

# Guidelines on the Complaints Process for SGBV The Judicial Medical Officer



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# The Judicial Medical Officer



# 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>)

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> )

Research on sexual violence in Sri Lanka indicates, however, that the actual incidence of SGBV in Sri Lanka is higher than those 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 difficulty for survivors who are already suffering from physical and mental distress due to the assault. Therefore, the Judicial Medical Officers (JMO) play an important role in making the survivor feel comfortable. Further, the documentation produced by the JMO is of extreme importance as the Court relies on it as expert evidence.



## Mandatory Procedures



According to Sri Lankan law, there are mandatory procedures the JMO is required to follow. The National Guidelines on Examination, Reporting and Management of Sexually Abused Survivors for Medico-Legal Purposes provides the JMO with a comprehensive overview of how to conduct a judicial medical examination. These guidelines, read in conjunction with the other National Guidelines, provide user-friendly, step-by-step suggestions on conducting and documenting the medical examination, and the obligations of the JMO.

There should be absolute privacy (where the survivor is neither seen nor heard by others in the vicinity when she/he is narrating her/his story). The JMO should also engage in non-judgmental listening and keep the information confidential except when required to report in medical settings, or the court.

# Police Procedure

- The Police has the authority to take a survivor to the scene of the crime to collect evidence.
- If the survivor has suffered sexual violence (for definitions of sexual violence see [http://www.commonlii.org/lk/legis/num\\_act/pca22o1995213/](http://www.commonlii.org/lk/legis/num_act/pca22o1995213/) ), and/or is murdered, or a cognizable crime has been committed where the police can arrest without a warrant (See Schedule 1 to the CCP), then the Police is duty bound to inform the Magistrate as soon as they receive First Information (FI). The information is also sent to the HQI.
- The survivor (if alive) is referred to the Judicial Medical Officer (JMO) for a medical examination or, if deceased, the Magistrate sends the body for a post-mortem.



# Medical Examination





- The Police should escort both the survivor and the alleged perpetrator of the crime **separately** to the hospital and admit them for a medical examination for evidence gathering.
- Female survivors have the right to request to be examined by a female medical professional. If requested, 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 JMO must complete the Medico-Legal Examination Form (MLEF) Cages 9 - 22. The police should have filled cages 1 - 8 of the form before handing it over to the JMO.





# The Medico-Legal Examination Form

- At times, a survivor may come directly to the hospital after suffering sexual violence. In such cases, it is possible that the hospital staff themselves will direct the survivor to you upon discovery of information regarding sexual violence. In cases like this, you are advised to speak to the survivor, confirm sexual violence, report it to the Police desk at the Hospital, and obtain the Medico-Legal Examination Form (MLEF).
- If the survivor is admitted by the police after making her/his complaint to the police, ensure that you obtain the MLEF, with cages 1 – 8 filled, and signed by the police.
- In the case of a survivor who is under 16 years of age, it is best practice that she/he be admitted to hospital to facilitate multidisciplinary (multi-sectoral) management as well as the conduct of a case conference where relevant. <sup>[1]</sup>



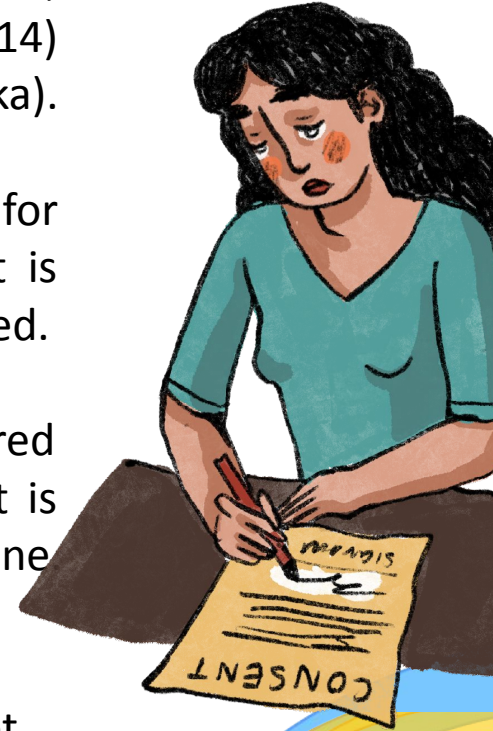
<sup>[1]</sup>Fernando, Asvini & Paediatricians, Members & Committee Members. (2014). National Guideline for Management of Child Abuse and Neglect - Multi - sectoral Approach

# Consent

- Obtain consent from the survivor. The consent of the survivor is mandatory. In cases where the survivor does not consent to a medical examination, the police can obtain a Magistrate's Order for a medical examination. If the survivor is below 16 years, the JMO is advised to obtain consent from the parents, or guardians or officers who report the case. These officers must be from the National Child Protection Authority (NCPA) or Probation Officers only.
- If the survivor is above the age of 16 and refuses to give consent, you are advised to build their trust. Explain to the survivor the procedures to be followed and the importance of the medical examination.



- If the survivor is above the age of 16 and still does not give consent, you should be mindful of not forcing her/him to undergo the examination. You should explain the implications of not proceeding with the medico-legal examination. You should record the basic history (any information/details that can be obtained verbally), record that the survivor has not given consent to perform the examination, and ask the survivor to sign it. (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).
- When the survivor is legally incapable of giving consent due to cognitive impairment, consent for the medical examination must be obtained from the guardian. If the cognitive impairment is severe, a Magisterial Order must be obtained.
- It is a best practice to obtain a psychological assessment of survivors who are cognitively impaired (to assess cognitive age etc.). Although there is no directive compelling a JMO to do so, it is recommended that this be routinely done.
- If the survivor is menstruating, you are required to summon her to return for an in-depth examination once menstruation ceases. Complete the general examination and provide a receipt to the survivor with the specified time and date for the clinical examination.



- Provide the survivor with a receipt – which is a document which includes the name and designation of the JMO/DMO who conducted the examination, and date and place of examination.
- After the examination, the survivor should always be referred to a counsellor/the mental health unit of a hospital, a gynaecologist (for reproductive health, injuries, medication/treatment), and a consultant venereologist (STD).
- The Magistrate will go through the documentation and ask for the Medico- Legal Report (MLR) to consider bail applications of the suspect or, to order further investigations. Thereafter, you must submit the MLR directly to the Court Registrar.



The following links provide a guide to best practices in other countries and Sri Lanka when medical professionals, such as JMOs, give expert evidence in Court.

<https://www.avant.org.au/Resources/Public/20150825-giving-evidence-in-court/>

<https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/protecting-children-and-young-people/doctors-giving-evidence-in-court>

<https://www.mdanational.com.au/-/media/files/mdan-corp/publications/writing-medico-legal-reports--giving-evidence-in-court.pdf>

<http://www.humanrights.asia/resources/journals-magazines/eia/vol-4-no-2-april-2010/http-www-humanrights-asia-resources-journals-magazines-eia-eiav4n2-sri-lankas-judicial-medical-officers-their-concerns-and-the-torture-shortcut/>

# Team

**Prof. Neloufer de Mel**

- **Researcher, Gender Justice and Security Hub.**

**Dr. Jean Perera**

- **Senior Consultant, Department of Pathology and Forensic Medicine, Faculty of Medicine, University of Moratuwa.**

**Ranitha Gnanarajah**

- **Attorney at Law**

**Sandani Yapa Abeywardena**

- **Attorney at Law**

**Harry Fernando**

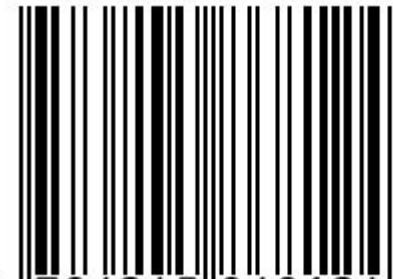
- **Women and Media Collective**

**Ruwangi Amarasinghe**

- **(Fold Media Collective)**

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