this report of the current judicial practices are based on an in depth desk research of relevant reports of the national judicial system, written records of criminal investigations, indictments, court rulings, direct observation of court hearings, interviews with victims and court actors.³

Gender-based violence is a concept that relates to a category of actions that permeates every area of criminal law. In Timor-Leste, as in a number of other jurisdictions, gender-based violence is not a specific crime as typified in law. Timor-Leste provides, nonetheless, for an aggravating circumstance when crimes are committed based on gender discriminatory views (Article 52€ PC). Generally, the term 'gender-based violence' refers to violence perpetrated based on prevailing factors relevant to the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men.

UN Women defines gender-based violence as harmful acts directed against an individual or a group of individuals on the basis of their gender.⁴

This form of violence is rooted in gender inequality, abuse of power and harmful gender norms.⁵ The term is used primarily to emphasise that gender-based structural power differences put women and girls at risk of multiple forms of violence.

While women and girls disproportionately suffer from GBV, men and boys can also be targeted. The term is also used to describe violence directed against LGBTQI+ populations when related to violence linked to norms of masculinity/femininity and/or other gender norms.

It is important to note that GBV does not only take a physical form but can also be psychological, sexual and economical. Violence does not need to be seen by others but can be silent and, in fact, often goes unnoticed by others. According to the United Nations, the following forms of violence against women and girls stand out:⁶

- **Physical, sexual and psychological violence** that occurs within the family, which includes mistreatment, sexual abuse of female children in

3. For reasons of privacy and legal confidentiality, the report will sometimes not identify the case number or other identifiable data.

4. UN Women, Frequently asked questions: Types of violence against women and girls

5. Ibid.

6. See, Declaration on the Elimination of Violence against Women, proclaimed by the United Nations General Assembly in its resolution No. 48/104 of 20 December 1993, article 2. And, see also, UN Women, Guidelines for Care in Cases of Gender-Based Violence against Girls and Women in Times of the Covid-19 Pandemic (ePub., 2020), 8.



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the home, dowry-related violence, marital rape (forced sexual relations by the partner), economic violence (control of the woman's financial resources by the partner, denial of money to buy food, medication or hygiene products), psychological violence through the obligation to stay indoors, psychological violence with threats of abandonment, expulsion from home, humiliations, overburdening of domestic responsibility, among other demands that can lead women to physical and emotional illness, female genital mutilation and other traditional practices that are harmful to women, acts of violence perpetrated by other family members and violence related to exploitation;

- **Physical, sexual and psychological violence** committed on the broader community, including rape, sexual abuse, sexual harassment and intimidation in the workplace, educational institutions, foster care institutions and other space; sexual violence against girls, adolescents, older women and women with disabilities, trafficking in women and forced prostitution;

- **Physical, sexual and psychological violence** committed or condoned by the State, wherever it occurs;

- Several of these forms of violence may also be **digital**, making use of technological means for their commission.



Cape Verde: Definition of Gender-Based Violence in Law

In Cape Verde, Law no. 84/VII/2011, of 10 January, was approved in 2011, which defines explicitly gender-based violence as "all manifestations of physical or psychological violence, whether they translate into offences against physical integrity, sexual freedom, or coercion, threat, deprivation of freedom or harassment, based on the construction of unequal power relations, namely by economic, social, cultural or any other higher position, of the perpetrator in relation to the victim, considered for this purpose" (Article 3(c)).

Applying the concept of GBV to a case, if a brother threatens his sister with harm because of her refusal to marry someone with whom she has had sexual relations could be considered gender-based violence. This crime is based off harmful social gender norms wherein a woman's virginity is a matter of a family's honour. Similarly, when a husband kills his wife because he suspects her of infidelity, it is also gender-based violence. If a young male is a victim of bodily harm perpetrated by his peers because they consider him to be 'effeminate', such action would also fall under the scope of gender-based violence due to being grounded in gender stereotypes still prevalent in society which places women and groups in an unfavourable position due to these stereotypes. Sharing intimate photos of an ex-girlfriend, without her permission, as revenge for ending the intimate relationship is also gender-based violence. Violence committed based or motivated by the

existence of power disparity within the family due to the roles expected of women as wives and/or domestic violence is always considered as gender-based violence.

Gender-based violence is considered gender-based discrimination. Since 1992, the CEDAW Committee has affirmed that discrimination against women, as defined in Article 1 of the Convention, includes gender-based violence and it therefore, constitutes a violation of the human rights of a woman. In accordance with this women's rights monitoring body, "violence that is directed against a woman because she is a woman or that affects women disproportionately".⁷

Thus, when the commission of a crime is based on a specific social gender norm that negatively impacts women, it may be considered that such crime was committed on the basis of 'gender-based discrimination'.



Timor-Leste: Crimes and Other Norms in the Penal Code and other laws relevant to Gender-Based Violence

The following crimes are always GBV because they are crimes of domestic violence (35(a) of the Law against Domestic Violence):

- ill-treatment of a spouse (Art. 154 PC);

They are GBV when they are crimes of domestic violence (35(a) and (b) of the Law against Domestic Violence):

- simple and aggravated homicide (Arts. 138 and 139 PC);

- interruption of pregnancy (Art. 141 PC);

- simple and serious offences against physical integrity (Arts. 145 and 146 PC);

- torture or other cruel, degrading or inhuman treatment (Art. 167 PC);

- ill-treatment of incapacitated persons (Art. 153 PC);

ill-treatment of a minor (Art. 155 PC), which may be aggravated by the result (Art. 156 PC), if within domestic scope.

All forms of sexual violence are GBV:

- sexual coercion (Art. 171 PC);

- rape (Art. 172 PC);

- child prostitution (Art. 175 PC);

- sexual abuse of a minor (Art. 177 PC);

- sexual acts with adolescents (Art. 178 PC);

- sexual abuse of a person incapable of resistance (Art. 179 PC);

- sexual fraud (Art. 180 PC);

-sexual exhibitionism (Art. 181 PC).

When linked to gender and inequalities arising from social constructions around gender, the following crimes will be GVB:⁸

- genocide, regarding modalities that particularly affect women such as acts that prevent procreation or birth in the group, rape, sexual slavery, forced prostitution, forced pregnancy, forced

7. CEDAW Committee, General Recommendation No. 35 on gender-based violence against women (updating General Recommendation No. 19), 14 July 2017, para. 1.

8. Some crimes, generically provided in the Penal Code and other criminal laws, constitute gender-based violence when elements arising from social constructions of gender are present. These elements can concretely make the crime more serious, for example, by aggravating or exploiting the social inequalities resulting from these constructions, or by taking advantage of the victim's vulnerability, which sometimes facilitates the commission of the crime.

sterilisation, etc. (Art. 123 PC);

- crimes against humanity, in the modalities that particularly affect women, such as when rape is used as an instrument (Art. 124 PC);
- exposure or abandonment (Art. 143 PC), with aggravation when there are domestic relations, according to Art. 143(3);
- threat (Art. 157 PC);
- duress and severe coercion (Arts. 158 and 159 PC);
- kidnapping (Art. 160 PC), in the case, for example, of a family member confining another member to the residence or other place;
- abduction, when committed with the intention of sexual exploitation or abuse or as revenge for non-compliance with stereotypical gender standards (Art. 161(1)(b) PC)
- slavery (Art. 162 PC);
- trafficking in persons, when committed for “the exploitation of the prostitution of others or other forms of sexual exploitation” (Art. 163(3) PC, and Art. 2 of the Law for the Prevention and Fight against Trafficking in Persons, Law n. 3/2017, of 25 January);
- sale of persons, especially women and minors (Art. 166 PC);
- disclosure of private facts (Art. 183 PC);
- crimes committed negligently: Art. 140 PC (negligent homicide), Art. 148 PC (negligent offences against physical integrity), Art. 212 PC (drunkenness and intoxication);

Also, among the **aggravating factors** of direct relevance to gender-based violence are the following:

- **general aggravation** in Art. 52(2)(e) PC [motivated by discriminatory feeling because of gender]; Art. 52(2)(f) PC [the agent has a special duty not to commit the crime]; and Art. 52(2)(a) PC [disloyalty, betrayal, waiting];
- **specific aggravation** of Art. 164 PC, regarding the crimes foreseen in Articles 162 and 163 PC, when committed “[as] a means of facilitating the sexual exploitation or use of the victim, by the perpetrator or by a third party” (subsection “a”).



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GUARANTEES FOR VICTIMS OF GENDER-BASED VIOLENCE

II. GUARANTEES FOR VICTIMS OF GENDER-BASED VIOLENCE

All individuals who have been a victim of a crime irrespective their gender will see their lives impacted by the criminal process, regardless of how efficiently the judicial process was conducted and how effective it was, and regardless of their access to quality support services.

In crimes against individuals, the judicial system requires and depends on the victim's participation since the victim holds vital information for a successful prosecution. But it is important to note that the victim not only has duties to cooperate with the authorities and to provide truthful testimony to the judicial system, but above all is the holder of rights and guarantees of their own.

For the majority of the population in Timor-Leste, especially the most vulnerable, the criminal justice process always represents a challenge, irrespective of personal circumstances and the treatment given by authorities. Some face challenges because of the formality of the process and the lack of familiarity or knowledge of how it unfolds; others suffer because the judicial process interrupts their return to normality, at times reliving the trauma related to the crime. Especially the victims may incur long-lasting consequences to their lives when not treated adequately by court actors who fail to acknowledge their specific needs.

Given this reality, international standards for the protection of human rights in general, and in particular the rights of women and victims of violence, determine the guiding principles for the treatment of victims of gender-based violence within the criminal proceedings, namely⁹:



Victims must be **treated** with compassion and respect for their dignity and privacy



Victims are entitled to have **access to an effective** criminal justice system and **prompt redress**



Victims must be **informed** about their rights, their powers and entitlements, the timing and progress of their case, and the disposition of their case



Victims must be able to **participate** in the proceedings actively and express their views and concerns, which should be presented and considered at appropriate stages of the criminal proceedings



Victims must have adequate **assistance throughout** the legal process



Children, in their position as victims or witnesses, must have access to specialised protection and support services, considering their particular needs

9. UNODC, Handbook on effective prosecution responses to violence against women and girls, 2014, 48.

Although gender-based violence is committed by a private person in which public agents or those representing the power of the State are often not directly involved in the act, the State has the duty to take effective measures to prevent and combat all forms of violence against women, including domestic violence. Therefore, States must develop legislative, administrative, and other measures, as well as allocate resources to effectively prevent violence against women and domestic violence while also making efforts to protect victims and contribute to the effective accountability of the perpetrators.¹⁰ Furthermore, this obligation implies that there is a responsibility of States to adopt appropriate measures to prevent and investigate, prosecute, punish and provide redress for acts and omissions of non-State actors that result in GBV against women. States must adopt and implement various measures to combat GBV, including passing laws, creating specialised institutions, and establishing a system to address this form of violence. States must also ensure that these measures work effectively in practice and are supported and enforced by all state actors and institutions.¹¹

Authorities' failure to take all appropriate measures to prevent acts of GBV when they knew or should have known of the risk of violence, including inadequate investigation, prosecution or punishment, and ineffective redress to the victims, is seen as implicit permission or encouragement for the continuation of such acts. Thus, failures and omissions by the State in this area constitute human rights violations.

In addition to criminalising behaviours that represent the most prevalent forms of gender-based violence, the assurance of broad protection for victims gives a general message that this type of conduct is reprehensible and should be punished.¹² The State must take positive steps to ensure that the entire judicial system can adequately respond to the specific needs of these victims.

Among the measures that should be taken is strengthening the capacity of those involved in the judicial process through specialised training and coordinated action between the various actors and public entities to ensure victims' access to specialised services.

The State should also provide regular and institutionalised training on gender sensitivity and capacity building on violence against women and girls to all its actors dealing with gender-based violence.¹³

The most effective results are obtained when all the authorities and services, including law enforcement authorities, the judiciary, victim support services, child protection agencies, non-governmental organisations and other relevant partners, join forces to develop a comprehensive and concerted response to combat gender-based violence.

In several countries, specific regulations have been approved, in addition to the primary criminal procedural legislation, aiming at incorporating good practices for responsive gender justice. The operational instruments are, in these contexts, approved by management bodies or the regulatory bodies of the justice sector institutions, such as the Councils of Judicial Magistrates, the Attorney General or the equivalent.

10. CEDAW Committee, General Recommendation no. 35 on gender-based violence against women (updating General Recommendation no. 19), 14 July 2017, para. 23.

11. *Ibid.*, para. 8.

12. It is recommended, to ensure a strong and responsive legal framework for discrimination against women, that the various forms of violence against women, such as forced marriage, psychological and/or physical violence, stalking, honour crimes and sexual violence, including rape, female genital mutilation, sexual harassment, forced abortion and forced sterilisation, among others, be criminalised. See, *Ibid.*, para. 21 and 26.

13. The 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), in its articles, indicates ways in which this change can be promoted, such as: conducting regular awareness-raising campaigns (Article 13), providing educational material on topics such as gender equality, non-stereotypical gender roles, mutual respect, and non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity (Article 14), regularly training all professionals in the field of domestic violence, on the prevention and detection of gender-based violence, gender equality, the needs and rights of victims, and on how to prevent secondary victimisation (Article 15). Recommendations to sensitise public officials on gender issues also appear in CEDAW's periodic reports for Timor-Leste, as can be seen, for example, in: CEDAW, Concluding observations on the combined second and third periodic reports of Timor-Leste, 24 November 2015, para. 11.e, 15.b and 21.e.



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National jurisdictions with operational regulations on gender-based violence

Brazil

National Council of Justice: Protocol for Judging with a Gender Perspective (2021)

National Council of Justice: Manual of Routines and Structuring of the Courts for Domestic and Family Violence against Women (2018)

Civil Police of the State of São Paulo: "Unique Attendance Protocol", to be observed in occurrences of domestic and family violence against women (Resolution SSP-2, of 12 January 2017)

National Secretariat for Combating Violence against Women - Secretariat of Policies for Women (Presidency of the Republic): National Guidelines for the Sheltering of Women in Situations of Risk and Violence (2011)

National guidelines for criminal investigation with a gender perspective - Principles for action with a gender perspective for the Public Prosecution and public security in Brazil

UN Women, Secretariat of Policies for Women and National Secretariat for Public Security: National Guidelines for investigating, prosecuting and judging violent deaths of women (femicides) from a gender perspective (2015)

Portugal

Resolution of the Council of Ministers No. 139/2019, of 19 August: Functional Performance Manual to be adopted by Criminal Police Organs within 72 hours of submission of a complaint of ill-treatment committed in a context of domestic violence

Secretariat of State for Citizenship and Equality and the Commission for Citizenship and Gender Equality: Preventing and Combating Violence Against Women and Domestic Violence in Employing Bodies: Good Practice Guidelines

Directive no. 5/2019 of the Attorney General's Office: Domestic Violence, which aims to provide agents of the Public Prosecution with uniform guidelines for action in the fields of directing criminal investigations and acting in the family and children's jurisdiction (2019)

General Health Coordination: Maltreatment of Children and Young People - Practical Guide for Approach, Diagnosis and Intervention (2011)

Spain

General Council of the Judiciary: Guide of Good Practices for taking the Declaration of Victims of Gender Violence (2018)

Secretariat of State for Equality and against Gender Violence: Action guide for women who are suffering from gender violence while staying at home due to COVID-19



Colombia

Attorney General's Office and UN Women: Protocol for the Investigation of Sexual Violence -Good practice guidelines for criminal investigation and prosecution of sexual violence and prosecution of crimes of sexual violence (2018)



Uruguay

Interagency Gender Group of the United Nations System in Uruguay, Centre for Judicial Studies of the Judiciary and Attorney General's Office: Guide for the Judiciary on gender stereotypes and international standards on women's rights (2020)



Mexico

Attorney General's Office: Protocol for the Investigation of Crimes of Sexual Violence against Women from a Gender Perspective;



Paraguay

Protocol of Attention to Cases of Violence against Women in the domestic and intra-family sphere addressed to the Magistracy and Civil and Commercial Courts of Peace and First Instance (2021)



Ecuador

Judiciary Council: Guide for Gender-Sensitive Administration of Justice (2018)



Indonesia

President of the Supreme Court, Regulation of the Supreme Court of the Republic of Indonesia number 3/2017 regarding Guide to Trying cases of Women before the Law (2017)

From the reading of the Law against Domestic Violence (Law No. 7/2010, of 7 July), it is understood that these types of instruments should be drafted. Article 8 of this law provides that the intervention of authorities and the support by technical services to the victim should follow professional norms and standard operating procedures. At the time of writing this Report, no such regulations have been adopted in Timor-Leste.

Similarly, it is the competency of the Public Prosecution to participate in the execution of the criminal policy defined by the organs of sovereignty,¹⁴ and the Prosecutor General's Office must also issue directives, orders and instructions which shall guide the performance of the Public Prosecutors in the exercise of their functions.¹⁵

Similarly, the Organic Law of the PNTL, in Article 41(1), states that Norms of Organisation and Procedure (NOP) shall be enacted to regulate the technical and administrative procedures, therefore developing further the legal norms already in place to guide PNTL work. These regulatory powers are wide and are only limited to the extent that they may not impact on people's rights.¹⁶

14. Article 5(1)(c) of the Statute of the Public Prosecution (Law No. 7/2022, of 19 May).

15. Article 23(c) of the Statute of the Public Prosecution (Law No. 7/2022, of 19 May).

16. Decree-Law No. 9/2009, of 18 February (Organic Law of the National Police of Timor-Leste).

Legal norms require the approval of standardised regulations in areas relevant to gender-based violence, which can support increased cooperation between the relevant institutions and the enforcement of victims' guarantees.



TREATMENT WITH COMPASSION AND RESPECT FOR THE VICTIM'S DIGNITY AND PRIVACY

The UN through its 1985 "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power" (hereafter referred to as the "Declaration of Victims' Principles") lays the minimum standards for the treatment of victims of crime.¹⁷

Principle 4 of the Declaration states that all victims should be treated "with compassion and respect for their dignity". This provided for victims to be formally recognised and receive nuanced treatment that acknowledges their suffering. This recognition can be assured without violating the accused's presumption of innocence.

Victims should be treated with dignity and respect in all their interactions with the police, other procedural actors, staff and other relevant justice actors and stakeholders. Procedures should be sensitive to victims, should be treated with empathy and understanding, especially when they are children, victims of sexual crimes, victims of domestic violence or victims of gender-based violence, as they are especially vulnerable. Furthermore, indirect victims, such as family members, should also be treated with respect.¹⁸

Generally, sharing a common understanding of domestic violence and gender-based violence allows for an efficient and victim-centred approach to such crimes. Prosecutors should avoid letting stereotypical assumptions influence their interaction with the victims. There should be a conscious effort to focus their inquiry and present evidence of violence of the alleged perpetrator. For instance, the line of questioning should be to clarify why the perpetrator is violent rather than why the victim remained in a violent relationship.

Measures should also be taken to minimise the distress caused to victims, protect their privacy if/when necessary, and ensure their safety and that of their families against intimidating actions and reprisals.¹⁹

The national legal system has no express provision for the duty of the police and judicial authorities to treat the victim with respect. However, this treatment can and should derive from constitutional precepts regarding the recognition of human dignity and the principle of non-discrimination provided in Articles 1, 16 and 17 of the CDRTL.

It is essential to train relevant professionals to support capacity building to promote gender equality within the criminal law system. Without specialised training, it remains very challenging for judicial actors to treat victims with compassion and respect for their dignity and privacy. Specialized training focusing on behaviour change, understanding of the victim position and the entrenched gender inequality in the country is also essential to dispel before court actors the stereotypes arising from gender-discriminatory social norms prevalent in the Timorese society.

17. UN, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 29 November 1985.

18. UNODC, Right of Victims to Adequate Response to their Needs, July 2019.

19. United Nations, Handbook for Legislation on Violence against Women, 2010, 38-44.

CEDAW recommended the reinforcement of awareness-raising and educational activities to eliminate prejudices regarding violence against women targeting both men and women. It went on to recommending such awareness programs for traditional and community leaders, health and social workers in Timor-Leste. It further urged the State to conduct specialised training for judges, prosecutors, police and other officials on the rigorous application of criminal rules to effectively punish violence against women.²⁰

The Timor-Leste 2010 Law Against Domestic Violence already recognises education, awareness raising and capacity building as efficient ways to combat and prevent domestic violence, as provided in its Articles 8 to 12. These norms regulate the role of technical support services, the need to educate public opinion to break down gender stereotypes, create public information materials, and integrate gender-related issues into school curriculum. It also determines the need for the State to take steps to study and analyse domestic violence as a social phenomenon.

The law regulating the initial training of judicial magistrates, public prosecutors and public defenders does not expressly require the inclusion of subjects on GBV or domestic violence (Decree-Law No. 10/2020, of 25 March). A similar gap is evident in the training course for public prosecutors' clerks (approved by Deliberation No. 86/CSMP/2019, of 30 September). On a positive note, despite a lack of express legal provision to this effect, the programmes for the 7th Initial Training Course for Judicial Magistrates, Public Prosecutors and Public Defenders was approved in April 2022 by the Pedagogic Council of the Legal and Judicial Training Centre to provide a specific course on Gender Equality and Gender-Based Violence with 24 teaching hours.

Legal Provision on Specialised Training for Court Actors



In **Spain**, the 2004 Law on Integrated Protection Measures against Gender-based Violence²¹ mandates the Government and the General Council of the Judiciary to ensure that training courses for judges and magistrates, prosecutors, judicial officers, national law enforcement and security agents, and coroners include specific training on gender equality, non-discrimination on the grounds of sex and gender, and issues of violence against women.



In article 42, the 2004 **Philippine** Anti Violence Against Women and their Children Act²² requires all agencies acting in response to violence against women and children to undergo training on: (a) the nature and causes of violence against women and their children; (b) legal rights and remedies of complainants/survivors; (c) available support services; (d) legal duties of police officers to make arrests and offer protection and assistance; and (e) techniques for handling incidents of violence against women and their children.

20. CEDAW, Concluding observations on the combined second and third periodic reports of Timor-Leste, 24 November 2015, para. 17(h).

21. Spain, Article 47 of Organic Law No. 1/2004, of December 28, on Comprehensive Protection Measures against Gender Violence.

22. The Philippines, Republic Act 9262: Anti-Violence Against Women and their Children Act of 2004.



THE RIGHT TO ACCESS TO AN EFFECTIVE CRIMINAL JUSTICE SYSTEM AND TO PROMPT REDRESS

The Declaration of Victims' Principles focuses mainly on access to justice issues for victims of crimes, devoting Principles 4 to 7 on the subject. In the context of access to justice for victims, the Declaration incorporates a number of principles dealing with the justice mechanisms, the promptness of the proceedings, as well as the victim's right to participation and the duties of assistance to the victim.

Reparations to victims, including restitution of property, compensation, reimbursement of expenses, provision of services and restoration of rights, are also part of the accountability measures of perpetrators of crimes (Principles 8 to 11). These obligations have significant relevance and are found in the UN system, regional human rights protection systems, domestic legislation, and international criminal law.

While the criminal process focuses on determining the guilt and responsibility of the accused, once a conviction is secured, the focus should be shifted to repairing the victim's rights by putting them in a position as close as possible if the crime was never committed.

In the national legal system, there are general provisions on the nature of compensation of the aggrieved party (arts. 72, 255 and 284 CCP). Instructions issued by the Superior Council of the Public Prosecutor's Office, in Circular No. 02/PGR/2017, of 27 December, provided guidelines to increase victim's access to financial compensation by the accused, establishing an institutional duty to inform the victim of her rights as well as to represent the victim in the request for compensation.



VICTIMS SHOULD BE INFORMED ABOUT THEIR RIGHTS, THEIR ROLE AND SCOPE, THE TIMING AND PROGRESS AND DISPOSITION OF THEIR CASE²³

Situations of violence against women and girls often represent a high risk for the victims, potentially resulting in severe impacts on their physical and mental integrity. In some instances, family violence will impact on family matters, such as separation, divorce and custodial rights of children. It is therefore necessary that throughout the judicial process there are opportunities for communication between the various actors involved in the process and the victim.

This good practice is even more pertinent when criminal and civil law issues are intertwined since it becomes more difficult for the victim to understand and follow all the decisions. It can be confusing and distressing for the victim to have conflicting instructions and different proceedings in civil and criminal courts.

The role of the Public Prosecutor includes the duty to ensure that the victim is informed about their rights and the specialised services available to them. This also includes being entitled to receive updated information on the progress of the judicial process and the outcome of the case.



23. Council of Europe, Preventing and combating domestic violence against women - A learning resource for training law-enforcement and justice officers, January 2016, 46-47.



Victims should always be given updates regarding their case, at least in cases where there is a risk or danger to the victim and their family; in cases for example where the accused absconds or when the accused is temporarily or permanently released.

In Timor-Leste, as provided for in Article 92(2) of the CCP, the victim/aggrieved party is informed through formal notification at two main phases of the process. The first at the time of the conclusion of the criminal investigation, where they receive a copy of the indictment or the decision to archive the case; and second notification upon the final decision of the case with a copy of the court judgement. The victim must also be informed of her right to compensation, provided in Article 72(2) of the CCP. The victim also has the right to access the case file or court records, as provided in Article 77 of the CCP; however, in practical terms, most victims will only be able to exercise this right when supported by legal representation. Even when accessing legal representation, there is some resistance in providing the documents and information that the victim is entitled to.

The LADV also determines a broader right of access to information by the victim. In Article 25, it is foreseen that the legal representative has to inform the victim about the progress of her case regularly.



VICTIMS SHOULD BE ABLE TO EXPRESS THEIR VIEWS AND CONCERNS, WHICH SHOULD BE PRESENTED AND CONSIDERED AT APPROPRIATE STAGES OF THE CRIMINAL PROCEEDINGS

As provided in Principle 6(b) of the Declaration of Victims' Principles, victims' participation in the process as a means of ensuring adequate access to justice, includes the right of the victims to present their opinions, concerns and have them taken into consideration at the relevant procedural stages, in cases where their personal interests are affected. Victims' rights can and must be secured without negatively impacting the rights and guarantees of the accused and also afford the implementation of other relevant legal norms.

This right can be ensured through the production of evidence, the opportunity to testify, and the possibility of having a legal representative, among others. In Timor-Leste, the CPC expressly provides several guarantees regarding the participation of the aggrieved party (or victim) during all stages of criminal proceedings.

The aggrieved party may request the taking of a declaration in advance of the trial hearings (Article 230, CCP), submit to the Public Prosecution during the criminal investigation requests for evidence collection (Article 72(1) CCP), present a hierarchical appeal against a decision to close the investigation (Article 235(4) CCP), provide information and participate in crime scene inspections during the trial (Article 145 CCP), prepare expert evidence questions before the trial (Article 155(2) CCP), and also, when directly relevant, submit an appeal on the final decision (Article 289 CCP) and make a separate request for compensation, if they so wish (Article 72(2)(a) CCP).

The integral realisation of these guarantees will only be possible when the victim has the support of a legal representative, as it is practically challenging to exercise these rights without such representation. To a full realization of this guarantee, when needed translation services should be guaranteed to ensure that language barriers do not prevent victims from participating in any stage of the judicial process.



VICTIMS SHOULD HAVE ADEQUATE ASSISTANCE THROUGHOUT THE LEGAL PROCESS

In addition to Principles 14 to 17 of the Declaration of Victims' Principles, which provide for the victim's right to material, medical, psychological and social assistance, Principle 6(c) states that support shall be provided throughout the judicial process as a means of enabling the responsiveness of the judicial and administrative apparatus to the specific needs of victims.

This principle has several aspects, among which:

- I. Possibility of free legal assistance in all legal proceedings, especially criminal proceedings, to secure the victim has the necessary means to exercise their rights and to prevent secondary victimisation;
- II. Possibility of free legal aid, including the right to be accompanied and represented in court by a specialised service and access to specialised services to receive guidance and assistance in using the legal system;
- III. Free access to a qualified and impartial interpreter and translation of legal documents when requested or required. Language barriers are a primary obstacle for survivors of violence, including migrant workers and survivors of domestic violence, when seeking safety for themselves and their children and accountability for their abusers.²⁴

In Timor-Leste, the victim's right to have legal representation as the aggrieved party in a crime is legally guaranteed when undertaking a direct interpretation of the procedural guarantees as expressly provided for in the CPC and already highlighted above under the section of victim's participation.

The right to legal assistance is also established for domestic violence victims (Article 25 of the Law against Domestic Violence), which shall be mainly provided by the Public Defender's Office, free of charge, as identified in Article 1(1) of its Statute.²⁵

The victim of domestic violence in Timor-Leste, as provided by law, has a broad right to assistance, which is achieved through access to emergency and non-emergency medical assistance, specialised social, psychosocial and humanitarian assistance services along with legal assistance (Articles 20 to 27 of the Law Against Domestic Violence). As a direct consequence of these legal provisions, there are corresponding duties or obligations of the State.

24. UN, Handbook for Legislation on Violence against Women, 2010, 38-44.

25. Decree-Law No. 108/2017, of 29 March.



RECOGNITION OF CHILDREN AS VICTIMS AND WITNESSES OF GENDER-BASED VIOLENCE AND PROVISION OF SERVICES TO ENSURE THEIR PROTECTION²⁶

To ensure a child's best interest, all phases of the judicial proceedings shall consider children's specific needs while at the same time factoring in their individual development.

Children should be protected from violence, including domestic violence, and from living in an environment that may negatively impact their psychological integrity. With this, regulation of parental responsibilities (visiting rights and custody or care of minors) need to consider allegations of domestic violence in the family context.

The State should take all necessary legislative and/or other measures to protect the rights and interests of child victims, including their unique needs as witnesses, at all stages of investigations and judicial proceedings.²⁷

There is a need to consolidate domestic violence cases with family cases to protect children; for example, in relation to limitations on parental visiting rights. Applying the coercive measures provided in the LADV can be a response in this context, and its application can result in a court's imposition of one of the accessory penalties on the accused.

In States following a civil law system, it is possible to identify specific legislative and institutional measures in the area of domestic violence as a tool to promote the protection of children. One of these measures includes combining criminal and civil proceedings within the 'sufficiency of criminal jurisdiction' framework.²⁸ An example of effective articulation between the two areas – civil and criminal – is the creation of specialised joined sections of criminal and civil jurisdiction and the provision of specific urgent measures to protect the child throughout the proceedings.²⁹

Violence often occurs within the family environment, and it is possible to consider ancillary issues during the criminal procedure. For instance, family law issues could be incorporated into the criminal process when deemed directly relevant to the case. Article 9 of the CPC establishes that "unless otherwise provided by law, it is in the criminal proceedings that all questions of interest to the decision of the cause are resolved, regardless of their nature"; leading us to argue that in cases of domestic violence, the criminal procedure should, in some instances, include family issues. This interpretation is not only supported by the letter of the law, but also is a required instance considering the need to comply with Article 3 of the Convention on the Rights of the Child, already ratified by Timor-Leste and the current lack of a child rights legal regime that can provide for the urgent treatment of child cases and the duty to ensure the best interest of the child,³⁰. The possibility of interim child maintenance support is regulated by the LADV (Article 32 LADV), wherein it states that "the Court may at any time, ex officio or at the request of the victim or the Public Prosecutor, grant provisional maintenance". It is important to note that "in case of economic insufficiency of the accused, the maintenance due is supported by the services of the Ministry of Social Solidarity" (Article



26. Council of Europe, Preventing and combating domestic violence against women - A learning resource for training law-enforcement and justice officers, January 2016, 27.

27. Ibid.

28. See, for example, Brazil (Law No. 11.340/2006).

29. As is the case of Portugal, where in cases of domestic violence or other forms of violence in a family context there are specific tools, presenting emergency solutions. An example of this is the urgent regulation or modification of the exercise of parental responsibilities when one of the parents is assigned the status of victim provided in the General Regime of Civil Guardianship Proceedings (RGPTC), or urgent coercive measures, provided in the Legal Regime applicable to the prevention of domestic violence. Law No. 24/2017, of 24 May and Law No. 112/2009, of 16 September, establishes the legal regime of prevention of domestic violence and support to its victims, inculcates precisely this design of the legislator, imposing the communication to the Public Prosecutor's Office, of the family and minor's jurisdiction, of the application of the coercive measure, with the express purpose of being promoted the regulation of the exercise of parental responsibilities. Thus, Specialised Integrated Sections on Domestic Violence (SEIVD) were created in the Public Prosecutor's Office, composed by the Penal Action Units (NAP) and the Family and Children Units (NFC) to provide an effective response and ensure the coordination of these two areas.

30. Parliament Resolution No. 16/2003, of 24 September.

32(3) LADV). Thus, this legal provision allows the victim to be economically independent of the defendant during the process. Interim maintenance is an important measure to encourage victims of domestic violence who are financially dependent on their husbands, or ex-husbands, to file a complaint, and be in a position to fully cooperate with the authorities during the proceedings. After the conclusion of the process, the law allows for interim maintenance support to be converted into permanent maintenance support (Article 29 LADV).



Regulation of Parental Responsibility and Maintenance Support under Criminal Proceedings

In **Timor-Leste**, as recorded in the judgement of the Court of Appeal in Proc. 14-CO-2019, dated 7 March 2019 at the District Court of Suai, before a case of domestic violence decided to accept the maintenance agreement between the defendant and the aggrieved party/victim they also determined the regulation of the parental authority of the children within the framework of the criminal proceedings. In addition, the panel of judges of the first instance court determined that the maintenance payment corresponded to a specific legal obligation imposed as a condition for a suspended imprisonment sentence to the defendant, therefore giving effect to Article 69 of the Penal Code.

From the point of view of the protection of victims of GBV and domestic violence crimes, the decision of the Suai District Court is strongly welcomed and should be encouraged.



Child Protection Measures in cases of Domestic Violence: Brazilian Legislation

In **Brazilian** jurisdiction, under Law 11.340/2006, called 'Maria da Penha Law', aimed at combating domestic violence, in Article 22 provides as one of its urgent protective measures "the restriction or suspension of visits to minor dependents, after hearing the multidisciplinary care team or similar service" and "the establishment of provisional or temporary maintenance support" to protect the interests of children.

These legally provided measures may be imposed as soon as the practice of domestic and family violence against women is reported and, therefore, even before the beginning of a police criminal inquiry.³¹



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An imminent Child Protection Law being discussed in late 2022 in the National Parliament is expected to fill many of the gaps in relation to the provision of specific guarantees and protection to children.

31. Brazil, Law No. 11.340, 7 August 2006.

PROVISION OF SANCTIONS FOR NON-COMPLIANCE BY THE COMPETENT AUTHORITIES TO ENSURE EFFECTIVE IMPLEMENTATION OF LEGISLATION TO COMBAT GENDER-BASED VIOLENCE³²

All institutional actors should effectively comply with relevant rules to protect victims of gender-based violence. When before non-compliance with applicable legal provisions, the law should provide for sanctions and secure their enforcement when rules are violated.

The UN, through one of its General Assembly resolutions in 2010, requires its Member States to adopt within its domestic legal system, as appropriate, various enforcement measures concerning violations committed by police authorities, prosecutors and other criminal justice agents³³. These measures include the effective implementation of the law, policies, procedures, programs, and practices related to violence against women; the development of comprehensive, multidisciplinary, coordinated, and systematic responses to this form of violence; and the use of experts by the criminal justice system, among others. The implementation of these measures allow the criminal justice system to have adequate agents, practices and procedures to assist victims of violence against women, conducting efficient investigations and thus providing a tool to combat this form of violence.³⁴

This UN Resolution also provides for the need to promote accountability for any violations committed by public agents through adequate oversight and accountability mechanisms.³⁵

In Timor-Leste, the national legal system allows for the implementation of such recommended practices since the bodies of the criminal justice system have their competencies well-defined in their Statutes, and mechanisms are established to promote administrative and disciplinary accountability of the relevant profession.³⁶ Moreover, the Penal Code provides for the criminal liability of those who failed to report the crime they have become aware of when they are legally required to do so.³⁷

32. UN, Handbook for Legislation on Violence against Women, 2010, 21.

33. UN, General Assembly Resolution 65/228, Strengthening crime prevention and criminal justice responses to violence against women, 21 December 2010.

34. UN, General Assembly Resolution 65/228, Strengthening crime prevention and criminal justice responses to violence against women, 21 December 2010. The duty of public authorities to act, and the consequent accountability of public authorities when they fail to observe this duty, may also be seen in regional systems for the protection of human rights. In the case *Sandra Janković v. Croatia*, the European Court held that there was a violation of art. 8 of the Convention (right to privacy) as a result of the inefficiency of the authorities and their failure to act in the face of violence suffered by the victim. With regard to respect for private life, the ECtHR jurisprudence states that the concept of private life includes the physical and psychological integrity of the individual. By art. 8, States have a duty to protect the integrity of a person vis-a-vis third parties, and for this purpose, they must maintain and apply in practice an adequate legal system that provides protection against acts of violence by individuals. See ECtHR, *Sandra Janković c. Croatia*. Final judgement of 14 September 2009, para.44-59.

35. UN, Strengthening crime prevention and criminal justice responses to violence against women, 2010, para. 16 (j).

36. See, for example, Disciplinary Regulations of the Timor-Leste National Police (Decree-Law No. 44/2020, of 7 October, arts. 99 ff. of the Statute of Judicial Magistrates (Law No. 5/2022, of 30 March) and arts. 226 ff. of the Statute of the Public Prosecutor (Law No. 7/2022, of 19 May).

37. This is the crime of "non-participation", provided for in Article 286 of the PC.





**OVERVIEW OF
TIMOR-LESTE'S LEGAL
FRAMEWORK TO
PREVENT AND COMBAT
GENDER-BASED
VIOLENCE**

I. OVERVIEW OF TIMOR-LESTE'S LEGAL FRAMEWORK TO PREVENT AND COMBAT GENDER-BASED VIOLENCE

Similar to other countries, Timor-Leste adopts mainly but not only, criminal laws to combat gender-based violence. The use of criminal law in combatting GBV includes the provision of several specific offences in legislations allowing State to structure its institutions and procedures to deal with these particular forms of violence.

As already seen, the Penal Code is the main legal instrument when considering the GBV framework of Timor-Leste, with crimes against life, physical integrity, and personal freedom (which includes sexual offences), among others. Although not provided as an offence in criminal legislation, sexual harassment is prohibited by Article 7 of the Labour Law (Law No. 4/2012, of 21 February), which prohibits any form of harassment against a job applicant or worker, including sexual harassment.³⁸

The Code of Penal Procedure provides rules on the different stages of the criminal process and the actions of each procedural actor. It further provides for the role and guarantees of the victim as the aggrieved party. Despite not integrating all the positive advances made in combatting GBV, the Code of Penal Procedure, nonetheless, serves as a good enough basis to advance gender justice by establishing some specific powers of the victims during the criminal procedure.

In 2010, Timor-Leste approved the Law Against Domestic Violence (Law No. 7/2010, of 7 July), which is multidisciplinary and aims to address domestic violence as a social phenomenon that requires the integrated role of different actors, powers, and institutions. It establishes fundamental principles, contains legal norms of criminal and procedural nature, provides for the availability of specialised services to victims of domestic violence and demands cooperation between different entities with competency to intervene in this area, among others.

Unlike several civil law system jurisdictions, in Timor-Leste, the judicial administrative bodies (such as the Superior Council of Police, Prosecutor General or Superior Council of the Public Prosecution, President of the Court of Appeal or Superior Council of the Judiciary) have not yet approved operational regulations on incorporating guidelines in dealing with victims and the prosecution of GBV. It has already been extensively mentioned as a recommendation made by the Judicial System Monitoring Programme (JSMP) that practical tools of this nature need to be developed, with particular attention to the stages of issuing the indictment and sentencing.³⁹

With the absence of specific regulatory tools on GBV, the effective implementation of guarantees for the victims of gender-based violence depends on the individual performance of each participant in the proceedings. It is noted that the Standard Operating Procedure of the Ministry of Social Solidarity approved in 2011, while being an important tool, is limited in scope, providing guidance to specialized victim support services and the referral network. This tool is not a guidance on procedures for judicial actors within the criminal procedure.⁴⁰

38. Article 7(3) provides that “constitutes sexual harassment any unwanted conduct of a sexual nature, which affects the dignity of women and men or which is considered offensive, in verbal, non-verbal or physical form, such as contact or insinuations, comments of a sexual nature, display of pornography and sexual demands, or which creates an intimidating, hostile, humiliating and destabilising work environment for the person harassed.”

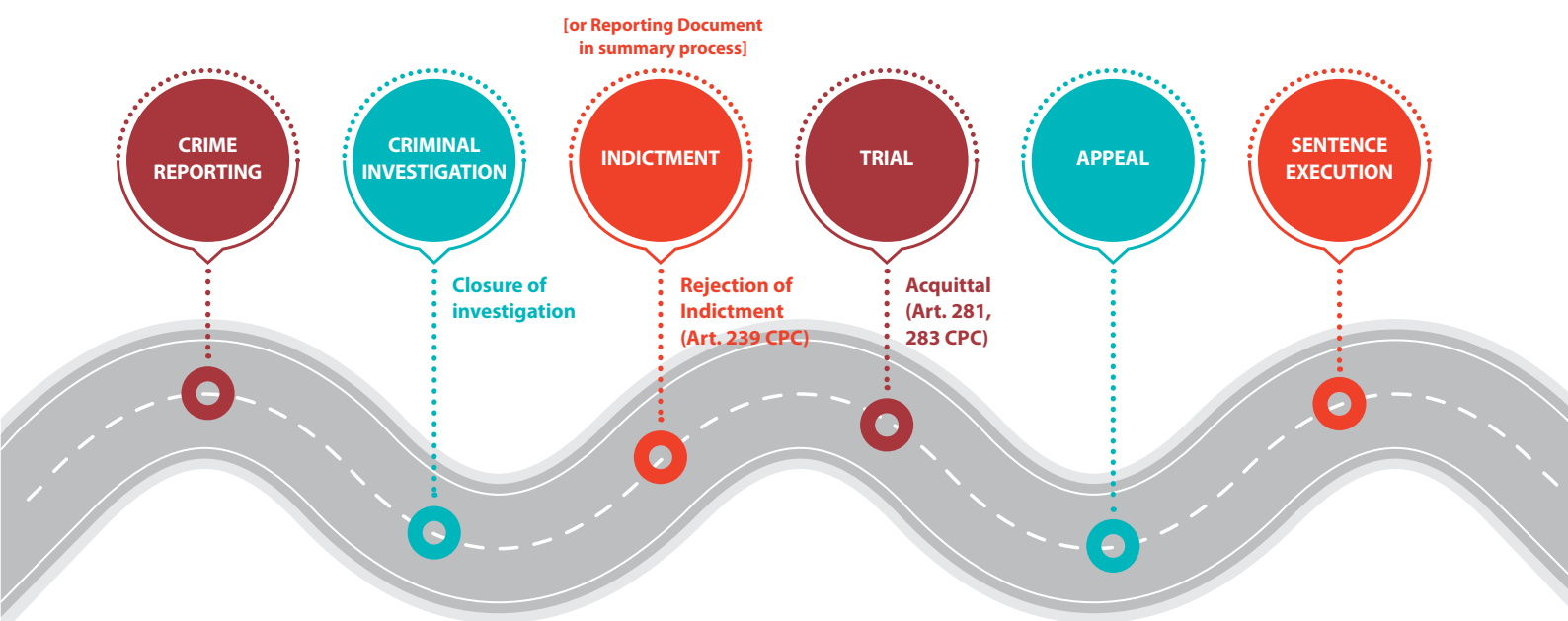
39. Judicial System Monitoring Programme, *Observasaun Jerál Setór Justisa 2020, 2021*, 36.

40. Ministry of Social Solidarity, *Prosedimentu operativu normalizadu kona-ba jestaun no koordinasaun atu aid victim violénsia doméstika, violénsia seksuál no forma seluk ba violénsia hasoru fetu no labarik*, 2017, 18.

It is fair to say that currently in Timor-Leste, as this Report shows, a GBV victim could have a lucky encounter when going through the criminal process: she might be served by a public agent who has the sensitivity and the capacity to deal with GBV cases, and who shows empathy and concern for those involved, based on the recognition of the trauma the victim has suffered. On the other hand, another victim could have an entirely different experience, encountering with professionals who have limited knowledge on how to deal with gender violence and how to ensure a trauma-informed process, and who reproduce gender social constructions in their work, thus contributing to the victim's re-victimization in the process.

II. THE VICTIM IN THE CRIMINAL PROCEDURE

When considering as the involvement of the victim in the process, the criminal proceedings in Timor-Leste in GBV cases can be divided into six key stages: (1) crime reporting; (2) criminal investigation; (3) indictment; (4) trial; (5) appeal; (6) execution of sentence.



The articulation of the phases of the criminal procedure as presented in this report considers specifically those steps of a decision-making nature and the role of the various judicial actors involved.

For this study, the aggrieved party, as a procedural participant provided for in the Code of Penal Procedure, will sometimes be referred to as a 'victim'.

The primary purpose of penal procedural law is obtaining justice and discovering material truth. To this end, the procedural initiative is a power given to a public entity, revealing the State's competency and the corresponding obligation to promote respect for the fundamental rights of citizens and its duty to administer and carry out criminal justice.

Throughout the steps that constitute 'the Path' presented here, the Report summarizes the legal framework using the leading legislative diplomas, namely the Code of Penal Procedure and the Law Against Domestic Violence.

For each stage of the process, some challenges and difficulties faced by the court actors and the victims of gender-based violence are identified. The Report also presents recommendations to promote a more effective victim protection framework by identifying good practices based on international human rights protection standards and other national jurisdictions' laws and practices.

The illustration presented in the end of the Report identifies the main challenges the victim faces at all stages of the criminal process, thereby systematically summarising the key limitations currently found in Timor-Leste, preventing full enjoyment of victims' rights. Considering this Report's goal to highlight gaps in current practice, the systematic summary in illustrative form is limited to identifying challenges faced by the victims, not including good practices identified throughout this Report.

The case studies and the experiences recorded in this part of the Report about the practices in Timor-Leste is the result of primary research from interviews with court actors, victim and support service professionals, as well as trial observation and case file documents. Depending on the specific nature of the case, there has been an intentional effort to omit both the identity and the identifying personal details of victims.



1. INITIAL OR PRELIMINARY ACTS

CRIME REPORTING

National Legal Framework

The reporting of a crime to the competent authorities – or the information that a crime has occurred – is of particular importance, since this step represents the beginning of an entire criminal process.

Crime reporting, in the national legal system, can take place in two ways, depending on who makes the reporting: by 'denunciation', when the offence is communicated by the victim him/herself or by third parties who have knowledge of the crime; or by 'participation' when public entities with specific legal duties report the crime.

For a crime to be formally recorded and criminal proceedings to be initiated, it must be reported to the police authorities (i.e. PNTL officers,⁴¹ Anti-Corruption Commission,⁴² Migration Service,⁴³ and PCIC⁴⁴) or the Public Prosecution (Art. 49(2) CPC). When dealing with semi-public crimes, reporting a crime requires a complaint from the person who has been directly offended or impacted by the crime (i.e. the victim).

Article 106 of the Penal Code determines what crimes may have a public or semi-public nature. A public crime is an offence whose criminal procedure does not depend on a complaint by the victim (or offended party). In contrast, the crime is semi-public when a criminal procedure depends on the formal presentation of a complaint by the person directly affected by the offence. The Criminal Code further provides that all crimes are public unless the Criminal Code expresses otherwise.

41. The National Police of Timor-Leste (PNTL) is "a security force whose mission is to defend democratic legality, guarantee the safety of people and property and safeguard the rights of citizens, in accordance with the terms established by the Constitution and the laws" (Art. 1(1) of the Organic Law of the PNTL, Decree Law No. 9/2009, of 18 February).

42. The Anti-Corruption Commission (CAC) is a "legal person governed by public law, with legal personality, technical independence and administrative and financial autonomy", and has the "status of a specialised and independent criminal police body, guided only by criteria of strict legality and objectivity under the terms of the law" (Article 3 of Law No. 8/2009, of 15 July, which creates the CAC).

43. The Migration Service (SM) emerged as an integral part of the PNTL, but was later transformed into a separate and autonomous body. It remains, however, a body of criminal police and thus "acts in the process, in terms of the criminal procedural law, under the direction and functional dependence of the competent judicial authority, carrying out the actions determined and the acts delegated by that authority" (Article 1(3) of the Organic Law of the Migration Service, Decree-Law No. 30/2009 of 18 November).

44. The Scientific and Criminal Investigation Police (PCIC) was created to deal especially with more complex and sophisticated forms of criminality. Article 3(1) of its Organic Law states that this organisation "has the mission of assisting the judicial authorities, developing and promoting prevention, detection and investigation actions of its competence or that are assigned to it by the competent judicial authorities, as well as ensuring the national centralization of criminal information and respective operational coordination and international police cooperation" (Decree-Law No. 15/2014, of 14 May, amended by Decree-Law No. 21/2014, of 6 August).

As established in the relevant regulations, the right to complain consists of the manifestation of the will of the offended party to exercise their rights to initiate criminal proceedings. The legal provision of semi-public crime reflects the intention of the legislator to give the offended party the decision to determine how they want to deal with the violation suffered. It offers the victim a choice to use the criminal proceedings or an alternate avenue (a civil suit or process such as an out-of-court resolution or even a judicial process of civil nature). Semi-public crimes are those less severe crimes in which the State will exercise its criminal powers only when it reflects the express will of the person directly impacted by the offence.⁴⁵

Domestic violence crimes are public crimes, as determined by Article 36 of Law No. 7/2010, 7 July. As such, they are not dependent on the victim's complaint, and any individual can report the crime.

However, not all crimes that fall under gender-based violence are public crimes since gender-based violence is not limited to domestic violence. Thus, gender-based violence also includes sexual violence; the crimes of sexual fraud or sexual exhibitionism,⁴⁶ present in Articles 180 and 181 of the PC, depend on a complaint, while the crime of threats and disclosure of private facts are semi-public crimes (Articles 157 and 183 of the PC, respectively).

Article 210 of the CPC stipulates that when before a public crime, a notice of the crime can also be based on the information given by any individual.

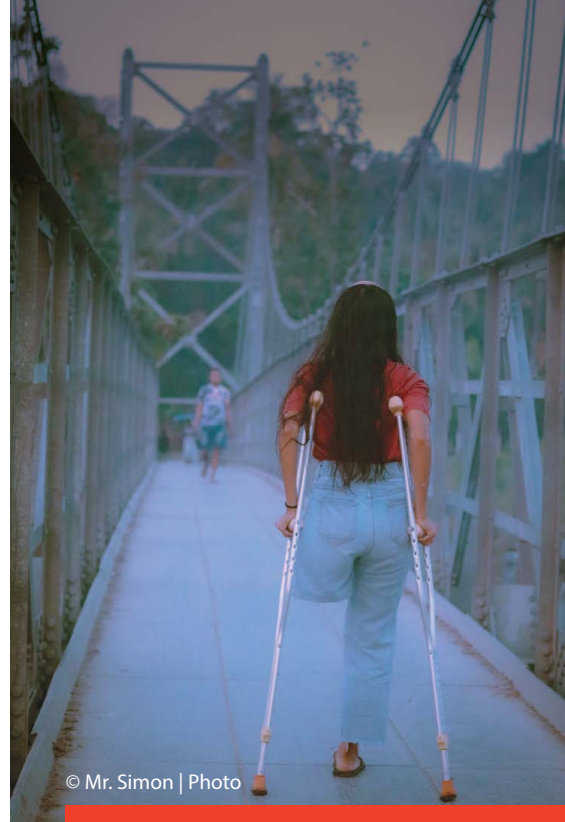
The 'participation' of a crime is defined as the act of crime reporting made by individuals with a legal duty to do so. The obligation to report is primarily imposed on the authorities directly involved in the criminal investigation, i.e. the Public Prosecution or the law enforcement.

Any police officer, or any public officer, who becomes aware of the commission of any crime – public or semi-public – is obliged to report it. This obligation is also extended to any agents, authorities or public officials when they become aware of the crime during the exercise of their functions or because of them, as provided in Article 211 of the CPC. Failing to comply with this legally imposed duty constitutes a specific criminal offence, provided in Article 286 of the PC, called 'non-participation'.⁴⁷

In this context, it should be noted that public authorities have a legal duty to report knowledge of a crime. In contrast, an individual – a private person – who has knowledge of or has witnessed a crime has the right to report it. Thus, the private individual has no duty to report and may never incur the crime provided in Article 286 of the PC.

In semi-public crimes, the criminal procedure will only be initiated if the victim formally submits the complaint, not being sufficient that the crime is reported by an individual or even an authority (Article 210(1)(d) CPC).

As regulated by Article 19 of the LADV, those working in shelters for victims of domestic violence should report all situations of domestic violence which they become aware to the National Police of Timor-Leste (PNTL) or the Public Prosecution. This reporting shall, nonetheless, respect the confidentiality and privileged nature of the information arising from the relationship between a victim and her counsellor working in the shelter.



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45. In this sense, the introduction to the Timorese Penal Code differentiates public and semi-public crimes: "The Penal Code, in the defence of the legal values and goods fundamental to life in society, distinguishes crimes of a public nature, which must necessarily be protected by the State, from those which, less serious, are dependent on the exercise of the right to complain, as already established in the criminal procedure legislation. Thus, all crimes which, in the Special Part of the Penal Code, determine that the exercise of the right to lodge a complaint is compulsory in the description of the respective legal type are considered to be semi-public crimes".

46. Sexual exhibitionism is a type of sexual harassment that presupposes the non-participation of the victim in the act, but their harassment with the practice of that act of a sexual nature, which takes place their presence and without their consent. Provided for in Article 181 of the Penal Code, there are two types of sexual exhibitionism: the public practice of acts of a sexual nature - without any specification as to what these acts would be, leaving it open to application to the specific case - and the public or private practice of specific acts - vaginal intercourse, anal intercourse or oral intercourse - in the presence of another person, without their consent.

47. This penal provision reads: "Whoever, having knowledge of the commission of a public crime and being obliged to report it, fails to do so, shall be punished with the penalty corresponding to the crime they covered up, reduced by two thirds in its minimum and maximum limits".

A crime report shall be registered in writing, and its record should ideally contain: all elements regarding the identification of the victim and the suspect; the facts constituting the crime; the day, time, place and circumstances in which the crime was committed if known; the identification of any relevant evidence; and any other information about the circumstances of the commission of the crime and the person reporting the crime to the authorities (Articles 211 to 213 CPC).

The PNTL has established the 'Vulnerable Persons' Unit' (VPU) that has been operational since 2001. It was initially established during the UN Administration in the country – at both national and district levels, with a VPU in each of Timor-Leste's municipalities – and this unit had the specific mandate of assisting victims of sexual crimes, domestic violence and child maltreatment.⁴⁸ Recently in 2022, for the first time, the VPU – now named "Support to Vulnerable People Subsection (SVPS)" – has been formally recognised in the Organic Statute of the PNTL, being a unit within the investigation department.⁴⁹

The VPU/SVPS is often noted as 'the gateway to the formal justice sector for women victims of crime' in Timor-Leste.⁵⁰ It was created precisely to provide, within the police service, an investigation department specializing in women and children cases, with jurisdiction over crimes such as rape and attempted rape, domestic violence, child abuse, child neglect, missing persons, and sexual harassment.⁵¹

The UN recommends the creation of specialised police and prosecutorial units to investigate these types of crimes.

The Statute of the Public Prosecution Services, approved by Law No. 7/2022 of 19 May, establishes the 'Guardian of Minors and Family' at each court's jurisdiction. This unit is competent to represent minors in court, protect their interests, and direct criminal investigations and indictments regarding sexual crimes against minors and crimes of domestic violence within its specific territorial jurisdiction.⁵²

With the establishment of specialised services to provide social, psychosocial and medical support as part of the implementation of the Law against Domestic Violence⁵³ and the existence of legal representation services, some victims seek out these specialised services before reporting the crime to the police or judicial authorities. In such cases, the victim is often accompanied by a specialised service when making a formal complaint before the competent authorities.

Good Practices in International and Other National Domestic Laws

Considering the complexity of GBV situations, the particular fragility and vulnerability of the victims, attention should be given to ensure that the victim's assistance is provided in a way that always respects their autonomy, dignity and privacy.

GBV victims' accounts of events should be held in a quiet place with privacy so that there is no disruption or the risk of others listening to their accounts.⁵⁴

48. PNTL, *Estratégia Jéneru ba 2018-2022*, 3.

49. Article 80(1)(a)(iv) Decree-Law No. 55/2022, of 3 August.

50. Judicial System Monitoring Programme, *Police Treatment of Women in Timor-Leste 2005*, 8.

51. *Ibid.*

52. Article 114 of Law No. 7/2022, of 19 May, approving the Statute of the Public Prosecution.

53. Article 15 of the LADV, in its Chapter on victim support and assistance, provides for State duty to secure assistance to victims by determining that the government "establishes, manages and supervises the national network of support centres for victims of domestic violence, which are responsible for direct assistance, refuge and guidance for victims" (n. 1), and that these support centres "are composed of reception centres and shelter homes, which work in coordination" (n. 2), among others.

54. Portuguese good practice also points to a similar direction, as provided in a police manual approved by the Council of Ministers - "Manual de Atuação Funcional a adotar pelos Órgãos da Polícia Criminal nas 72 horas subsequentes à apresentação de denúncia por maus tratos cometidos em contexto de violência doméstica". Among the guidelines, it is worth mentioning the one in which "[the] victim, when coming to the police facility or being taken there, following the intervention of the criminal police, should be received in a private place, ensuring her privacy and the absence of any kind of pressure. The victim shall also be attended, preferably or whenever requested, by a professional of the same gender. Being, by force of law, an especially vulnerable victim, any inappropriate action may increase her fragilization and/or vulnerability" (Portugal, Council of Minister Resolution No. 139/2019, of 19 August (2020).

Police officers, prosecutors and public prosecutors' officers should be aware that their role is to provide the necessary support to victims. They should not look at the veracity of the report with pre-conceived of the report made, and they should always treat victims without prejudice or discrimination.

Access to assistance shall be afforded to the victim while showing empathy and understanding for the situation experienced.⁵⁵ When registering the complaint, during the victim's account, the officer responsible for taking the statement should be careful to ask open-ended questions.

The police should also inform the victims of their rights, including access to free legal aid, and explain the steps in the judicial process.

Ideally, from the time a crime is reported, the victim should be accompanied on several fronts, including legal, medical, psychological and economic support. Should a victim wish to leave her residence, the authorities should support her in contacting relatives or acquaintances and also provide information about available support services, such as shelters.⁵⁶

Gender-based violence is always a violent crime, often committed by a person who has control power over the victim, and often known to the victim like a family member or friend. In such situations, there is a high likelihood that the victim may be afraid to contact police authorities for support due to fear of the perpetrator becoming aware of her reporting. To address this, several countries have instituted alternative ways to make a complaint (and trigger the initiation of the criminal process) and ask for help; for example, national hotlines with toll-free numbers, text messages, social media channels and telephone applications.⁵⁷ These measures allow for increased safety, especially when dealing with the most vulnerable victims, such as women with economic dependence, children, persons with disabilities or those living in rural areas. Such measures have seen an increase in numbers and improvement in reach with the COVID-19 pandemic, which demanded public services to adapt to non-face-to-face interaction.⁵⁸

The police play a crucial role in any response to violence against women. However, as reported in many countries, women who are victims of violence hesitate to call the police as they fear they will not be taken seriously or be considered as liars, which reflects the existence of low trust in the justice system.⁵⁹

Considering this perception of victims, good practice requires several actions to be taken by police authorities in cases of violence against women, for example:⁶⁰

- Respond promptly to every request for assistance and protection in cases of violence against women, even when the person reporting is not the victim;
- Provide the same priority to requests for support relating to violence against women as provided to other cases of violence;
- At the time of the crime reporting, conduct a coordinated assessment of the risks faced by the victim and by those reporting on the crime, and take the necessary actions to secure their protection;

55. UN Women, *Guidelines on Addressing Gender-based Violence against Girls and Women in Times of the Covid-19 Pandemic*, 2020, 20.

56. The Timor-Leste Domestic Violence Law provides that social assistance services shall, if necessary, facilitate the removal of the victim from her home to a place suitable to her needs (Article 23(e)). Similarly, the specialised police services should refer the victim, if she requests, to a shelter home or support centre (Article 24(2)(b)). The Public Prosecution must also refer the victim "to hospital care or to shelter homes, if this has not already been done" (Article 28(b)).

57. See, for example, United Nations Population Fund. *Guidelines for establishing hotlines to support survivors of gender-based violence*, Bangkok, 2021.

58. M. B. W. Vieira, F. E. A. Feitosa, D. D. Pinheiro; L. G Da Silva; P. P. T De Alcantara, 'New Ways to report Cases of Domestic Violence During the Quarantine Period Provided by Covid-19'; *Holos*, 37(3):10, 2021.

59. UNODC, *Handbook on Effective police responses to violence against women*, 2010, 2-43.

60. UN, *Handbook for Legislation on Violence against Women*, 2010, 35-36.

- Provide information on the applicable procedure, including the victim's rights, using appropriate language and in a language understood by the victim;
- Interview victims, including children, in a private place to ensure their opportunity to speak freely;
- Demonstrate respect and an empathetic attitude without criticising or making value judgements;
- Refer or arrange transportation of the victim to the nearest hospital or health centre, or unit for treatment when necessary or requested;
- Refer or arrange transport for the victim and their children or dependents if necessary or requested.



Ghana: Legal provision imposing duties upon receipt of GBV complaint

Section 7 of the **Ghana** Domestic Violence Act (Act 732 of 2007) provides that police officers shall respond to requests for assistance related to domestic violence and, depending on the case's circumstances, shall offer protection to the victim or the person reporting the crime.

Article 8 specifies the duties of a police officer receiving a complaint: take the testimony of the complainant, as well as those who witnessed the domestic violence, including children; record the complaint in detail and, upon request, provide the victim with a copy of her declaration in a language that the victim understands; assist the victim in obtaining medical treatment, when necessary, which should be free of charge; accompany the victim to a safe place, according to the circumstances of the case or when the victim expresses concern for their safety; offer protection to the victim to allow them to collect their belongings, when applicable; guide the victim in preserving evidence; and inform the victim of their rights and any available support services.



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According to international standards, it is also considered good practice to prohibit mediation to solve cases of violence against women of a public nature before or during judicial proceedings. Mediation of crimes related to GBV is a common practice in several countries. However, mediation removes cases of violence from the criminal judicial sphere, assumes that both parties have equal bargaining power, and reflects a presumption that both parties are equally culpable for the violence, thus reducing the perpetrator's responsibility.⁶¹

61. ONU, Handbook for Legislation on Violence against Women, 2010, 35-36.

Spain, Brazil and Peru: Legal Prohibition of Mediation in Cases of Gender-Based Violence



In **Spain**, the Law on Integrated Protection Measures against Gender Violence (2004) expressly prohibits mediation as a means of resolving any case of violence against women (article 44(5)).⁶²



In **Brazil**, the Maria da Penha Law (Law No. 11.340/2006), aimed at combating domestic and family violence, rules out cases of domestic and family violence from the application of Law No. 9099/1995, which creates the Special Civil and Criminal Courts and uses negotiated criminal justice mechanisms, seeking, whenever possible, conciliation between the parties (Article 41).



Similarly, in **Peru**, the Law to Prevent, Punish and Eradicate Violence against Women and Members of the Family Group (Law No. 30364, of 24 November 2015, from now on,⁶³ in Article 25, determines that domestic violence crime cannot be mediated.

The above three States all follow a civil law system.

Practice in Timor-Leste

Timor-Leste has a gender-based violence victim support network, which counts on the participation of police authorities, including the VPU and the Public Prosecutor's Office.⁶⁴ This network is gradually increasing the provision of support to victims of GBV, although not yet present in every locality of the country's territory.

This support network has developed several practical instruments and tools to promote quality victim support, including during the initial stage of crime reporting.⁶⁵

With its twenty years of operation, VPU has had the opportunity to develop its institutional capacity to receive reports of GBV crimes. In some police stations, the VPU has already established specific facilities for receiving complaints from victims, allowing victim interviews to be conducted in a welcoming and private facility.



Suai Village Police Station with GBV Victim Reception Facilities⁶⁶

Suai Village has a quality VPU facility to support its work. The facilities include a kitchen, in which the victim herself can cook meals, a room for sleeping, and an interview room. There are also toys and other relevant items or instruments in the interview room to promote a welcoming environment. Food items are also

62. Spain, Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género, "Artículo 44, n.5: "En todos estos casos está vedada la mediación".

63. Peru, Ley para prevenir, sancionar y erradicar la violencia contra las mujeres y los integrantes del grupo familiar, "Artículo 25. Protección de las víctimas en las actuaciones de investigación: En el trámite de los procesos por violencia contra las mujeres y los integrantes del grupo familiar está prohibida la (...) conciliación entre la víctima y el agresor".

64. See, to this effect, Ministry of Social Solidarity, Prosedimentu Operativu Normalizadu Kona-ba Jestaun No Koordinasauun Atu Ajuda Víctima Violéncia Doméstika, Violéncia Seksual No Forma Seluk Ba Violéncia Hasoru Feto no Labarik.

65. Ibid.

66. Site visit by JU,S Jurídico Social.

available, and their provision is under the responsibility of the Ministry of Social Solidarity.

The office for the VPU officials is located in the same facility, securing the proximity of the police and the victim, bringing a sense of security to them.

Victims, who are adults, can also sleep on-site if they need a safe place.

When transport facilities are available, the VPU facilitates the transport of the victim and the members of her family accompanying the victim back home whenever necessary.

As a result of the research undertaken for this report, the main challenges found during the phase of crime reporting are: attempts to mediate GBV crimes, including domestic violence, the prevalence of strong gender stereotyping, including the use of prejudicial language based on stereotypes and victim-blaming, and limited quality of the written recording of details of the crime reported.⁶⁷

In practice, when reporting a crime, police officers often try to discourage victims from registering the offence, even when it is a public crime. This police conduct evidences a total disregard towards the victim. It fails to acknowledge that it was the victim's effort to reach out for the police to report the crime in the first place and that she was ready to cooperate fully with the authorities.⁶⁸

There are also several reports indicating that victims are asked by police and prosecution authorities if they wish to continue with the criminal proceedings or not, even when it is a public crime. This type of question causes doubt and confusion to the victims, as to whether the judicial process is optional or not.

As noted in several studies, mediation of gender-based violence is still a reality in Timor-Leste,⁶⁹ even though it has been reported that, more recently, the number of mediations of GBV crimes by community authorities has decreased.⁷⁰ Occasionally, community leaders are directly involved in attempting conciliation between the suspect and the victim.⁷¹



Community leader (Suco Chief) promotes marriage between a 15-year-old girl and her abuser

In September 2018, a community leader (Suco Chief) in Baucau Municipality encouraged and mediated two families of the local community to promote the marriage of an adult male and a 14-year-old child who was a victim of repeated sexual abuse by the man. As a consequence of the sexual abuse, the victim got pregnant. The accused was a member of the victim's extended family and was also responsible for supporting her upbringing. The case was registered with the police only after the victim's

67. There are a number of studies and report registering the widespread prevalence of gender stereotypes in Timor-Leste. See, for example, Sara Niner, Hakat Klot, Narrow Steps: Negotiating Gender in Post-Conflict Timor-Leste, *International Feminist Journal of Politics*, 13(3), 2011, 413-435.

68. Judicial System Monitoring Programme, Access to Justice for women victims, 2004, 17; Judicial System Monitoring Programme, The treatment of women by the police in Timor-Leste, 2005, 12; Judicial System Monitoring Programme, *Relatório Observasaun Setór Judisiáriu* 2013, 2014, 37.

69. UN Women, *Women's multiple pathways to justice: Alternative Dispute Resolution and the impact for women in Timor-Leste* (2019); Judicial System Monitoring Programme, *Relatório Observasaun Setór Judisiáriu* 2013, 2014, 37; Judicial System Monitoring Programme, *Lei Kontra Violénsia Doméstika: Tinan tolu implementasaun ho nia obstakulu*, 2013, 8.

70. Recent survey from The Asia Foundation Timor-Leste Safety, Security, and Justice Perceptions Survey, 2022 show that an increased number of community members seek the police in cases of domestic violence, and that community leaders are becoming more aware of their limited powers in mediating domestic violence. Despite that, there is still registered that a high number of victims firstly reach out to community authorities in cases of domestic violence. See The Asia Foundation, *Timor-Leste Safety, Security, and Justice Perceptions Survey, 2022*, 24, 25. See also, *Comissão para a Reforma Legislativa e do Sector da Justiça*, 2017.

71. Judicial System Monitoring Programme, *Relatório Observasaun Jerál Setór Justisa* 2016, 2017, 32.

family did not agree to the amount offered by the accused's family as the bride price.

Facts recorded in the Judgement of the Court of Appeal, Case No. 194-CO-2019-TR, dated 11 November 2020.⁷²

Regarding the institutional barriers faced by the justice system during the phase of crime reporting, police officers sometimes are unwilling to receive a complaint of GBV. There are several explanations for such unwillingness, such as discriminatory attitudes based on the victim's gender and/or limited interest in fulfilling their professional obligations to serve the community.⁷³



Dili PNTL Police Officer: "Come to the police station another day." "Do you want to continue with the complaint?" "What did you do to make the suspect hit you?"

In February 2022, Joana (not her real name), a 30 year old woman with a university degree and employment, approached one of the main PNTL police stations in Dili to report a crime of physical offence in the form of domestic violence by her partner. On the previous night, the police intervened to deter the violence from continuing. Despite that, they failed to record the complaint, asking the victim to return to the police station another day because the violence had been committed late into the evening to register the complaint.

Upon arrival at the police station, a male PNTL officer asked if the victim wished to continue with the complaint or if she preferred to resolve the problem within the families. As recounted by the victim, this question brought genuine confusion about the nature of the crime, as on the day of the violence, another officer had informed about the public nature of the crime.

After the victim reiterated her willingness to 'continue with her complaint', the same officer started the interview. When hearing the victim's testimony about the facts, he asked, "what did you do to make the suspect hit you?" (saida mak ita halo ne'ebé halo suspeitu tuku ita?).⁷⁴

Although police officers are aware that most GBV crimes are public offences, gender stereotypes and the long-standing practice of mediation of domestic violence before the approval of the Penal Code and the LADV make it difficult to record the crime at all times. This challenge is more noticeable in sexual crimes or when crimes are reported by individuals who are not the direct victim of the offence.

Often times, there is a misconception that GBV crimes require violence or aggression to be considered a crime, for example bloody injuries or broken

72. Note that the Court of Appeal's decision did not attempt to condemn the attempted marriage of the child.

73. Judicial System Monitoring Programme, *Overview of the Courts in East Timor in 2004*, 17 December 2004, 13.

74. Interview with JU,S Jurídico Social.

bones. As per definition of the different crimes, including domestic violence, the incident may not have 'serious' injuries, but is still a crime. There is also a misconception within the Timorese community that sexual crimes involve two private individuals within a 'relationship'; and therefore falsely think that only the victim can report the crime. For this reason, even though the vast majority of sexual crimes are public, a report made by a third person will often not be registered by the police authorities.



Unregistered child sexual abuse awaiting direct complaint from the victims

The PNTL, in 2018, received a complaint of sexual abuse committed over an extended period to potentially several children in a residential facility from an individual who was not a victim themselves. The PNTL did not formally register the complaint because the victims themselves had not provided the information and without a complaint from them, the case could not be registered.⁷⁵

The sexual abuse of minors is a public crime; therefore, it does not depend on a complaint from the victims. According to the Timorese legal system, the PNTL had the legal duty to register that case. Once a criminal investigation was opened, an investigation should have included gathering the identity of the victims, if any.

INTERVIEW BY THE POLICE OR PUBLIC PROSECUTOR

National Legal Framework

As already mentioned, through crime reporting, including victims' complaints, the Public Prosecution and the relevant police bodies are informed about facts that may constitute a criminal offence.

The victim recounts what has occurred, often being the first person to be heard in the process. A criminal offence may be reported by a third person who has relevant information, and as such, a specific report by the victim is not a required step to secure the initial recording of the case.

A first account of the facts by the victim or another complainant can be given immediately after a crime is committed or at any time after knowledge of the offence. In public crimes, the maximum time frame imposed by law to allow for reporting is the prescription period of the specific criminal offence. Semi-public crimes carry a 6-month limit for a complaint from the victim (Article 215 CPC).

The record of the alleged criminal offence shall contain as much factual detail as possible, as required by Article 97 of the CPC.



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75. Case registered with JU,S Jurídico Social.

There are no specific legal norms on how to take a victim's statement, including the practices to observe to ensure respect for their rights. Also, to date, there are no operational instruments for police and prosecution authorities to support this step.

Based on an interpretation following the Constitution and integrating human rights standards as per international treaties ratified by Timor-Leste, relevant authorities should fulfil their duties of guaranteeing full respect for the victims' right to dignity and privacy during statement taking. However, as reported below, current practice shows a lack of uniformity and have indicated grave violations of GBV victims' rights, and to a certain degree can be attributed to be the result of a lack of formal operational instruments in this area.

The PNTL also has the legal duty to provide information to the victims of domestic violence (Article 24(2)(a) LADV).⁷⁶

The Law against Domestic Violence determines a legal obligation to provide legal support to a victim of domestic violence in all of the steps of the procedure if she wishes (Articles 25 and 5 LADV). If a victim cannot afford to pay for legal representation, she can access the Public Defender Office's services, which are free of charge (Article 25(1) LADV).

Good Practices in International and Other National Domestic Laws

Victims of violence are usually found in a fragile physical and psychological state due to the impact of the crime they suffered. This reality should always be at the forefront of any contact with a GBV victim, especially during the interview.⁷⁷

Ideally, victims should give their statement as soon as possible while their memories are still fresh. Taking statements as early as possible from a victim is also recognized as a means to avoid re-victimisation by making the victim relive the traumatic experience after some time has passed. A victim's statements and testimonies from witnesses may also help assess the risk and determine the safety measures to be taken in a particular case.

The statement-taking from a victim should be carried out only after her immediate safety has been assured. Also, victims should receive information about the possibility of providing a statement later when they feel better.

As it happens with the initial reporting of the crime, a victim's testimony should always be taken in a quiet room, without any external disturbance.

The UN recommends the establishment of specialised police and prosecutorial units on violence against women, with adequate funding to undertake their work. It is also crucial that relevant officers can ensure a victim-centred quality service.⁷⁸

Also identified as a good practice for GBV victims, a victim should be offered the option of communicating with female police officers or prosecutors.⁷⁹

76. See also Article 3(c) of the Decree-Law No. 10/2017, of 29 March (New Statute of the Office of the Public Defender).

77. See, among many available, UN Women, Training Manual on Enhancing Attitudes of Police towards Survivors of Violence Against Women in Pakistan, 2021.

78. UN, Handbook for Legislation on Violence against Women, 2010 19.

79. UN, Handbook for Legislation on Violence against Women, 2010 19.

Specialised Units in Portugal and Brazil

80. The Portuguese GAVs were created through a protocol signed in 2019 between the Ministry of Justice and the Portuguese Attorney General's Office. Portugal, Manual de Atuação Funcional a adotar pelos Órgãos da Polícia Criminal nas 72 horas subsequentes à apresentação de denúncia por maus tratos cometidos em contexto de violência doméstica, Council of Ministers Resolution No. 139/2019, of 19 August.

81. Portugal, Manual de Atuação Funcional a adotar pelos Órgãos da Polícia Criminal nas 72 horas subsequentes à apresentação de denúncia por maus tratos cometidos em contexto de violência doméstica, Council of Ministers Resolution No. 139/2019, of 19 August, 39.

82. The first DDM was created by Decree of the State of São Paulo No. 23.769 of 6 August 1985.

83. Centro Feminista de Estudos e Assessoria, Criação das Delegacias Especializadas de Atendimento à Mulher/ DEAMs – 1985, 2.

84. Brazil, Normative Act No. 914 of 25 August 2015. The nucleus has, among others, the following competences (Article 2(1)): Undertake studies on public policies for the promotion of women's rights, equality, and combating domestic and family violence, which will also serve to support the formulation of proposals for legislative amendments; promote the improvement of mechanisms for protecting and combating violence as well as the training of members and staff of the Public Prosecution to combat violence against women and promote equality; develop projects related to the orientation of aggressors and victims of violence against women; monitor the development of public services related to the issues of its activity, elaborating proposals to improve their quality; promote events to sensitize and raise awareness on the prevention and confrontation of domestic violence and promote support and dissemination of public campaigns related to non-discrimination, equality and the confrontation of domestic violence.

85. Council of Europe, Combating violence against women: minimum standards for support services, September 2008, 54.

86. Brazil, Article 28 of Law No. 11.340/2006 determines that: "When assisting women in situations of domestic and family violence, the police authority shall, among other measures (...) inform the victim of the rights granted to her by this Law and the available services, including those of judicial assistance (...)."



In **Portugal**, the Offices for the Support of Victims of Gender-Based Violence (GAV) were set up, linked to the Departments of Investigation and Penal Action (DIAP) of the Public Prosecutor's Office.⁸⁰ These seek to ensure "in an integrated manner, continuously, the personalised care, information, support and referral of victims, with a view to their protection" (Clause 1.1), also contemplating "a specialised training package aimed at magistrates and employees of the respective DIAP in the areas of risk assessment and management and intervention with victims in a situation of special vulnerability" (Clause 1.2).

The GAVs "are endowed with adequate conditions, namely, privacy in the attendance of victims" and, when faced with the need to access "articulated and urgent response capacity, in the places where they exist, it should be preferred to use the GAVs [...]"⁸¹



In **Brazil**, since 1985, Police Stations for the Defence of Women (DDMs) have been established, with the first ones created in the State of São Paulo,⁸² which were later expanded throughout the country. Over the past 30 years, the DDMs have undergone adaptations due to the approval of Law 11.340/2006 ("Maria da Penha Law", which aims to combat violence against women, especially domestic violence). These specialized police stations "have, beyond their investigative function, the symbolic function of dealing with the complexity of violence against women by providing exemplary care. It has a role to connect with other services that are part of the support network to women and adolescents' victims of domestic and sexual violence."⁸³

In 2015, the Gender Nucleus was also created within the Public Prosecution of the State of São Paulo, which is responsible for developing various initiatives to combat violence against women, raise awareness, undertakes studies and research, among other tasks.⁸⁴

The police should also allow the presence of legal representatives or other support persons (specialist support service officers) during statement-taking if requested or consented to by the victim.⁸⁵

In some legal systems, victims are entitled to free legal aid, provided specific criteria are met, such as one's economic hardship or the nature of the legal matter, and shall be informed of the right to have legal support to them as soon as they first encounter the legal system.

In Brazil, the Maria da Penha Law guarantees all women in situations of domestic and family violence have access to the services of the Public Defender's Office or Free Legal Assistance in police and judicial headquarters,⁸⁶

and the police authority shall communicate this right at their first contact.⁸⁷ Argentina has created a specific group of lawyers for victims of gender violence,⁸⁸ composed of professionals trained in gender perspectives and whose function is to, among others, offer free and integral legal representation to victims of domestic violence and sexual abuse.⁸⁹ Argentine law establishes the obligation of police, judicial officers, health officials, and any other public official to provide information about the rights of victims, the government services available to them, and how to obtain assistance in the process.⁹⁰

If the victim is not proficient in one of the official languages or has difficulties communicating for other reasons, including disability, an interpreter shall be provided.⁹¹ Several UN instruments aiming at supporting victims' access to justice determine the duty to provide access to interpretation services to victims to secure their effective participation in the proceedings.⁹²

When interviewing victims, those involved should act sensitively and sympathetically towards the victim, avoiding assessments or judgements. A trauma-informed interview should guide the intake officers' actions.

87. Brazil, Article 11, V of Law No. 11.340/2006 determines that "In assisting women in a situation of domestic or family violence, the police authority shall, among other measures (...) inform the victim of the rights granted her by this Law and the services available, including legal assistance (...)".

88. Argentina, Law No. 27210 of 2015.

89. Argentina, Ministerio de Justicia y Derechos Humanos, Cuerpo de Abogadas y Abogados para Víctimas de Violencia de Género.

90. Argentina, Article 36 of Law 26.485 of 2009 (Ley de Protección Integral a las Mujeres).

91. The Timorese Code of Criminal Procedure already makes provision the appointment of an interpreter (Article 83): "1. If a person is to make a statement or receive a statement from a person who does not know or understand the official language used, an interpreter shall be appointed. 2. In addition to the situation referred to in the preceding paragraph, an interpreter must be appointed: [...] b) If a deaf person who cannot read, a mute who cannot write, or a deaf-mute who cannot read or write is to make a statement. [...]".

92. See, in this regard, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Standards and Serious Violations of International Humanitarian Law.

93. Claudia Cecilia Ramírez, Lineamiento para la incorporación del enfoque de derechos humanos de las mujeres y prevalencia de los derechos de niñas, niños y adolescentes en las funciones preventiva, disciplinaria y de intervención judicial y administrativa de la Procuraduría General de la Nación (2019), 43.

94. UNODC Mexico, Guidelines for the communication of law enforcement personnel in Mexico with indirect victims of femicide during the criminal investigation, 2019, 73-83.

Colombia and Mexico: Practical Instruments for Statement-Taking from Victims

In **Colombia**, the Attorney General's Office has published guidelines on victim assistance by public servants.⁹³ These guidelines include actions which should not take place when interviewing a victim, including: authorities must not judge the victim; must not underestimate the victim's risk situation; must not have expressions or attitudes that may make the victim feel guilty or responsible for the case or for not having acted differently; must not show surprise or unawareness of the pain, shame, guilt or fear expressed by the victim; must not overload the victim with excessive information; must not use stereotypical phrases or expressions (such as 'why are you still with him?', 'if you wanted to, you would have left', 'why were you walking alone in that place?', 'you shouldn't wear those clothes'); must not bring false hope; must not ask about information or ask about details of facts that are not necessary at that specific moment; must not minimise the victim's case; must not take decisions in the name of the victim and must not rush the victim, telling them that the official does not have sufficient time.

In **Mexico**, the United Nations Office on Drugs and Crime has published guidelines for authorities' communication with indirect victims of femicide during criminal investigations (i.e. family members of the deceased woman).⁹⁴ These guidelines provide practical tools to interview the victims and listen to them. This same tool recommends to authorities, if possible, to estimate the interview duration and ensure that, if necessary, the interview may be paused or interrupted. The interview should take place where the victim feels safe and comfortable to express their emotions

and report the facts, with the guarantee that their privacy will be assured. If the statement is recorded, the victim should be informed of this.

This same tool provides guidelines on techniques for interviews with victims, such as (i) the need to personalise the act, referring to the victim by their name and demonstrating that her case is unique and is going to be treated as such; (ii) the need to ensure active listening without pre-judgements, interruptions or distractions and always maintaining good non-verbal communication; (iii) the identification of points that need to be clarified; (iv) the balanced use of questions without turning the statement into an interrogation; (v) the opportunity for the victim to express different emotions they feel during the interview, respecting silences and not interrupting the account.

In an ideal scenario, the victim's statements should be video recorded or audio-recorded. If this is not technically possible, or the victim does not consent, detailed notes must be taken.⁹⁵



Portugal: Criminal Police Officers' Manual on how to act when recording a complaint/statement

According to the **Portuguese** Criminal Procedure Code, the communication of a crime can be verbal or written, and shall always be reduced to writing by the authority receiving it and signed by the official receiving it and the person reporting it (Article 246(1) and (2)). The report must contain the facts of the crime: the day, time, and circumstances in which the crime was committed, what can be ascertained about the identification of the perpetrators and the victim and the known means of proof (Article 243(1)).

However, due to the complexity of domestic violence crimes and the high number of complaints, domestic violence cases have a specific standardized report: the Report on Domestic Violence (Administrative Rule No. 209/2021, of 18 October). With this new template report, the interview before the police authorities is considered a formally valid investigation method during the police investigation stage, which renders it unnecessary to summon the complainant to confirm her declaration before the public prosecution.

According to the Manual, statements must contain as many details as possible about the facts. Police authorities need to analyse if they are dealing with more than one count of domestic violence. During the fact-collection effort, it is imperative to check if there are children or young people who are direct or indirect victims of domestic violence.

95. Council of Europe, Preventing and combating domestic violence against women - A learning resource for training law-enforcement and justice officers, January 2016, 44.

Once a case of domestic violence is known to the police, it can proceed with the description and photographic or video graphic documentation of the crime scene and any signs of the violence, including injuries suffered by the victim, without needing to wait for authorisation from the judicial authority.

Given the particular vulnerability of victims of domestic violence, they have the right to be heard using the statement for future use hearing, as provided in Article 21(2)(d) of the Victim Statute. If the police officer finds the victim particularly vulnerable due to age, health condition or disability, the police may immediately propose a statement for future use to the prosecutor.⁹⁶

Victims of gender-based crimes should be informed at appropriate times and promptly about their right to claim compensation for any damages suffered, the existing coercive measures that may be applied against the suspect, and their right to be heard in hearings.

Jurisdictions with specialised units are more effective in dealing with complaints of violence against women, resulting in greater response capacity in this area and, consequently, increasing the number and quality of investigated cases and securing more effective processes from the victim's viewpoint. Awareness about violence against women and its seriousness reduces the predominant understanding that this is a private matter while also decreasing its association with stigmas and gender stereotypes.

Practice in Timor-Leste

With the enactment of the Law against Domestic Violence more than ten years ago, most police services across the territory have sufficient basic information about the availability of specialised services to support the victims.

The Vulnerable Persons Units are gradually becoming referential units for GBV cases and are effectively referring victims to specialised services of the referral network.

Police officers are progressively building their capacity with participation in specialized training programmes.⁹⁷

Upon observing the police, especially VPU's interaction with victims, it is possible to note their empathic approach towards the victims and their commitment to support them. Despite that, police services often fail to ask for their express consent before referring them to specialised services.⁹⁸ The lack of requests for victims' consent is partially due to authorities being imbued with the idea that they have to ensure victims' protection and that victims sometimes cannot make the right decisions for themselves. It is common practice for police services to inform specialised services about the victim and their circumstances without the victim's knowledge of this communication.



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96. Portugal, Manual de Atuação Funcional a adotar pelos Operadores da Policia Criminal nas 72 horas seguintes à apresentação de denúncia por maltreatment cometidos em contexto de violência doméstica, Council of Ministers Resolution No. 139/2019, of 19 August, 25.

97. National Action Plan on Gender-Based Violence (2022-2032), approved by Government Resolution No. 31/2022, of 3 November.

98. Judicial System Monitoring Programme, Labarik sira nia Asesu ba Justisa Formal iha Timor Leste, 2014, 66.

One of the most significant challenges faced by victims of gender-based violence is the challenge to secure confidentiality about the facts reported by the victims and/or about their identity. If the confidentiality is not maintained in these matters, victims are often subjected to the scrutiny of persons outside of the judicial proceeding who re-traumatise them with unverified allegations and gender discriminatory based assumptions. In sexual crimes and, at times, in domestic violence cases, violation of a victim's right to privacy is a key factor preventing a victim's continuous participation and cooperation during criminal proceedings.⁹⁹

Most police and prosecution facilities do not have a room specially designated for interviewing victims, which ensures the comfort and privacy required by the situation. It is common practice in the Public Prosecutor's Office, for example, to have victims give their statement in the office of the designated prosecutor or their prosecution clerk. The interview is conducted in a regular workplace office, often shared with other professionals, with documents and other items at sight, therefore not a welcoming environment for the victims.



Victims Interviewed without any Privacy

In October 2018, an adult victim of child sexual abuse was approached by investigating police officer at her workplace. In the corridors of the building, in front of passing persons, the police questioned the victim about her relationship with the alleged perpetrator. Feeling it was not an adequate place to be interviewed, the victim requested the officer to stop asking questions in an open place, without any privacy.¹⁰⁰

In January 2022, a woman, victim of a death threat by a man accused of sexual abuse of children, was notified to provide a statement at the Public Prosecution (having already been interviewed by the police). A prosecution clerk was the official responsible for the victim's interview and, without adequately introducing himself to the victim, interviewed in a room with two other officers and doors open to the corridor. During the interview, the officer also communicated with those colleagues sitting in the same room, making personal remarks about the victim's statement. The victim felt her privacy violated and was shocked by the lack of sensibility of the prosecution clerk towards her matter.¹⁰¹

In Timor-Leste, it is still usual that victims are subjected to gender stereotyping during their testimony, increasing their trauma, feelings of guilt and raising doubts about their choice of reporting the crime to the authorities.¹⁰² As well recorded, trauma and fear negatively impact a victim's ability to give a coherent and complete statement.¹⁰³

Police officers or public prosecutors regularly fail to record and present information the victim gave during the interview correctly or completely.¹⁰⁴

99. Interview with JU,S Jurídico Social.

100. Interview with JU,S Jurídico Social.

101. Interview with JU,S Jurídico Social.

102. Judicial System Monitoring Programme, *Protesaun legal ba vítima sira Violénsia Bazeia ba Jenéru: Seidauk Fó Justisa*, March 2011, 21.

103. See also, Judicial System Monitoring Programme, *Protesaun legal ba vítima sira Violénsia Bazeia ba Jenéru: Lei Seidauk Fó Justisa*, March 2011, 21.

104. Judicial System Monitoring Programme, *Access to Justice for women victims*, 2004, 16.

The shortcomings faced during the crime reporting and the first interview of the victim are the main reasons the prosecution authority often requires an additional interview with the victim before concluding the investigation phase, which makes the victims even more vulnerable to revictimization.

As revealed by this research, the police services and Public Prosecution have a limited ability to take statements from child victims.¹⁰⁵



Dili Prosecutor: “Make your child stay quiet!”

In the context of a criminal investigation held in 2020 in a case of sexual abuse against a 10-year-old boy, the prosecutor leading the investigation demonstrated a lack of basic knowledge about children’s behaviour. Noticing that the child could not stay quiet during the interview, the prosecutor instructed several times the mother of the child to ensure that he would stop obstructing the interview (“Haruka nia tuur hakmatek!” - Order him to sit still!).¹⁰⁶

It was later ascertained that the prosecutor had never received any specialised training on child behaviour, trauma and strategies for interviewing children.

Police and prosecution, in sexual cases, also face difficulties in having an effective dialogue with the parents of children victims due to limitations on communication on their part and the stigma associated with sexual violence. It is not uncommon that parents of the victims to be aggressive towards the police or prosecution for feeling offended by receiving the information that their child had been sexually abused.

VICTIM SAFETY AND ACCESS TO SPECIALISED SUPPORT SERVICES

National Legal Framework

Victim safety is a significant issue in cases of gender-based violence.

In the national legal system, there are two pieces of legislation of relevance in this area: Law against Domestic Violence and Law on Witness Protection (Law No. 2/2009 of 6 May). The LADV connects back to the legislation on witness protection as the legal framework for issues related to the safety and security of victims of domestic violence.

Although the position of a victim should not be confused with the position of a witness, the LADV, for protection purposes, likens them (Article 39 LADV).¹⁰⁷

When there is a risk to the victim’s safety, three main actions can be taken: provide police protection to the victim or take other specific safety measures, move the accused away from the victim and temporarily move the victim to a shelter.

105. Judicial System Monitoring Programme, *Observasaun Jerál Setór Justisa* 2014, 2015, 51; Judicial System Monitoring Programme, *Labarik sira nia Asesu ba Justisa Formal iha Timor Leste*, 2014, 38, 51.

106. Interview with JU,S Jurídico Social.

107. Article 39 of the LADV provides that: “when necessary, the competent court shall apply to the victims and persons with knowledge of key facts relevant to the proceedings or other information relevant to the decision procedural measures applicable for the protection of witnesses in cases involving domestic violence”. The understanding that witness protection extends to victims is consensual at national and international levels. This is the position adopted by UNODC, in its official website on the subject: *Victim Assistance and witness Protection*.

The provision of police protection to the victim is established in Article 19 of the Witness Protection Act. This legal provision determines temporary security measures, including the “access to a space located in the Court or the Police premises under surveillance and security, wherein the victim can stay without the presence of other parties in the proceedings” and “benefit from police protection, extended to his/her spouse, parents, children, siblings or other persons in close contact with him/her”.

The requirements for granting security measures in cases of GBV are: a) justified security need; and b) crimes with a maximum abstract sentence of more than five years imprisonment or cases related to the guardianship of minors (Article 19(1) Witness Protection Law).

The Witness Protection Law is applicable when there is a danger to “life, physical or psychological integrity, freedom or property of high value” (Article 1(1)). Thus, this legislation protects victims of GBV when, due to the violence they have suffered, procedural measures applicable for the protection of witnesses in cases involving domestic violence acquire such a dimension which risks impacting their psychological integrity.¹⁰⁸ A literal interpretation of this legal rule makes it unmistakable that there is no requirement of a materialised risk or a real and imminent threat against the victim for the application of witness protection measures.

During the criminal investigation, one-off security measures can be applied based on an ex officio instruction by the Public Prosecution, at the request of the witness/victim or their legal representative, or the proposal of police authorities (Article 19(2) of the Witness Protection Law). No court order is required at this stage.

This same legislation also provides for a special security programme (Article 20 and following), which includes, among many other elements, police protection and even the relocation of the victim’s residence and alteration of the physiognomy of the witness.

The degree of implementation of differing protection measures provided in the special programme depends, to a large extent, on the level of complexity of the measure. While one-off security measures are often implemented (Article 19), measures such as physical alteration of the victim’s face have not been applied, given the degree of intervention required.

Within the criminal procedure, several coercive measures against the accused may be applied to guarantee the victim’s safety and the integrity of the process. The Code of Penal Procedure lists the main coercive measures applied in all crimes (Articles 186 to 203). In domestic violence cases, additional coercive measures exist: removal of the accused from the family home and prohibition of contact with the victim (Article 37 LADV).

The coercive removal from the family home is one of the measures of great relevance for domestic violence cases.

For removing the accused from the family home, there is the need to comply with both sets of criteria: the general requirements as provided in Article

108. The understanding that witness protection extends to victims is consensual at national and international levels. This is the position adopted by UNODC, in its official website on the subject: Victim Assistance and witness Protection.



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183 of the Code of Penal Procedure and the specific conditions under the LADV. An order to remove the alleged perpetrator from the family home can only be issued when there is evidence of risk of the reoccurrence of the acts of violence or aggression and potential danger to the life or physical, psychological or sexual integrity of the victim if the risk materialises.

The judge is the competent authority to issue an order of removal from the family home under article 184 of the Code of Penal Procedure. In practice, when seeing the need for the removal of the accused, the Public Prosecutor should submit an urgent request to the court, a procedure similar to the one commonly followed for a warrant of arrest.

The arrest of a crime suspect can be made in flagrante delicto or out of flagrante delicto. Article 219 of the CPC defines flagrante delicto as 'when the crime is still being committed or has just been committed'. It is also considered flagrante delicto when, immediately after the crime was committed, the perpetrator is pursued, or found with objects or evidence that show that s/he has just committed the crime or, at least, has participated in its commission.

In the case of flagrante delicto, and if the crime is punishable by imprisonment, any police authority can, and should, arrest the alleged perpetrator. Arrest in flagrante delicto is an important means not only from a procedural viewpoint but also to secure the victim's trust in the judicial system by immediately removing the perpetrator and thereby providing immediate protection to the victim.

When not in flagrante delicto, detention can only be made with a judicial warrant.

The support centres, often called shelters or Uma Mahon, are one of the protection measures explicitly created to support victims. These centres are responsible for the direct assistance, refuge and overall support for victims of domestic violence (Article 15(1) LADV). Victim support centres, established, managed and/or supervised by the Government, are in the form of reception centres and shelter homes (Article 15(2) LADV).

Shelter homes must temporarily accommodate domestic violence victims upon their request or consent and whenever for safety reasons, it is impossible for the victims to remain in their regular residence (Article 16 LADV). Victims might feel unable to stay in their homes when the accused remains in the family home, and no judicial order for his removal has been issued. A victim may also go to a shelter when she feels insecure due to the local community's response, including when receiving threats from the local population, especially from the family of the accused.

All services provided in shelter homes are free of charge and always dependent on the victim's consent. There are no rules that mandates a victim to move temporarily into a shelter home. If the victim wants to stay in her home, but there are risks to her security, temporary protection measures should be applied, and the prosecution should request to the court the accused removal from the family home.

The police services and the public prosecution have the authority to refer victims to a shelter home or support centre, provided there is consent from the victims (Articles 24(2)(b) and 28(b) LADV).

Other services provided by the LADV for victims of domestic violence include: (i) access to emergency assistance, providing counselling on available measures and taking immediate police intervention, when there is a risk to the victim's safety (Article 20); (ii) specialised assistance services for the reporting of the crime and support victims to access hospital services, through the organisations in the referral network of support services to victims of domestic violence (Article 21); (iii) specialised hospital assistance (Article 22); (iv) social assistance, including humanitarian support (Article 23); (v) police assistance (Article 24); (vi) legal assistance (Article 25); (vii) community reinsertion measures (Article 26); (viii) assistance for crime reporting at the public prosecution (Article 28); and (ix) provision of alimony, including on a provisional basis, and in case of accused inability to pay the provision alimony, the Ministry of Social Solidarity will make the necessary payments (Articles 29 to 34).

Access to information about specialised services available shall be provided through the implementation of awareness-raising activities, through the use of the media, or communication efforts at the local level.¹⁰⁹ Public authorities are legally obliged to provide relevant information when in direct contact with victims.

Additionally, to promote the implementation of initiatives as established in the LADV, the LADV determines the need to approve a National Action Plan to Combat Domestic Violence (Article 13). The First Action Plan in this area was approved in 2012¹¹⁰ and revised in 2015, with a third plan being implemented between 2017-2021.¹¹¹ A new plan for 2022 to 2032 has recently been approved,¹¹² further developing and working towards improving the already obtained gains from the previous plans. With the approval and regular update of national action plans, Timor-Leste makes a concerted effort to fulfil its commitments on gender-based violence, updating the necessary instruments to support the planning of required actions as per results of evaluations of the progress acquired and obstacles faced.

Good Practices in International and Other National Domestic Laws

The Declaration of Victims' Principles establishes in its Principle 14, that "victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means"¹¹³

Principle 6(d) of the Declaration also provides that "the responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: [...] taking measures to minimise inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation."

According to international standards, based on the view of the CEDAW Committee and the Beijing Platform,¹¹⁴ a minimum set of support services should be available to victims of gender-based violence and their families.

109. Article 10 of the Law against Domestic Violence (Law No. 7/2010 of 7 July).

110. Government Resolution No. 21/2012, of 18 July.

111. Government Resolution No. 25/2017, of 17 May.

112. Government Resolution No. 31/2022, of 3 November.

113. See, UNODC, Handbook on effective prosecution responses to violence against women and girls, 2014, 48.

114. UN, Declaration and Platform for Action of the Fourth World Conference on Women, Beijing, 1995.



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Partnership between Specialised Services Implemented by NGOs and the Judicial System: Mexico, Spain, India, Kenya and South Africa

In **Mexico, Spain, India, Kenya and South Africa**,⁷⁸ non-governmental organizations specialising in women's rights and providing legal advice work directly with the public prosecution Service and the courts to produce awareness information instruments about the services available to victims, such as brochures and leaflets.

Such information is also made available in the country's official language and other languages and accessible to persons with disabilities. Several good practices can be found in respect of access to services for persons with disabilities: being more patient and flexible about how to proceed in taking the statement, its location and date; having trained staff to deal with victims requiring specialised care; and including victim's carers in the assessment, who should be consulted separately about their experiences and needs.¹¹⁵

115. UNODC, Handbook on effective prosecution responses to violence against women and girls, 2014, 150.

116. Women's Refugee Commission, Building Capacity for disability Inclusion in Gender-Based Violence Programming in Humanitarian Settings: A Toolkit for GBV Practitioners, June 2015, 7.

117. Council of Europe, Combating violence against women: minimum standards for support services, September 2008, 13-16.

118. UNFPA, Interagency gender-based violence case management guidelines 2017, 18.

119. UN Women, Guidelines on Addressing Gender-based Violence against Girls and Women in Times of the Covid-19 Pandemic, 2020, 7.

120. Cf. UN Women, Facts and figures: Ending violence against women; Council of Europe, Combating violence against women: minimum standards for support services, September de 2008, 54.

All referrals to relevant services should be made only after the express consent of the victim.¹¹⁶ It is crucial that victims always feel in control of all relevant decisions and do not feel pressured to opt for any of the solutions presented to them.¹¹⁷

To ensure respect for their autonomy and dignity, victims should be informed of the benefits and risks of the measures at their disposal. Victims should also be advised that some information concerning their cases will be shared with support services when they agree on referrals.¹¹⁹

During the evidence collection and throughout the entire investigation phase, it must be acknowledged that most of the perpetrators are in some way known to the victims and not strangers,¹²⁰ which in turn brings increased risks to the victim's victim due to this proximity.

States should provide shelters that provide safe, immediate and free accommodation and are also responsive to the needs of victims and their families.



Lack of Access to Shelter as a Violation of State Obligation

In the Communication AT v. Hungary, the CEDAW Committee held in 2005 that the rights of victims, as provided in the Convention on the Elimination of All Forms of Violence against Women, are violated when the State fails to secure access to a shelter or other measure to guarantee GBV victims' safety.¹²¹

In this specific case, the Committee analysed the lack of shelters able to receive the domestic violence victim and one of her children who had a physical disability. A total lack of adequate shelters, with the delay of the criminal proceedings and the existence of gender stereotypes, were considered a violation of the State's obligations as provided in Articles 5(a) and 16 of the Convention.

Shelters in many countries are not limited to offering accommodation to victims but serve as a truly integrated victim support centre, providing other services, including legal advice, support in finding new accommodation, child care and support services, among others.

South Korea and India: "One-Stop Shop" for GBV victims



In **South Korea**, the 'Sunflower Center' is the multi-stakeholder, inter-institutional one-stop service that provides counselling, psychological, medical, investigation and legal support in an integrated manner for victims of gender-based violence.¹²²



In **India**, the one-stop centres have been set in up in many villages, cities and states across the country to create a system wherein women victims of GBV can access all services in one place – medical, legal and psycho-social support.¹²³

Considering the impact on the mental health of GBV victims, it is necessary to ensure access to counselling and psychological support services, including through primary health care systems or other appropriate settings.¹²⁴ It is critical to understand that such support cannot be time-bound. The need for medical assistance may extend over time, either for treatment of physical injuries or for more in-depth psychological support due to the trauma suffered.

This type of support must be provided to the victims and their family members, as they are recognised as indirect victims of gender-based violence.

With this, health support centres should also follow a victim-centred approach to ensure their services are responsive to the victim's specific needs. The health assistance needed by GBV victims may range from initial examination and treatment to physical and psychological follow-up. Very importantly, emergency medical services shall also include the provision of medical-forensic examinations, including writing reports and collecting evidence for legal proceedings.¹²⁵

121. CEDAW Committee, Communication No. 2/2003, Ms. A. T. v. Hungary, 26 January 2005.

122. UNDP, Seoul Policy Center, Sunflower Center Resource Book, 1st March 2019

123. Ministry of Women and Child Welfare of India, 'One Stop Centre Scheme', 17th March 2015

124. UN, Beijing Platform for Action (1995-2005), 1995, para. 106.

125. UNFPA, Interagency gender-based violence case management guidelines, 2017, 24.



United Nations: Women's Empowerment as an Ideal Outcome of Victim Support

The UN Secretary-General's report refers to the Autonomous Women's Centre in Belgrade, as an example of good practice. This GBV victim specialized service operates on three basic principles: "trust in women's lived experience, do not blame women for the violence they have suffered and do not give advice, but foster women's self-determination".¹²⁶

According to the Beijing Platform, States shall secure the availability of specialised health professionals to deal with situations of violence against women, especially to address incidents of sexual assault.

Women and girls who are victims of sexual violence should have access to free health care, including the treatment of sexually transmitted diseases and access to emergency contraception pills.¹²⁷ The availability of this assistance should not be conditioned upon criminal reporting.

The UN considers a good practice the integration of specialised services for sexual violence into the health system, establishing a network connecting the various relevant sectors, such as health, shelter, counselling and legal support.¹²⁸

CEDAW recommends interlinked services for the protection, counselling and treatment of physical and psychological trauma,¹²⁹ always respecting the dignity of the human person, confidentiality, privacy, autonomy of choice and informed and express consent.¹³⁰

Responsive and accessible victim support services depend directly on their availability and victims' ability to access the services. National 24-hour free-of-charge hotlines preserve privacy and confidentiality, provide information free of charge, and are often the first step to accessing other services. Hotlines are also an essential avenue for women living in rural areas and those who cannot leave home without their spouses becoming aware.



Emergency Lines: Free Anonymous and Time-Sensitive Support

The United Nations Secretary-General, in his report on all forms of violence against women, stresses the importance of anonymity and the generalized access that hotlines for victims of GBV provide, as "many women are hesitant to seek help. (...) The operation of at least one 24-hour national emergency telephone line providing information, advocacy, support and crisis counselling would constitute good practice".¹³¹

Canada also has developed GBV support services that use instant messaging to promote access for remote communities or those hard to hear women.¹³²

126. UN, in-depth study on all forms of violence against women, Report of the Secretary-General A/61/122/Add.1, 6 July 2006, I, 93.

127. UN, Handbook for Legislation on Violence against Women, 2010, 32.

128. Ibid, 31-34.

129. CEDAW Committee, General Recommendation No. 24 on Women and Health, 20 August 1999, para. 16.

130. Ibid, para. 22.

131. UN, In-depth study on all forms of violence against women, Report of the Secretary-General A/61/122/Add.1, 6 July 2006, 93.

132. Council of Europe, Combating violence against women: minimum standards for support services, September 2008, 13.

Analysing the experience of several countries and based on the recommended international standards, it is crucial that legal provisions establish protective measures for victims of domestic violence and their families and that these measures be mainly applied against the alleged perpetrator.¹³³

Innovative Protection Measures: Angola and Brazil



Under Law No. 25/11 of 14 July, the **Angolan** legal framework establishes some innovative protection measures, including an order prohibiting the accused from being present in the “place of work, study or other places regularly attended by the victim”. Orders can also be issued to “determine the return to the residence of those who have left it for reasons of personal safety”, with the victim’s return made in the presence of competent authorities (Article 12(2)(d) and (g)). Victims can also request the return of property belonging to them taken by the perpetrator against the victim’s wishes (Article 13). The referred legislation also determines a maximum timeframe of 72 hours for the competent authority to take the relevant action (Article 12(2)).



The **Maria da Penha Law of Brazil** was amended in 2019.¹³⁴ Measures incorporated in this amendment include priority for victims of domestic violence, if they request it, in the enrolment (or transfer) of their children to a school closer to their place of residence, with information on this request only being available to competent judicial bodies (Article 9(7) and (8)). An urgent protective measure can be decreed judicially to secure the enrolment (or transfer) of the victims’ dependents to an educational institution closer to their home, regardless of the existence of vacancies in the education establishment (Article 23(IV)).

133. United Nations, Handbook for Legislation on Violence against Women, 2010, 1.

134. Law No. 13,882 of 8 October 2019.

135. United Nations, Handbook for Legislation on Violence against Women, 2010, 17-18.

136. Donna Coker, Addressing Domestic Violence Through a Strategy of Economic Rights, 24 Women Rts. L. Rep. 187, 2003, 188.

137. Principles 3, 4 and 17 of the Victims’ Declaration of Principles.

138. UNFPA, Interagency gender-based violence case management guidelines, 2017, 24, 66.

Providing financial support to victims is essential in the range of support offered to them.¹³⁵ Financial aid is very important because the victim often depends on the perpetrator for her subsistence. Victims will find it more difficult to survive or start a new life project without the perpetrator’s participation if financial support is not provided. It is known that economic dependence is one of the factors that contribute to a victim’s decision to continue to live with her abuser.¹³⁶ Thus, assistance and support services should also be able to provide material aid to the victims, taking into account the specific economic situation in which they find themselves.¹³⁷

Access to livelihood opportunities for victims and their families allows for them to live with dignity and independently; besides giving back some of their self-esteem, they strengthen victims’ confidence, contributing to their empowerment.¹³⁸

Access to Public Funds Ensure Minimum Economic Status for Victims of Domestic Violence



In **Cape Verde**, the Law on Gender Violence (Law No. 84/VII/2011, of 10 January 2011) establishes the creation by the Government of an autonomous support fund, with its funds being used to provide victims with access to immediate financial assistance for urgent expenses. The Fund also aims to secure the budget to support the maintenance of the offices and shelters, the implementation of recovery programmes, psychological and psychiatric support, and prevention programmes for perpetrators (Article 21).



In **Portugal**, the Commission for the Protection of Victims of Crime is responsible for providing advances in financial compensation from the State to victims of violent crime and domestic violence (Article 2 of the Decree-Law regulates the establishment and functioning of the Commission for the Protection of Victims of Crime).¹³⁹ To access this compensation, victims of domestic violence need to prove that, due to the crime they have suffered, they are in a situation of severe economic deprivation. An initial amount is paid at the moment of the family breakdown; as often, this is the time when the victim is left without income.¹⁴⁰ A monthly instalment is given for six months, which can be extended, in exceptional situations, up to one year (Articles 5 and 6). If the victim obtains compensation or reparation for the harm suffered after receiving the advance payment, the Commission will demand reimbursement of the amounts already paid (Article 16).

139. Decree-Law No. 120/2010, of 27 October.

140. Portugal, Commission for the Protection of Crime Victims. Frequently Asked Questions. Framework, revised in 14 January 2021.

141. Judicial System Monitoring Programme, Observasaun Jerál Setór Justisa 2020, 2021, 47.

142. See, in this respect, Article 37 of the Law against Domestic Violence (Law No. 7/2010, of 7 July) and Articles 1, 4, 5 and 15 of the Witness Protection Law (Law No. 2/2009, of 6 May).

Practice in Timor-Leste

The practice in Timor-Leste to ensure the protection of GBV victims lacks uniformity. It is possible to find several cases where efforts are notably made to ensure that victims' rights are promoted and that appropriate protection measures are taken according to their specific situation and will. However, at the same time, there is a substantial number of cases where the needs of the victim, and their decision-making capacity, are virtually disregarded. In a large number of cases, there is no risk assessment made by authorities,¹⁴¹ even though it is a requirement of the LADV and there is a specific law dealing with this matter.¹⁴²

As discussed above, Timor-Leste has adopted several legal diplomas to protect victims of GBV, which are often put into practice by public institutions and their agents, therefore promoting an encouraging drive to bring about cultural changes in dealing with GBV.

There is a lack of specific guidelines or regulations to deal with situations involving GBV, which partially explains the inconsistency in the practice of different Timorese institutions and their actors.



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The provision of police protection measures such as one-off security patrolling, is reliant on the competency of the police authorities. Despite that, it is understood that there is no systematic practice of undertaking a risk assessment at the police level, based on its initiative. In numerous instances, access to security policing measures depends on a specific request from the victim, through her legal representative, or through the lobbying of influential individuals.

With these discrepancies, many justice actors report challenges in adequately applying the protection measures provided by law. It is clear from practice that part of the problem relies mainly on the lack of implementation of the measures, and not just because of limited funding or legal difficulties, but due to police and prosecution lack of training in this area, little understanding and empathy towards the victim and the prevalent view amongst communities that violence is a normal, and expected, feature in family contexts.



Lack of Uniformity in Policing Measures

In a case of sexual abuse of children, the legal representatives of the victims requested police patrolling in the local communities as a protection measure during the trial due to the case's particulars. In this case, the severe risks the victims and their families faced were publicly known. The local police duly granted the request made by the victims. However, when the same request was made to the Public Prosecutor's Office, the prosecution requested evidence or proof of imminent and concrete danger to the victim's physical safety based on previous formal criminal reports of threats.¹⁴³

A significant number of victims are accommodated in the shelters established in various locations across the national territory.¹⁴⁴

To a large extent, a lack of support from the victim's family and blame on the victim by the perpetrator's family have a marked influence on the victim's decision to go to a shelter. Many victims seek refuge in shelters because they fear the community's reactions, which may severely harm the victim's physical and psychological integrity.¹⁴⁵

In cases of children victims of sexual violence, because of the feeling of "shame" shared amongst local communities as a consequence of misperceptions about sexual violence, many families prefer the child to move away from the community she lives in as a measure to safeguard the good name of the family.¹⁴⁶

Removing a victim from the community where she lives when she temporarily stays in a shelter may reinforce the mistaken view that the victim also shares some guilt for being a victim of violence.

143. Interview with JU,S Jurídico Social.

144. In 2019, as per report on the implementation of the National Action Plan on Gender Based Violence, close to 1 000 individuals (949 women e 42 men) were housed in shelters (Secretaria de Estado para a Igualdade e Inclusão, Relatório ba Parlamentu Nasionál kona-ba Implementasaun Planu Asaun Nasionál kontra Violénsia bazeia ba Jéneru, 2019, 17.

145. Judicial System Monitoring Programme, Akuzasaun, Julgamentu no Sentensa iha Kazu Violénsia Seksuál iha Timor Leste 2012-2015, 2016, 26.

146. UNICEF Timor-Leste, Study on Violence Against Children in and around educational settings: Timor-Leste, 2016, 50; 55| 61.



Parents with no reference on how to care for their sexually abused daughter hand her over to a Shelter Home

In one case of child sexual abuse, the parents were worried about the well-being of their child and showed that they did not have any confidence in how to take care of their daughter who had been sexually abused (“if she cries in the middle of the evening, what shall we do?”). Due to their concern about not knowing what to do to help their daughter, the parents decided to take her to a shelter home, despite the family not being economically vulnerable and not existing any specific risk to the child’s safety.¹⁴⁷

It is common for authorities not to arrest the perpetrator of GBV, even in flagrante delicto. The PNTL may intervene directly in the situation to end the violence unfolding. However, officers rarely arrest the perpetrator, and their actions are limited to securing a temporary physical separation of the victim and her attacker. It is understood that such inaction is a direct consequence of the widely held view in Timorese society, including the police authorities, that violence in a family context is commonplace and that such cases are family or private matter.



“Why don’t you detain the perpetrator?” Victim was suggested to go to a Shelter because of fear

In a Dili-based domestic violence case, the police intervened quickly based on the victim’s request, arriving on the scene while the violence was still ongoing. The police actions were limited to control the situation so the violence would not escalate further.

The victim told the police she was afraid of her partner, and the police replied: “if you are afraid, we can take you to a shelter home”. The victim felt wronged as she was sure that the one who should leave the house was not herself but the perpetrator who committed the violence. Due to her instance, the police convinced the suspect to leave the house. Despite the police securing the immediate safety of the victim, it was noted that there was no formal registry of the public crime of domestic violence.¹⁴⁸

In another case, in 2021, a male accused threatened to kill a woman who provided support services to GBV victims accused. The threat occurred in front of police officers, and despite that, no arrest was made. It is understood that no arrest was made because the perpetrator was an influential person. As per criminal procedure, an arrest should have been made, and then the perpetrator should be heard in a criminal summary procedure, thus concluding the procedure expeditiously.¹⁴⁹

147. Interview with JU,S Jurídico Social.

148. Interview with JU,S Jurídico Social.

149. Interview with JU,S Jurídico Social.



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FORENSIC LEGAL EXAMINATION

National Legal Framework

Medico-legal and forensic examinations are recognised as potential pieces of evidence in criminal proceedings (Article 116(e), Articles 174 et seq and 629 et seq of the CCP). Article 174 of the CPC establishes that examinations constitute a means to collect evidence of criminal activity and can take the form of an examination of items, places, and individuals. The examination of persons includes the examination of the aggrieved party (or victims) of crimes when the offence could have left traces.

Forensic examinations are not essential evidence to secure a conviction of a GBV crime, and an accused can be duly convicted without a forensic examination. Despite this, the importance of such evidence shall not be overlooked.

Medical examination of victims can collect relevant evidence in cases of gender-based violence since many of these crimes leave marks, such as bodily injury in the cases of homicide and scars in some sexual crimes. In these cases, personal medical examinations can assist in ascertaining the commission of the crimes, their nature, and gravity, confirm some of the facts, and contribute to identifying the perpetrator.

However, it is not only physical traces that are relevant for clarifying facts about gender-based violence. Medical examinations also evaluate the impact and identification of any psychological effects on the victims, their extent, and gravity. Such evaluations also help investigate cases involving children, as these allow for more effective evidence collection and less traumatizing interviews with the victims while also avoiding the unconscious suggestiveness of the victims.

The law further requires that “the examination that may offend the modesty [or privacy] of persons must respect their dignity and, as far as possible, the modesty [privacy] of the person who undergoes it” (Article 175(2) of the CCP).

As a rule, medical examinations are carried out with the consent of the concerned person (or the permission of the legal guardian of a minor).¹⁵⁰ In exceptional circumstances, the CPC allows for the medical examination of a person without their consent (or that of their representative).

In attention to the rights enshrined in the Timor-Leste Constitution and the respect for the right of personal integrity, Article 175 of the CPC provides that the competent judicial authority may compel a person who “intends to evade or obstruct an examination which needs to be carried” (paragraph 1). This legal provision states that “the examination of persons depends on the authorisation of the competent judicial authority unless the person concerned consents” (paragraph 4). In other words, the CPC determines that the examination of a person is carried out with the consent of the person concerned or based on an order issued by the competent judicial authority.

150. Article 175 of the CPC and articles 5-1, and 22 of the LADV.

The public prosecution has broad legal powers during the criminal investigation, being responsible for “directing and conducting the investigation” (Article 57(1)). It is also the public prosecution’s power to “perform or authorise the acts that the law identifies as its competencies” (Article 227 CCP). Thus, the public prosecution is the central judicial authority in the criminal investigation phase, having several investigative powers to lead this phase.

The exclusive competencies of the Judge during the criminal inquiry are those listed in Article 226 of the CCP. The exclusive competencies of the judge include the competence to authorise phone tapping (Article 22(6)(d)), and decide on searches (Article 226(c) and Article 169(1)). A judge still has the exclusive competence to determine the extension of the timeframe of the criminal inquiry (Article 195(2) CCP), and authorise the seizure of objects (Article 172(1)), among others. During the criminal investigation, the public prosecutor and the judge have concurrent competency concerning all other powers not listed in this legal provision.

As per CCP, both public prosecutors and judges may authorise the examinations of people when consent is upheld.¹⁵¹ Article 150 of the CPC provides that the judicial authority in charge of the procedural phase shall issue a written order to undertake forensic examination when no consent is given.

An order by a judicial authority obliging someone to be subject to a medical examination without their consent is a restriction on the right to privacy and a restriction on the right to physical integrity when invasive methods are used. With this background, the public prosecution must weigh the necessity and proportionality of human rights restrictions before authorising a person’s examination without their prior consent, as a direct application of rights’ restriction as provided in the Timorese Constitution.

The LADV provides that the identification of a potential victim of domestic violence requires the intervention of specialised health institutions once the victim consents. Medical assistance to the victim shall be provided by registered medical facilities, which also have the duty to collect evidence through medical-forensic examinations. The health professionals should also inform the victim of their rights, the steps which may be taken to support the victim and the professional’s obligation to report the facts to the police or the public prosecution. After providing medical assistance, a report shall be written containing information on the case and the steps taken, and it shall be submitted to the competent authority (Article 22 LADV).

The legal framework in Timor-Leste does not contain any rule on the content of the medical examination procedure. The Ministry of Health has approved a protocol for forensic examination, which serves as a guidance tool to support the work of health professionals.¹⁵² The information to be collected through this examination protocol includes the physical and psychological condition of the victim and the identification of any traces found in the victim’s body or items.

The general rule of evidence relevance shall guide this decision-making process to request or order a forensic examination. Article 109 of the CPC states that “constitute the object of evidence the facts legally relevant” to the criminal procedure. In addition, the CPC establishes that the examination of individuals seeks to gather traces that the crime may have left behind; as such, only when it is probable to find still traces of the offence should an exam be carried out.¹⁵³

151. It is worth noting that currently the Portuguese legal system requires a judge order to compel someone to subject to a medical forensic authorisation (Articles 172(2) and 154(2) of the Portuguese CPC). This is a marked difference to the Timorese legal system. In fact, until 2007, similar to the legal regime in force in Timor-Leste, the Portuguese criminal procedure law gave to the public prosecutor the power to order an examination when consent is upheld. With the enactment of Law No. 48/2007, of 29 August, which amended the Portuguese CPP the rule was changed to require an order by a judge. It is noted that the Portuguese legal system establishes the Investigating Judge, an authority removed from the Timorese legal system with the approval of the CPC in 2004. As Timor-Leste does not have an investigating judge the public prosecution has increased competencies during the criminal enquiry.

152. Ministry of Health, Protocol for Medicolegal Examiners - Domestic Violence, Sexual Violence and Child Abuse, (no date).

153. Article 174 of the CPC.

A forensic examination may be carried out during the crime reporting or the criminal investigation.

Good Practices in International and Other National Domestic Laws

When analysing international and foreign law, several good practices guide the implementation of forensic medical examination on victims of GBV.

When possible, forensic health professionals should be present during the victim's initial interview before the police authorities, thus limiting the number of times the victim must repeat her statement.¹⁵⁴

Carrying out medical examinations on victims of sexual violence can sometimes make them relive the trauma of the abuse. Several studies point out that examinations may result in re-traumatisation of the victims, sometimes making them feel like they have been abused again.¹⁵⁵ To avoid this, it is recommended to carry out a medical forensic examination only with the victim's consent and when, considering the facts of the case, a medical forensic examination will probably reveal relevant evidence requiring to be collected and preserved.

Medico-forensic examinations of a woman's genitalia should be limited to identifying and reporting clinical findings, such as scars, tissues or other traces of any criminal act. This test should not be performed when the time between the alleged offence and the examination limits the possibility of identifying traces of sexual violence.

Forensic medico-legal examinations shall not include the so-called "virginity tests", where the main objective of the examination is to determine whether the victim has had prior sexual acts or not. "Virginity tests" represent a human rights violation, and the United Nations urges all States to ban this practice. The World Health Organisation, the UN Women and the Office of the United Nations High Commissioner for Human Rights stated that "virginity tests" are scientifically unsound, medically unnecessary, and their practice is associated with short and long-term health problems.¹⁵⁶

"Virginity tests" cannot prove whether women already have past sexual experiences. Still, they represent psychological humiliation and are often associated with painful and traumatic experiences for the woman. Due to the invasive nature of most "virginity tests", genital injuries, bleeding, and infections can occur. In addition, women subjected to virginity tests may show severe psychological effects: women feel deep fears, develop low self-esteem and depression, and sometimes even commit suicide. Those who "fail" the test typically face rejection by family and society. In some communities, a test reporting the woman is no longer a virgin brings deep shame to the woman and her family, and they may be punished severely through beating, starvation, rape, and murder ("honour crimes"). If these procedures are performed without proper, disinfected instruments, the risk of sexually transmitted diseases increases.¹⁵⁷

The submission of women to "virginity tests" is considered a form of torture and ill-treatment and a form of gender-based violence discrimination in violation of international standards such as CEDAW.¹⁵⁸ "Virginity tests" reinforce gender stereotypes and inequality since they are often used to determine a woman's suitability for marrying.



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154. Council of Europe, Preventing and combating domestic violence against women - A learning resource for training law-enforcement and justice officers, January 2016, 58.

155. See, for example, Independent Forensic Expert Group, "Statement on Virginity testing", in *Journal of Forensic and Legal Medicine* 33, 2015, 1121-1124.

156. World Health Organisation, Eliminating virginity testing: an interagency statement, 2018, 5.

157. *Ibid*, 10-11.

158. Independent Forensic Expert Group, "Statement on Virginity testing", in *Journal of Forensic and Legal Medicine* 33, 2015, 1121-1124.



Pakistan: Prohibition of virginity tests

The Supreme Court of Pakistan, in March 2021, declared the “virginity tests” unconstitutional, used in rape cases to determine whether a woman has had sexual intercourse. The Court stated that these tests are “an affront to the reputation and honour” of victims and violate the Constitution. The decision also affirmed that courts should no longer use expressions such as “accustomed to sex”, “easy woman”, “woman of low morals” and “no longer a virgin”, as they are unconstitutional and illegal.¹⁵⁹

Practice in Timor-Leste

Timor-Leste has established a robust system for conducting medico-legal examinations in cases of GBV through the referral network of service providers to women and children victims of violence.

The forensic medical examination may be undertaken before the formal opening of the criminal investigation. A victim, on her own or through referral by support services, seeks relevant health services for a forensic medical examination. The medical-legal examination may also be carried out after opening the criminal investigation through a request from the police or prosecution authority. This issue has been included in the section before the criminal investigation for reasons related to the organisation of this Report. Performing medico-legal examination is the responsibility of the medico-legal services or hired medical experts (Article 150(3) CCP) or hospital facilities (Article 22(b) LADV). To comply with this obligation, the Timor-Leste Government has partnered with non-governmental organisations, such as the NGO PRADET, so forensic examination and other medical or clinical examinations can be performed.

The duty to provide access to these services, as per Article 22(b) of the LADV, rests on the State. However, in discharging this duty, the State has entered into a partnership with private organizations, notably PRADET. Medical forensic professionals are linked with public health centres and are salaried public staff, but PRADET serves as a support organization, managing the victim’s requests and needs and liaising with other relevant authorities. In practice, when a forensic examination is needed, PRADET will then request the support of the public health professional. This partnership is, to a great extent, regulated in the Standard Operating Procedure approved by the Ministry of Social Solidarity in 2011.¹⁶⁰

Through analysis of court case records, including physical and sexual violence, and accounts from victim assistance services, it is ascertained that forensic medical examination of victims has become a fairly frequent practice.¹⁶¹ Access to these services is widespread in various localities of the national territory. Currently, the police, the Public Prosecution and specialised support services are aware of the significance of medical examination to support the judicial process, and they can often successfully coordinate efforts with relevant medical forensic services.¹⁶²

159. “Pakistan’s Supreme Court declares “virginity test” unconstitutional”, Newspaper Online, 25 March 2021.

160. Ministry of Social Solidarity, *Prosedimentu operativu normalizadu kona-ba jestaun no koordenasaun atu aid victim violénsia doméstika, violénsia seksuál no forma seluk ba violénsia hasoru fetu no labarik*, 2017, 18.

161. Evidenced also by JSMP’s report that in 2020 and 2021 they referred 116 victims to PRADET out of a total of 177 cases. Judicial System Monitoring Programme, *Report Asisténsia Legal ba Vítima Violénsia Bazeia ba Jéneru 2020-2021*, 2022, 34.

162. The evidence of increased access can be noticed by the numbers of examinations conducted, as reported in the Annual Report under the National Action Plan against Gender Based Violence, in 2015, PRADET conducted 511 examinations, while in 2019 this number rose to 823.



Quick Access to Medical Forensic Services

In 2022, it can be said that there is already widespread knowledge about the services offered by PRADET, a national NGO specialising in the forensic examination of women and children victims of violence, and the relevance of forensic medical examination for cases of sexual violence.¹⁶³

Every so often, when parents become aware that their young child has been sexually abused, they seek medical examination on their own and access directly to the medical facilities for medical examination and assistance.¹⁶⁴

Through PRADET's work, medical examinations are carried out in dedicated facilities that ensure the victim's privacy. Such spaces, as they are not medical establishments, are a less intimidating environment, and while allowing, if needed, a welcoming place for their rest and accommodation for some nights.

According to the information gathered, from interviews with victims, their family members and specialized services, most victims who undergo forensic medical examinations report feeling respected, being asked for their consent, and receiving sufficient information about the examination process. Victims also described that, in addition to recording the injury related to the alleged crime, health professionals might also offer medical treatment for health problems not directly linked to the crime.

It has also been observed that, at times, victims of gender-based violence do not fully understand the need and extent of the medical examination. Therefore, questions may arise as to whether their consent for the forensic examination was indeed an informed consent.



Medical Examination based on a Public Prosecutor's Order without the Victims' Consent

In 2021, a group of young women identified as victims in a case of sexual abuse against minors publicly raised their concern that they felt 'violated or abused' when forensic gynaecological tests were carried out. In this case, the girls further declared that they had not consented to the examination.

These declarations were made through media outlets and generated controversies in the Timorese society. The young females further stated that the medical examination had been carried out with force and without respecting their wishes.

Although those responsible for the forensic examination reaffirmed that forensic medical examinations are only carried out with the victim's consent or order from the Public Prosecutor,

163. Judicial System Monitoring Programme, Report Asisténsia Legal ba Victim Violénsia Bazeia ba Jéneru 2020-2021,2022, 34.

164. Interview with JU,S Jurídico Social.

this case ultimately brought to the fore the issue of the victim's consent and the powers of the Public Prosecutor to order a medical examination, as currently provided for in the CPC.

Given the limited access to medical care in rural areas, some victims are not used to undergoing routine medical examinations or treatment, including gynaecological exams. With this, some victims might find it challenging to adequately understand the extent of the examination, leaving them cautious and potentially scared. Also, the limited previous contact with medical examinations, in general, may increase the likelihood of victims of sexual violence being retraumatised due to the medical examination.



Full Medical Assistance during the Forensic Examination

On a positive note, it was possible to identify cases where the medical forensic services provided additional support to victims by carrying out a comprehensive medical examination of the general health condition of the victim, including access to appropriate medication.

“For me, it [the forensic examination] was the first time I went on a medical appointment, and I liked how the female doctors treated me, as they were very careful and patient, and they gave medicine for some skin problem I had for years” said a 17-year-old young victim who was examined in 2021.¹⁶⁵

It has been reported that the Public Prosecution or victim support services sometimes recommend the medical-legal examination of victims of GBV without analysing the facts of the case in detail and without considering the extent to which such examination should be carried out. It has also been reported that sometimes, the request for forensic examination is not put in writing (contrary to what is established in Article 155 CPC), so health professionals are unaware of any specific focus for the medical examination.

165. Interview with JU,S Jurídico Social.





Unnecessary Medical Examination

In a case of alleged sexual abuse against a minor in 2018, the facts gathered in the victim's statement were that the victim (a male child) had been instructed to perform oral coitus on the accused. The facts of this case also indicated an attempted abuse of the victim through anal coitus. Although the alleged crime was committed more than six months before, and there was no likelihood of finding any traces of the crime in the child's genitals, the prosecutor requested a forensic medical examination, and the services conducted a forensic medical examination of the child's genital area.¹⁶⁶

In yet another case recorded before the Court of Appeal, Proc. 156/CO/15/TR, dated 30 December 2015, it was referred that a gynaecological medical examination of the victim had been performed during the criminal investigation stage. The facts of the crime clearly indicated that the victim had been subjected to perform oral coitus on the accused, making it difficult to understand why the gynaecological exam was necessary.

In another case of sexual abuse of a minor, the Public Prosecutor ordered a gynaecological forensic medical examination of the victims even though the criminal facts alleged took place more than two years before the start of the criminal investigation.¹⁶⁷

Often a copy of the results of the medical-legal examination is not made available to the victims or their legal representatives, even though they are of direct concern to them. The main reason for not providing copies of the exam is the reference to 'secrecy of justice', therefore treating the victim as 'public' and disregarding their own decision-making capacity.¹⁶⁸

Despite the results of the medical-legal examination of the victim relates to information that is of direct concern to them, victims often do not have access to the examination report. The reason often cited for not providing victim's access to results of her own examination is "secrecy of justice", a legal guarantee applicable to stakeholders who are 'part of the public'. This practice disregards the victim's decision-making capacity.¹⁶⁹

In practice, for victims to access the results of their medical-legal examination, it has to be demanded through formal requests to the medical services. This is an example where authorities do not treat victim's right to information as an inherent guarantee, but it can be invoked through procedure.

Finally, medical examinations tend to focus more on the physical traces found on the victims, even though the examination form approved by the Ministry of Health includes a substantial component concerning the victim's psychological state. At times the examination report fails to include detailed information on the psychological state of the victims, a piece of information which may be a very relevant piece of evidence for the process.

166. Interview with JUS Jurídico Social.

167. Interview with JUS Jurídico Social.

168. Judicial System Monitoring Programme, Akuzasaun, Julgamentu no Sentensa iha Kazu Violaasaun Seksuál iha Timor Leste-2012-2015, March 2016, 24.

169. Judicial System Monitoring Programme, Akuzasaun, Julgamentu no Sentensa iha Kazu Violaasaun Seksuál iha Timor Leste-2012-2015, March 2016, 24.



Medical Examination as Key Evidence for Determination of Compensation

On a positive note, the forensic medical report in a 2015 sexual assault case recorded the victim's mental state in some detail, reporting that she felt "sad, afraid and traumatised".¹⁷⁰

Based on this medical examination, the Dili District Court ordered the payment of compensation by the defendant.

170. Interview with JU,S Juridico Social.

2. CRIMINAL INVESTIGATION

The criminal investigation stage, as provided in Article 225 of the CPC, aims at gathering evidence and deciding on the indictment of the accused, archival of the investigation and the amount of compensation requested on behalf of the victim.

Several steps integrate this phase, namely the (re-) taking of statements from the victim by the public prosecutor, the search of premises, apprehension of items, and the imposition of coercive measures on the accused, among others.

Under Articles 57 and 227 of the CPC, the public prosecution is responsible for directing and conducting the investigation, and he or she can “delegate the power to conduct the investigation or acts of the investigation to the police or judicial officers”.¹⁷¹

The investigation stage is vital, as it is during this stage that evidence is sought and where it is decided whether to continue the criminal proceedings. If the inquiry is not well conducted, it may lead to the closure of a case related to a crime which has been committed, but the prosecution failed to secure evidence to sustain an accusation or lead to the indictment of a person who is innocent and should not be subject to criminal procedure.

VICTIM’S STATEMENT BEFORE THE PUBLIC PROSECUTOR

National Legal Framework

According to the criminal procedure, witnesses are required to appear in person before the court for their testimony to be considered as evidence (meant by the ‘proximity of evidence rule’) (Article 266(1) CPC). The criminal procedure determines that, when a victim or another witness is absent at the trial, statements taken before a judicial authority during the criminal investigation phase may be used (Article 266(2) CPC). Therefore, when the victim has reported the crime to the police, the public prosecutor may consider strategic relevance to interview the victim again to ensure the formality of her statement and secure the possibility of using it in court in cases where the victim cannot appear during the trial.

A prosecutor can collect a statement from a victim or a witness in facilities other than the prosecution’s office since there is no demand for interviews before the judicial authority to take place in the premises of the public prosecution.

Within the criminal proceedings in Timor-Leste, there is still no possibility, even if a victim has a high degree of vulnerability, to conduct interviews with the support of video recording, which can be valued in court as evidence. Video testimonies are possible under the Witness Protection Law, Article 5 of Law No. 2/2009 of 6 May, with the support of a video link where the witness’s identity and voice can be concealed. Using this protective measure does not require the victim to be physically present in the courtroom, but her declaration is being given during the trial hearing and under the direction of the judges of the case.



Closure of
investigation

171. There are doubts as to the extent of the potential delegation to the judicial officer since while article 57 of the CPC seems to provide for the possibility of delegating the entire conduct of the inquiry to the judicial officer, article 228 of the same code seems to determine that the police authorities can be delegated the “other procedural acts of the enquiry”, thus leaving the delegation to bailiffs only the non-procedural acts of the enquiry. Considering that such a legal provision is not found in other jurisdictions of the CPLP, the question remains as to the extent of the delegation of the investigation to the judicial officer.

In semi-public crimes, the testimony before the public prosecutor also serves as an opportunity to determine the victim's willingness to continue with her complaint. As provided for in the criminal procedure, a victim can withdraw the complaint of a semi-public crime at any time until the conclusion of the trial (Article 216(2) CPC).

Collecting a victim's statement for future use represents one of the few existing legal measures in Timor-Leste which can contribute to the non-revictimisation of the victim. Based on Article 230 of the CPC, in cases of sexual crimes, a statement for future use can always be a means used for the victim's testimony. The victim has the power to make the request directly to the court. The statement for future memory is made in a hearing before a judge and with the presence of a prosecutor and a defender.

According to the national legal system, victims may be supported by a legal representative during this stage. In crimes of domestic violence, the law provides that the victims should be accompanied 'in all procedural acts by a lawyer or a public defender' (Article 25(1) LADV).

Good Practices in International and Other National Domestic Laws

International good practice recommends that the victim of gender-based violence should not be subjected to giving statements more than once, especially regarding sexual crimes.

Spain and Portugal: Declaration for Future Use



In the Circular from the State Attorney General's Office No. 3/2009, on the Protection of Minor Victims and Witnesses, the **Spanish** judicial system demands that the particular vulnerability of victims be considered. When before vulnerable victims, their testimony shall be taken only once. The court will not necessarily require their presence during the trial, with their initial statement sufficient to be valued as evidence. The law recognises that due to victims' age and maturity, their participation in court can lead to re-victimisation and result in severe psychological impact lasting over time due to the stress caused.¹⁷² The judicial statement collection at the early stage is a positive practice provided by law and is a settled point in Spanish jurisprudence, which reiterates that "the early taking of evidence during an investigation is justified in the case of minors who are victims of certain crimes, to avoid the risks of secondary victimisation, which is especially important in the case of minors at a young age. It is nonetheless a matter that should be analysed on a case-by-case basis to determine whether the victim's presence during trial could cause them additional psychological harm".¹⁷³



In **Portugal**, the Criminal Procedure Code provides for the possibility of a statement for future use of victims of human trafficking crimes and sexual crimes. The anticipated statement-taking is compulsory for victims of crimes against sexual freedom

172. Circular No. 3/2009, 10 November, on Protection of Child Victims and Witnesses.

173. Spain, Supreme Court, Judgement of 19 September 2019, Proc. No. STS 2944/2019-ECLI:ES:TS:2019:2944.

and self-determination who are minors. This statement, taken by the judge during the inquiry phase, has the mandatory attendance of the prosecutor and accused defender. The Supreme Court of Justice's decision in clarifying jurisprudential standpoint affirms that "the scope of statements for future use has been widened, and it is no longer conditioned by the need to minimize the risk of losing evidence, but the need to protect the victims, especially minors". This same Court further stressed that "in crimes of human trafficking and crimes against sexual freedom and sexual self-determination, statement for future use functions as a means for the protection of the victim. This method shall be used even if there are no impeding factors to secure the victim's attendance during the trial hearing. (...) The admissibility of this measure - statements for future use - answers the public interest in the discovery of the material truth, the preservation of evidence and the interest of the victims".¹⁷⁴

The movement that led to changes in the law to allow the inclusion of victims of sexual crimes within the scope of statements for future use included a campaign by judges of the Court of Criminal Investigation in Lisbon. The reasons to support this legal rule were to avoid victims' revictimization, recognizing that successive enquiries at the various stages of the process cause victims to relive the traumatizing episodes, prolonging their pain, suffering, and feelings of shame.¹⁷⁵ In addition to the trauma to the victim, it was further recognised that the passage of time affects the quality of testimonies, and specific information may be lost with time or risk being contaminated. Therefore, "statements for future use seeks to: i) avoid the psychological damage involved in the successive recalling of witness painful experience and their exposure in a public trial, and, ii) determine the relevance of the evidential elements from the first account of the facts, which is presumably the closest to the truth and most spontaneous, therefore avoiding the danger of evidence contamination".¹⁷⁶

174. Portugal, Supreme Court, Judgement of 11 October 2017, Proc. No. 895/14.OPGLRS. L1-A.S1.

175. Pedro Vieira, *Declarações para memória futura - Questões controvertidas no Ordenamento Jurídico português*, p. 17. Master's Thesis in Legal Forensic Sciences. Faculty of Law - University of Coimbra, Coimbra 2020, 17.

176. José Cruz Bucho, *Declarações para memória futura (Elementos de estudos)*, , 38.

The need to recount what happened several times translates into secondary victimisation. It raises doubts about victims as to whether their first testimony was incorrect; with misleading speculations on why authorities require them to testify again and inadvertently prejudicing the victims. Similarly, victims may feel like they are the subject of the investigation and fear potential arrest. Moreover, the need to appear before authorities several times raises concerns about their privacy, including the possibility of their identity becoming known to others. For such reasons, in various jurisdictions, the law provides for the first victim's statement to be recorded and then used in court, in which case the victim is required to testify only once.

Examples of Jurisdictions that Allow Pre-taped Testimony

According to Law No. 12 of 2022 of 9 May 2022 on Sexual Offences of **Indonesia**, in cases where there is the need to secure victims' protection for reasons of health or safety, including their psychological integrity, their statement can be video recorded by police authorities with the presence of a prosecutor and, then, used as evidence during the trial (Articles 48 and 49).

The **Indonesian** Law on the Protection of Witnesses and Victims, Article 9(1) and (3) provides that witnesses and/or victims who feel under serious threat may give testimony through electronic means, assisted by the authorities when authorised by a judge. The officers' presence ensures that the witness and/or victim is not under any pressure or coercion when giving the statement.¹⁷⁷

In **Portugal**, the Code of Penal Procedure in Article 271,¹⁷⁸ determines that in cases of human or organ trafficking, crimes against sexual freedom and sexual self-determination, the judge may question the victim during the criminal investigation phase, and the testimony may be considered at trial. In the case of a crime against the sexual freedom and sexual self-determination of a minor, a judge will always lead the victim's interview during the criminal investigation phase.

The Portuguese Law for the Prevention of Domestic Violence and the Protection and Assistance of its Victims¹⁷⁹ also establishes the possibility for victims of domestic violence to make statements for future use (Article 33).

When there is a justified need to collect a second statement from a victim, the same good practices applied to the victim's first interview, already discussed in this report, should be observed. Thus, measures should be taken to protect the victim and her privacy and create a welcoming environment where she can freely narrate the facts.

In comparative law, several jurisdictions incorporate legal provisions on a victim's right to be accompanied by her lawyer.

177. Law of the Republic of Indonesia Number 13 of 2006, amended by Law of the Republic of Indonesia Number 31 of 2014.

178. Decree-Law no. 78/87 of 17 February.

179. Law no. 112/2009, of 16 September.



Indonesia and Spain: Role of Victim's Legal Representative

Article 26 of **Indonesia's** Law No. 12 of 2022 of 9 May 2022 on Criminal Offences of Sexual Violence, expressly provides that the victim is entitled to be accompanied by their legal representative (or another support person) during any contact with the authorities.¹⁸⁰

Similarly, in **Spain**, Law 4/2015, of 27 April, which approves the Crime Victim Statute, provides that a legal representative may accompany victims during the criminal investigation phase, including when providing their statements.

In some Lusophone legal jurisdictions, only the prosecutor, police and judges have the power to interview victims (and witnesses) during the criminal proceedings. In **Cape Verde** and **Portugal**, the criminal procedure legislation does not allow the delegation of the criminal investigation to a judicial officer (like a clerk), but only to the police officers.¹⁸¹ It is understood that this limitation represents good practice, as judicial clerks do not receive adequate training to ensure an effective criminal investigation.

Practice in Timor-Leste

Almost daily, victims are requested to provide their statements (again) to the public prosecutor. As mentioned previously, this demand generally occurs regardless of whether a written record of the victims' statement is already included in the case file. The lack of a coordinated and effective system allows for the repeated questions of the victims. The fact that the law provides that for a piece of evidence to be valid it has to be presented before a judicial authority – a prosecutor or a judge – means that prosecutors will often call victims to testify before them as a "safety procedure" in case the victim is not present before the court during the trial.

Victims have limited knowledge of how the judicial process works, its purpose, its stages, the extent of their participation, etc. When victims are summoned to provide new statements, they question if they told something wrong during the previous declaration, feel insecure, have distrust towards the judicial system, and have reservations as to whether their complaint was taken seriously by the police and the public prosecution.

180. "Indonesia: Parliament Passes Sexual Violence Bill," Library of Congress, 2022.

181. The Portuguese Code of Criminal Procedure only allows the Public Prosecution to delegate its power to direct the enquiry to criminal police bodies (Article 53), which may, within this scope, carry out any measures and investigations related to the enquiry (Article 270(2)). This power is therefore forbidden to judicial officers. Also, the Cape Verde Code of Criminal Procedure, in article 69, provides for the right of the Public Prosecution Service to be assisted by the organs of the criminal police in the exercise of their functions within the scope of criminal procedural purposes.



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As previously mentioned, victims are often subjected to gender stereotyping during their interviews, reinforcing the trauma and increasing their feelings of guilt. As is well known, trauma and fear may negatively impact the victim's ability to give a coherent statement.¹⁸³

It is noted that the public prosecution increased the delegation of the criminal investigation to the judicial officers. In executing superior instructions, the judicial officer is often responsible for taking (again) the victim's statement. It has been observed, however, that it is becoming common to ask a victim if she wishes to continue with the criminal process or withdraw the complaint. This question is being asked even in cases of public crimes, which do not depend on the victim's complaint; therefore, a victim cannot stop the process. The trauma and fear of the victim are thus amplified, leading victims to feel that there is veiled pressure or threat from the judicial bodies to drop the proceedings or to give up from providing their declaration.¹⁸⁴

This incorrect and reprehensible practice demonstrates a significant lack of understanding about the impact such a question can have on a victim. At the same time, it also reveals the limited knowledge of basic foundation rules of the criminal procedure by the judicial officers. This practice also shows that GBV crimes are not given their duly required attention, considering their nature, being dealt with as any other criminal case.

182. Interview with JU,S Jurídico Social.

183. See, for example, Brewin, C. R., "The Nature and Significance of Memory Disturbance in Posttraumatic Stress Disorder", *Annual Review of Clinical Psychology*, 7(1), 2011, 203-227.

184. Judicial System Monitoring Programme, Akuzasaun, julgamentu no sentensa iha kazu violencia sexual ia Timor-Leste, 2012-2015, March 2016, 26

With the increase in the volume of criminal investigations, delegating the implementation of the investigation to judicial officers of the public prosecution is becoming more common. Given this reality, it is understood to be valid to question whether, from a legal standpoint, the Timorese legal system duly determines the possibility of delegation of procedural acts of the criminal investigation to public prosecution judicial officers. It follows that from the combined reading of Articles 228 and 57 of the CPC, it is interpreted that the legislator established that acts of criminal inquiry could be delegated to police authorities or judicial officers. Still, only police authorities can perform 'procedural acts' of the inquiry. It leads to the conclusion that public prosecutors can only entrust judicial officials with the execution of non-procedural acts of criminal investigations.

However, it is essential to underline the crucial role of judicial officers in securing the ordinary course of proceedings; an effective criminal inquiry cannot function without the work of judicial officers. Further, from a GBV perspective, judicial officers often serve as a point of contact between victims and public prosecution services. Despite that, they should not be expected to perform functions analogous to those of the police investigating authorities since these are careers with different statutes, training, competencies and overall different objectives.¹⁸⁵

As a result of gender stereotypes and the objectivation of the victim, the prosecution services regularly give warnings against the detention of the victims if they do not comply with the notice to appear before the prosecutor or if they fail to tell the truth. It is understood that these 'warnings' are allowed since the Code of Criminal Procedure, in its Article 118(1), provides that the aggrieved party (i.e. victim) is 'subject to a duty of truth and consequent criminal responsibility for its violation'.

The information gathered throughout this research shows that, in the vast majority of cases, the prosecution does not take a victim-centred approach, and the victim's wellbeing is not a guiding consideration. It has been verified that there is a general lack of training and awareness-raising regarding the issues of gender-based violence, namely how to approach these issues and how to ensure a responsive approach to victims' needs. This lack of training is even more accentuated in what concerns victims of sexual violence, as the public prosecution often does not use mechanisms to prevent re-victimisation, such as, for example, the possibility of taking statements for future use, as contemplated in Article 230 of the CPC.

On a positive note, the prosecutor has, at times, taken specific actions which showed an understanding of the victim's apprehension in providing their statement in a place accessible to the public.

185. Statute of Justice Officials (Decree-Law No. 19/2012, of 25 April).



Availability of the Public Prosecutor to Meet the Victim

In 2020, in a child sexual abuse case involving a particularly vulnerable victim, the prosecutor granted the request of her legal representative, accepting that the victim's statement to be taken during the weekend and at the premises of an organization providing GBV victim support services.

After hearing the victim, the prosecutor stated that the strategy used complied with the law and represented the correct action to respond to the victim's particular circumstances. Through this process, the prosecutor also acknowledged that he could obtain detailed and coherent information from the victim's statement, further acknowledging that the fact the victim felt comfortable in that environment positively influenced the outcome.¹⁸⁶

It has been regularly observed that victims are prevented from being accompanied by their legal representative when appearing before the public prosecutor. The exclusion of a victim's legal representative is generally a violation of their fundamental rights. In cases of domestic violence, the violation is heightened since the entitlement to be accompanied by legal assistance in every step of the process is provided in law (Article 25(1) of the LADV).

It is not yet a common current practice for prosecutors to request statements for future use in cases of sexual violence despite the general provision in the law. Despite that, it is possible to identify a handful of instances in which victims' representatives successfully requested this measure in sexual crimes and, with this, contributed to securing the privacy and safety of the victim and prevented her revictimization.



Promptness of Judge to Schedule Statement for Future Use at a time that would ensure victim's sense of personal safety

The judiciary in 2020 showed a remarkable ability to take steps to secure the safety and the psychological integrity of a victim by promoting a statement for future use hearing in the Dili District Court of a case under the jurisdiction of another district court and by scheduling the hearing outside regular court opening hours.¹⁸⁷

COERCIVE MEASURES AND EVIDENCE GATHERING

National Legal Framework

The public prosecution is responsible for promoting the criminal proceeding, as provided in Article 49(1) of the CPC. Within the scope of its powers, regulated by Article 48 of the CPC, the prosecution receives crime complaints,

186. Interview with JU,S Jurídico Social.

187. Interview with JU,S Jurídico Social.

reports and orders the start of criminal proceedings. As the owner of the criminal action and representing the State's interest to secure an individual's punishment when relevant, the public prosecution also has the power to collect relevant evidence.

Besides those measures already mentioned in this report, including referral to specialised services and access to shelters, coercive measures imposed on the accused are also actions that can support the victim's protection. Coercive measures are regulated under the Criminal Procedure Code in Articles 181 to 203, and include the collection of residential address and identity record, bail, regular reporting to authority, house arrest and pre-trial detention.

Coercive measures may be imposed on the accused to ensure that the investigation is not disrupted, to avoid the continued commission of the criminal activity, to prevent the disturbance of public order and peace, or to ensure the accused continued attendance during the criminal proceedings (Article 183 CPC). The coercive measures are applied only to the accused (Article 181(1) CPC).

One of the criteria for the imposition of coercive measures is directly related to the victim's situation: the well-founded danger of the continuation of criminal activity.¹⁸⁸ Within the grounds of the disturbance of public order and tranquillity, it is understood to include the risk of the accused threatening the victim.

In the context of domestic violence, the Law Against Domestic Violence provides special coercive measures for cases of domestic violence in addition to those offered in the CPC: (a) coercive removal of the accused from the place of residence of the family and (b) prohibition of the accused contacting the victim.

The application of these measures requires compliance with the general requirements laid down in the CPC, as well as the specific conditions provided in the LADV. The special coercive measures under the LADV may be applied "whenever there is evidence that reasonably leads to foresee that the acts of violence may be repeated in such a way as to create a danger to the victim's life or physical, psychological or sexual integrity" (Article 37 LADV). As can be noted, the risk of recurrence of the criminal activity foreseen in the CPC is determined with particular characteristics for domestic violence cases in the LADV.

Studies show that there is a strong possibility that a crime of domestic violence will be repeated, as often domestic violence is not limited to an isolated act but instead happen cyclically, within a "cycle of violence".¹⁸⁹ These measures are based on the premise that, at times, the continued contact of the victim with the accused may impact the progress of the proceedings and bring negative consequences for the victim.

Applying coercive measures is the judge's prerogative under Article 184 of the CPC, except for the residential address and identity record. Only the public prosecutor may request the imposition of a coercive measure (Article 184(1) and (2) CPC). The victim does not have the legal standing to submit a request to the court for a coercive measure order, even in domestic violence cases.

188. Cfr. Portugal, Tribunal da Relação de Évora, Judgment of 03 March 2015 (Proc. no. 1373/14.3PBSTB-A.E1), which states "In truth, the facts under appraisal show that the continuation of criminal activity will be associated with intimidation of the victim, already sufficiently weakened and diminished as a "person". This victim will necessarily occupy the role of important or main evidence in the process, as happens in other cases dealing with crime in a family context. Crimes of domestic violence are rarely perpetrated under the eyes of third parties, and it is common practice for the victim to be isolated by the aggressor himself or herself. Therefore, this person-witness naturally appears in the process as the main, or even the only, source of knowledge. In the light of the above and given that the (serious) facts under examination (which occurred repeatedly and intensely over six years) are temporally situated in the course of a suspended prison sentence imposed on the defendant for a similar crime and against the same victim, that is, it has been sufficiently demonstrated that the defendant's aggressive conduct towards the victim has lasted (and continued) for about fourteen years, it must be concluded that the danger of continuing the criminal activity is extremely high and coexists with the danger of preserving evidence. In this context, any measure of coercion other than preventive custody would prove insufficient to guarantee the precautionary purposes diagnosed in this case. Preventive detention also proves to be proportional to the seriousness of the crime and to the penalties that may foreseeably be applied." [Emphasis added]

189. UNODC, Handbook on effective prosecution responses to violence against women and girls, 2014, 19.

The pre-trial detention of the accused is a judicial decision determining that the accused has to wait while in custody until the conclusion of the criminal procedure. The CPC does not provide an express legal duty to the authorities to inform the victims of the whereabouts of the accused, especially whether the accused has been put in pre-trial detention. Although for domestic violence cases, the LADV, in its Article 7, demands the victim to be regularly informed of updates on the proceedings, the general practice is that the public prosecution only communicates with the victim when the CPC specifically requires to deliver notification to the victim.

The legal regime identifies several measures to obtain evidence, including searches, seizures, examinations and telephone tapping, per the regulations expressly provided in the criminal laws (Articles 168 to 180 CPC).

While searches are concerned with the seizure of objects related to the crime, searches are carried out in a private place, for instance, at the suspect's or victim's home. A judicial order must be obtained to conduct searches, and the judge may preside over the search if s/he sees fit.

Article 172 of the Criminal Procedure Code states that a judge's order must authorise the seizure of objects related to the crime. Only in case of urgency or danger due to the time needed to obtain a warrant can the criminal police make seizures without prior judicial authorisation.

Also, when the law enforcement officials are in charge of carrying out the investigation, based on delegation from the public prosecutor, they are obliged to prepare a final report at the conclusion of the investigation, as provided in Article 234(1) of the CPC.

As often the primary witness of a GBV crime, the victim's participation and cooperation with the relevant entities is crucial for a successful investigation by providing information that may be useful for the criminal proceeding. According to Article 72(1) of the CPC, while the victims cannot collect evidence themselves, victims' have the right to request the prosecutor to collect specific pieces of evidence. In practice, victims are often unaware of this right and only avail to it, when they are informed and supported by legal representatives.

While the victim has a pivotal role during the criminal investigation phase, it is nonetheless the overall responsibility of the State, with all its apparatus, to conduct a serious and quality investigation. The victim's statement is, often, only one of the means of proof, and the prosecution shall not expect the victim to provide all the evidence to support the investigation.

Good Practices in International and Other National Domestic Laws

The conduct of the criminal investigation must achieve two things simultaneously, the means for evidence gathering and the victim's safety. For adequate access to justice in GBV cases, the legal framework must establish effective measures to keep the alleged perpetrator away from the victim.¹⁹⁰ During the investigation of these cases, attention must be given to protecting the victim while collecting evidence, especially since the accused is usually a close acquaintance of the victims, often having access to them, which puts them in a vulnerable position.



190. See, *Segurança da vítima e Acesso a Serviços de Apoio Especializados*





As foreseen in international instruments, compliance with the victim's right to receive updated information on the progress of the process is a good practice, as it contributes to the victim's safety and allows them and the authorities to identify actions to ensure their protection.¹⁹¹

States must secure the implementation of their duty of care in investigating and clarifying reported GBV crimes, as provided under Article 2(c) of CEDAW.¹⁹² According to the CEDAW Committee, States are under the obligation to carry out a thorough investigation in cases of GBV. In the Communication of S.L. v. Bulgaria, 19 July 2019, the Committee held that the State has to "promptly, thoroughly, impartially and seriously investigate all allegations of gender-based violence against women".¹⁹³

Several foreign jurisdictions secure the right of victims to propose to authorities the collection of specific evidence. This guarantee does not mean that the responsibility for evidence collection lies entirely on the shoulders of the victim. Public authorities have, by law, the overall burden of collecting evidence, including in allegations of GBV crimes.

Right of the Victim to Present Evidence to the Authorities

 In **Poland**, the victim has the right to present requests for the submission of evidence (Article 315).¹⁹⁴

 In **Brazil**, victims (referred to as assistants to the prosecution) can propose collecting evidence and may also address questions to witnesses.¹⁹⁵

Despite efforts to secure a responsive judicial system for GBV crimes, it is generally acknowledged that GBV investigations face particular challenges, as they are "often infiltrated by strong gender stereotypes that can result in engaging in gender-biased behaviour by court officials and discrimination against women by the criminal justice system in general".¹⁹⁶ Considering this to be the existing reality, a good practice is to enact specific rules or guidance for evidence gathering in GBV crimes, supporting investigating authorities to act impartially and without prejudice against women and girls.

As it relates to evidence assessment, the deep-rooted stereotypes that women make false allegations of rape and sexual assault are well known; an unsupported generalised statement ignoring the fact that a victim could face legal repercussion if providing a false statement. Furthermore, specific rules of evidence based on gender bias and stereotypes facilitate intrusive and unjustified enquiries into the morality and character of the victim.¹⁹⁷

Positively, the acknowledgement of this discriminatory practice has led to several national legal systems identifying changes needed to ensure that rules align with international human rights principles and the principles of the rule of law. The following measures have been identified as practices to be excluded due to being based on gender stereotypes:¹⁹⁸

191. Cf. CEDAW Committee, General Recommendation no. 35 on gender-based violence against women (in update of General Recommendation no. 19), 14 July 2017, para. 23; Principles 6.c, 14 and 17 of the Victims' Statement of Principles. Vide, As vítimas devem ter assistência adequada ao longo de todo o processo legal.

192. See also Article 124(b) of the Beijing Platform.

193. CEDAW Committee, Communication of S.L. v. Bulgaria, No. 099/2016, 19 July 2019, para. 7.15.

194. Poland, Regional Prosecutor's Office in Warsaw, Basic Rights and Obligations of a Victim of Crime, 2022.

195. Brazil, Article 271 of the Brazilian Code of Criminal Procedure.

196. European Union and Council of Europe, Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice, September 2017, 80-81.

197. European Union and Council of Europe, Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice, September 2017, 80-81.

198. Ibid, p. 81.

- The requirement of an immediate complaint: There is the need to exclude any rules and procedural practices determining a timeframe within which the complaint of sexual violence must be presented. This rule is based on the fallacious idea that a ‘true victim’ will immediately denounce the incident of violence. When reporting is delayed, unfortunately, the integrity of the complaints presented is called into question.
- The need for corroboration of the victim’s allegations: This requirement demands the victims of sexual violence have their claims corroborated by other evidence, such as physical, forensic, medical or testimonial evidence. This requirement places a higher burden of proof on crimes of sexual violence than other violent crimes, where the latter allows for a conviction can be obtained solely based on the victim’s testimony. The need for corroboration of the victim’s allegations in GBV is a blatant gender-discriminatory practice.
- Credibility of the victims based on their previous sexual conduct: This discriminatory practice is based on the notion that if a woman has already had sexual intercourse, she is more likely to have consented to have sexual intercourse with the alleged offender. This practice undermines the victim’s credibility through the stereotype that a woman should be a virgin and ‘respectable’, shifting attention to the victim’s behaviour rather than the alleged criminal conduct of the perpetrator.

Spain, Brazil, the United States and the United Kingdom: Prohibiting Reference to the Victim’s Sexual History

Several countries have formally banned or limited the use of the victim’s sexual history, behaviour and reputation in criminal proceedings.



Spain, Article 25(2) of the Crime Victims’ Statute provides that actions are to be taken to prevent the victim’s being asked questions concerning their private life, which have no relationship with the criminal act under consideration. These measures should be adopted at both the investigation and trial stages.¹⁹⁹



In **Brazil**, Law No. 14.245/2021 of 22 November 2021, amended several normative diplomas, among them the Code of Criminal Procedure, to guarantee respect and care for the victim’s physical and psychological integrity, forbidding “the declaration on circumstances or elements that are unrelated to the facts object of the investigation as per the court record” and the “use of language, information or material that offends the dignity of the victim or witnesses”. This law was approved after the publicity of a trial hearing wherein the questioning of an alleged victim of sexual violence by the defendant’s lawyer about photographs posted on social media and enquired whether the victim did not have a ‘general sexualised behaviour’ and that, therefore, the victim declaration she did not consent to the sexual act should be disregarded.

199. Spain, Law 4/2015, of 27 April.

200. Brazil, Law No. 14.245, of 22 November 2021.



In the **United States of America**, through Rule 412 of the Federal Rules of Evidence, evidence seeking to prove that a victim participated in other sexual acts or information about the victim's sexual predisposition is not admissible in civil or criminal proceedings involving sexual offences.²⁰¹



The **United Kingdom**, through the Youth Justice and Criminal Evidence Act, section 41, prohibits evidence about the sexual behaviour of the victim.²⁰²

Another severe shortcoming still prevalent in some legal frameworks is the need to prove the use of physical force or the existence of a struggle (as an element of the crime or as corroborative evidence to enhance the victim's credibility) in sexual offences or that the victim has denied consent.

Confronting the Gender Stereotype of the Victim's Need to Attempt to Escape



It is noteworthy the judgment of the **European Court of Human Rights** which, in the case of *M.C v. Bulgaria*, stated: "Evolving understanding of how rape is experienced by the victim has shown that victims of sexual abuse - in particular girls under the age of majority - often do not offer physical resistance due to a variety of psychological factors or because they fear violence from the perpetrator. [Any] rigid approach to the prosecution of sexual offences, such as requiring evidence of physical resistance in all circumstances, risks leaving certain types of rape unpunished and thus jeopardising the effective protection of the individual's sexual autonomy".²⁰³



In the case of *Vertido v. Philippines*, the **CEDAW Committee** in 2008 concluded that the State court erred in relying on gender-based myths and stereotypes about rape and rape victims. The Committee noted that the decision reinforced the myth that a woman needed to physically resist to fulfil the elements of the crime of rape. It further emphasized that in law or judicial practice, there can be no presumption that the lack of physical resistance automatically means that consent was given.²⁰⁴

Victim safety should also be a concern during the investigation phase. Regular communication with the victim about the progress of the case, the evolution of the investigations and the actions already taken serve to keep the victim safe. Most importantly, victims should be informed when a violent defendant is freed to allow them to take any measures needed for their protection.



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201. United States, Rule 412. Sex-Offense Cases: The Victim. Federal Rules of Evidence.

202. United Kingdom, Youth Justice and Criminal Evidence Act 1999.

203. European Union and Council of Europe, Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice, September 2017, 82-84. [emphasis added].

204. CEDAW, Communication No. 18/2008, *Vertido v. Philippines*, 16 July 2010, para. 8.5. Cfr. CEDAW, Communication No. 34/2014, *R.P.B. v. Philippines*, 21 February 2014, para. 8.10.



Spain and Poland: Regular information to the victim about the release of the accused

The **Spanish** Law regulating protection orders in cases of domestic violence determines the entitlement of a victim be regularly informed about the legal proceedings, including any changes in the process and the eventual release of the alleged offender.²⁰⁵

Similarly, the **Polish** Code of Criminal Procedure provides for the victim's right to have information about the overturning of a pre-trial detention decision (Article 253).²⁰⁶

Practice in Timor-Leste

An in-depth analysis of the investigation phase of GBV crimes in Timor-Leste reveals both positive and adverse practices.

In numerous domestic violence cases, the court does not impose coercive measures on the accused. To date, there is no effective and widespread use of the special coercive measures provided in the LADV. An order to remove the domestic violence suspect from the family home is rarely used.²⁰⁷ Often, it is expected that a victim who is afraid should be the one being moved away from the suspect, and if she feels the need to seek safety at a shelter home. The common practice in Timor-Leste is, in fact, the reserve of good practices: authorities, police and prosecution, recommend the victim leave her home if she is afraid, rather than requesting the imposition of coercive measures on the suspect or taking steps to secure the victim's safety in her community.

When contemplating coercive measures against the accused, the victim's needs are not fully considered, nor are their physical and psychological integrity and safety. Through analysis of court decisions, it is seen that they almost exclusively rest solely on the risks related to the accused's actions.²⁰⁸ It is common to note that the public prosecutor has not yet enquired into the family and living circumstances of the victim and the accused by the time the court's first interrogation of the accused is held. Therefore, strong arguments are often lacking to support a request for coercive measures on the accused, including pre-trial detention for the risk of recurrence of criminal acts or a non-contact judicial order due to the trauma faced by victims.

Despite the shortcomings described above, it is still possible to identify the use of pre-trial detention in cases of sexual violence for fear of flight of the accused, disturbance of the investigation process or recurrence of the crime.

205. Article 2, n. 9 of Law 27/2003, of 31 July, regulating the Protection Order for Victims of Domestic Violence.

206. Regional Prosecutor's Office in Warsaw, Basic Rights and Obligations of a Victim of Crime, 2022.

207. Judicial System Monitoring Programme, Lei Kontra Violénsia Doméstika: Tinan tolu implementasaun ho nia obstakulu, 2013, 31; Judicial System Monitoring Programme, Inestu-iha-Timor-East-Agostu-2012, 21; Judicial System Monitoring Programme, Observasaun Jerál ba Sistema Judisiáriu Iha Tinan, 2011, 27.

208. Judicial System Monitoring Programme, Observasaun jeral sector justisa 2020, 2021, 47. See also, Judicial System Monitoring Programme, Observasaun Jerál ba Sistema Judisiáriu Iha Tinan, 2011, 26.



Maintenance of Pre-Trial Detention for Risk of Recurrence of Crime in Sexual Abuse of a 12-year-old Child

On 15 October 2020, in Case No. 124-Inq-2020-TR, the Court of Appeal upheld the court a quo decision determining the accused pre-trial detention. In its appeal grounds, the defence argued that there was no evidence of a crime, as the accused and the victim had established a 'relationship as a de facto union' and that the 'accused loved the victim very much'. In addition, it was argued that traditional ceremonies were already concluded to 'dignify' the victim for the 'immoral actions' of the accused, and those had allowed the accused to consider the victim his wife.

The victim was 12 years old when the 'relationship' began, and at the time of the arrest of the accused, she was 13 years old.

The Court of Appeal stated that this was a case of sexual abuse of a minor and that "for this type of offence, it is irrelevant whether the sexual acts described therein had the victim's consent".

In addition to strong evidence that a crime was committed, the court identified the risk of the recurrence of the criminal acts. The court also affirmed that, if not in pre-trial detention, the accused was expected to continue the 'relationship' with the child victim.

It has been noted that victims are not regularly informed of the progress of criminal proceedings. In particular, victims are never told whether the accused is remanded in custody or not after an arrest or upon a successful appeal against a court order for pre-trial detention. In cases of domestic violence, it is understood that the public prosecutor generally fails to consider that the LADV imposes, in its Article 7, a general duty of information of the victim on the prosecution, which is in law beyond the formal notifications required to be given to the victims as provided by the CPC.



Victims without any information on the release of an accused from pre-trial detention

In a case of domestic violence in 2019, pre-trial detention was initially ordered, but it was reversed on appeal, with the accused released.

The victims in the case, who had legal representatives formally registered, were not informed of the release of the accused but became aware of the accused release through social media posts. Being blindsided, the victims were very anxious and terrified, and for more than three days, they felt afraid to leave their homes for fear of meeting the accused.²⁰⁹

209. Interview with JU,S Jurídico Social.

The public prosecution sometimes uses a limited investigation strategy, relying on passive techniques, where victims are expected to bring the evidence to them. The passive approach to investigations of GBV weakens the investigation process and limits its results.²¹⁰



Without information on the identity of the alleged perpetrator, no criminal investigation was opened

In 2018, a middle-aged woman was a victim of an invasion in her home at night. This female victim went to the public prosecution to report the crime. The public prosecutor inquired if the victim could identify the individual who entered her house, and she replied negatively. She was told that without any information on the identity of the accused, the authorities could not open a criminal case.

The victim attempted to inform that she was aware that community leaders could contribute additional information about the case or the suspect's identity since there were other cases of unauthorised entry into residents' homes in the neighbourhood. However, the prosecution insisted that no criminal reporting could be formally registered since there was no potential suspect previously identified.²¹¹



Acquittal in sexual violence case due to inadequate investigation

In March 2016, a young woman in the capital of one of the Municipalities was approached by a young male who offered her a ride on his motorbike. She accepted the ride and according to the indictment filed before the district court, the young man took her to a different location and committed sexual assault.

The court decided to absolve the accused because the defendant presented by the prosecution was not the person responsible for the possible crime. It was evident during the trial, which took place in late 2016, that the investigation was inadequate, as the victim did not identify any similarity between the alleged perpetrator and the defendant in the case.



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210. Judicial System Monitoring Programme, Akuzasaun, julgamentu no sentensa iha kazu violensia sexual ia Timor-Leste, 2012-2015, March 2016, 22.

211. Interview with JU,S Jurídico Social.

In the last few years, the delegation of investigation powers from the prosecution to the police has increased. However, a remarkably higher surge has been identified in the delegation of these powers to prosecutorial judicial officers. A couple of years ago, this delegation of powers was made without identifying the investigation strategy, including particular types of evidence to be collected. More recently, the prosecution has started to frequently provide

specific instructions on investigative steps to be taken, a positive advance which has the potential to contribute to an increased quality of the investigations.

The prosecution often does not request a psychosocial report concerning GBV victims staying in shelters. These reports can register the victim's conditions, physical and psychological needs and describe the support they are receiving.²¹² Psychosocial reports can be a crucial piece of evidence in GBV crimes while also being beneficial to support requests for coercive measures against the accused.

The lack of a strong relationship between the victim and the criminal public organs based on mutual trust that promotes genuine communication is an obstacle to identifying other crimes against the victim or third parties. In GBV cases, it is not uncommon the disclosure of additional crimes when victims feel comfortable and valued during the proceeding and has confidence in the relevant authorities.



Two or five counts of sexual abuse of a minor?

In a case of alleged sexual abuse of a minor committed by the uncle of a girl under 14 years of age, the indictment issued upon the conclusion of the criminal investigation only identified that the girl had been the victim of a sexual act twice. During her testimony before the court, it became clear that the victim had been abused more than five times. Once alerted to that fact by the victim's legal representatives, the judges showed the intention of amending the indictment.²¹³

When gathering evidence, the safety and confidentiality of the victim and witnesses are not fully considered by the public prosecution. When GBV service providers support victims, the prosecution often assumes that care for the victim's safety and wellbeing has been taken. However, the limited use of special coercive measures in domestic violence cases may limit the capacity of service providers advocating for alternative measures, which can also support the earlier return of the victim to her community. The prosecution always has to consider the psychological and physical integrity of the victim as a paramount issue during the criminal investigation phase.

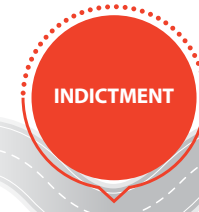
In the context of domestic violence, the prosecution authority may find difficulties in gathering evidence as the Timor-Leste local community still believes that cases of this nature are a problem only between spouses.²¹⁴

Due to historical and other reasons, there is a community eagerness during the investigation to uncover 'who made the complaint', even when the crimes are public. This reality brings grave concerns to the victim's wellbeing as it mistakenly puts the burden on her shoulders, contributing to their increased vulnerability, increasing the likelihood of being a target of threats and intimidation, and intensifying their feelings of guilt.

212. Judicial System Monitoring Programme, *Labarik sira nia Asesu ba Justisa Formal iha Timor Leste*, 2014, 33.

213. Interview with JUS Jurídico Social.

214. UNDP, *Breaking the Cycle of Domestic Violence in Timor-Leste: Access to Justice Options, Barriers and Decision Making Processes in the Context of Legal Pluralism*, October 2013, 17.



INDICTMENT OR DISMISSAL OF THE INVESTIGATION

National Legal Framework

The public prosecution concludes the investigation, having the option to dismiss the case or issue an indictment.

The investigation may be dismissed when: a) not enough evidence has been gathered to support the alleged offence; b) the perpetrator of the crime is unknown; c) the criminal procedure is legally inadmissible (Article 235(1) and (2) CPC). However, whenever new elements relevant to the investigation emerge, ex officio or on request by the victim, a closed investigation must be reopened (Article 235(3) CPC).

The public prosecutor issues an indictment when there is sufficient evidence of the existence of the crime and who has committed it (Article 236(1) CPC) and where it is convinced that there is a reasonable chance for a penalty (or a security measure) as the outcome of an eventual trial (Article 236(2) CPC). The indictment must meet several requirements, including the identification of the accused, the narrative of the alleged criminal facts and the applicable substantive legal rules. It further needs to contain an indicative list of witnesses and other evidence to be produced at trial (Article 236 (3) and (5) CPC). The Indictment shall also identify the number of crimes alleged in the case of concurrent crimes.

As provided in the Penal Code, based on Article 41 read with Article 35, “crimes eminently against the person” are not continuous crimes, and when more than one act of these crimes occurs, as a rule, one is before concurrent crimes. Gender-based crimes are crimes against a person.

The accused and the aggrieved party/victim are notified of the decision to dismiss or be indicted, as provided in Article 237 of the CPC.

When the investigation is dismissed, the victim may, within 15 days of being notified, submit a hierarchical appeal requesting the review of the decision to the prosecutor’s immediate supervisor (Article 300 CPC). The immediate superior of the prosecutor responsible for the initial criminal investigation may, ex officio or, following the appeal of the victim, order the issuance of an indictment or further investigation (Article 235(4) CPC).

Upon the issuance of an indictment, the prosecution submits it to the court with jurisdiction over the case. According to Article 239 of the Criminal Procedure Code, in the pre-trial phase, it is the judge’s responsibility to identify any elements or preliminary questions that may hinder the assessment of the case on its merits. According to Article 239(b) of the CPC, the judge may issue an order rejecting the indictment if s/he considers the accusation to be manifestly ill-founded. What is understood by ‘manifestly ill-founded’ is defined in Article 1(c) of the CPC: “does not contain a description of the facts or information leading to the identification of the accused, does not indicate the applicable legal provisions or the evidence on which the charge is based, or the facts described do not constitute a crime”. The charge cannot be dismissed for simple ‘minor defects’, as already clarified by the Court of Appeal in Case 207/CO/2019/TR, of 27 December 2019.

The judge's competency in evaluating the indictment is limited to rejecting or accepting the indictment, with the rejection only being possible when meeting one of the criteria provided in law. A judge does not have the power to review or amend the indictment. A wrong criminal qualification, through the identification of an incorrect offence, or a failure to allege concurrent crimes when relevant, may only be remedied during the trial.

Good Practices in International and Other National Domestic Laws

Judicial authorities are the ones responsible for prosecuting violence against women and children. Thus, it is a good practice when legislation establishes the authorities' duty to explain to the victim the reasons for the closure or dismissal of the case.²¹⁵



Spain: Duty of the Public Prosecutor to Explain the Reason for Case Dismissal

Cases of violence against women have often been closed or dismissed without explaining the reasons for the decision to the victims. In order to address this issue, several countries have introduced legal or regulatory provisions, such as Instruction 8/2005 of the State Prosecutor's Office of **Spain**.²¹⁶ This instrument establishes the general duty to keep the victim informed and take steps to safeguard their protection during the entire criminal proceedings. This decree determines, among other guidelines, that prosecutors must explain the reasons for closing a case to victims.

The indictment should always reflect the seriousness of the crime charged, ensuring an effective right of access to justice, the corresponding accountability of the offender and, ultimately, promoting, through criminal punishment, the prevention of the reoccurrence of these crimes in society.²¹⁷

Communication with the victim should respect the victim's right to privacy and avoid re-victimisation and stigmatisation. Ideally, delivery of documents to the victims should take place through the victim's legal representative or request the victim to identify a suitable place to be notified.

Practice in Timor-Leste

As already mentioned, the victim often does not receive information on the progress of the proceedings, on the evidence gathered and whether the prosecution is meeting challenges in securing relevant evidence during the proceedings. However, when a criminal investigation is concluded, the prosecutor has to notify its decision to indict or to close the case. In a closure or dismissal order, a brief reference to the reasons is included (Articles 92 and 237 CPC).

While the legal requirement for notification of the outcome of the investigation phase to the victim is positive from a victim's perspective, care shall be given to ensure that this will not retraumatize the victim or reveal confidential information putting her physical and psychological integrity at risk.

215. UN, Handbook for Legislation on Violence against Women, 2010, 36-37.

216. Spain, Doctrina de la Fiscalía General del Estado, 'Instrucción 8/2005, de 26 de Julio, sobre el deber de información en la tutela y protección de las víctimas en el proceso penal', Boletín Oficial del Estado.

217. UNODC, Handbook on effective prosecution responses to violence against women and girls, 2014, 81.



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Frequently the in-hand notification exposes the victim's identity and puts her wellbeing at risk when officials go to the local communities and often contact persons living in the localities to more easily find the whereabouts of the victim and notify her. The same procedure is used even when the victim has a legal representative, and repeatedly officials fail to liaise with the victim's legal representative to identify the most responsive mechanism for the notification given the victims' situations.



Prosecution Clerk accommodating the victim's needs

Recently in 2022, the prosecution clerk contacted a young female nurse by telephone to inform her that he had to deliver a copy of the Indictment in which she was identified as the victim. The victim expressed to the official that she did not want him to come to her work or community and asked if she could collect the document instead. Considering her work engagement, the victim informed that she could only come to the municipality's capital on a Saturday, and the prosecution clerk showed readiness to receive her during the weekend.²¹⁸

At this stage of the criminal procedure, one of the main shortcomings revealed in this research is the limited quality of the indictments, which frequently contain several errors, such as the incorrect legal qualification of the crime, including the choice of less serious crimes,²¹⁹ and the lack of identification of concurrent offences.²²⁰ Confusion about the selection of crimes is sometimes notable, especially concerning the crime of ill-treatment of spouses and bodily harm committed in a family context.²²¹



Incorrect identification of the crime in the indictment

Before the Dili District Court in 2015, a defendant was tried on a charge of sexual coercion in the form of a sexual act against the victim. However, it was clear from the reading of the indictment and the evidence presented in court that the sexually suggestive act had been fraudulently induced by the accused. The accused told the victim that he needed to mark symbols on her body, including on her stomach, so that he could 'cleanse her house of evils'. The victim obeyed his instructions and removed part of her clothing, being undressed in the top part of her body, believing that the actions were necessary to perform the ritual.

The court of first instance sentenced the accused to two years imprisonment. On appeal, the Court of Appeal acquitted the accused on the understanding that the crime of sexual coercion requires the existence of an element of violence or serious threat and that these were not present. Neither court discussed the need to change the criminal qualification from sexual coercion to sexual fraud at no time.²²²

218. Interview with JU,S Jurídico Social.

219. Judicial System Monitoring Programme, Observasaun Jerál Setór Justisa 2020, 2021, 36.

220. Judicial System Monitoring Programme, Observasaun Jerál Setór Justisa 2017, 2018, 29, 36; Judicial System Monitoring Programme, Relatóriu Observasaun Jerál Setór Justisa 2016, 2017, 19, 22; Judicial System Monitoring Programme, Akuzasaun, Julgamentu no Sentensa iha Kazu Violénsia Sexuál iha Timor-Leste, 2012-2015, 2016, 3, 15-16, 21-22, 31; Judicial System Monitoring Programme, Lei Kontra Violénsia Doméstika: Tinan Tolu, 2013, 24.

221. Judicial System Monitoring Programme, Observasaun Jerál Setór Justisa 2020, 2021, 36.

222. Interview with JU,S Jurídico Social.

When before sexual crimes, indictments commonly only indicate one count of the crime, even though actions were practiced against the same victim by the same agent several times. The CPC unequivocally provides that ‘imminent personal crimes’ are not continued crimes and shall represent concurrent crimes when more than one act is committed. It is worth noting that in cases of physical offence, it is commonly identified, and when relevant, more than one count in the indictment.



Lack of provision for concurrent offences in sexual abuse of a minor

In a case of sexual abuse of a minor, investigated by the Dili District Prosecutor’s Office in 2020, the indictment described one alleged sexual act in 2018 (groping the body of the victim), the use of physical acts of violence (dragging and hitting) and vaginal penetration of the victim in another date in the same year. In addition, the same indictment provided that the following year, the defendant showed pornographic films to the victim to ‘teach’ the child how to do the acts as they appeared in the video. The victim was a child under 14 at the time of all the alleged actions. The indictment only identified one crime of sexual abuse of a minor in the aggravated form of vaginal penetration.

The facts, as narrated in the indictment, clearly showed concurrent crimes: one offence of sexual abuse of a minor in the form of vaginal penetration, two crimes of sexual abuse of a child in the form of a sexual act and one offence of simple bodily harm.²²³

During the trial, the absence of concurrent crimes in GBV cases may be eventually remedied by the court.²²⁴ However, in the vast majority of the cases analysed where more than one sexual offence was committed, the court did not alter the indictment and failed to identify concurrent crimes.²²⁵

When questioning judicial actors about this practice, it was understood that the main reason for the non-identification of concurrent crimes in sexual cases is not based on an erroneous understanding of what an “imminently crime against the person” crime consists of but rather on a stereotyped view of the matter. The false idea prevails that once a woman or young female has already had ‘sexual experiences’ which caused her to lose her ‘virginity’ or be already ‘impure’ (even though that was a result of sexual violence), other subsequent sexual acts are no longer considered since the perceived aim of the criminal offence is to protect the woman’s virginity or purity.

Even when an indictment describes that the accused and the victim integrated a family context, the application of the LADV is habitually not included. It is further noted that several charges fail to identify aggravating circumstances as provided in the Criminal Code when the crime refers to a dependent relationship between the accused and the victim.

223. Interview with JU,S Jurídico Social.

224. See, in this regard, the judgment of the Court of Appeal of 29 October 2020, case No. 143/CO/2020/TR, in which it convicted the defendant of 10 counts of aggravated sexual abuse of a minor. The defendant was initially indicted for only one aggravated sexual abuse of a minor.

225. As an example of the court’s inaction regarding concurrent sexual offences, see the Court of Appeal judgement in case No. 202/CO/2016/TR, of 30 May 2019, and Case No. 27/CO/2016/TR, of 14 May 2020.



JSMP: Lack of identification of aggravating circumstances due to family relationships

In an indictment filed in 2018, the public prosecutor charged a male defendant with the commission of sexual abuse of a minor. The indictment did not include any reference to the aggravating factor of a descendant relationship between the victim and the defendant, who was the victim's grandfather.²²⁶

Indictments sometimes also describe the facts through a gender stereotyping lens.²²⁷

It is also common to identify a failure to include claims for compensation in crimes of gender-based violence, as reported extensively by non-governmental organisations, despite the existence of specific formal instruction.²²⁸



Indictment with a specific claim for damages to the victim

On a positive note, it was possible to identify a limited number of indictments that contained civil claims for damages compensation. In one indictment from the Dili prosecution filed in 2021, the prosecutor included a request for civil compensation for the crime of sexual abuse of a minor in the form of vaginal penetration; however, it failed to identify a proposed amount for the compensation.²²⁹

226. Judicial System Monitoring Programme, Observasaun Jerál Setór Justisa 2020, 2021, 45. It is noted that JSMP report mistakenly refer that the sexual act of vaginal coitus was performed against the will of the victim, failing to recognize that sexual abuse of minors does not require as an element the use of violence or threat or the consent of the child.

227. Judicial System Monitoring Programme, Observasaun Jerál Setór Justisa 2017, 2018, 29, 36; Judicial System Monitoring Programme, Relatóriu Observasaun Jerál Setór Justisa 2016, 2017, 19 and 22; Judicial System Monitoring Programme, Akuzasaun, Julgamentu no Sentensa iha Kazu Violénsia Sexual iha Timor-Leste, 2012-2015, 2016, 3, 15-16, 21-22, 31; Judicial System Monitoring Programme, Lei Kontra Violénsia Doméstika: Tinan Tolu, 2013, 24.

228. Judicial System Monitoring Programme, Observasaun Jerál Setór Justisa 2020, 2021, 45.

229. Interview with JU,S Jurídico Social.

When a compensation claim is formulated, no specific amount is often requested, or when it is, the value is extraordinarily low, not reflecting the consequences that victims have faced. The justification for the compensation claim is often based on myths about the effects of the crime in question, including a request for financial payment for losing virginity.

Due to passive investigations into gender-based crimes, many inquiries end in dismissal orders, as not enough elements have been found to support a formal indictment. It is noted that the Office of the Prosecution does not have disaggregated data on dismissals.

Nothing prevents an indictment rejected by the court from being reviewed using the same criminal investigation. A new charge in no way harms the prohibition of double jeopardy (not to be tried more than once for the same crime) since the judge's rejection of the indictment means a trial has not occurred. A statutory limitation would be the only eventual impediment to revising an indictment and drafting a new one to be submitted to the court.

Despite the possibility of submitting a new indictment answering the specific issues identified by the court in its reasoned rejection, it was impossible to identify cases in which a new 'rectified' indictment was submitted within the national judicial practice. Instead, it is possible to identify the existence of appeals by the prosecution against the court decision rejecting the indictment. It is unclear, however, why in practice, prosecutors choose to file an appeal rather than redraft a new indictment, given that the latter appears to be a less burdensome process.

TRIAL

Acquittal
(Art. 281,
283 CPC)

3. TRIAL

The trial stage is mainly composed of hearings and the court's decision. As a rule, hearings occur in court facilities, with the number varying depending on the specific case in question. One judge will preside over the trial when the crime indicted has a prison sentence of fewer than five years imprisonment; otherwise, it is presided over by three judges (Articles 14 and 15 CPC).

The court hearing will begin as per the schedule determined by the court once all the relevant parties required to attend are present.

The production of evidence generally follows the order established in Article 265 of the CPC, which includes the statements of the accused (if he so decides to give a statement), the evidence as indicated by the public prosecution, followed by the evidence presented by the accused and any other evidence the court deems necessary. The judges may decide to alter the order of the evidence if necessary (Article 265(2) CPC).

VICTIM'S STATEMENT BEFORE THE COURT

National Legal Framework

During the actual trial proceedings, one of the pieces of evidence that the public prosecutor may produce is the victim's statements. When making a statement before the court, the victim must answer all the questions posed by the judges, the public prosecution and the defender of the accused (Article 270 CPC).

As a general rule, the victim's statement is given during a court hearing unless the court has previously heard her testimony during a statement for future use hearing.

In cases of domestic violence, if the victim requests, social assistance services can support and accompany her in court (Article 23(g) LADV). The Court may also apply measures to protect witnesses, including the victim, according to Law No. 2/2009, of 6 May. Considering the reality of domestic violence, the court should always ponder the application of protection measures towards the victims of these crimes, as expressed in Article 39 of the LADV.

Trials are public by nature, and as a general rule, hearings should be open to the public (Article 247 CPC). Hearings can and should, be closed to the public when there is the need to preserve the victim's right to privacy. The legal provision allowing limitation of public participation during trial hearings is based on the guarantee of protection of the right to privacy and dignity (of the victim and other parties to the trial), as provided in Article 76 of the CPC. Article 253(4) of the CPC establishes the defendant's removal from the courtroom when "his/her presence may contribute to inhibit or intimidate someone who is required to make a statement".



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Good Practices in International and Other National Domestic Laws

Good practices relating to victims' statements during the trial focus on securing the psychological condition of the victim so they can effectively participate in the process and have their physical integrity, mental integrity and privacy duly protected.

Most victims will be unfamiliar with the courts' environment and trial processes, which can increase anxiety and fear about the entire judicial process. For victims of gender-based violence, including sexual offences, feelings of vulnerability are especially traumatic. Victims being required to testify need to be ready and prepared to participate fully in the process to minimise the impact on their physical and mental integrity.

Under international law, specific measures are recommended to promote a more empowering experience for the victim.²³⁰ A trauma-informed process will include preparatory steps to support the victims' experience in testifying, an opportunity for victims to share their concerns and actions, and actions which assert that the case is being taken seriously by all actors and that victim's specific needs are duly addressed. When the victim has psychosocial and legal representation support, the role of the prosecution can be mostly limited to ascertaining if they have effectively provided the help needed.

The safety of victims shall be secured in the vicinity of the court premises and inside the courtroom.²³¹

Victim statements should not be given face-to-face with the accused unless requested by the victim after receiving necessary information on the potential consequences of being physically next to the accused. Alternative means should be explored to allow for the victim's statement to be given without the presence of the accused, such as closed-circuit television or video links²³² Furthermore, judges should consider the possibility of the victim giving their statement in court without the presence of the accused in the courtroom.



Brazil: Legal prohibition of contact between the child victim and the defendant

"The child or adolescent will be shielded from any contact, even visual, with the alleged perpetrator or accused, or with another person who represents a threat, coercion or embarrassment" - Article 9 of Law 13.431/2017, of 4 April (Establishes the System to Guarantee the Rights of the Child and Adolescent's Victim or Witness of Violence).

Prosecutors should always take action to secure victims' right to respect, privacy and challenge degrading stereotypes and emphasis on myths during court hearings. In cases of sexual violence, it is notable that there is a consensual position that any evidence relating to the victim's sexual history and sexual conduct should not be used to discredit the evidence presented by the victim. Likewise, court actors should consider that any inappropriate, aggressive or provocative questioning should be stopped.²³³

230. UNODC, Handbook on effective prosecution responses to violence against women and girls, 2014, 60-61.

231. Council of Europe, Preventing and combating domestic violence against women - A learning resource for training law-enforcement and justice officers, January 2016, 60.

232. UN, Handbook for Legislation on Violence against Women, 2010, 40.

233. Council of Europe, Preventing and combating domestic violence against women - A learning resource for training law-enforcement and justice officers, January 2016, 51-52.

During the victim's statement taking, victims should not be asked the same questions or slightly different questions to answers already given. This practice may give the victim the impression that their previous answer is wrong and that another response is expected from them.



Colombia: Recommendation Not to Repeat Questions to Victims

Under the Protocol for the Investigation of Sexual Violence of the *Fiscalia Geral da Nação* [equivalent to the Attorney General's Office], approved by Resolution 01774-003, of 14 June 2016, it identifies actions to be avoided when hearing a victim's statement, including "repeating the same questions". It is expressly noted that asking repetitive questions may give the victim the feeling, not necessarily consciously, that another answer is expected, especially when dealing with children. This recommendation does not prevent corroboration of the information given by a victim, if necessary. It highlights that corroboration can be done through paraphrasing techniques, where questions are asked in a different or explanatory way and intentionally return to the issue in question aiming at confirming what the victim has already said. Confrontation of the information provided by the victim with other elements given at different moments of the statement is also permitted.²³⁴

During the victim statement-taking at the trial, interruptions should be kept to a minimum and used only when necessary and at the victim's request.

Courts should be organised to have separate waiting areas for the different parties involved in the case, especially in cases of domestic violence, divorce, or other family matters. Solutions should be found for the provision of childcare so that she can attend any meetings or court hearings without worrying about the welfare of her children.²³⁵

One of the main recurrent concerns is the guarantee of victims' privacy to protect their identity from the press and the public. Several measures are recommended in this regard, such as removing identifying or identifiable information, such as names and addresses, from public records and court media and prohibiting the disclosure of the victim's identity or identifying information to third parties.²³⁶

It is clear that victims in GBV cases are, as a rule, are in a more vulnerable position than victims of other crimes, and with this, special measures need to be taken by public authorities. Therefore, foreign jurisdictions have opted for establishing specialised court sections to deal with domestic violence or violence against women and children as a response strategy to ensure victims' rights.

Spain, Brazil, Guatemala and **South Africa**, for example, are making key steps to guarantee the fast and efficient handling of cases of violence against

234. Colombia, Fiscalia General de La Nación. Protocolo de Investigación de Violencia Sexual: Guía de buenas prácticas y lineamientos para la investigación penal y judicialización de delitos de violencia sexual, 2016, para. 160.

235. European Union and Council of Europe, Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice, September 2017, 91.

136. Council of Europe, Preventing and combating domestic violence against women - A learning resource for training law-enforcement and justice officers, January 2016, 66.

women by establishing specialised court sections. These specialised court sections enable all criminal and civil matters relating to victims of domestic violence to be dealt with within a single chamber. It is understood that simplifying and centralising court proceedings in specialised chambers has the advantage of eliminating contradictory decisions, improving the safety of victims and reducing the number of times the victim has to testify.²³⁷

Guatemala, Spain and South Africa: Specialised Judicial Sections



Guatemala was the first country in the world to adopt a law dedicated to femicide and violence against women and to create specialised judicial bodies that operate 24 hours a day. All court officials receive specialised training on violence against women, and professionals from various fields are available to support the victims, including social workers, psychologists, etc.



In 2005, the Chambers on Violence against Women started operating in **Spain** due to the Organic Law against Gender Violence. According to this law, each judicial district must have at least one court chamber to guarantee a specialised response to all relevant victims. These chambers deal exclusively with criminal and civil litigation arising from issues of gender violence.



South Africa's Sexual Offences Courts, approved in 2007, established, as part of its strategy to combat sexual violence, specialised courts with jurisdiction to specifically deal with sexual crimes. These judicial bodies have specialised officers from various fields, such as judicial officers, social workers, health professionals and police officers.²⁴²

Practice in Timor-Leste

The trial phase is one of the moments in criminal proceedings where the victim is most vulnerable. A lack of information and knowledge of criminal procedure, especially when victims do not have access to legal support,²⁴³ and the frequent delays and postponements of hearings²⁴⁴ constitute significant anxiety and fear for victims.²⁴⁵

Most victims have met the prosecutor only once (or never) before the trial. As a direct consequence of this reality, in most cases, the prosecutor will not be aware of the specific circumstances of the victims and their fears and concerns.

237. UN, Handbook for Legislation on Violence against Women, 2010, 19-20.

238. Guatemala, Artículo 15, Ley contra el Femicidio y otras Formas de Violencia contra la Mujer (Decreto Ley N. 22/2008, 2 Mayo 2008).

239. Catherine Withrow and Kristen Walker, "Fighting Femicide: Making Courts Work for Women," in Dexis, 1 December 2021.

240. Spain, Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género, Título V, Capítulo I.

241. Ana Isabel Luaces Gutiérrez, "Justicia especializada en violencia de género en España", in Revista de derecho (Valdivia), 24(2), 2011, 205-223.

242. South Africa, Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, 14 December (Section 55A – ss).

243. Judicial System Monitoring Programme, Feto ne'ebe hetan violencia domestika no defende an iha Timor-Leste-fevereiru, 2017, 2017, 12; Judicial System Monitoring Programme, Protesaun legal ba vítima sira Violénsia Bazeia ba Jenéru: Lei Seidauk Fó Justisa, March 2011, 18.

244. Judicial System Monitoring Programme, Observasaun Jerál Setór Justisa 2020, 2021, 47.

245. It is reported that women's feeling of fear when accessing the formal justice system is commonly found. See, for example, UNDP Timor-Leste, Breaking the Cycle of Domestic Violence in Timor-Leste, 2013, 39.



Promoting a Relationship of Trust with the Victim by the Prosecutor

In 2021, in a case of domestic violence in the form of sexual abuse of minors, at the request of the legal representatives of the victims, the prosecutor met the female victims days before the start of the trial hearings.

The meeting was held at the victim support service facility, and its sole purpose was to provide an opportunity to strengthen the prosecutor's relationship with victims and to allow victims to ask any questions or doubts they might have in preparation for the hearing.

Victim support specialised services provided under the LADV is the primary source to ensure that the victims are prepared to attend the trial. These services explain the judicial process,²⁴⁶ engage with victims' families to secure their support, provide transportation and liaise with prosecutors and court officers. These services mainly serve as a support mechanism for victims, allowing them to clarify any doubts they may have and create an environment where victims feel supported.

In GBV crimes, the victim's body, physical or mental integrity or livelihood are violated, so these crimes significantly disrupt the victim's daily life. Thus, individualised support, and its capacity to round up help and encouragement to victims' path before the judicial process, are critical conditions for their wellbeing and, consequently, for the quality of their statements before the court.

There are many GBV cases in Timor-Leste where the victim receives the notification of the date and time of the trial hearing without sufficient advance time. A short notice on the trial date is an obstacle to securing adequate time for preparation for the trial, taking actions to ensure her physical and psychological safety and finding suitable care for their children, if under their direct supervision.

Attendance at a court hearing is legally a justification for absence from work.²⁴⁷ Despite this, it is understood that, in a context like Timor-Leste, a victim may prefer not to inform her employer about it due to prevailing victim-blaming positions in the community. However, it is noticed that for the prosecutors and court clerks, there is a presumption that the right to justified absence from work is sufficient to ensure the victim's presence in court. Due to this fallacious idea, court and prosecution clerks tend not to empathise with the victim's concern about challenges to participating in the trial hearings.

There is no dedicated waiting room for victims in any court buildings in the country. Victims are to wait in the court's corridor or outside the court, often in plain sight of the family of the accused and the general public.²⁴⁸ Courts have specific facilities for the accused (as well as cells guarded by the police), the defender or lawyer representing the accused, and the public prosecutor. The

276. Miguel Antonio dos Santos Filho, "Dramas, socializações e treinamentos: as pedagogias jurídicas em uma ONG no Timor-Leste contemporâneo", *Etnográfica*, vol. 23 (3), 2019, 755-774.

247. Article 62(1)(g) Civil Service Statute (Law No. 8/2004, of 16 January, amended by Law No. 5/2009, of 15 July).

248. Judicial System Monitoring Programme, *Relatório observasaun jeral sector justisa 2017,2018*, 52; *Judicial System Monitoring Programme, Akuzasaun, julgamentu no sentensa iha kazu violensia sexual ia Timor-Leste, 2012-2015*, March 2016, 5, 27; *Judicial System Monitoring Programme, Labarik sira nia Asesu ba Justisa Formal iha Timor-Leste, 2014*, 57; *Judicial System Monitoring Programme, Relatório Observasaun Setór Judisiáriu 2013, 2014*, 38, 42.

current physical structures of the courts do not meet the needs of GBV victims, as they do not have an appropriate place to wait for the hearing in privacy and be able to access the court without meeting the accused or his relatives.²⁴⁹

The regular presence of journalists in the court building represents a real challenge for victims who feel intimidated by their presence and worried about being exposed by the media. While media coverage is a key feature in promoting the right to a fair trial and can contribute to GBV prevention, national media are still found to use gender stereotypes and victim blaming in their reporting. The Press Council of Timor-Leste has published a handbook for journalists to guide them on the reporting of violence against women and girls.²⁵⁰ Recent court practice, registered in 2021 and 2022, in scheduling hearings in GBV cases at the end of the day is a positive step toward supporting victims' privacy. Fewer people are present in court at those times, and at this period of the day, often journalists have already left the building. However, if, on the one hand, the identity of the victim is better protected with this practice, on the other hand, there is a decrease in the media coverage of GBV cases, which can be an effective means to support GBV prevention.

Another positive practice identified include the decision of some judges to take victims' statement in a more informal and private environment, sometimes in the judge's chambers rather than in the courtroom. Such practice is mainly used when involving children as victims and when there is a previous judicial order to limit public access to the hearings.



Judges promoting the wellbeing of children during hearings

It was possible to register several cases involving child victims in which the judges decided to hear the victim's testimony in their offices and to minimise the use of formal attire, such as wearing a judge's robe.²⁵¹

249. Judicial System Monitoring Programme, Relatoriu observasaun jeral sector justisa 2017, 2018, 52; Judicial System Monitoring Programme, Akuzasaun, julgamentu no sentensa iha kazu violensia sexual ia Timor-Leste, 2012-2015, March 2016, 5, 27; Judicial System Monitoring Programme, Labarik sira nia Asesu ba Justisa Formal iha Timor-Leste, 2014, 57; Judicial System Monitoring Programme, Relatóriu Observasaun Setór Judisiáriu 2013, 2014, 38, 42.

250. Conselho Imprensa, "Reportajen kona-ba Violénsia Bazeia ba Jéneru: Matadalan ba Joernalista", 2022. See, also, United Nations Educational, Scientific and Cultural Organization, Handbook for journalists on reporting of violence against women and girls, 2019

251. Interview with JU,S Jurídico Social.

Although domestic violence victims have the legal right to be accompanied by social and legal assistance during the trial, in some cases, judges have decided to order the removal of the professionals providing this assistance, including the victim's legal representative. The judges' decision is based on the misunderstanding that victims' specialised support services are part of the 'public'; therefore, when the public is restricted from attending the hearing, those assisting the victim shall also be removed from the courtroom. It is noted that such decisions have become more frequent recently. Specialised support services have shared their view that they understand these decisions are based on an erroneous assumption that specialised support services will influence the victims to negatively impact the authenticity of their statements. The decision to remove victim support service professionals from the courtroom is generally not preceded by consultation with the victim. It has also been recorded a few times that when judges have tried to ascertain the victim's position on the support services' continued presence, they have used language suggesting the victim denounce the support.



A child victim is denied the right to be accompanied by social assistance

In 2022, in a domestic violence trial of sexual abuse of a minor, a panel of the Dili District Court ordered the professional psychosocial support of a 15-year-old child victim to leave the courtroom during the victim's statement. This decision was based on the defence's request that the hearing be closed to the public.

At no time did the Court attempt to obtain the victim's opinion on whether she needed the presence of the assistance, nor has the court questioned whether victim support services should be equated to "public participation".²⁵²



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In sexual crimes, it is a regular practice to ask single, young and children victims whether they have had any sexual experiences before the alleged abuse. In almost every court judgment concerning the sexual abuse of a minor, the list of proven facts includes whether or not the victim was a virgin prior to the trial.²⁵³

Based on reports from court actors, it is understood that this questioning is, in most cases, more closely connected with gender stereotypes rooted in society than with the issue of discrediting the victim. It is a generalised position in society that a woman is expected not to have any sexual relationship before marriage.²⁵⁴ Thus, some court actors and support services shared the view that they understood that the questioning about her sexual history during a victim's statement aims at 'corroborating' her statement and not to discredit her.

It is understood that questions about the sexual history of a victim are the result of limited knowledge about gender issues and a lack of understanding of the critical role that courts play in breaking down discriminatory gender stereotypes.

When questioning persons – whether accused, victims or witnesses – courts often repeat the same questions using different wording or changing their order. As declared by some court actors, the use of this 'questioning strategy' aims at identifying possible discrepancies or inconsistencies on the part of the persons giving statements, thus, allowing the court to determine whether they are telling the truth.

This practice can surely bring adverse consequences, especially for GBV victims. The use of repetitive questions to victims risks re-traumatising them due to exposing their trauma and insecurity based on overall victim-blaming pervasive in the community. When judges and the other parties repeat the same questions, it can result in fatigue on the part of the victim. It may lead the victim to think they are not answering the questions correctly and change their answers to reflect what they might understand as the answers expected by the court.

252. Interview with JUS Jurídico Social.

253. See, by way of example, the judgement of the Court of Appeal of 19 December 2019 (Case No. 93/CO/2019/TR), the judgement of the Court of Appeal of 7 February 2019 (Case No. 07/CO/2019/TR), the judgement of the Court of Appeal of 22 October 2020 (Case No. 136/CO/2020/TR), the judgement of the Court of Appeal of 29 October 2020 (Case No. 142/CO/2020/TR).

254. Deborah Cummins, Report on Teenage Pregnancy and Early Marriage, UNFPA, 2017, 18.

It is reported the use of stereotypical language is based on discriminatory gender norms.²⁵⁵ Judges and the parties ask questions about whether or not the victims resisted the crime, correlating the absence of resistance, search for help or immediate reporting to the lack of veracity of the victim's allegations. The analysis of several cases leads to the conclusion that there is no uniform method to determine whether the victim's testimony is necessary or not when the accused confesses to the crime.

In addition, there has been a perceived recurrent practice on the part of the defence counsel of questioning the veracity of the victim's testimony, treating the victim as a hostile witness, asking offensive, stereotypical questions or making unfounded allegations. It is possible to find in documents and hearings 'defence strategies' alleging that a complaint was made against the accused or his family as revenge for past events or some other non-related issues, such as previous land or other asset disputes between the victim and the accused. It has been noticed that these unfounded claims are more frequently used when victims are accompanied by legal representatives or psychosocial assistance staff. Thus, at times victims are subjected to a more traumatic experience during the court hearing simply because they have exercised their right to assistance.

In several cases, the defence asks blatantly offensive questions imbued with gender stereotypes, aiming to defame the victim's image and create an environment destabilising her. In fact, it has been revealed that there is a general perception amongst justice professionals that this is a valid 'tactic' that the defence lawyer, in their role, can attempt to uphold the interests of the accused.

Questions to the victims are made by, or through, the judges. If other actors in the proceedings ask discriminatory questions, the judges, as the ultimate guarantor of the procedural rights and the order at the hearing, should interfere and prevent such questions.

In a promising number of hearings, it has been observed that the panel of judges has already demonstrated some sensitivity towards the victim's right to dignity and privacy, exerting control in filtering the questions to be asked to the victim. However, in most hearings, traumatising or offensive questions are still posed by the prosecution or defence of the accused to the victims, which are not perceived by the judges and, therefore, not duly sanctioned by them.²⁵⁶ It is understood that this current reality results from shared deep-rooted gender stereotypes amongst justice actors, including judges.

255. Judicial System Monitoring Programme, *Feto ne'ebe hetan violensia domestika no defende an iha Timor-Leste-fevereiru*, 2017, 11-12.

256. UNODC, *Handbook on effective prosecution responses to violence against women and girls*, 2014, 111.



OTHER TRIAL HEARINGS

National Legal Framework

The CPC does not make any express reference about the victim's participation in other trial hearings.

During the presentation of the evidence before the courts, all individuals still required to give statements shall be absent from the courtroom and shall not have access to information about the content of the evidence presented until they are expected to testify (Article 263 CPC). With this, victims should not hear the accused's statement before their statement is given. However, nothing should prevent her from being able to continue following the trial by attending later hearings.

Victims in cases of domestic violence expressly have the right to "monitor the attention given to their cases by law enforcement officers and judicial operators, i.e. the Police, the Public Prosecution and the Courts", directly or through their legal representative (Article 25(2)(d) LADV).

In practice, victims are only formally notified of the date and time of the hearing when they are scheduled to make their statement.

A judicial decision to restrict the publicity of the proceedings under the CPC shall apply to subsequent hearings until the conclusion of the proceedings.

Good Practices in International and Other National Domestic Laws

The victim's right to information is a lasting guarantee for the entire duration of the judicial process.

The right of the victims to have the ability to follow the entire legal process is recognised in international and foreign law, based on the victims' recognition as a participant in the process. Victims are entitled to be present in person or through their legal representatives during the hearing.²⁵⁷

To ensure a gender-sensitive and victim-centred approach throughout the judicial process, judges should:²⁵⁸

- Be aware that the way judges express their opinions and how they behave can shape the expectations, regarding justice, for victims, accused, court staff and other actors involved in the investigation and court proceedings;
- Ensure that courtroom statements and behaviour (including non-verbal communication) demonstrate that violence against women is taken seriously by the court;
- Treat victims with courtesy, compassion, dignity and sensitivity, even if they are not present in the courtroom;
- Consider the safety of victims and children at all levels and at all times;

257. ICJ, Women's Access to Justice for Gender-Based Violence: A Practitioners' Guide, 2016, 226-228.

258. Council of Europe, Preventing and combating domestic violence against women - A learning resource for training law-enforcement and justice officers, January 2016, 57-58.

- Consider the victim’s needs and circumstances, informing the victim of available measures regarding safety and access to support by specialised services;
- Explain the procedures, particularly the different stages of the process, in a language the victim can understand. Courts also need to be aware that the victim may be overwhelmed by the amount and complexity of information and therefore use accessible language;
- Provide information to victims on who to contact and how to express their views and concerns about the case.

It is also a victim’s right to have the public excluded from the courtroom and to forbid the publication of information on court proceedings. These guarantees aim to protect the victim from intimidation or humiliation and ensure that the victim feels safe and does not have a traumatising experience when appearing in court.²⁵⁹



Philippines: Express legal provision for non-disclosure of identifiable or identifying information

In the **Philippines**, the Rape Victims Assistance and Protection Act of 1998,²⁶⁰ in its Section 5 regulating protective measures, provides for the possibility of confidentiality of the investigation, the indictment and the trial hearings. This law also prohibits the disclosure to the public of the name and personal circumstances of the offended party/victim and the accused or any other information which may allow them to establish their identities.

The victim should be entitled to participate in the process until its conclusion and have to be made aware of the dates of the hearings, to be physically present or be represented by their legal representatives and to access court hearings records.

In several foreign civil law jurisdictions, the victim has the right to present evidence directly to the court, as is the case in **Germany** (Article 397 of the Code of Criminal Procedure) and **Finland** (Chapter 5, Section 3 of the Criminal Procedure Act).



Estonia: Victim’s right to examine the minutes of hearings and have their representative present at all proceedings

The **Estonian** Criminal Procedure Code provides for the right of the victim to “examine the minutes of all the procedural acts and statements made which are to be recorded in the minutes” (Article 38(6))²⁶¹. Since the conclusion of the investigation, victims also have full access to the case file (Article 224). This same legal instrument provides for the express right of the victim to

259. UN, Handbook for Legislation on Violence against Women, 2010, 38-44.

260. Act 8505: Rape Victims Assistance and Protection Act, 1998.

261. Code of Criminal Procedure, approved on 12 February 2003 (RT I 2003, 27, 166), amended until 2017.

participate in all criminal proceedings in person or through their legal representative (Article 41(1)).

In this civil law jurisdiction, the victim, through her legal representative, has the right to ask questions to the witnesses (Article 288).

Practice in Timor-Leste

Victims face serious challenges to secure their full participation, or that of their legal representative, throughout the trial stage of the proceedings. This is primarily due to a lack of information on the schedule of the hearings, limited access to psychosocial support, limited availability of transport to be present at court and the numerous postponements of the trial hearings.

The courts do not personally notify the victims about other scheduled hearings once the victim has given her statement. As evidenced by the monitoring of domestic violence cases, the court also does not emphasise that victims can attend further hearings. Victims' are often informed that they may leave the court after making their statement if they so choose. Some victims were confused about whether they could or not attend the other hearings, reporting that they understood they could only enter the courtroom when called to provide their statement.

It has also been noted in recent years that judges have decided to exclude the participation of the victim's legal representatives from trial hearings, justifying that since the hearing is closed to the public, victims' legal representatives cannot attend the hearings.



Legal Representatives absent from hearings and appeal challenging removal not sent until conclusion of trial

In the context of a child sexual abuse trial at the Oecusse District Court in October 2021, the judges decided that victims' legal representatives were only allowed to attend the hearings in which the victims would be giving their statements. For all subsequent hearings, they were prohibited from attending because the hearing was closed to the public.

Dissatisfied with this decision, the victim's legal representatives filed an appeal against this court order which should be sent immediately to the Court of Appeal, per the legislation in force. However, the court of the first instance only sent the appeal to the Court of Appeal after the conclusion of all trial hearings. With this, the Court of Appeal did not decide on the request, as any decision would be futile at that stage due to the conclusion of the hearings.²⁶²

262. Interview with JUS Jurídico Social.

These current practices are an absolute affront to the victims' rights, who are reduced to the role of mere spectators and part of the public and not rightful participants as recognised in law. Removing the victim's representative from the hearings presents a significant barrier to victims' justice pursuit. While victims are entitled to consult the court files, this guarantee becomes inept when there are serious delays in writing down the minutes of the trial hearings.²⁶³

The Court of Appeal has, in 2022, affirmed the right of the victim to participate in all hearings and that this right is extended to participation through their representatives.



Court of Appeal: Aggrieved party's legal representative shall be naturally allowed to be present in the court hearings

In 2022, an appeal was made against the judges' decision to exclude the victim's legal representatives from attending the hearings, arguably because the hearings on this sexual abuse of minor case were determined to be closed to the general public. The Court of Appeal in Proc. 36/INQ/2022/TR declared that the admission of the Court of the presence of the aggrieved party/victim invariably means that it is "naturally intended to also include their representative".

It is also quite common in Timor-Leste to see widespread and insensitive media coverage based on gender stereotypes that increase the dissemination of discriminatory views and put victims and witnesses in danger while undermining the confidence of other victims to report violent situations.

The Timorese justice system does not yet count on judicial actors specialising in gender-based violence, who have the specific role of promoting the victims' rights and ensuring a trauma-informed practice by all involved during the trial proceedings.

At times, judges have, after the trial, amended the legal classification of the criminal offences against the accused.²⁶⁴ The need for the court to amend the indictment submitted by the prosecution is often the result of a narrow focus of the investigation conducted and the lack of a trust-based relationship between the prosecutor and the victim, as already referred to in this report.

263. Judicial System Monitoring Programme, *Protesaun legal ba victim sira Violénsia Bazeia ba Jenéru: Seidauk Fó Justisa Law*, March 2011, 24.

264. Judicial System Monitoring Programme, *Relatoriu observaun jeral sector justisa* 2017, 2018, 48.



CONFRONTATION BETWEEN VICTIM AND ACCUSED

National Legal Framework

Statements given before the Court by witnesses, accused, and victims may sometimes contradict each other.

In these circumstances, ex officio or at the request of one of the parties, a face-to-face ‘confrontation’ meeting may take place between those with contradictory declarations (Article 116(2)(g) CPC).

The confrontation is a specific means of evidence and should, therefore, comply with the general criteria of the principle of investigation set out in Article 252 of the CPC. ‘Confrontation’ shall only be used when it is considered ‘essential to the discovery of the truth and the good decision of the cause’ and only when necessary and when the Court does not have sufficient evidence to make a decision.²⁶⁵

The use of face-to-face confrontation should respect other procedural rules provided in the CPC and special legislation, including the need to ensure the physical and psychological integrity of the victim, with the removal of the accused from the courtroom during the victim’s statement (Article 253 CPC). In cases of sexual crimes and domestic violence, it is vital to consider the impact a confrontation with the accused may have on the victim. When ascertaining the necessity for the confrontation, the court should weigh in on alternative means to conduct such a step without contact with the victim, including the use of video conferencing facilities, as permitted in the Witness Protection Law.

Good Practices in International and Other National Domestic Laws

Under international law, the confrontation (or debate) between victims of GBV and their alleged perpetrators is not outright prohibited. However, confrontations are recognised as a stressful experience, and it is recommended that the victim be guaranteed access to psychological support to, among other things, prevent or reduce the risk of stress and re-traumatisation associated with the investigation and court proceedings.

Special measures implemented by the courts help alleviate the experience of victims and mitigate risks of re-traumatisation and further psychological damage.²⁶⁶ Such efforts include changing the room layout to avoid eye contact with the accused, using video links rather than face-to-face confrontation between the victim and accused, limiting the presence of other people in the courtroom, allowing the participation of a victim support person in the courtroom, with the specific permission to be sitting close to the victim during the hearing, and making adjustments to questioning techniques to avoid unnecessarily intrusive questions. Just as measures should be taken to prevent intimidation of the victim or a negative impact on her psychological integrity during her initial statement, steps should also be taken to avoid contact between the victim and the accused in cases where confrontation is necessary.

Confrontation in sexual crimes cases is the subject of extensive debate in the doctrine and jurisprudence in many jurisdictions. Traditionally, in order not

265. See, Portugal, Coimbra Court of Appeal, Judgement of 2 June 2009: “the existence of contradiction between statements does not necessarily and necessarily determine the carrying out of a confrontation, imposing the need for mediation of a judgement on the usefulness of this evidential step”.

266. Office of the United Nations High Commissioner for Human Rights, Protection of victims of sexual violence: Lessons learned (Workshop Report), 2019, 18.

to reinforce trauma among children victims of these crimes, testimonies via video are accepted, which are valued according to the reliability of the victims' words. In some jurisdictions, confrontation has been limited, restricting their use in cases involving women and children victims of sexual crimes.



Peru: General rule of law prohibiting the confrontation of women and children victims

In the scope of the Peruvian Law to Prevent, Punish and Eradicate Violence against Women and Members of the Family Group (Law no. 30364, of 24 November 2015),²⁶⁷ in Article 25, confrontations between the victim and the accused are forbidden. This same law further provides that the reconstruction of the facts must always be carried out without the presence of the victim, except when the victim herself, aged 14 years or above, requests to be present.

In the Peruvian Code of Criminal Procedure, it is further determined that in sexual crimes (when those fall beyond the scope of the 2015 abovementioned law), no confrontation shall take place between the accused and the victim under 14 years of age, unless the representative of the victim expressly requests it (Article 182).²⁶⁸

Practice in Timor-Leste

Given that the nature of sexual crimes means they often occur in places and times without the presence of anyone else. It is expected that evidence will be limited to the victim's and the accused's statements. It is also inevitable to find contradictions between these accounts.

As evidenced in court files, reports and as admitted by actors of the court, several judges use confrontation between the accused and the victim in cases of sexual crimes due to limited available evidence.



Judicial Order for confrontation of 15-year-old child with her uncle despite the strong evidence presented

In early 2022, the Dili District Court ordered a confrontation in a child sexual abuse case involving a female child 15 years old at the time of the trial.

Without any prior consultation with the victim's legal representatives, the panel of judges decided to order a confrontation between the child and the accused due to the discrepancies between both statements. The accused was her uncle.

The accused's defence recognised that sexual acts in vaginal penetration took place. Forensic medical examination also reported

traces of sexual abuse with scar tissue. The victim's statements to the medical services, the public prosecution and the court were similar, and the main doubt remaining was whether the victim, at the time of the sexual act, was over or under the age of 14.²⁷⁰

The use of confrontation to gather evidence in GBV crimes, when not strictly necessary considering all the evidence already presented, fails to consider the victims' right to dignity, privacy and safety.



Face-to-face confrontation with a child under 14 and her father

In the Court of Appeal's judgement in Proc. 75/CO/12TR of 7 February 2013, it was referred that the court of the first instance conducted a confrontation between the victim, a child under 14 years of age, and the accused, who was her father.

The court of first instance concluded that the version of the facts narrated by the accused was "totally improbable", thus bringing into question whether there was indeed the need for a confrontation in the first place.

The Court of Appeal, in its judgement, made references to the confrontation that took place, but without making any observations on the apparent unnecessary nature of the confrontation.

CRIME SCENE INSPECTION

National Legal Framework

Inspection of the crime scene is a means of evidence collection intended to allow the Court to have a direct insight into the place where the crime allegedly occurred and, through this process, be able to clarify any doubts which may be of interest to the judicial decision. This procedure is provided in law in Article 143 and following of the Code of Penal Procedure. The court may also undertake reconstitution of the facts when deemed necessary.

The accused and the victims are notified of the date and time of the inspection and may be present during the process. The Code of Penal Procedure also expressly provides, in Article 145, that the victim may directly intervene in this process, providing clarifications and highlighting relevant facts as deemed fit. The victim's participation in the crime scene inspection is essential to secure the utility of the evidence itself since the victim has been in that specific place during the alleged crime and has direct knowledge of the area and its characteristics.

The court freely assesses the result of the inspection.



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Good Practices in International and Other National Domestic Laws

The decision to carry out a crime scene inspection should result from a balance of the advantages and disadvantages of this method of evidence collection, including from the victim's perspective. This method should not be used unnecessarily, especially in cases where the alleged crime is not capable of leaving visible marks at the place where the violence occurred.

Holding crime scene inspections by courts shall ensure a trauma-informed and victim-centred procedure. As has already been referred to above, considering a crime inspection is part of the trial procedure and constitutes a formal court hearing, issues of privacy of the victim shall also be attended to.

Practice in Timor-Leste

Crime scene inspections in cases of GBV are often used to identify evidence to corroborate the information already provided before the court, including having the opportunity to confirm the victim's account and devalue the accused's statement.

Crime scene inspections can risk the confidentiality of the victim's identity and safety, especially in domestic violence cases or when the victim and accused live in the same local community.

It is the victims' right to decide whether they will participate in the inspection process. Participation is dependant of the knowledge of the inspection taking place as well as the date and place as determined by the court. There is a certain confusion between the court and the prosecution, in that the court does not issue a notification to the victim, but appears to expect that the prosecutor will communicate with the victim. The CPC is clear to provide that the victim shall be notified of the inspection, and since this is done during the trial, the duty to inform is placed in the courts.



Lack of notification to victim of inspection

In late 2021, in a case of sexual abuse of minor, the court decided to inspect the location where the crime had allegedly taken place. The court failed to formally notify the victims or their representatives.²⁷¹

Based on the country's local reality, it is implausible that the visit by several judicial actors to a local community would go unnoticed and that the inspection could be carried out following the strict observance of the confidentiality required where the public has been excluded from participating in the hearings. Even with this undeniable reality, there has been a recent increase in the use of crime scene inspection by judicial courts, including in GBV cases.

In communities where the criminal process (or formal justice) is perceived with a certain level of resistance, the presence of judicial authorities in the

local community to carry out a crime scene inspection can bring the judicial power closer to the local community. The court's presence at the community level may also result in indirect support to the victims, with community members better accepting of the victim's choice, including domestic violence victims, in reporting crimes to relevant authorities.

Victims are often not informed that a crime inspection will occur, despite the court's legal duty to notify the victim as per Article 145 of the CPC.

FINAL HEARING

National Legal Framework

After the conclusion of the evidence's presentation, the public prosecution and the accused defence have the floor for oral arguments, formulating their findings of fact and law (Article 276 of the CPC).

Before the judge concludes the trial, the accused may make additional statements if he wishes.

The CPC and special domestic violence legislation do not expressly provide for the active participation of the victim at this stage. However, the CPC appears to give sufficient room for the judge to request, if desired, final statements from the victim as part of judicial power to modify the order of presentation of evidence, as provided in Article 265(3) of CPC.

Good Practices in International and Other National Domestic Laws

A victim-centred judicial process that considers the victim's experience and the consequences per international standards may require the court to hear the views of victims. Victim impact statements allow victims to have a voice in the legal proceedings - to speak and be heard about the harm caused by the crime.

Although a victim's final statement on the impact of the crime is a step created initially in common law systems, a substantial number of national civil law jurisdictions have adopted this practice.

The first countries to adopt the victim impact statement outside common law legal systems were Asian countries: South Korea (late 1980s), Taiwan (late 1990s) and Japan (early 2000s), all criminal procedures strongly influenced by the civil law legal tradition. In Europe, driven by the developments of the European Union, several civil law jurisdictions have already incorporated victim impact statements into their criminal procedure, including Austria, Belgium, Estonia, Finland, Luxembourg, the Netherlands, Poland and Romania.²⁷²

Through a victim impact statement, victims are given an opportunity to explain in their own words how a crime has affected them, whether physically, emotionally, financially or in any other way. By hearing how a crime impacts the victims, courts can better understand the consequences of a crime, allowing them to ensure a more responsive punishment for the accused.²⁷³

272. Maarten Kunst, Giulia de Groot, Jelmar Meester and Janne van Doorn, "The impact of victim impact statements on legal decisions in criminal proceedings: A systematic review of the literature across jurisdictions and decision types", in *Aggression and Violent Behaviour*, Volume 56, 2021.

273. Tracey Booth, Alice K Bosma, Kim M E Lens, 'Accommodating the Expressive Function of Victim Impact Statements: The Scope for Victims' Voices in Dutch Courtrooms', *The British Journal of Criminology*, vol. 58, n. 6, 2018, 1480–1498.

Practice in Timor-Leste

At this stage, only the prosecutor, the defence, and the accused during the final hearing may actively participate, which is evidence of the adversarial nature of the proceedings concerning the accused.

To date practice has shown that victims do not actively participate at the conclusion phase of the trial. No such practice of a victim impact statement is applied within the national jurisdiction.

Without the opportunity to hear the victim and how the crime has affected her, it becomes challenging for the court to understand the reality and the crime's impact on their lives. It is often reported, as seen below, that court sentences in cases of GBV are often considered inadequate to the specific case, its characteristics, and the constraints and impact suffered by the victim. It is understood that the lack of a victim impact statement may contribute to this reality.

Another common barrier encountered in many cases is a lack of discussion about the defendant's financial ability to pay an eventual civil compensation determined by the court. It is understood that nothing is preventing the judges from enquiring, at this stage, about the accused's assets and financial capacity to cover monetary compensation to the victim.

COURT DECISION AND RULING

National Legal Framework

After closing the case, the judges are to deliberate their decision. After the deliberation, the court decision is written in a judgement, which must comply with many formal requirements identified in the Code of Criminal Procedure (Article 281 CPC).

The court may pronounce a guilty verdict, stating the reasons for the penalties chosen, the manner for their compliance and determine any other duties imposed on the convicted person (Article 282 CPC).

The Timorese criminal system applies the principle of free assessment of evidence by the judges, enshrined in Article 113 of the Code of Criminal Procedure. Based on this principle, evidence is assessed according to the rules of experience and logic, which support a decision of the competent judicial authority regarding the guilty or not of the accused.

The Timorese Penal Code, particularly Article 52, establishing the general aggravating circumstances, is evidence that the justice system should seriously deal with GBV crimes. Aggravating circumstances of relevance to GBV crimes include: the use or motivation by discriminatory feelings based on gender, sex or sexual orientation (Article 52(2)(e)), concurrent commission with another criminal act, serving as a means to facilitate the commission of another crime (Article 52(2)(h)), and when a spouse (or equivalent) or family relationship exists between the accused and the victim (Article 52(2)(l)). Similarly, the Penal Code also identifies particular aggravating circumstances for sexual

crimes, including, for example, a family or affinity relationship or a hierarchical dependency between the accused and the victim (Article 182 PC).

The main penalties which may be imposed for GBV crimes are those provided in the Penal Code: imprisonment, fine, community service and reprimand. Specifically, the prison sentence may be suspended, and its suspension may be conditioned by the fulfilment of specific duties (Article 69 PC), the imposition of rules of behaviour (Article 70 PC) or the monitoring of the accused by public institutions (Article 71 of the Penal Code). The criminal law also determines the possibility of imposing accessory penalties, including suspending or prohibiting the exercise of certain professions (Articles 84 and following PC). As it refers specifically to human trafficking, the particular legislation also establishes specific punishments which can be imposed on legal persons (such as companies).²⁷⁴

In domestic violence crimes, the prison sentence may be substituted by a fine if the conditions established in the Penal Code and the LAVD are concurrently met. The requirements to allow for the substitution of a prison sentence for a fine in the LAVD are: (i) guarantees for the victim's safety, (ii) subject the accused to treatment or monitoring by victim support services, and (iii) assurances that the non-custodial sentence has the potential to support the maintenance of the family unit (Article 38(1) of the LADV). The sentence can also include determining an accessory penalty prohibiting the accused from contacting the victim for a maximum of 3 years (Article 38(2) of the LADV).

The Penal Code refers to the reintegration of the accused as one of the objectives of sentencing: "the application of sentences aims at the protection of legal interests essential to life in society and the reintegration of the agent in society" (Article 61 PC). The reintegration of the accused is one of the factors guiding the court in determining the specific sentence against an accused. Still, it does not represent the only or the most relevant factor (Article 91 of the CP).

Within the scope of the criminal proceedings, regardless of the type of crime, a court may also determine the acquittal of the accused. An acquittal shall withdraw any coercive measure imposed on the accused resulting in an immediate order for the defendant's release when held in preventive detention (Article 283 CPC).

Regardless of a decision of conviction or acquittal, the defendant may be convicted to pay financial compensation to the victim whenever the damages and the defendant's liability have been ascertained and quantified (Article 284(1) CPC).

Generally, the sentence or the judgement is read in a public hearing (Article 76(2) CPC). However, this step, that is of great relevance for the transparency of the justice system, must still respect the guarantee of privacy of the victims in cases, in which there has to be a limitation on the publicity of hearings.

Good practices in International and Other National Domestic Laws

States are obliged to take all the necessary measures to contribute to the effective accountability of the perpetrators and protect those who were

274. Law for the Prevention and Fight against Trafficking in Persons (Law no. 3/2017, of 25 January), Articles 6 and 7.

victims of crimes. It is partly through the criminalisation of specific conduct that the values of a society are affirmed.

When deciding on the criminal cases before them, courts need to consider the valuation of evidence and, when the guilty of the accused is determined, a correlation between the seriousness of the crime committed and the sentence imposed.

One standard in international law is the possibility of finding an accused guilty based solely on the victim's statements, even when these are not corroborated by other evidence.²⁷⁵ The acceptance that an accused of a GBV crime can be convicted without the need for further evidence is a practical application of the principle of equality: the non-requirement for additional proof beyond the victim - often female - opens up the possibility of giving a woman's statement the same value as a those of a man.

Those jurisdictions still requiring additional evidence in cases of sexual violence beyond the victim's statement are based on the premise that less trust should be given to women's declarations than those of the male accused. This idea represents "a particularly irrational stereotype since women and girls who report crimes against them generally have very little to gain and everything to lose from rape allegations. There is rarely an incentive to lie, and many seek the truth and justice at enormous cost to themselves in terms of stigma and rejection by their families and communities."

Spain and Portugal: No need to corroborate victim's declarations



In **Spain**, the Supreme Court of Justice admits the victim's testimony as sufficient evidence to issue an indictment. Courts of first instance may determine guilty verdicts based solely on the victim's statements, provided that they are credible, without meaningful contradictions and meet the requirements of reasonableness.²⁷⁷ No other evidence is required for the Court to convict the accused.



Following a similar direction, **Portugal** considers that the principle of free assessment of evidence by the judge means that judges may convict an accused based only on the victim's statements, provided that they are credible and that the court explains the reasons it upheld to consider them credible. The Court of Appeal of Coimbra, in an appeal made by the accused in a domestic violence case, stated that: "the assessment of the evidence imposes on the judge a critical and rational appraisal, based on the rules of experience, logic and science and on the perception of the personality of those giving statements [in what concerns evidence presented through declarations], having, in any circumstances, as baseline the principle in *dubio pro reo*. The Court's position shall be the result of a combination of the objective information contained in documents and other established evidence and the impressions offered by the evidence given through individuals' declarations, taking into account how they were produced, in particular the

275. CEDAW Committee, General Recommendation No. 33 on women's access to justice, 3 August 2015, para. 25, al. a), para. 29, al. c) and para. 51, al. h).

276. Amnesty International, Rape and sexual violence: Human rights law and standards in the International Criminal Court, 1 March 2011, AI Index IOR 53/001/2011, 36.

277. Spain, Supreme Court, Judgement of 6 March 2019 (Proc. No. STS119/2019-ECLI:ES:TS:2019:678).

reasoning behind the knowledge of the deponents, their serenity and detachment, their certainties as shown, their hesitations and contradictions, their language and culture, the behavioural signs and reactions revealed, the coherence of their reasoning, among others. This combination can only be obtained, at least to the desirable degree, through the proximity and orality of the evidence, as only direct contact between the evidence and the judge puts them in the ideal condition to proceed, firstly, to an individual assessment and then to the global assessment of the evidence".²⁷⁸

International law shares an unequivocal position that in cases of violence against women, the legal framework and court practice should reflect the serious nature of a crime, and the courts should impose appropriate sanctions.²⁷⁹ Failure to do so could convey a message of acceptance or normalisation of violence against women.²⁸⁰



CEDAW Committee Case Law: Criminalization of GBV a Required Measure

The case of O.G. v. Russia, presented before the CEDAW Committee, it was a domestic violence case between former partners. This Committee analysed a legislative change made in Russia in 2017, which determined that offences against the physical integrity committed against persons within an intimate relationship without causing physical injuries were to be considered an administrative offence and no longer a crime. This organ observed that since most domestic violence assaults were prosecuted as an offence against physical integrity, the amendment in Russian law led to the impunity of the perpetrators.

The Committee pointed out that the latest legislation prevented victims from accessing justice and obtaining protection and effective jurisdictional measures. It also considered that the Russian State was failing in its commitment to ensuring that appropriate steps were taken to eliminate discriminatory practices based on the idea of the inferiority of women and the stereotypical role of being a woman in society.²⁸¹

Sentencing in GBV cases should be fair, non-discriminatory, proportionate, uniform and consistent. It is further observed that the main objectives of sentencing should be: to prevent the recurrence of violence, to protect the victim and to hold the perpetrator accountable.²⁸² In these cases, the re-socialisation of the accused should not be the overriding factor. Further, the courts must ensure that the sentence duly reflects the severe nature of the crime.

Courts in some countries have developed practical guides to assist judges in deciding the most appropriate sentence in sexual crimes and domestic

278. Portugal, Coimbra Court of Appeal, Judgement of 15 December 2016, Proc. no. 55/15.3GCMBR.C1.

279. CEDAW Committee, General Recommendation No. 35 on gender-based violence against women (updating General Recommendation No. 19), 14 July 2017, paras. 29 and 32.

280. Cf. UN, Strengthening crime prevention and criminal justice responses to violence against women, Resolution 65/228, 21 December 2010, para. 17.

281. CEDAW Committee, Communication No. 91/2015, O.G. V. Russian Federation, 6 November 2017, para. 7.7-7.8.

282. UNODC, Handbook on effective prosecution responses to violence against women and girls, 2014, 84-85.

violence cases. The guidelines are often based on research, evidence and expert opinions while considering a comprehensive approach to the issue of the sentencing of GBV crimes. The implementation of these guidelines shall be monitored and reviewed periodically.²⁸³

United Kingdom, Brazil and the Netherlands: Tools to support sanctioning of sexual and domestic violence



One of the countries that adopted sentencing guidelines is the **United Kingdom**, which includes the main factors that judges should consider in their deliberation.²⁸⁴



In turn, **Brazil**, in its national guidelines on how to investigate, indict and judge the crime of femicide, identifies the approach that the judges should adopt to conduct the trial,²⁸⁵ noting that Brazil applies a juror-based judgement proceeding in cases against life. This guidance highlights the role of the public prosecutor, who, in the argumentation, must demonstrate that the crime was a form of a gender-based crime, presenting its characteristics and impact. These guidelines aim to serve as a tool for the jurors and judges, guiding them in understanding the evidence and qualifications presented during the trial.

These guidelines also recommend that the sentence to be applied should clearly refer that the decision was related to a gender-based crime and that the defendant, the direct and indirect victims, and the entire society should be aware of that. This instrument recognizes that gender-based crime is an avoidable crime and “for which the State should formulate measures of accountability, protection, reparation and prevention and that these are crucial to support a transformation of the culture of violence against women.”²⁸⁶



The **Netherlands** has approved General Guidelines for Prosecutors. This tool aims at supporting the consistency of the strategies and work of the prosecution concerning certain offences, having more than 75 guidelines issued. For example, in the guidelines for investigating sexual crimes, it is determined that the prosecutor must propose a minimum sentence of 36-month imprisonment, without the right to parole, in cases of a primary defendant of a crime of rape, unless there are aggravating or mitigating situations.²⁸⁸

In addition, according to the international minimum standards, the legal framework should not contain jurisprudential practice or legal provisions:

- Providing for reduced and excusable penalties for offenders in cases of ‘honour crimes’;²⁸⁹
- Excluding criminal responsibility or decreasing the punishment if the perpetrator of the violence subsequently marries the victim;²⁹⁰

283. European Union and Council of Europe, Training Manual for Judges and Prosecutors on Ensuring Women’s Access to Justice, September 2017, 85.

284. Sentencing Council United Kingdom, Sexual Offences: Definitive Guideline, entered into force on 1 April 2014.

285. UN Women, Secretariat for Women’s Policies and National Secretariat for Public Security, National Guidelines for investigating, prosecuting and judging violent deaths of women (femicides) from a gender perspective, April 2016 93.

286. Ibid, 109.

287. Sigrid van Wingerden and Jakub Drápal, “Dutch prosecutorial sentencing guidelines: an inspiration for other countries?” in Leidenlawblog, Universiteit Leiden, 2018.

288. Amnesty International, Criminalization and Prosecution of Rape in Netherlands: Submission to the UN Special Rapporteur on Violence against Women, its causes and consequences, May 2020, Ai Index EUR 35/2455/2020, 4.

289. In Brazil, although there is no legal provision, the thesis of “legitimate defence of honour” was developed jurisprudentially until the Federal Supreme Court ruled it unconstitutional in cases of femicide in March 2021, considering that it goes contrary to the constitutional principles of human dignity, protection of life and gender equality (ADPF 779 MC-REF/DF, Plenary, Min. Reporter Dias Toffoli, j. 15.03.2021)

290. Countries that have laws that allow a convicted sex offender to have their sentence reversed if they marry the victim: Algeria, Angola, Bahrain, Bolivia, Cameroon, Dominican Republic, Equatorial Guinea, Eritrea, Gaza, Iraq, Kuwait, Libya, Philippines, Russia, Serbia, Syria, Tajikistan, Thailand, Tonga and Venezuela. See: UNFPA, My body is my own: claiming the right to autonomy and self-determination, (ePub., 2021), 48-49.

- Imposing lesser penalties in cases involving specific ‘types’ of women, such as sex workers or non-virgins.

The non-acceptance of the aspects identified above should be combined with increased sanctions for repeated or aggravated offences of violence against women.²⁹¹

In cases of violence against women, judges should inform victims of the outcome of the sentence²⁹² and any changes in the defendant’s position, such as early release or escape from prison, to ensure that victims and their families are aware that they may be in danger.²⁹³

It is important to note that under international law when dealing with crimes of domestic violence, it is recommended that the penalty should not be limited to fines. When courts impose a non-custodial sentence for GBV cases, especially domestic violence, good practice dictates that judicial orders include specific rules for accused conduct and supervision measures for the convicted individual.

Imposing fines is not recommended in domestic violence cases, as this may result in increased financial difficulties for the household.²⁹⁴

Judicial stereotypes can significantly limit the rights and protection of victims, and it is expected that judicial actors, especially judges, play a significant role in combating discrimination and ensuring the protection of victims’ rights.

Practice in Timor-Leste

In Timor-Leste, the principle of free assessment of evidence is a well-established system with no predetermined rules on the minimum evidence that must be presented for a conviction. There are several judgments of the Court of Appeal confirming the decisions of the courts of first instance finding the accused guilty of GBV crimes solely based on the victim’s statements.²⁹⁵

The Timor-Leste Court of Appeal has repeatedly stressed that it is rare to have direct witnesses to alleged sexual crimes and that due to their nature, often only the accused and the victim have knowledge of what has happened.²⁹⁶



No need for corroboration of victim’s statement for a guilty verdict

The Court of Appeal’s Judgement of 13 November 2012, Case No. 85/CO/12, is often used as an example in several subsequent judgements on the issue of whether corroboration of the victim’s statement is necessary. The 2012 case describes with detail and clarity the position of the Timorese justice on this issue:

“Article 116(1) of the Code of Criminal Procedure (...) states that ‘all evidence not prohibited by law is admissible in criminal proceedings. As far as the victim is concerned, they are bound

291. UN, Handbook for Legislation on Violence against Women, 2010, p.51.

292. UN, Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, Resolution A/RES/65/228, 21 December 2010, para. 17 (c).

293. European Union and Council of Europe, Training Manual for Judges and Prosecutors on Ensuring Women’s Access to Justice, September 2017, p. 91-92.

294. United Nations, Handbook for Legislation on Violence against Women, 2010, p. 52.

295. By way of example see Court of Appeal Case No. 34/CO/14, of 30 April 2014, Case No. 85/CO/12, of 13 November 2012, Case No. 30/CO/10, of 16 June 2010, Case No. 35/CO/01, of 15 November 2016.

296. Judicial System Monitoring Programme, Justice in the Districts, December 2003, 40.

by the duty of truth (Art. 118(1) Code of Criminal Procedure), and their statements are freely assessed by the Court (Art. 188 (3)). Thus, there is nothing to prevent a court from considering the facts proven solely based on the statements made by a victim. It may happen that, in certain situations, only the victim and the accused are present when the facts occur. [...]

What becomes necessary is that in its free assessment, the court indicates sufficient grounds so that, through the rules of science, logic and experience, the court's position on the facts deemed proved can be considered reasonable.

So as not to be arbitrary, the law demands [the judge] to be objective, through the justification of the matter of fact, and to provide an explanation, as complete as possible, even if concise, of the factual and legal reasoning which the decision is based, with the identification and the critical examination of the evidence that served to support the court's decision [...].

A court can consider proving the facts included in the indictment based on the statements of the victim (...) when she coherently and credibly explained how everything happened [...].

As it is commonly known, crimes of a sexual nature are often committed in closed spaces or isolated places, not accessible to outsiders or the public. Therefore, in the vast majority of cases, the proof of these crimes is based on very scarce evidential elements, with the court often relying on the only existing testimonies, which are that of the victim and the alleged accused of the crime [...].

In effect, there can be no conviction without absolute certainty, but we cannot, whenever there are only statements from the accused and the victim, as it often happens in this type of crime, argue that there are insufficient grounds for conviction just because the accused does not admit to the crime".

More recently, the Court of Appeal, Case No. 129/CO/2020, of 22 October 2020, identified other features to serve as a factor to determine whether a victim's statements may be sufficient to secure a conviction: when a victim statement is given in a "firm, coherent and credible manner", "without hesitation", and "spontaneous", and when reflected "the authenticity, consistency and credibility of victims' testimony". The court has also referred to the possibility of finding a conviction without corroboration of the victim's declarations in cases involving child victims when they answer "with simplicity and naivety adequate of a child". The main question before the court is to consider that the testimonies as presented are sufficient and "the court is not left with doubt or reservation" about the guilty of the accused.



According to the judicial interpretation, the determination of the punishment should be based on weighing the demands of general and special prevention. General prevention relates to the general awareness of the overall social importance of protecting the legal interest and re-establishing the community's trust in adequate criminal protection. In contrast, special prevention is directly linked with the perpetrator's personal circumstances.

However, in cases of gender-based violence, it is observed that, during the sentencing determination by the Timorese courts, great importance is given to the defendant's family situation and whether the defendant is a primary offender. Often not sufficient weight is given to the need to prevent crimes of this nature from continuing to occur.²⁹⁷



Decreased sentence in a sexual abuse crime due to the court's recognition of the male accused's Role in financially supporting the family

In 2016, the Baucau District Court sentenced a school security guard to 30 years in prison (the maximum punishment provided by law) for 21 counts of aggravated sexual abuse, ruling the existence of sexual acts with 21 different girls under the age of 12. On appeal, in April 2019, in Case No. 122-CO-2018-TR, the Court of Appeal found the penalty excessive and amended the sentence to sixteen years in prison.

The Court of Appeal recognised the direct and intense guilty of the accused due to "the high degree of the illegality of the fact" - manifested in the number of acts committed (persistence of the criminal act), the nature of the acts committed and the way they were carried out against the victims, and the psychological consequences for the victims. However, the court considered that the accused was married, had children who were economically dependent on him, was the sole breadwinner of the family, was a primary defendant and had admitted almost entirely to the crimes. The court further valued that the accused had shown a required level of remorse for his actions and had internalised the illegality of his conduct. The court considered the initial sentence to be "slightly disproportionate to the seriousness of the facts and the defendant's guilt, and also rather excessive considering the purpose the criminal sentence intended to achieve, and it should be reduced to 16 years imprisonment, thus achieving a fairer and more balanced outcome considering the need to prevent future crimes, while at the same time being sufficient to protect the community's expectations of the enforcement of the rules and, to that extent, still being able and to achieve a sufficient intimidation effect."

The Court of Appeal reduced the prison sentence to less than half the prison sentence initially set at the district court level.

This sends a message that the Court of Appeal gave more value to the actions of the accused after the case was reported rather

297. Judicial System Monitoring Programme, Analysis of a sexual assault decision from Dili District Court, July 2004, 20.

than the seriousness of the criminal acts committed and the consequences to the victims.

It should also be noted that the Court of Appeal used the expression “even if they were not forced” when discussing the events and the (re)actions of the children who were victims, therefore commenting that these were not forced to do the sexual acts. These observations are concerning as they indicate a clear violation of the definition of the sexual abuse of minors, which categorically provides the victim’s consent as irrelevant in crimes of sexual activity with children under the age of 14 years (Article 47(3) PC).

It should be noted that this decision was not unanimous, and a dissenting opinion was issued by one of the judges.

In her dissenting opinion, the judge highlighted that, besides national provisions, such as the Constitution and the Penal Code, CEDAW should also be used to support the determination of the sentence, as Timor-Leste has ratified this international convention. In her dissenting opinion, it was stressed that sexual violence represents discriminatory acts against women and girls, which affect the victim’s sexual self-determination and cause severe psychological lasting consequences. Given the high number of cases of sexual abuse of minors prevalent in the Timorese society, the dissenting judge considered that there was a need for a high level of censorship of such practices, and the community must be attentive and concerned to secure the protection of these vulnerable groups. In her dissenting vote, the judge expressed that even if additional mitigating circumstances to reduce the sentence were considered, the penalty should never have been so severely reduced. She was of the position that 27 years in prison would be the most appropriate decision.

On a positive note, Timorese courts have generally decided on the need for a harsher when before the recurrence of criminal acts by the accused, considering an aggravating circumstance.



Imprisonment Sentence in Domestic Violence Cases

In Case No. 125-CO-2020-TR, the Court of Appeal upheld the decision of the court of first instance to sentence the defendant to 9 months’ imprisonment for a crime of assault in the form of simple bodily harm as a crime of domestic violence. According to the facts proven, the defendant used physical violence against his wife, who was five months pregnant.

The court determined the need for the sentence to represent efforts to promote general community prevention due to the high frequency

of such behaviours against vulnerable people in Timor-Leste. It also considered “very intense the reasons for special prevention, since the defendant did the same type of behaviours, repeating the same criminal actions that had already occurred less than a year before”.

As frequently reported by JSMP, in cases of domestic violence in the form of physical violence, the courts often have given a suspended prison sentence or a fine.²⁹⁸ The imposition of a non-custodial sentence on the accused in these cases can provide a wrong message to the community that these acts of violence do not require severe sanctions and that they may also be tolerated.



JSMP: Multiple examples of fine penalties in domestic violence cases

JSMP has frequently reported the sentencing of fines in cases of domestic violence has been recognised as simple bodily harm, determining the commission of the crime as provided in Article 145 of the Penal Code in conjunction with Article 35 of the LADV.

In 2019, the Baucau District Court ordered an accused to pay a fine of USD 60. As deemed proved by the court, the facts revealed that the defendant hit his second wife twice as a punishment due to her failure to promptly bring hot water when ordered by the accused.²⁹⁹

The Suai District Court 2020 sentenced a defendant to pay a fine of USD 90 for the commission of the crime of simple bodily harm in the form of domestic violence. The defendant attempted to run over the victim – his wife - with his motorbike and, when noticing his unsuccessful attempt, kicked the victim. These actions took place soon after exchanging words between the victim and another woman, which related to a family dispute between the couple.³⁰⁰

The Oecusse District Court imposed a fine of USD 100 as a penalty for the crime of simple bodily harm in the form of domestic violence. During an argument between the defendant and the victim, when the victim enquired about the husband’s alleged infidelity, the defendant kicked the victim’s body, took a knife, and hit the victim’s head while she was wearing a helmet with the flat side of the knife. The defendant was an officer in the Timor-Leste National Police.

An accused was convicted by Baucau District Court for simple bodily harm in the form of domestic violence and sentenced to pay a fine of USD 90. It was proved that the accused punched and kicked the victim’s body and head and chased her when she tried to escape to the bedroom. The violence occurred during an argument when the victim complained to the husband about her dissatisfaction with his behaviour in not following her request to fetch water because he was talking on his mobile phone.

298. Judicial System Monitoring Programme, Observasaun Jerál Setór Justisa 2020, 2021, 37.

299. Judicial System Monitoring Programme, Sumáriu Kazu District Court Baucau, Octubru 2020, 2020.

300. Judicial System Monitoring Programme, Sumáriu Kazu Suai District Court, Julu 2020, 2020.



JSMP: Repeated physical violence against spouse with suspended prison sentence

In a case reported by JSMP,³⁰¹ it was proven that the defendant, the victim's spouse, had committed physical assault against his wife on four separate occasions from 2017 to 2020. The initial accusation was made in 2019, right after one of the assaults. It was proven at trial that the defendant had committed violence before and after the formal charge before the Court. Despite the recurrence of the violence, the court sentenced the defendant to 2 years imprisonment, suspended for two years for ill-treatment of a spouse. Ill-treatment of spouses has a sentencing framework from 2 to 6 years in prison.

In another case, with a decision issued in March 2020 by the Baucau District Court, the defendant was sentenced for ill-treatment of spouse to imprisonment for three years, suspended for five years. It was proven that between 2017 and 2020, the defendant assaulted his spouse numerous times, including in 2018, due to disagreements over managing the household economy and in 2019 concerning discussions about the baptism of one of their children. The Court also considered that, in 2017, the defendant wounded the victim's neck with a sword (samurai) as punishment for bringing his lunch late.



JSMP: Reprimand sentence in cases of domestic violence

The Oecusse District Court in October 2021 sentenced a defendant to a reprimand for committing a crime of simple bodily harm in the form of domestic violence. In December 2020, the defendant slapped his wife twice in the face as his wife was unable to prepare coffee for her husband because she was leaving for a previously arranged appointment.³⁰²

Victims often do not have access to information on the outcome of the judicial proceedings. Victims frequently do not participate in the final hearing as they are not notified of the impending decision or do not receive first-hand information on the last hearing date due to being absent immediately before the final hearing. Victims often receive information about the sentencing hearing and the court's final decision through the accused and their relatives.

It is reported that victims who are represented by legal professionals have an increased opportunity to access information about the final hearing due to efforts made by their legal representatives to obtain updated information on the judicial process.

301. Judicial System Monitoring Programme, Sumáriu Kazu District Court Baucau, Octubru 2020, 2020.

302. Judicial System Monitoring Programme, Sumáriu Kazu District Court Oecusse, Octubru 2021, 2021.



Considering that crimes of domestic violence are crimes committed in the family context, it is expected that these will bring grave consequences in the field of family law.

Only in exceptional cases, the criminal court decision integrated the determination of alimony or maintenance support or additional accessory sentences in cases of domestic violence, despite these being foreseen in the LADV. There is rarely communication between the criminal and civil jurisdictions, which in turn puts the victim at risk, insecure and leaves many unresolved issues directly related to the crime of domestic violence, such as issues of divorce, access to the family home, pension and regulation of parental power.

Once the criminal proceedings have been concluded with a court verdict, victims who were received in shelters are expected to return to their originating community soon. The reintegration process of the victim can be complex irrespective of the sentence imposed. If the court determines a suspended sentence, the victim may need to return to live with the perpetrator. If a prison sentence is imposed, victims are often blamed for the imprisonment of the accused. Victim-blaming at the community level represents fertile ground for victims being victimised again, this time being the target of threats and intimidation from the accused's family.

These challenges to secure a victim-centred reintegration process are often fuelled by the court's written judgments, which too often make use of language that highlights gender stereotypes and give more weight to the "justification" of violence alleged by the accused and the accused personal circumstances, rather than being responsive to the seriousness of the assault against the woman.

4. COMPENSATION

National Legal Framework

One of the possible consequences of a crime is a compensation order in favour of a victim, as provided in Article 104 of the Timorese Penal Code.

The law imposes a duty to the court to order compensation, quantifying the damages from the criminal action, even when the victim has been silent about the matter and has not expressed her preference to make an individual request for compensation.

Compensation for the consequences of a crime is a civil suit by nature. Despite that, compensation can be ordered as part of criminal proceedings based on the principle of judicial economy.

The Penal Code determines that the payment of the compensation to the victim has to take priority over all other financial orders issued against the accused, including court costs and fines payable to the State.³⁰³

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303. Article 105 Penal Code.

Good Practices in International and Other National Domestic Laws

Victims have the right to fair restitution and compensation, and unnecessary delays shall be avoided in the decision and the execution of the award for compensation to the victims (Principle 6 of the Declaration of Victims' Principles).³⁰⁴

Whether the court decides to convict or acquit an accused, victims have the right to seek compensation covering their expenses. The expenses that victims often incur include those used to appear as a witness and participate in the proceeding, as well as compensation for damage and losses suffered as a result of the accused's actions.³⁰⁵

The victim's need for compensation for financial consequences resulting from violence arises even before the conclusion of the criminal proceeding. With this, several countries have established a victim compensation fund to provide financial support to victims of crime.

Philippines, Taiwan and Portugal: Public fund for compensation of victims



The **Philippines**, through Act No. 7309, from 30 March 1992,³⁰⁶ established a compensation claim scheme under the Department of Justice, accessible for individuals wrongfully detained and victims of violent crimes. A victim of a violent crime - referring to rape, any offence resulting in death or serious physical or psychological injury, permanent disability, miscarriage, torture or victims of cruelty and barbaric acts - may file a claim and request compensation from the State. The compensation to be provided corresponds to the amount necessary to reimburse the financial losses faced by the claimant due to the injury suffered (such as hospitalisation expenses, medical treatment, and loss of salary), with a maximum limit of P10,000 (ten thousand pesos) (Section 3 and 4). In the event of death or permanent disability of a victim, their legal heirs may file a claim for compensation (Section 6).



In **Taiwan**, the Crime Victims Protection Act establishes compensation from the State for pecuniary and non-pecuniary damages incurred by the family of deceased victims, victims seriously injured, and victims of sexual abuse (Article 3(3)).³⁰⁷ If the accused subsequently pays compensation to the victim, the State shall be entitled to be reimbursed for any amount already given to the victims (Articles 11 and 12).



In **Portugal**, the Commission for the Protection of Victims of Crime is responsible for providing advance compensation from the State to victims of violent crimes and domestic violence (Article 2 of the Decree-Law that regulates the establishment and functioning of the Commission for the Protection of Victims of Crime).³⁰⁸ The legal regime for compensation to victims of

304. UNODC, Handbook on effective prosecution responses to violence against women and girls, 2014, 48.

305. Cf. Principle 8 of the Victims' Declaration of Principles; Council of Europe, Combating violence against women: minimum standards for support services, September 2008, 54-58.

306. The Philippines, Law creating a Board of Claims under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for other Purposes (Republic Act No. 7309).

307. Taiwan, Crime Victim Protection Act (30 December 2015).

308. Portugal, Decree-Law no. 120/2010, of 27 October.

violent crimes and domestic violence is distinct, establishing different criteria to access financial support (Law 104/2009, of 14 September).

According to Law 104/2009, from 14 September 2009, violent crimes include terrorism, murder, serious bodily injury, rape, sexual abuse of minors or serious physical injuries resulting from a robbery. Access to advance compensation from the State is only payable when the damage suffered by the victim has not yet been repaired (Article 2(1)(c)).

Victims of domestic violence, on the other hand, only need to prove that they have been found in a situation of severe economic need due to the crime they have suffered. The advance payment by the State is made as soon as a family breakdown is registered, as often this is when the victim is left without income.³⁰⁹ This financial support for victims of domestic violence comes in monthly instalments for six months, which, in exceptional situations, may be extended up to one year (Articles 5 and 6 of Law 104/2009, 14 September).

If the victim obtains compensation or reparation for the damage suffered after receiving the State advance payment, the Commission will demand reimbursement of the funds already disbursed (Article 16).

Practice in Timor-Leste

In Timor-Leste, few indictments of gender-based violence include a request for compensation to the victim, despite being a legal obligation to ponder its inclusion.³¹⁰ The lack of compensation requests in accusations of GBV crimes is in stark contrast with indictments about economic crimes, including crimes of corruption, where the demand for compensation (to the State) is almost always included in those indictments.

The issue of non-inclusion of compensation in GBV-related charges, especially sexual crimes, has already been addressed by the public prosecution through an internal order in 2017, a positive step to strengthen the guarantee of victims' rights. This order establishes a duty of the prosecutor to identify compensation for sexual crimes, amongst other violent crimes.³¹¹

While the judge has a legal duty to order compensation without a specific request from the prosecutor or the victim, including a compensation request in the criminal charges drafted by the prosecution can positively influence the court.



Compensation Order in the crime of sexual abuse of a minor

In Case No. 133-CO-2020-TR, from 22 October 2020, the Court of Appeal confirmed the decision to convict a defendant for 25 years

309. Portugal, Commission for the Protection of Crime Victims. Frequently Asked Questions. Framework, revised on 14 January 2021.

310. Judicial System Monitoring Programme, Observasaun Jerál Setór Justisa 2020, 2021, 41, 44.

311. Superior Council of the Public Prosecution, Circular n. 02/PGR/2017 (Request for Compensation within a Criminal Investigation), of 12 January 2018.

imprisonment for the commission of three crimes of aggravated sexual abuse of a minor (crimes committed against three different victims) and one count of a crime of sexual exhibitionism, as well as the payment of civil compensation for non-pecuniary damages to two of the victims, in the amount of USD 700 and USD 300.

In this decision, the Court of Appeal concluded that the nature of the offences committed, the number of crimes committed, the seriousness of the accused's actions, and the intensity of the accused's intention required the court to issue a substantial sentence. The court saw the need to take decisive steps in securing general and special prevention due to the consequences of the crimes on the victims and the absence of remorse on the part of the accused. The Court declared that "if any criticism can be made regarding the appealed decision, it is its leniency and not its excess".

It is worth noting that in this decision, the concurrent crimes - three counts of abuse – were based on the existence of three victims. However, while the court of first instance considered proven that some of the children were victims of more than one crime (for example, one of the victims was abused on three occasions with vaginal penetration and also faced two death threats), the sentence failed to convict the accused of those crimes, also noting that these were not included in the indictment.

As reported by JSMP in August 2020, the Suai District Court convicted two defendants of paying compensation of USD 150 to the female victim as part of a conviction for simple bodily harm. The crime related to an allegation of witchcraft against the victim by the defendants when the victim visited their residence to demand payment for money loaned to them.³¹²

The compensation awarded by Timorese courts often does not reflect the real suffering of the victim. It does not cover the expenses incurred to secure the victim's participation in the process or the material losses resulting from the violence and the corresponding criminal process. Compensations often fail to reflect the nuances of the case in question, instead are often based on discriminatory gender norms prevalent in the Timorese society, including providing compensation for losing one's virginity. With this, rarely the compensation awarded represent an adequate reparation to the victim.

When judicial awards for civil compensation are made, it does not necessarily mean that the victim will have access to this financial sum as ordered by the court. It is noteworthy that the vast majority of victims have no effective means at their disposal to demand the payment of compensation. Moreover, victims in Timor-Leste are not provided with any financial support from the State in cases where the convicted individual does not have the economic means to pay the compensation determined by the court.³¹³

312. Judicial System Monitoring Programme, Sumáriu Kazu Suai District Court, Agostu 2020, 2020.

313. Judicial System Monitoring Programme, Observasaun Jerál Setór Justisa 2020, 2021, 41; Judicial System Monitoring Programme, Relatóriu observasaun jeral sector justisa 2017, 2018, 43; Judicial System Monitoring Programme, Aplikasaun sentensa alternativa iha kazu violénsia doméstika iha Tribunál Distritál Oe-cusse-2015, 5; Judicial System Monitoring Programme, Relatóriu Observasaun Jerál Setór Justisa 2014, 2015, 46; Judicial System Monitoring Programme, Relatóriu Observasaun Setór Judisiáriu 2013, 2014, 35; Judicial System Monitoring Programme, Lei Kontra Violénsia Doméstika: Tinan tolu implementasaun ho nia obstakulu, 2013, 18; Judicial System Monitoring Programme, Observasaun Jerál ba Sistema Judisiáriu Iha Tinan, 2011, 31.

5. APPEAL

National Legal Framework

The rules regulating appeals are enshrined in the CPC, in Articles 287 and following.

Article 287 of the CPC states that a sentence may be appealed, and the appeal may concern matters of fact and law. Unless expressly prohibited by law, appeals may be lodged against court orders, sentences and judgements in their entirety or parts.

In addition to the public prosecution and the defendant, a person intending to defend a right affected by the decision or who has been ordered to pay any amount has legal standing to appeal (Article 289 CPC). It is clear that the criminal procedure law provides for the possibility for a victim to submit an appeal “when defending a guarantee impacted by the court decision” (Article 289(c) CPC).

The appeal must be filed within 15 days from the date of notification of the decision or the date when the decision should be considered notified (Article 300 CPC). When appeals are lodged against the court’s final sentence, the first instance court’s decision is suspended (Article 298 CPC).

The appeal must expressly state the grounds on which it is based, ending with clear conclusions and the specific question requiring assessment by the higher court (Article 301 CPC).

The Timorese legal framework does not provide a specific timeframe to hear the appeal. In cases where the accused is in pre-trial detention, the process should take priority due to the restriction of the accused’s liberty (Article 80 CPC).

The appeal memorials should be notified to “all remaining procedural parts impacted by the appeal” (Article 302 CPC). The general rule is that no hearing is held during the appeal, with a hearing being called by the judges only when necessary by the Court of Appeal (Article 306(2) CPC).

Good Practices in International and Other National Domestic Laws

As already referred to in this report, victims should be informed about their rights, the case’s progress, and the outcome throughout the entire criminal proceedings.³¹⁴ They also have the right to be accompanied in court by specialised services to access the support needed and to receive guidance and assistance on navigating the legal system.³¹⁵

Victims of gender-based violence are entitled to prompt justice and redress.³¹⁶ In particular, domestic violence cases should always be considered a priority, even during judicial holidays, due to the consequences brought to the families by the violence.

The respect for victims’ right to privacy is extended to all the stages of the procedure, including the appeal phase. The continued guarantee of victim’s privacy has special relevance in the cases where the court of first instance

314. Council of Europe, Preventing and combating domestic violence against women - A learning resource for training law-enforcement and justice officers, January 2016, 46-47.

315. Principle 6(c) of the Victims’ Statement of Principles specifically states that assistance should be provided throughout the judicial process as a means of facilitating the responsiveness of the judicial and administrative apparatus to the needs of victims. Cf. UNODC, Handbook on effective prosecution responses to violence against women and girls, 2014, 48.

316. UNODC, Handbook on effective prosecution responses to violence against women and girls, 2014, 48.



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proceedings was held behind doors. This practice is provided for in international conventions and the procedures of international courts, such as the International Criminal Court. The Rome Statute, for example, in Article 68(1), provides that the “Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children”. Paragraph 2 of the same legal provision adds that “[a]s an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.”³¹⁷

In practice, several national jurisdictions take action to ensure that the publicity of the courts’ jurisprudence will not adversely impact victims’ rights.



Portugal: Use of techniques to hide private and identifiable data in court decisions

Appeal courts publish their judgments regularly, and in cases related to GBV crimes (and family matters), the written judgements are redacted to conceal the private and identifiable data of the defendant and the victim, making use of acronyms, which are used in alphabetical order when referring to people (AA for Defendant; BB for the victim; CC, DD, and so on). Data of a private nature, such as places and addresses capable of identifying the parties, are also concealed.

For example, the Judgment of the Lisbon Court of Appeal (Proc. 974/16.0PEOER.L1-9, March 21, 2019) in a domestic violence case reads as follows:

“For the trial held as summary proceedings, the Public Prosecution Service has charged the defendant AA - married, born on (.....), place of birth at (.....), son of NN of MM, holder of CC No., residing at, Carnaxide - with the commission, in material authorship and consummate form, of a crime of domestic violence, provided for and punished under Article 152(1)(a), (2), (4) and (5) of the Penal Code.

The victim, BB, and the defendant married at in Mozambique and shortly afterwards settled in Portugal, first at, and from 2008 at, in Carnaxide, where they still live.

B. From this relationship CC... born in ..., DD and EE, both born in

317. International Criminal Court, Rules of Procedure and Evidence, Rule 43, (e.Pub, 2019), 27.

Another issue of paramount importance at the appeal stage is ensuring that victims are informed, when relevant, of the possibility of appealing the decision.

The right of the victim to submit an appeal is widely recognized in several foreign legal systems. Victims often have legal standing to file actions questioning the court's initial decision in the criminal proceedings. Such right relates directly to guaranteeing the justice machinery's adequate functioning, which is an essential element for defending victims' interests.³¹⁸ An appeal filed by the victim as an assistant to the criminal charge also recognises the need to promote a minimum level of satisfaction towards the legal system in force on the victim's party and society in general.³¹⁹

Portugal, Brazil, Argentina and Paraguay: Victim's legitimacy to file an appeal against the final court decisions



In **Portugal**, the victim may constitute as an assistant in the criminal proceedings, thus having the legitimacy to submit an appeal against the final decision, according to article 69(2)(C) of the Code of Criminal Procedure.³²⁰

The jurisprudence of the Lisbon Court of Appeal shows that, in the case of an appeal filed by the victim, the Court is not limited to the prohibition of *reformatio in pejus* and may, on appeal, decide a conviction when acquitted at first level or a harsher sentence.³²¹ Recognizing the victim's legitimate right to act means that the victim may appeal without the prosecution's participation "concerning the type and concrete extent of the punishment".³²² A victim's right to appeal applies to all crimes, including crimes involving GBV.



In **Brazil**, the Supreme Court of Justice established in its 542 decision concerning domestic violence against women, that "criminal action regarding the crime of bodily harm resulting from domestic violence against women is of a public nature".³²³ Thus, in general terms, it is up to the public prosecution to represent the interests of the State and, consequently, to file an appeal from the final decision if it deems it necessary. The victim can act as an assistant to the criminal procedure,³²⁴ which gives her the possibility of filing an appeal against the final court decision as provided in article 271 of the CPC.³²⁵



In **Argentina**, the right of a victim to act as an assistant to the criminal prosecution is provided for in Article 82 of the CPC under the name of private querellante. The casación appeal refers to the review of questions about the applicable law and the procedure (Article 456 of the CPC)³²⁶ and may be brought by the victim in the same conditions in which the Ministerio Fiscal (equivalent to the Public Prosecutor's Office) may appeal (Article 460 of the CPC).³²⁷ A victim also has the legitimacy to file an appeal of unconstitutionality of the final decision, under Article 474 of the CPC.³²⁸

318. Fernandes, Valéria Diez Scarance. 'Lei Maria da Penha: o processo penal no caminho da efetividade. Abordagem jurídica e multidisciplinar'. (São Paulo: Atlas.2015).

319. João Pedro Petek, 'O novo papel da vítima no processo penal e a assistência à acusação' [2011] p. 123-135.

320. Código de Processo Penal (CPP), Decreto-Lei n.º 78/87, de 17 de Fevereiro de 1987 (with due changes).

321. Portugal, Acórdão do Tribunal da Relação de Lisboa, [974/16.0PEOER.L1-9], 21 March 2019.

322. Portugal, Acórdão do Supremo Tribunal de Justiça, [Proc. 1740/10.1JAPRT.P1.S1], 18 January 2012.

323. Brazil, Tribunal de Justiça do Distrito Federal e dos Territórios, Lesão corporal decorrente de violência doméstica - ação penal pública incondicionada.

324. Brazil, Código de Processo Penal (CPP), Decreto-Lei n.º 3.689, de 3 de Outubro 1941 (as amended).

325. Brazil, Código de Processo Penal (CPP), Decreto-Lei n.º 3.689, de 3 de Outubro de 1941 (as amended). Art. 271 - Ao assistente será permitido propor meios de prova, requerer perguntas às testemunhas, aditar o libelo e os articulados, participar do debate oral e arrazoar os recursos interpostos pelo Ministério Público, ou por ele próprio, nos casos dos arts. 584, § 1º, e 598.

326. Argentina, Código Procesal Penal, Lei 27.063, 09 de Dezembro de 2014. Art. 456. - El recurso de casación podrá ser interpuesto por los siguientes motivos: 1º) Inobservancia o errónea aplicación de la ley sustantiva. 2º) Inobservancia de las normas que este Código establece bajo pena de inadmisibilidad, caducidad o nulidad, siempre que, con excepción de los casos de nulidad absoluta, el recurrente haya reclamado oportunamente la subsanación del defecto, si era posible, o hecho protesta de recurrir en casación.

327. Argentina, Código Procesal Penal, Ley 27.063, 09 de Diciembre de 2014. Art. 460 - La parte querellante podrá recurrir en los mismos casos en que puede hacerlo el ministerio fiscal.

328. Argentina, Código Procesal Penal, Lei 27.063, 09 de Dezembro de 2014, art.º 474, 4 novembro de 2013: - El recurso de inconstitucionalidade podrá ser interpuesto contra las sentencias definitivas o autos mencionados em el artículo 457 si se hubiere cuestionado la constitucionalidade de una ley, ordenanza, decreto o reglamento que estatuya sobre matéria regida por la Constitución, y la sentencia o el auto fuere contrario a las pretensiones del recurrente.



Similarly, the Criminal Procedural Code of **Paraguay**, in its Article 69, names the victim as an assistant to the accusation (*querellante adhesivo*).³²⁹ The victim, therefore, has a certain autonomy vis-à-vis the prosecution authority. The victim or her legal representative may intervene in the proceedings and appeal in case of acquittal, dismissal of the case, or dismissal of the compensation.

Practice in Timor-Leste

In the practice of the national judicial system, a victim's entitlement to submit an appeal is still an underdeveloped stage of the process.

It is considerably difficult for victims to understand if they are entitled to an appeal when not satisfied with the court decision and in what terms it can be made. Even when accompanied by specialised services, limited experience in submitting appeals and lack of standardised training on this specific matter prevents legal professionals from knowing the extent of victims' entitlements and whether she has the standing to submit an appeal independently from the prosecution.

To date, few appeals have been filed in the name of victims, even in cases where the court of first instance procedural decisions or sentences have unequivocally violated the rights of the victim as provided in law.

The appeal procedure does not generally provide a space for the victim to be heard or to participate actively. The appeals memorials are not notified to the victim or her legal representatives. The appeals are limited to written submissions between the public prosecution and the accused, excluding the victim.

The victim, and in general the local communities, find it difficult to understand that on appeal, the conviction has a suspensive effect, and, therefore, the accused may remain free for an additional period while the appeal is being heard, despite already being convicted for a prison sentence by the court. This fact also means that victims who are temporarily residing in shelters might not yet feel safe to return to their community until the appeal procedure is concluded.

The Timorese judicial system faces a significant institutional barrier at this stage as it relates to the delay in concluding the appeal process since there are no overall timeframes for this process as time limits are only prescribed for the submission of the appellant's petitions.

District Courts and Court of Appeal judgments often contain references to gender stereotypes.



References to and valuing of the virginity of the victim, victim's defenceless position and the superior family position of the male defendant

In Proc. 75/CO/2018/TR, dated 7 March 2019, the Court of Appeal assumed that the male accused was the family breadwinner,

329. Paraguay, Código Procesal Penal, Ley 1286, 03 de Septiembre de 2012. "Art.º 69. Querellante Adhesivo. En los hechos punibles de acción pública, la víctima o su representante legal, en calidad de querellante, podrán intervenir en el procedimiento iniciado por el Ministerio Público, con todos los derechos y facultades previstos en la Constitución, en este código y en las leyes.



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330. It is noted that there is a rooted social norm in the Timorese society that husbands have the control over the sexual relation in a marriage. See Timor-Leste Spotlight Initiative, Social Norms Study Report, 2021, 17-19.

ignoring the defence's argument that the accused was ill and, therefore, could not have had the ability to support the family and care for his numerous children. The case related to an attempted rape of a woman by her husband, which was not accomplished due to the victim's successful escape. The same decision referred to facts which clearly showed the defendant's regular actions of exerting his domination over his wife, including demanding sexual intercourse whenever the defendant desired it. The Court stated the attempted rape was of a "medium degree of unlawfulness based on the accused's intention" and "limited consequences of the fact"³³⁰

In Proc. 94/CO/2018/TR, of 7 March 2019, the Court of Appeal referred that "the woman was more fragile compared to the accused who was stronger" and also mentioned that the defendant should not be imprisoned because he was the "head of the family".

In Proc. 176/CO/2016/TR, of 4 July 2019, although the Court of Appeal upheld the conviction in the sexual abuse of a minor case, it decided to reduce the sentence. The judgement referred to facts related to the victim's sexual history ("she has never had sexual relations with a man, other than the defendant"). While the Court of Appeal expressed censure of the defendant's behaviour by stating that he had shown "insensitivity to the pain and suffering he has inflicted on the minor", it focused on the accused's actions concerning his moral standing. It failed to highlight the infringement of the law and the long-lasting impact inflicted on the child.

In another 2019 decision, in Proc. 119/CO/2018.TR, dated 17 April 2019, the Court of Appeal's decision cites as a mitigating factor reducing the defendant's sentence the fact that the minor, a female child of 14 years old, had an "active sex life" and that "she was already almost a teenager, and she maintained a relationship that included sexual intercourse".

Reference to the victim's virginity before the commission of the sexual crime against her is commonly found in Court of Appeal's and District Court decisions. A few examples are: Proc. 202/CO/2016/TR, dated 30 May 2019; AC-31-08-2009-P-14-CO-09-TR, dated 31 August 2009; Proc. AC-25-08-2011-P-64-CO-11-TR, dated 25 August 2011; Proc. AC-13-11-2012-P-85-CO-12-TR, dated 13 November 2012; Proc. AC-09-12-2013-P-117-CO-13-TR, dated 9 December 2013; Proc. 39/CO/2018/TR, dated 31 July 2019; Proc. AC 174/CO/2020/TR, dated 23 December 2020; and Proc. AC 201/CO/2019/TR, dated 16 January 2020.

The reference to gender stereotypes in court decisions shows the widespread existence of discriminatory gender norms throughout the entire sector of Timorese society, including within the court actors.³³¹

When analysing the practice before the Court of Appeal, it is also noted that sometimes the defence submissions use discriminatory arguments based on the victim's gender.³³² It is further also registered that, faced with discriminatory defence arguments, the Court of Appeal often remains silent, not expressing any opinion or making any rebuttal, even though its written judgement may reproduce the argument as presented.



Appellative defence argues superior probative value of a witness because of his gender

In an appeal petition submitted by the defence in a child sexual abuse case, the defence argued that the victim's statement should not be considered credible by the court since the victim's older male brother had given contradictory declarations to the court about the defendant's regular contact with the victim.

Despite the Court of Appeal's decision for a dismissal of the defence's appeal, the judgment did not refer to this argument, despite its gender discriminatory content.

It is also noted that at the appeal level, there is no specific care to guarantee the victim's privacy in cases involving children and those related to sexual crimes. Until the end of 2021, the written judgements of the Court of Appeal's decisions were published on its website with the identification and personal data of the accused and victims, even when victims were minors or in cases of sexual crimes with restricted public access during the criminal proceeding. While every court decision is, by law, of a public nature and must be widely accessible to the public, the Court of Appeal is under the duty to secure the privacy of the victims in cases of GBV and those involving minors. The Timor-Leste highest court should redact its decisions before publishing, extracting names of the parties to the case and other relevant information.



Publication of victim's name, parents' name, address and school in attendance

All the Court of Appeal decisions in cases of sexual violence or involving minors published do not conceal the victim's private information.

Examples of some of the information contained in Court of Appeal decisions are: the full name of the victim, place of residence, name of the victim's mother, victim's date of birth, names of witnesses (Proc no. 06/CO/2020/TR, 23 January 2020); victim's full name,

331. It is generally recognized that men are expected to be the breadwinner and to have control over the household finances. See, for example, Timor-Leste Spotlight Initiative, Social Norms Study Report, 2021, 13-15.

332. Judicial System Monitoring Programme, Feto ne'ebe hetan violencia domestika no defende an iha Timor-Leste, 2017, 14.

victim's place of residence, name of the victim's school (old and current), name of victim's father, name of victim's aunt, name of victim's brother, victim's date of birth, identification by the name of other potential victims and names of witnesses (Proc. no. 74/CO/2020/TR, 16 June 2020); and the full name of the victim, name of the victim's mother, place of residence of the victim (identifying that "accused and the victim as neighbours"), victim's date of birth, name of witness and name of the accused, accused's the date of birth, accused's the place of residence and accused's parents' name (Proc. no. 182/CO/2020/TR, 30 December 2020).

It appears that the Court of Appeal in December 2021 became aware of the need to ensure that the identification of victims is not published in cases involving minors and sexual offences and removed public access to its written decisions from its public website. It is understood that these judgments will be edited to conceal the data of a private nature and will be publicly accessible again in the near future.

6. RETRIAL

National Legal Framework

On appeal, if the higher court cannot decide on the appeal presented, the case may be sent for retrial (Article 313 CPC).

In this scenario, the Court of Appeal's decision may order the entire case's retrial, the re-evaluation of the evidence and writing of a new written decision or the re-hearing of evidence. Depending on the specific matter, a retrial may require the victim and witnesses to provide their statements again.

Good Practices in International and Other National Domestic Laws

All stages of criminal proceedings should be guided by international standards aimed at securing a responsive justice system for cases of gender-based violence. As highlighted in this report, all relevant measures during the trial phase should also be applied during a retrial.

With a new trial, a victim will need to go over the entire process once more, which naturally brings anxiety and uncertainty to a victim, even if the retrial does not directly affect her. In some cases, a retrial demands the renewal of evidence and hearing a new declaration from the victim, and the victim will need to recount the crimes again. It is, therefore, undeniable that a new trial brings a high risk of re-victimisation of the victim.

A retrial order means an extended process to conclude the judicial proceedings. A long and delayed process diminishes the feeling of justice served, deterring other victims from reporting crimes committed against them.

Practice in Timor-Leste

A new trial, while permitted by law and aiming at securing the necessary accountability and the rights of the accused, has a substantial impact on the victims of GBV. In Timor-Leste, the adverse effects of a retrial are intensified due to the community's limited access to information about the judicial process.

A new trial may result in doubts about the effectiveness and efficiency of the criminal justice system for victims and the community, with questions about the implication of new proceedings and why there was the need to bring the case again before the courts.

Victims, during a retrial, will probably face the same challenges they encountered when giving testimony during the trial hearing, with an increased feeling of insecurity and anxiety with the need to return to the court.

Also, when the victim's first experience before the court was met with challenges where her rights were not fully respected or when the victim has received threats and intimidation, she may not want to participate in a retrial or, possibly, may decide to give a testimony contrary to the first one, to see the proceeding quickly concluded or to be free from any coercive actions against them. If the victim's dissatisfaction or fear results in declarations on retrial contrary to her initial one, the court will inevitably question the victim's credibility.



7. SUSPENDED SENTENCE

National Legal Framework

The main punishment as per Penal Code is imprisonment, where courts may impose custodial sentences for every one of the crimes established in law. The Penal Code establishes, in Article 66, a minimum term of imprisonment of 30 days and a maximum period is 25 years.

Considering that a custodial sentence restricts the right to liberty of an accused, the legal framework rightly provides for the possibility of a suspended prison sentence. Article 68 of the Penal Code allows for the suspension of the execution of a prison sentence when the court sentence is below three years of imprisonment. The sentence suspension can be from 1 to 5 years.

As provided in Article 69 of the Penal Code, the suspension of a custodial punishment may impose several duties on the accused, namely:

- a) Reparation or guarantee of reparation of the damage caused by the crime in a certain period;
- b) Issuance of public apologies to the offended party;
- c) Undertaking certain tasks in connection with the crime committed;
- d) Payment of money to the State or a charitable institution working in an area of relevance for the offender's rehabilitation."

It is also possible for a court to issue behaviour or conduct orders to the accused during the suspension period (Article 70 PC). A court can order behaviour or conduct orders, including the prohibition of residing in certain places, which may entail the accused's removal from his residence and, therefore, may reflect an important measure in domestic violence cases.

A court may also impose a duty on the accused to be accompanied by social reintegration services as a condition for a suspended sentence (Article 71 PC). It is understood that this measure, as provided for in the Penal Code, refers to the same order included in Article 38(1) of the LCVD, although the latter may also represent an accessory punishment to a fine as an alternative punishment to imprisonment.

The court shall revoke the suspended sentence if, during its period, the perpetrator is tried and convicted for another crime. A suspended sentence can also be withdrawn when the accused intentionally violates the behaviour rules or duties imposed by the court, and the court finds an amendment of the suspension regime inadequate, concluding that the only practical solution is the accused imprisonment as per the original court sentencing. When a suspended sentence is revoked, the perpetrator must serve the initial sentence handed down in prison.

Good Practices in International and Other National Domestic Laws

Good practice in international and other national laws in the area of suspended sentencing in GBV cases focuses, first and foremost, on securing that the sentence is proportionate to the seriousness of the crime committed, including when considering the harm inflicted on the victim.

The application of a suspended sentence should depend on the imposition of specific behaviour or conduct orders on the perpetrator, meaning a court-imposed decision determining a duty to do or refrain from doing certain actions or prohibiting specific behaviours.

A suspended sentence is "a criminal measure of a pedagogic and rehabilitation nature, which has to be based on a trust relationship between the court and the convicted accused",³³³ and "at the foundation of a decision to suspend the execution of a sentence is always the elevated likelihood of social rehabilitation of the perpetrator, with the acceptance of a calculated risk".³³⁴ Any judicial order to impose behaviour orders on the perpetrator as a condition for a suspended sentence needs to secure the active participation of the victim.

International law states that the decision-making process for a suspended sentence shall weigh several factors, including a careful analysis to determine whether it will meet the needs of the punishment in the specific case and whether the judicial system can act fast to revoke the sentence if new offences are committed.³³⁵ It is generally considered that only in exceptional circumstances a suspended sentence can be an adequate measure when dealing with repeat offenders.

In some national jurisdictions, the legal framework provides specific measures or conditions for determining suspended sentences for GBV crimes. In France,

333. Portugal, Supremo Tribunal de Justiça, Acórdão de 09 de Janeiro de 2002 (Processo n.º 3026/01) (2002).

334. Portugal, Supremo Tribunal de Justiça, Acórdão de 09 de Janeiro de 2002 (Processo n.º 3026/01) (2002).

335. OSCE, Ensuring Accountability for Domestic Violence: An analysis of sentencing in domestic violence criminal proceedings in Bosnia and Herzegovina, with recommendations, December 2011, 32.

for example, a suspended sentence for repeat offenders can only be issued with an order to participate in a rehabilitation treatment programme.³³⁶

As already referred, to assist courts in determining a more appropriate sentence, some foreign jurisdictions have approved tools to guide judges in the sentencing of GBV cases, for example, Brazil, the Netherlands and the United Kingdom.³³⁷ These tools also include guidance in determining suspended sentences and issuing behaviour orders.

Applying socio-educational (or rehabilitation) measures to the perpetrator, based on which he must follow specific training or individualized monitoring, is important to combat some GBV crimes effectively. In comparative international law, applying these measures is often an accessory sentence to the principal penalty. The socio-educational measure for perpetrators of GBV crimes is often characterised by an order to attend specific training programmes to prevent violence in the future and by individualised monitoring of the offender. However, to be a successful effort to combat GBV, States must ensure the availability of specialized services in this area.

Portugal and Brazil: rehabilitation programmes for convicted offenders of domestic violence as a condition for suspension of sentence



In **Portugal**, the Lisbon Court of Appeal, in Proc.689/19.7PCRGR. L1-3, of 21 October 2020, can illustrate an example of a court decision imposing specific conditions against the accused when ordering a suspended sentence. The court decided to:

“2.- Sentence the defendant CR_____ for the practice, in material authorship and consummate form, of 1 (one) crime of aggravated domestic violence, provided for and punishable by Article 152(1) (b) and (2) of the Penal Code, to a sentence of 2 (two) years and 6 (six) months imprisonment, suspended in its execution for the same period, having regard to the provisions of article 50(1) and (5), upon the condition that the defendant has to be subject to an individualized rehabilitation plan implemented under the supervision and support of the General Directorate for Social Reintegration, to facilitate the conditions for the defendant’s reintegration, namely by imposing the order to attend interviews as they may be designated by the DGRS and by submitting the defendant to participate in the CONTIGO programme developed by the DGRS.

The CONTIGO Programme [meaning “together with you”], implemented by the General Direction of Reinsertion and Prison Services of the Portuguese Ministry of Justice, is an intervention programme geared toward individuals involved in violent intimate relationships. The programme aims to develop flexible and integrated activities to prevent and combat domestic violence through cooperative work facilitated by recognized social assistance professionals.

336. France, Loi n° 2007-1198 du 10 août 2007 renforçant la lutte contre la récidive des majeurs et des mineurs, article 8.

337. See supra Court Decision and Sentence, Good Practices in International and Foreign Law.



Similarly, it is possible to identify in the judicial decisions in **Brazil** in cases of domestic violence where the Maria da Penha Law was applied, the determination of a judicial order to the accused to attend rehabilitation programmes.

The case of the Court of Justice of São Paulo, 1st Criminal Court and of Childhood and Youth (Case 150XXXX-09.2019.8.26.0540) is an example in this direction as the Court “convicted the accused for the practice of the crime provided in art. 129, § 9 of the Penal Code and sentence the accused for imprisonment in an open prison regime, but suspended as follows: overnight stay in prison over all the weekends in the first year of the suspended sentence as per art. 48 of the Penal Code, to attend courses and lectures or assigned educational activities under the terms of art. 35, V, of the Maria da Penha law, should be specifically aimed at offenders to promote their rehabilitation.”

International law shows that great caution must be exercised when the only penalty imposed by a court is the participation in rehabilitation programmes, as this sanction alone may not meet the objective of the punishment while assessing a need for the relevant authorities to take continuous action to ensure the safety of the victim. According to international standards, the victim’s safety should be paramount, so sentences that impose attendance in such programmes in place of other, more restrictive penalties should be reviewed and monitored constantly.³³⁸

Considering the nature of the socio-educational measures imposed by the courts, their application can be a key strategy for mitigating the risk of continuing violence and, when properly employed and well managed, can bring about positive results, especially in cases of domestic violence.³³⁹

It is worth noting that the cycle of domestic violence reveals a high probability of recidivism, which contrasts with other crimes often committed as isolated offences.³⁴⁰ The evaluation of the risk of recidivism should be one of the main factors considered by the courts when factoring in the use of a suspended prison sentence.

When a final court decision is issued, victims shall receive adequate information to understand the nature of the sentence and its practical application, including the suspension of the sentence and the imposition of behaviour orders.

Practice in Timor-Leste

As pointed out above, it is not uncommon in Timor-Leste judicial practice for courts to hand down suspended prison sentences without imposing any behaviour orders, duties or prohibitions. Indeed, as per JSMP regular reporting, of all the alternative penalties to imprisonment provided in law, the most frequently used by the courts is a suspended sentence, followed by fines.³⁴¹

338. International Commission of Jurists, *Women’s Access to Justice for Gender-Based Violence: A Practitioners’ Guide*, 2016, 244.

339. Portugal, *Associação de Mulheres contra a Violência, Avaliação e Gestão de Risco em Rede - Manual para profissionais* (2013), 96.

340. UNODC, *Handbook on effective prosecution responses to violence against women and girls*, 2014, 19

341. Judicial System Monitoring Programme, *Observasaun Jerál Setór Justisa 2020,2021*, 21, 39; *Judicial System Monitoring Programme, Relatoriu observasaun jeral sector justisa 2017, 2018*, 37; *Judicial System Monitoring Programme, Sentensa no Violénsia Doméstika: Suspensaun ba pena prizaun ho kondisaun sira-Dezembru-2017, 2017*, 10; *Judicial System Monitoring Programme, Akuzasaun, julgamentu no sentensa iha kazu violénsia sexual ia Timor-Leste, 2012-2015 (Marsu-2016)*, 5, 32; *Judicial System Monitoring Programme, Relatoriu observasaun jeral sector justisa 2015 (2016)*, 25; *System Monitoring Programme, Aplikasaun sentensa alternativa iha kazu violénsia doméstika iha Tribunál Distritál Oecusse, 2015*, 15; *Judicial System Monitoring Programme, Relatóriu Observasaun Jerál Setór Justisa 2014, 2015*, 43; *Judicial System Monitoring Programme, Relatóriu Observasaun Setór Judisiáriu 2013, 2014*, 37; *Judicial System Monitoring Programme, Lei Kontra Violénsia Doméstika: Tinan tolu implementasaun ho nia obstakulu, 2013*, 33.

Despite the widespread use of suspended sentences in domestic violence crimes, courts rarely impose suspended sentences in sexual crimes.



Need for guarantees of non-repetition for a suspended prison sentence

The Court of Appeal, in Case No. 112-CO-2018-TR, of 28 February 2019, affirmed an interpretation of the application of a suspended prison sentence specifically in a case of GBV crime.

The court stated that “at the centre of a decision to suspend the execution of a sentence, there must always be a favourable prognosis about the future behaviour of the defendant/defendants. It means that the Court can predict that they will probably not commit crimes in the future (...). In order to prevent the repetition of such an act by the defendants in the future, as well as the general prevention required for this type of crime in a patriarchal society that does not generally respect the dignity of the human person, the right to life, including that of the woman (...), and taking into consideration articles 16 and 17 of the Constitution of the Republic and the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW, specifically Articles 1, 2(b) and (e), as well as Article 5(a), which prohibit discrimination against women, it is necessary for this Court to apply the appropriate sanction on the defendants in order to guarantee non-discrimination of the offended party - a woman -, as well as to prevent this type of discrimination in the future, and thus contribute to the change of the socio-cultural behaviour of the defendants with the aim of eliminating acts that are based on the idea of inferiority and superiority one sex over the other or “stereotypes” about the role of men and women.”

In this specific decision, the Court considered having insufficient factors to convince that the defendants would not commit new crimes in the future. Therefore, the Court of Appeal modified the sentence of the Oecusse District Court and determined a custodial sentence.

Recidivism is a legally established reason to prevent a court from determining a suspended sentence or revoking a previously decreed suspended sentence. As a positive step, it is possible to identify some court decisions which recognize that a suspended sentence is not an adequate punishment in situations of recidivism.



Rejection of an appeal for suspension of the execution of a prison sentence for repeat offender

In the judgement delivered on 20 November 2020, in Case No. 154-CO-2020-TR, the Court of Appeal dealt with an appeal from

the accused requesting to change the initial court decision and to suspend the two-year prison sentence for a crime of simple bodily harm in the form of domestic violence. The Court of Appeal denied the appeal, holding that the accused was still serving a suspended sentence for a prior conviction for the crime of domestic violence against the same victim and, therefore, should not benefit from a suspended sentence.

The Court explained that “suspension of the sentence is only a possibility, which means that it is only applicable to cases where it is unnecessary to impose an effective prison sentence. (...) The defendant had previously been sentenced to three years imprisonment, suspended for the same period. During that period, the defendant committed a crime of the same nature against the same victim, which leads to the conclusion that actual imprisonment is the only sentence capable of preventing further crimes”.

The legal rule that a suspended sentence shall be withdrawn if a new crime is committed is not the most effective strategy in countries like Timor-Leste, where there is often a delay in recording, opening and concluding the criminal investigation. Therefore, considering the Timorese system, a suspended sentence for GBV crimes will rarely be sufficient when not accompanied by court-ordered behaviour orders.

In the vast majority of the decisions about domestic violence crimes where the sentence is suspended, no additional accessory penalties are given by the court, such as behaviour orders, imposition of positive duties or prohibitions of behaviour by the perpetrator.³⁴² It is promising that when analysing in-depth the judicial practice in the country, it is possible to identify a few exemplary decisions where accessory punishments have accompanied the suspended sentence.



Suspended sentence in crimes of domestic violence conditioned with an order to pay alimony

In a Suai District Court decision of September 2018 an adult male was convicted of domestic violence. The sentence of two years in prison was suspended for three years with the accessory legal duty to pay alimony to the accused children at USD 80 monthly.

As reported in the Court of Appeal decision, in Case No. 14/CO/2019/TR, of 7 March 2019, the criminal proceeding related to violence committed by the accused against his wife occurred during discussions about the husband's infidelity. The physical violence resulted in the victim needing medical care for her injuries.

While this court decision is highly favourable as it imposed duties as a condition for a suspended sentence, the court's written decision replicated language reinforcing gender stereotypes and normalizing

342. Judicial System Monitoring Programme, Sentencing and Domestic Violence: Suspending prison sentences with conditions, de Dezembro de 2017, 4.



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violence in the family context, as commonly found in many judicial decisions. The court judgement stated that “the couple started discussing and this discussion made the accused be angry and give two punches on his wife and push her to the floor”.

It is often difficult for victims to understand how the accused can be freed by the court when convicted of the crime of violence committed against them. Suspended sentences can frustrate the victim’s legitimate expectation of justice because, despite a long and challenging criminal procedure, the perpetrator remains at liberty. When this happens, victims often feel that the crime goes unpunished in cases of a suspended sentence.

As per court’s rules of procedure, the judge reads the court decision in the final hearing; however, victims face real challenges in accessing this document’s content effectively. Firstly, as already referred to above, the victim is often not informed of the date of the final hearing and, therefore, may not have been present during the hearing where the final decision was read aloud and was handed a copy of the written judgment (written in Portuguese) by court officials at a later date. Secondly, even if present, it does not mean that the victim will always be able to fully understand the content of the decision read by the judge because it often contains technical and legal terms. Thirdly, in almost every proceeding, there is no dialogue between the judge and the victim, with the court’s actions limited to ensure that the accused understands the sentence’s content. In short, it is common in Timor-Leste for the victim to feel confused after the case’s conclusion, not entirely understanding what has occurred. It is, in fact, observed frequently that upon the conclusion of the final hearing, the victim will seek clarification from court clerks or specialized services of the court’s decision and what it means in practice. In the case of a suspended prison sentence, the confusion tends to be even more significant, and even if the decision was well explained, a victim could face challenges in fully understanding the information due to high-level stress caused by a fear of her safety when hearing that the accused is to be free.

There is close to a complete lack of monitoring by public authorities of defendants who have had their prison sentences suspended.³⁴³ To date, no formal mechanism has been established to share information between the justice authorities and the community leaders or parish authorities about the imposition of a suspended prison sentence on a community member for GBV offences. It is understood that local authorities are unaware of the need for these authorities to monitor their behaviour and are not explicitly encouraged to formally report to the police when aware of a new criminal, violent behaviour by the same person in the future.

343. Judicial System Monitoring Programme, Observasaun Jerál Setór Justisa 2020, 2021, 21, 39; Judicial System Monitoring Programme, Observasaun Jerál Setór Justisa 2017, 2018, 37; Judicial System Monitoring Programme, Sentensa no Violénsia Doméstika: Suspensaun ba pena prizaun ho kondisaun sira, de Dezembro de 2017, 10; Judicial System Monitoring Programme, Akuzasaun, Julgamentu no Sentensa iha Kazu Violasaun Seksuál iha Timor Leste 2012-2015, de Março de 2016, 5, 32; Judicial System Monitoring Programme, Relatoriu observasaun jeral setor justisa 2015, 2016, 25; Judicial System Monitoring Programme, Aplikasaun sentensa alternativa iha kazu violénsia doméstika iha Tribunál Distritál Oe-cusse, de Novembro de 2015, 15; Judicial System Monitoring Programme, Relatóriu Observasaun Jerál Setór Justisa 2014, 2015, 43; Judicial System Monitoring Programme, Relatóriu Observasaun Setór Judisiáriu 2013, 2014, 37; Judicial System Monitoring Programme, Lei Kontra Violénsia Doméstika: Tinan tolu implementasaun ho nia obstakulu, 2013, 33.

8. ENFORCEMENT OF THE SENTENCE

National Legal Framework

The execution of a sentence is regulated by the Penal Execution Legal Regime (Decree-Law No. 14/2014, of 14 May), which provides the main rules for implementing custodial and non-custodial sentences given by the courts in criminal justice proceedings. This law establishes a series of procedures, identifies specific guarantees, defines duties and develops a more dignified, humane and quality prison system guided towards the social reintegration of the defendant, therefore giving effect to Articles 61 and 91 of the Penal Code. After the final and unappealable decision determining the application of a penalty, it is the court's responsibility to monitor the execution of the sentence and to decide on their modification, substitution and extinction as referred to in article 4 of the Penal Enforcement Regime. The public prosecution assumes a more passive and vigilant role at this stage since it is responsible for promoting, monitoring and verifying the legality of the execution of the penalties previously determined by the judge (Article 5 of the Penal Execution Legal Regime).

The execution of a prison sentence is guided by individualised monitoring of prisoners (Article 11(1) of the Penal Execution Legal Regime), based on the specific judicial decision and assessing each prisoner's needs. The referred regime makes it clear that the execution of the prison sentence should avoid, whenever possible, the harmful effects of the deprivation of liberty and should promote a sense of responsibility for the inmate, who should be encouraged to participate in the planning and execution of his sentence, including contributing to his social reintegration, through education, training and work activities (Article 11(2) and (3) of the Penal Execution Legal Regime). The rehabilitation of inmates is to be supported by educational, employment, social and solidarity programmes and activities conducted in the prison establishments. The implementation of these activities and programmes can be secured with the support of relevant public and private institutions (Article 9 of the Penal Execution Legal Regime).

During the execution of a prison sentence, a few legal provisions focus on victim protection and reparation.

The Penal Execution Legal Regime provides for the possibility of monitoring correspondence and the communication of an inmate to protect the safety of the victims (Articles 75(2), 76(3) and 78). Inmates may be entitled to leave the prison for specific periods when fulfilling certain criteria; amongst the requirements for an inmate to benefit from a leave from the prison facilities are assurances related to victim protection (Article 106(2)).

The penal execution regime determines that part of the remuneration received by the inmate for his work while serving a prison sentence shall be used to pay court-ordered compensation to the victim (Article 58(3) of the Penal Execution Legal Regime).



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Reference is also made to the victims when considering media access to prison establishments. The legal framework imposes on the prison director the need to consider the “negative impact on the victim or their family” before granting media access to interview an inmate (Article 80(3)).

At no time does this specific legal regime reference the victim’s participation in the efforts to promote the rehabilitation and the future reintegration of an inmate. However, the inmate’s family plays a key role in the rehabilitation process, which means that in domestic violence crimes, a victim may participate as a member of the inmate’s family.

The Penal Execution Legal Regime does not require the notification of the offended party or victim upon the release of the convicted individual. It is provided, in Article 32, that the “court communicates the date of the inmate release to the police authority of the victim and respective family members residential location”. Once with information on the imminent release of an inmate, the police authority, in turn, may inform the victim and their family of the impending release of the convict only “when it considers that the release of the prisoner may bring about any specific danger”.

Good Practices in International and Other National Domestic Laws

Unlike other topics in criminal law, there are no international standards, reports or studies by international organisations dedicated to the execution of sentences for GBV crimes. This subject is discussed sporadically in documents and norms that deal with broader issues, such as the rights of prisoners or inmates and the role of prison in their rehabilitation.

Within the execution of the sentence, particular importance is given to the reintegration of prisoners into their community. With this, it appears relevant to consider the potential impact that the inmate reintegration process may have on the lives of victims, especially victims of GBV.

Good practice standards on prisoners’ community reintegration highlight the need to implement prison rehabilitation programmes. Programmes for rehabilitating inmates are essential in achieving a prison sentence’s primary goal, such as reducing reoffending and increasing public safety.³⁴⁴ The Mandela Rules, as the UN standards for the treatment of prisoners, emphasise their rehabilitation and reintegration into the community. With this, prison administrations and other competent authorities shall offer education, vocational training, work and other forms of assistance in line with the individual needs of offenders to assist in reintegrating prisoners into society.³⁴⁵

One reintegration process that tends to be particularly difficult is for male convicts who have committed crimes based on gender-based violence, who often return to the communities where their victims reside. In these cases, it is possible to demand the participation of these men in therapeutic groups for the recovery of aggressors when based on a judicial order. A judicial order for participation in support programmes for perpetrators of violent crimes as part of sentencing has proven to effectively reduce the levels of recidivism of domestic violence. As such, various countries have adopted these measures, starting in the 1970s in the United States and the United Kingdom since the 2000s, adopted in several European countries.³⁴⁶ Contemporarily,

344. UNODC, *Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders*, 2018, 3.

345. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 8 January 2016.

346. Cristina Oddone, *Setting up Treatment Programmes for Perpetrators of Domestic Violence and Violence against Women: Analysis of the Kosovo legal framework and good practices report* (Council of Europe, 2021), 11.

347. In Brazil, there was a specific project of the judiciary of the State of Paraná, where 24 groups were held with the participation of 598 men, with only four cases of recidivism, Ministério Público do Paraná, “Grupo de recuperação de homens agressores reduz violência doméstica”, in MPPR, 14 January 2020.

programmes for the recovery of violent inmates involved in GBV crimes are being implemented by several countries, including developing countries such as Kosovo and Brazil.³⁴⁷

Practice in Timor-Leste

The legal regime allows for several measures to promote the gradual rehabilitation of inmates, ultimately aiming at their reintegration into the community once the prison sentence is concluded. The main measures for inmate integration include regular contact with the family through visits and communication, leave from the prison establishment and participation in educational and social programmes.

Inmates' enjoyment of leave from prison establishments is still of limited use in Timor-Leste, where leave entitlements are rarely used as a general measure to support inmate reintegration. Often inmates are given leave from the correction facilities to attend the funerals of close family members or for other humanitarian purposes. The limited exercise of inmate leave prevents the collection of sufficient understanding if and how victim protection is ensured in this process.

While inmates have access to telephonic communication, this access is not provided in a manner that allows inmates to have a regular pre-determined schedule for using the available communication channels. Current practice is that inmates have to make a specific request to correctional officers to use the telephone, presenting a justification for needing such communication. With this system, which appears to violate inmates' rights, there is increased control of the communication channels used by inmates, allowing prison authorities to be aware of any contact with the victims. As the court rarely determines an order prohibiting a perpetrator's contact with the victim, it is not possible to identify how the prison authorities control this limitation. Public authorities with the competency to support the reintegration of inmates regularly communicate with the inmate's family. In cases of domestic violence, the victim should be involved in the reintegration process as a direct consequence of being a member of the inmate's family. So while the law does not require the prison authorities to inform the victim of the imminent release of an inmate, in domestic violence cases, a victim may be notified as part of the reintegration services work at the inmate's community. It is worth recalling, however, as referred to before in this Report, that very rarely courts impose an effective prison sentence in physical and psychological domestic violence cases; therefore, there is a limited number of inmates serving sentences for those crimes in the Timorese prisons.

The previous NAP GBV (2017 to 2022) identified the "strengthening of rehabilitation, monitoring and evaluation of programmes with perpetrators to reduce recidivism" as one of its objectives.³⁴⁸ The implementation of training programmes with inmates, including in the area of behaviour and anger management control, is regularly implemented in the prisons, involving those inmates who show interest and willingness to participate. Despite not being included in the 2022-2032 NAP GBV, it is understood that this type of activity will continue based on general need to secure the inmate reintegration to society.

348. National Action Plan to Combat Gender Based Violence 2017-2022, Government Resolution No. 25/2017, of 17 May, Result 3.5.



9. CONDITIONAL EARLY RELEASE

National Legal Framework

The national legal framework allows an individual sentenced to imprisonment to benefit from early release. Early or conditional liberty (or parole) consists of anticipating the release of an individual sentenced to effective imprisonment, where the inmate does not serve the entire sentence in a correctional facility. According to the Penal Execution Legal Regime (Article 119), in conjunction with the Penal Code (Article 64) and the Code of Criminal Procedure (Article 332), two types of conditional liberty are provided for:

- (a) Mandatory and automatic for those sentenced for more than six years when five-sixths of the sentence has been served. This early release does not depend on being justified;
- (b) Optional based on the inmate's consent (or request) when half the sentence has been served. Early release in this modality requires compliance with two requirements: (i) satisfactory behaviour during the execution of the prison sentence, (ii) inmate's ability and willingness to successfully reintegrate into society "based on the circumstances of the case, the known history of the convict's life and personality, as well as his personal, family and social conditions".

The judge has the legal powers to grant conditional release, per Article 331 of the Criminal Procedure Code. The judicial decision must be taken with access to information from the public prosecution, and reports from the prison establishments and the social rehabilitation services.

The granting of parole may be subject to obligations or duties, including victim reparation and performance of specific tasks related to the crime committed (Article 331(4) CPC and Article 69 CP). It is noted that it is unclear whether the conditional release decision may also determine the imposition of behaviour orders provided in Article 70 of the Criminal Code.

When conditions are imposed, the reintegration services should regularly monitor compliance with these duties and report to the court (Article 129 of the Penal Execution Legal Regime).

When determining duties or obligations to be applied during the conditional release period, it is possible that one of the duties imposed may be related to the protection of the victim, also foreseeing the execution of relevant actions in the scope of the social reintegration of the inmate. However, it is noted that applicable legal norms are not worded with a clear and intentional perspective to promote a victim-centred process.

The conditional release is a judicial decision, which may be preceded by a hearing with the inmate if considered necessary by the court (Article 122 of the Penal Execution Legal Regime). In case a hearing is held, the law identifies the inmate's participation, his legal representative and the public prosecution. The prison services may also participate when invited by the court to provide clarification. No express reference is made to the victim's participation in this

process. Victims could, nonetheless, be invited by the judge to participate when consideration is given to the imposition of behaviour orders or specific conditions, including the payment of victim compensation or victim reparation.

The legal framework, as already referred, does not require that prison authorities inform the victim of the imminent release of the inmate. Correctional authorities must inform the police of the residential area of the victims or their families of the release date of the convicted person, but information to the victim is only provided in case the police find it relevant because of security risks (Article 32 of the Penal Execution Legal Regime).

In domestic violence cases, under Article 25 of the LCVD, it is understood that a victim's legal representative may demand to be informed about the date of the offender's release, therefore giving effect to the role of counselling the victim and monitoring the progress of the case.

Probation is revoked if the defendant commits a crime with intent, punishable by imprisonment during the period of probation and sentenced to imprisonment for that crime. Revocation of parole means the convict must return to prison to serve the remaining prison time and is not prevented from benefiting from new parole after one year (Article 333 of the CPC).

The law allows for the revocation of an inmate's conditional liberty when he reoffends or violates the duties imposed by the court (Article 130 of the Penal Execution Legal Regime). The court is given discretionary power to extend the conditional liberty period or to warn the convicted person when there is a violation of the duties or a new offence sentenced with a non-custodial sentence. Early or conditional release will be revoked if the offender is sentenced to imprisonment for another crime during the conditional period.

Good Practices in International and Other National Domestic Laws

Judges and prosecutors play an important role in supervising the execution of sentences, especially in cases involving violence. Decisions on conditional release, including the imposition of duties, should not be taken without assessing the risk of future violence to the victim or others.³⁴⁹

As already considered supra in this report, victims should be informed when the offender is temporarily released to enjoy a leave from the correctional establishment or benefit from an early release, at a minimum, when victims or their families may be in danger.³⁵⁰

Indonesia and Portugal: Right to receive information on the execution of a sentence

In the 2022 **Indonesian** legal system for combatting sexual crimes, the victims and their families have the legally provided right to receive information about the progress of the execution of the sentence imposed on the perpetrator, in particular, information about the imminent release of the convicted person from prison (Article 71(1) (a) Law No. 12 of 2022 of 9 May 2022).

349. European Union and Council of Europe, Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice, September 2017, 87. In cases of violence against women, the Public Prosecutor and the Judge must ensure that the sentence reflects the serious nature of the crime.

350. European Union and Council of Europe, Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice, September 2017, 92. See, also, UN, Strengthening crime prevention and criminal justice responses to violence against women, 21 December 2010, para. 17(c).



In the **Portuguese** Statute of the Victim, the right of the victim to receive information about the release of the convicted person is legally foreseen in Article 11(10) of Law No. 130/2015, of 4 September.

In several civil law jurisdictions, the victim has a legal right to participate in the inmate conditional early release process. In these frameworks, victims have the right to submit their positions or opinions, either in writing or orally, on the potential parole of the convicted person. In certain jurisdictions, victims may attend the hearing before the judge if they want to.

France, Argentina and Quebec: Victim participation in early release hearing



In **France**, under the Code of Criminal Procedure, Articles 729 to 733, the victim's representative has the right to participate directly in the prisoner's hearing, which is not extended to the victim's participation in person. The victim may, however, submit a personally written statement.



In **Argentina**, under the Law on the Rights and Guarantees of the Victims³⁵¹, the victim has the right to express her opinion directly to the execution judge in the cases of an inmate's temporary leave from prison, early release or conditional liberty, amongst others. At the start of the execution of the sentence, the judge asks the victim if she wishes to be kept informed of the development of the prison sentence of the perpetrator. If a positive answer is given, the court regularly provides information to the victim.



In the province of **Quebec** in Canada, which is a civil law jurisdiction, the victim can personally participate in the convict's probation hearing and make a statement. Furthermore, a public fund can reimburse the victim's participation costs.

Practice in Timor-Leste

A specific challenge the victim faces is not knowing the date of the convict's release. The victim has no information about the date when this might happen or, most of the time was not even aware of the possibility that the convict will serve only half of the sentence incarcerated and the rest of the time at liberty.

The justice system does not formally notify the victim of the accused's conditional release date. While the police may inform the victim of the date of the convict's release, when done, it is provided verbally and not in the form of written notification. Victims are often not asked about their safety or the concerns they share, nor are they effectively supported on how to deal with the impact of the imminent release, including in their psychological integrity.

351. Argentina, Ley n.º 27.372, Ley de Derechos y Garantías de Las Personas Víctimas de Delitos. "Artículo 12. Durante la ejecución de la pena la víctima tiene derecho a ser informada y a expresar su opinión y todo cuanto estime conveniente, ante el juez de ejecución o juez competente, cuando se sustancie cualquier planteo en el que se pueda decidir la incorporación de la persona condenada a: a) Salidas transitorias; b) Régimen de semilibertad; c) Libertad condicional; d) Prisión domiciliaria; e) Prisión discontinua o semidetención; f) Libertad asistida; g) Régimen preparatorio para su liberación. El Tribunal a cargo del juicio, al momento de dictado de la sentencia condenatoria, deberá consultar a la víctima si desea ser informada acerca de los planteos referidos en el párrafo que antecede. En ese caso, la víctima deberá fijar un domicilio, podrá designar un representante legal, proponer peritos y establecer el modo en que recibirá las Comunicaciones".

In cases of domestic violence where the families of the victim and the offender still have close relations, for example, when the victim is still living in the family home, the victim will receive information about the early release procedure through the work of the reintegration services when consulting with the offender's family. However, this process does not involve the victim in her position as a victim but is aimed at the convict's family. In practice, such a situation may further harm the victim by reinforcing gender-discriminatory power dynamics in the family.

In practice, the victim does not participate in the court hearing on probation and is neither notified nor present or represented there. Rarely a judge will notify the victim and request her participation. In a few instances, judges have requested the victim's presence to confirm whether the compensation had been paid in full before deciding on the early release of the perpetrator.

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