

# Guidelines on the Complaints Process for SGBV The Befriender



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# The Befriender

[A Civil Society Organisation (CSO)/  
A Non-Governmental Organisation (NGO)/  
The Lawyer of the Aggrieved Party]




# Introduction

These guidelines are meant for a) victim-survivors of sexual and gender based violence, b) the police who record the complaint, c) the Judicial Medical Officers who conduct the medical examination and d) the Befriender/Human Rights lawyer or organization who will provide support to the survivor. The guidelines are in 4 sections for the benefit of these 4 different groups. They provide a quick reference to the complaint, medical and legal process.

There is a high incidence of sexual and gender based violence (SGBV) in Sri Lanka. In 2022, 1391 incidents of statutory rape (rape of girls under the age of 16 years), and 257 incidents of rape (rape of women above the age of 16 years) were reported to the Police.

(See: <https://www.police.lk/wp-content/uploads/2023/07/GRAVE-CRIME-ABSTRACT-FOR-WHOLE-ISLAND-FROM-01.01.2022-TO-31.12.2022.pdf> )

There have also been several reports of conflict-related sexual violence. (Woodworth, A., & Fonseka, B. 2016. “Accountability and Reparations for Victims of Conflict Related Sexual Violence in Sri Lanka.” Centre for Policy Alternatives. <https://www.cpalanka.org/wp-content/uploads/2016/07/CSV-paper-June-2016.pdf>)



Research on sexual violence in Sri Lanka indicates, that the actual incidence of SGBV is higher than reported to the Police. While there are many reasons for non-reporting, research on SGBV and discussions with survivors highlight gaps in the practical procedures a survivor has to follow, and a lack of awareness regarding these procedures.

This adds a layer of difficulty for survivors who are already suffering from physical and mental distress due to the assault. Therefore, a befriender (a family member, an adult friend, a lawyer, a human rights defender, a responsible officer working in a NGO, CSO or women’s organisation) is an important person who accompanies the survivor, and who the survivor can rely on during the complaints, court and coping process. These guidelines provide user-friendly, step-by-step suggestions on how a befriender/you, can support the survivor when accessing the justice system in Sri Lanka.

From January to March 2024 the special unit established in the Bureau for the Prevention of Abuse of Children and Women of Sri Lanka Police received a total of 1,077 complaints related to incidents of abuse, violence and harassment against women and children, through the hotline number ‘109.’

( <https://www.adaderana.lk/news.php?nid=98185> )



# Incident & Procedures

# First Steps

Information on the incident may be received from:

- The Survivor
- Grama Niladhari (GN)
- Women's Development Officer
- Women's Rural Development Society
- Rural Development Society
- Probation Officer
- Social Service Officer
- Family members
- Community/religious leaders
- Neighbors
- Case manager (a case manager is a person appointed to manage the case from a range of services. This can include a counsellor).



- A survivor may report the incident directly to any of these people who can act as a befriender.
- Such a befriender can report the incident on behalf of the survivor to the Police.
- If a grave violence has been inflicted (or any injuries that require medical attention), ensure that the survivor is admitted to a hospital, and arrange treatment for her/him.
- Assist the survivor to make a complaint to the Police as soon as possible. The complaint must be made to the police station nearest to where the crime took place.





- Advise the survivor of the importance of preserving evidence, including not washing themselves, if possible, prior to the medical examination by the Judicial Medical Officer (JMO). Assist the survivor to collect the clothing worn at the time of the attack (without washing them) and to place the clothing in a paper bag or wrapped in paper, and any other evidence of contact with the perpetrator (e.g., condoms, accessories, text messages, cloth used to wipe bodily fluids etc.).
- Assist the survivor to gather the documents necessary to make the police complaint (National ID Card or Birth Certificate, Marriage Certificate if applicable etc.)



# Police Complaint Procedure



- Advise the survivor on the different ways in which a complaint can be made to the Police i.e., by phone call, fax, letter, online, or by visiting the police station. Section 109(1) of the Code of Criminal Procedure Act states that any information regarding an offence may be given orally or in writing to a police officer. If the survivor chooses to make a complaint online, she/he can do so using the following link:  
<https://gic.gov.lk/gic/index.php/en/component/complaints/?id=479&task=add>
- Advise the survivor that a complaint can be made by her/him in-person, or by another person on their behalf. The complaint can be made to the Women and Children Desk of the respective police station.
- Explain the formal procedure that will commence upon making the police complaint to the survivor.
- If the survivor is under threat, make arrangements for her/him to be relocated to a safe house. A Women's / Human Rights Organisation in your area may be able to provide such a safe house, and/or home meals and transport to the survivor where necessary.



- The Government Information Centre specifically states that in the event of an incident of rape, the complaint should be made as soon as possible as this is to the survivor's benefit.
- Check with the survivor whether she/he has all the evidence and documents required. Accompany the survivor to the police station.
- Make sure the survivor feels comfortable while making the complaint.
- There is no fee charged to make a complaint.
- Ensure that the complaint is recorded in a language the survivor understands. If the Police does not have an officer who speaks the survivor's primary language, request for an officer from a nearby Police Station who can speak the language of choice to record the complaint.

If there is no officer who is able to record the complaint in the language that the survivor wants to give it in,

- The survivor has a right to submit the complaint in writing.
- After the officer records the complaint in one of the national languages, ensure that the complaint is interpreted to the survivor in a language she/he understands. This is clearly spelt out as a requirement in Section 109(2) and Section 110 of the Code of Criminal Procedure Act.



- If the police refuse to take down the complaint, intimidates the survivor, or advises against making the complaint, advise the survivor that she/he can make a complaint to the Human Rights Commission of Sri Lanka (HRCSL) and/or write to the Inspector General Police (IGP) using the online Tell IGP platform so that evidence of the complaint is retained. (See Human Rights Commission of Sri Lanka: <https://www.hrcsl.lk/make-a-complaint> and “Tell IGP”: <https://www.telligp.police.lk> ).
- Please note that under Section 109 of the Code of Criminal Procedure Act, the police have a statutory obligation to record a complaint, initiate an investigation and report to the Magistrate.
- In cases where the survivor is hearing impaired and/or speech impaired, the befriender can take a sign language interpreter. There is no statutory requirement for the police to provide such an interpreter at present, and the presence of a sign language interpreter will depend on the discretion of the OIC.
- Where the offence is of a sexual nature, advise the survivor that she/he has the right to request the gender of the officer who is to carry out the investigation. The State has a duty to make all endeavours to comply. (Section 3(1)(g) and Section 3(2), Assistance to and Protection for Victims of Crimes and Witnesses Act, No. 10 of 2023).

# The Medical Examination



## The Medical Examination

- Advise the survivor that after making the police complaint, she/he must undergo a medical examination by a Judicial Medical Officer (JMO). Female victim-survivors have the right to request to be examined by a female medical professional, and the State has a duty to make all endeavours to comply. (Section 3(1)(f) and Section 3(2), Assistance to and Protection for Victims of Crimes and Witnesses Act, No. 10 of 2023).
- The Police should escort the survivor and, where applicable, admit the survivor to the hospital. The survivor will then be sent to the JMO's office for the examination.
- Advise the survivor that the police are also required to escort the perpetrator **separately** to the JMO for a medical examination to gather evidence. Ensure that the police do not transport the survivor in the same vehicle as the suspect(s).
- Advise the survivor that s/he or his/her guardian has to give written consent for the medical examination. Advise the survivor that if she/he does not give consent, the police can ask for a Magistrate's order for a JMO to conduct the medical examination. (See National Guidelines for the Examination, Reporting and Management of Sexually Abused Survivors for Medico-Legal Purposes (2014), introduced by the College of Forensic Pathologists of Sri Lanka).  
<https://srilanka.unfpa.org/en/publications/national-guidelines-sexually-abused-survivors-medico-legal-purposes>



## Consent & the Medical Legal Examination

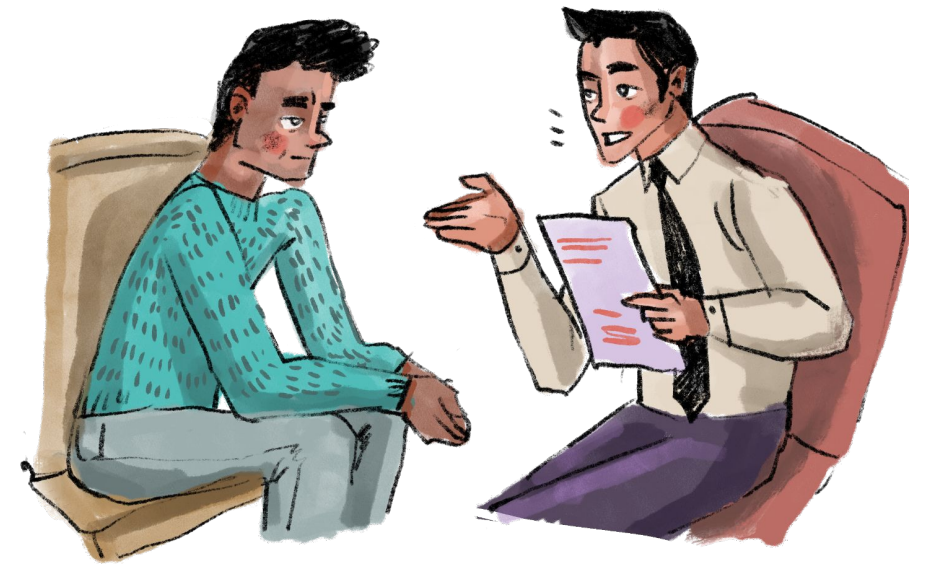
- If the survivor is below the age of 16, ensure that consent is obtained from a parent, a guardian, or an officer of the National Child Protection Authority or Probation Services.
- If the survivor is above the age of 16 and refuses to give consent, explain to him/her the importance of the medical examination for obtaining evidence, and support the survivor in undergoing the medical examination for a successful legal process.
- Ensure that the JMO obtains valid, informed written consent from the survivor prior to the examination. This is mandatory. (See National Guidelines for the Examination, Reporting and Management of Sexually Abused Survivors for Medico-Legal Purposes (2014) introduced by the College of Forensic Pathologists of Sri Lanka).
- If the survivor is menstruating, the JMO can still obtain evidence (such as bite marks and scratches). The JMO is required to ask her to come once her menstruation is over to conduct an in-depth examination on another date. Make sure the JMO completes the general examination and provides a receipt to the survivor with the specified time and date for the clinical examination.



- The Police are required to fill the Medical Legal Examination Form (MLEF) (cages 1 – 8) and hand it over to the JMO before the medical examination begins. The JMO must fill out cages 9-22.
- The MLEF is the form used by the Police to obtain the medico-legal examination of a survivor by the JMO. The MLEF is usually a two-page document which will confirm the type and gravity of the crime.
- The survivor can ask for a chaperone to be in the room when the JMO conducts the medical examination. Under current guidelines, this chaperone has to be a trained medical officer, midwife or nurse. (See National Guidelines for the Examination, Reporting and Management of Sexually Abused Survivors for Medico-Legal Purposes (2014), introduced by the College of Forensic Pathologists of Sri Lanka).
- Ensure that the survivor is comfortable with this chaperone.
- Please note that under current guidelines, the JMO is only obliged to consider the request for a chaperone during the medical examination but is not required to allow it. The chaperone must also sign a consent form.



- If the survivor is too traumatized to speak, help/aid the JMO to refer her/him for counselling. Counselling can also be recommended for trust-building prior to the medical examination. Ensure, to the best of your ability, the dignity of the survivor throughout the examination.
- There should be absolute privacy (auditory and visual), and nonjudgmental listening.
- Assist the JMO to build trust with the survivor to carry out the medical examination.
- If the survivor does not consent to any aspect of the medical examination, the JMO will document this and ask the survivor to sign it.





- In the case of a special needs survivor (with cognitive impairment, for instance), the JMO has to follow legal procedures on consent prior to the medical examination. (See National Guidelines for the Examination, Reporting and management of Sexually Abused Survivors for Medico-Legal Purposes (2014) introduced by the College of Forensic Pathologists of Sri Lanka.
- After the medical examination, ensure that the survivor obtains a receipt for the examination with the JMO's name and designation, date and place of examination.

# The Court Process

The survivor has the right to be represented in Court by a lawyer as an aggrieved party. Source: Section 260, Code of Criminal Procedure Act and *Jagathsena and Others v. G.D.D.Perera, Inspector, Criminal Investigation Department and Mrs. Sirimavo Bandaranaike (Aggrieved Party)*(1992) 1 SLR 371.



## Witness Protection

- Make submissions under the Assistance to and Protection for Victims of Crime and Witness Act if the survivor is being threatened and requires security.
- Under this Act, the survivor may apply to be considered a “vulnerable victim” (due to being a victim of a sexual offence) which allows the court to decide special measures for her/his protection.
- A complaint can be made to the National Authority for the Protection of Victims of Crime and Witnesses, the Victim and Witnesses Assistance and Protection Division of the Sri Lanka Police, or at the nearest police station.
- Protection can be sought from Court while the case is ongoing or after its conclusion.
- It is the responsibility of the Police to object to bail for the suspect. However, the presence of an attorney representing the survivor in court is beneficial towards this end. Ensure that all witness protection rights available to the survivor are requested for, and that witness protection orders are implemented.
- In situations where the witness protections orders are not adhered to, inform the Court of this.



## In-camera

- It is possible for the survivor's lawyer to apply to Court for the survivor to give evidence in-camera, or in the Magistrate's Chamber so that the survivor's side of the story is presented properly. (See Article 106(2) of the Sri Lanka Constitution which provides that a judge may, at his/her discretion, whenever they consider it desirable in proceedings relating to sexual matters exclude persons who are "not directly interested in the proceeding". The discretion is with the judge, but the lawyer can apply for an in-camera hearing. See also, Section 28(1)(d) of the Assistance to and Protection for Victims of Crime and Witnesses Act No. 10 of 2023).
- If the police representation of the survivor or the case is inaccurate, inform the Court of this.



# The Role of Lawyers

- No lawyer should attempt to influence the police investigative team. However, where the defense is known to influence the police, report this to Court or seek a transfer of the case to a higher authority.
- An attorney representing an aggrieved party must ensure, inter alia, that measures are taken in a timely manner:
  - (a) to secure protective measures for the survivor, where required;
  - (b) to ensure that the law enforcement/judicial authorities frame the correct charges against perpetrators;
  - (c) to make representations in court, where such interventions are required, for the imposition of a mandatory custodial sentences against perpetrators, or to object to bail. This is where the release of the suspect/accused on bail threatens the security of the survivor.
  - (d) to seek maximum compensation payable by the perpetrator(s) to the aggrieved parties, as provided by law;
  - (e) to monitor the progress of the investigation, indictment process and judicial proceedings so that the survivor's right to timely justice is ensured. (See National Authority for the Protection of Victims of Crime and Witnesses: <https://napvcw.gov.lk/>).
- The Assistance to and Protection of the Victims of Crime and Witnesses Act No. 10 of 2023 also recognizes a number of core rights and entitlements of victims of crimes. This includes their right to be treated with equality and fairness and have their dignity and privacy respected, to be informed of the progress of the investigation, the judicial proceedings, the right of representation by an attorney in the judicial proceedings, submit a victim impact statement as well as the right to compensation.

## Key Tips for Befrienders

- Assist/support the survivor to obtain medical assistance and advice from other professionals where needed.
- Support the survivor to access the relevant legal authorities including an aggrieved party legal counsel.
- Assist the survivor to seek counselling throughout the entire process.
- If a survivor falls within the category of an “aggrieved person” as defined by the Office of Reparations under the Office for Reparations Act, the survivor should be referred to the Office of Reparations for assistance, compensation and support.
- Appoint a lawyer to act on behalf of the survivor, or help the survivor find a lawyer, to observe and assist the case proceedings, and look after the survivor’s interest in Court.



- Observe the Court procedures and ensure that the relevant applications and documents are filed in court for appropriate orders.
- Your presence in court will lessen the chance of the survivor being intimidated or harassed by the friends/family members of the suspect in court or on its premises.
- Advise the lawyer to utilise the provisions of the Assistance to and Protection for Victims of Crime and Witnesses Act, No. 10 of 2023, where relevant, to ensure the safety of the survivor.
- If you are the lawyer for the survivor, instruct her/him in simple language how to report the incident to the Police as well as to the Court. The survivor can give evidence in Court as the prosecutrix. If not, the lawyers (the Prosecution or Aggrieved Party lawyer) speak on behalf of the survivor.
- Speak to the police investigating team and be updated on the progress of the investigation.
- After obtaining all relevant documents (from the survivor, police, court), show the survivor how the documents are organized in your file.
- Only communicate with the legal representatives of the suspects and/or associates if absolutely necessary.



- Assist to prepare the list of evidence and witnesses related to the incident for the First Information, B Report and Further Reports to be presented at the Magistrate's Court and show the survivor these documents.
- Assist the police investigating team if language barriers arise, and assist the Court Sergeant during court proceedings when necessary.
- Empathetically brief the survivor on dress code, expected behaviour in court, and sequence of what will take place before the survivor goes to court.
- Appear in court on the date summoned and mark both your appearance and the appearance of the survivor. At the High Court, stay until the Indictment is read.



- Once the Indictment is served, communicate with the Prosecutor to understand how the AGs Department plans to proceed with the case.
- Continuously monitor the case proceedings, keep in communication with the AGs Department, and update the survivor regularly as to the progress of the case.

## Do Not

- Do not appropriate the survivor's voice at any stage, or speak on her/his behalf without her/his consent.
- Do not retraumatize the survivor. The aggrieved party lawyer must be alert and sensitive to how a survivor can be retraumatized when answering questions posed by the prosecutor or the defense lawyer.
- Do not instruct witnesses the survivor may bring to the police station on how they should make their statements.
- Do not share any confidential facts, evidence or material on the survivor that may be relevant to the case with the defense lawyers. This is privileged information and consent of the survivor to do so is mandatory. Any disclosure is contrary to the Supreme Court Rules. An attorney is liable to face a Rule inquiry if information of a client is disclosed without express consent of the client.
- Do not share facts on the case with outsiders including the media without the informed consent of the survivor.
- Do not show a lack of interest or faith in the case in front of the survivor, or show a lack of confidence about the case in court.
- Do not act against the survivor at any point. Where the aggrieved party lawyer is acting pro bono, in the event he/she becomes uncomfortable with the case for any reason, withdraw from proceedings rather than undermine the case.

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