

Guidelines on the Complaints Process for SGBV

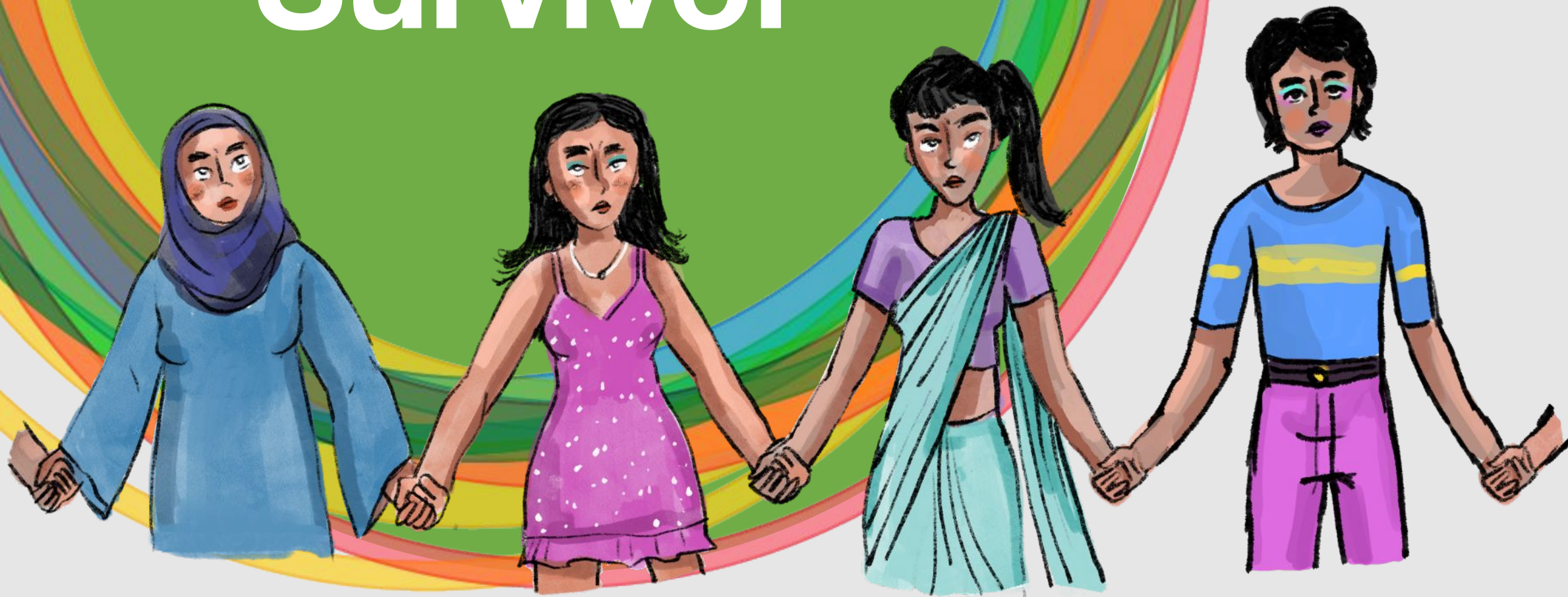
The Survivor



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Survivor



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 you, the survivor can make a complaint 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.’

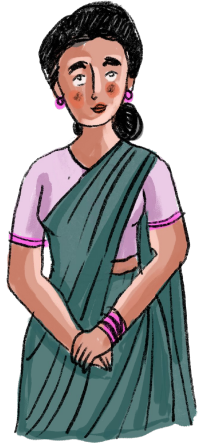
(<https://www.adaderana.lk/news.php?nid=98185>)

Incident & Procedures



First Steps

Immediately after the attack, talk to an adult befriender (member of the family/ a friend/ a counsellor/ a lawyer/ a member of a women's or human rights organization) about what happened and seek their support and protection.



Family member



Loved one



Friend



Lawyer



Women's Rights /Gender & Sexuality Rights Organization representative

- If you have suffered physical injuries that require immediate attention, you should admit yourself to a hospital for treatment as soon as possible.
- The emergency phone number 119 can be used to contact the police.
- If necessary, and you feel threatened, you can also contact a women's organization in your area for a safe house to stay in temporarily.
- It is best that you do not wash yourself or change the clothes you were wearing during the attack as it is important to preserve all evidence until a Judicial Medical Officer (JMO) has examined them.





- If you have to change the clothes you wore during the attack, don't wash them. Place them, with other evidence, in a paper bag or wrap them in a newspaper as they will attract fungus if placed in a plastic bag. Show these clothes and other evidence to the Police and the JMO.
- You should preserve any evidence of contact you may have with the perpetrator.
- Evidence may include condoms, clothing, accessories, text messages, cloth used to wipe bodily fluids etc. It is recommended that all the evidence is kept together in a paper bag or wrapped in newspaper and taken to the Police Station and the medical examination



Police Complaint Procedure

- **The following documents will be requested at the Police Station: National ID Card or Birth Certificate, Marriage Certificate (if married).**
- The Government Information Centre specifically states that in the event of an incident of rape, the complainant should complain as soon as possible as this is to the complainant's benefit.
- Source: Government Information Centre. Section 109(1), Code of Criminal Procedure Act also states that all information regarding an offence maybe given orally or in writing to the relevant police officer.
- If you choose to make a complaint online: See <https://gic.gov.lk/gic/index.php/en/component/complaints/?id=479&task=add>





- You are advised to have a befriender, or someone you are comfortable with, to accompany you to the Police Station to make the report.
- It is recommended that you take the clothes you were wearing at the time of the crime, as well as all other evidence, and documents (NIC, Birth Certificate and marriage certificate) to the Police Station. It is also important to take all available evidence to the medical examination.
- There is no cost or fee taken when making a complaint.
- At the Police Station, the Women and Children Desk will take down your complaint. The police are required by law to take down your complaint (Section 109, Code of Criminal Procedure). Please note, that at some sub police stations, there may not be a Women and Children Desk. In this instance, your complaint will be taken by a police officer at the sub-station's Crime Division.
- There are no application forms to be filled.

- If you do not understand the language in which the complaint is written in, it must be interpreted/translated to you at the police station itself in a language you understand. Sometimes, at the discretion of the Officer In Charge, a police officer from another station who has the required language fluency may be asked to come over and interpret/translate the complaint to you.
- The police are required to make every reasonable effort to record or interpret/translate your complaint to you in the language you prefer (Article 18(1) and (2), Sri Lanka Constitution recognizes Sinhala and Tamil as official languages; Article 19, Sri Lanka Constitution recognizes Sinhala and Tamil as national languages).
- When making the complaint, you should provide as much detail as you can remember, if possible, in chronological order. Inform the Police if you think you were drugged prior to, or during the incident. This has relevance to the matter of consent.



- Once the complaint is made, you will be asked to read it. Confirm that it has been accurately recorded and sign it. You should read over the complaint carefully, make any corrections if necessary, place your initials on any corrections, and sign confirming that the complaint is accurate.
- The Police Officer will then paste it in the complaint information book (CIB).
- You should obtain a complaint acknowledgement receipt. This receipt has the complaint reference number (with the page number, the name of the Police Officer who recorded it, and the date of complaint).
- You have the right to request the gender of the officer who is to carry out the investigation where the offence is of a sexual nature. 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).



- If any state official refuses to take down the complaint, intimidates you, or advises against making the complaint, you can make a complaint to the Human Rights Commission of Sri Lanka (HRCSL) and/or write to the Inspector General of Police (IGP) using the online “Tell IGP” platform so that proof of the complaint is retained.
 - See Human Rights Commission of Sri Lanka: <https://www.hrcsl.lk/make-a-complaint/>
 - See Tell IGP: https://telligp.police.lk/index.php?option=com_complaint.
- Please note, under Sri Lankan law, the Police cannot refuse to record a complaint (Section 109, Code of Criminal Procedure Act). The law also requires the OIC of the Police station to submit a report on your complaint to the Magistrate’s Court (Section 109(5) of Code of Criminal Procedure).



Medical Examination



The Medical Examination

- After making the complaint to the Police, you must undergo a medical examination by a Judicial Medical Officer (JMO).
- Therefore, after the complaint is made, the Police will escort you, and admit you to the nearest hospital for the examination.
- You will be first registered at the hospital. Thereafter, you will be sent to the JMO's office for the medical examination. In rural areas this maybe the District Medical Officer's (DMO) office.
- If you did not go to the police directly after the crime took place to make your complaint, but went to the hospital to get treatment for your injuries, you should make your complaint at the police desk located in the hospital. This should happen after you have been registered at the hospital and obtained treatment.
- Female victim-survivors also have the right to request to be examined by a female medical professional. The State has a duty to make every effort 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).



Consent

- You should be mindful that the JMO can still obtain evidence even if you are menstruating. The JMO can obtain other evidence (e.g., bite marks, scratches) and, if you are menstruating, the JMO must conduct an in-depth examination on another date.
- The JMO has to obtain valid, informed written consent from you or your guardian 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).
- The JMO will ask you whether you consent to the medical examination or not. You have the right to consent or not. In some cases, where consent is not given, the Police can ask the Magistrate for an Order to conduct a compulsory medical examination. (See National Guidelines for the Examination, Reporting and Management of Sexually Abused Survivors for Medico-Legal Purposes (2014)).



- A Magistrate is required mandatorily (the word is “shall”) to have a survivor of sexual violence and a suspected perpetrator examined by a JMO/ Government Medical Officer (GMO) as soon as possible. If the survivor (you) do not consent to any aspect of the medical examination, the JMO will document this and ask you to sign it. Please note that in cases where the survivor does not consent to a medical examination, the police can seek a Magistrate’s Order which compels you to undergo one. (See Section 137, Criminal Procedure Code).
- Once the examination is over, the JMO will send the completed Medico-Legal Examination Form (MLEF) to the police officer with the results of the examination.
- (For details of medical examination procedure, see the 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).

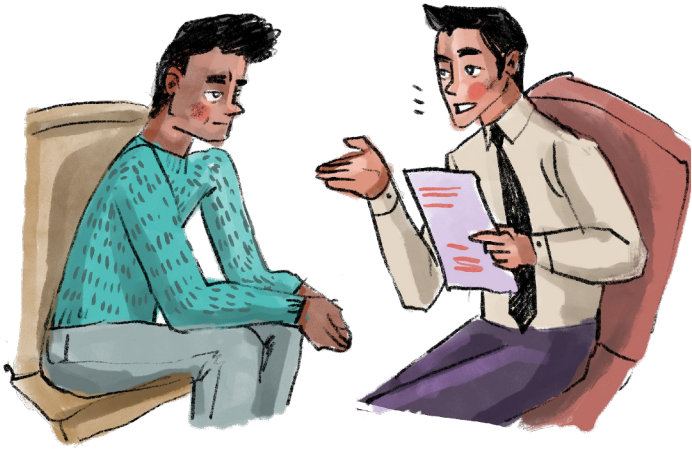


- A trained midwife, or nurse, or another healthcare worker who you are comfortable with should be present at the medical examination. If such a person is not present, you have the right to request such a person to be present.
- If you agree to waive your right to confidentiality, you can also request the presence of a family member, a befriender, or a lawyer at the medical examination. (However, please note that under current guidelines, the JMO is only obliged to consider your request, but is not required to allow it).
- After the medical examination is concluded, you should obtain a receipt from the JMO with the JMO's name and designation, date and place of examination.
- The JMO should refer you to a psychologist.
- The JMO may refer you to a STI clinic, or other medical/ support services.
- The JMO should explain to you the purpose of the referrals.



The Court Process





- If you do not know a criminal lawyer, you should contact a women’s organisation (such as Women in Need) or a legal aid organisation (such as the Legal Aid Commission) and request legal aid.
- You are advised to ask a befriender and/or a lawyer to accompany you to Court and to ensure that the relevant police officer makes the submissions for your case.
- The Court Branch of police stations handles all the crime related documentation of cases, and it is police officers from this Court Branch who go to Court. They file the (first) ‘B Report’, and subsequent ‘Further Reports’ to keep the Magistrate abreast of developments in investigations. They also go to court and ask for relevant orders/directions.

- If you feel harassed or unsafe, you should inform your lawyer and seek protection under the Assistance to and Protection for Victims of Crime and Witnesses Act No. 10 of 2023. Under this Act, you may also 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 your protection.
- You can ask your lawyer as to the dress code and behavior expected of you in court, and what you should expect during the court process.



- The police officer who takes down your complaint at the beginning will only be called as a Witness in the Magistrate's Court during an initial Non-Summary Inquiry and thereafter, at the High Court trial.
- This can create a gap in the case because the Court Branch police officers handle multiple cases simultaneously. Moreover, the officer who comes to court may not be the person who recorded your complaint, nor conducted the investigation on your case.
- Police officers can also be transferred to other stations so different officers may appear in court throughout your trial/case. Make sure, therefore, that a befriender and/or lawyer who follows the process throughout is always with you in Court to monitor the proceedings.
- The survivor has the right to be represented in Court by a lawyer as an aggrieved party. (See 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).



- The Assistance to and Protection for 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.
- Under the Penal Code (364) relating to Sexual and Gender Based Violence, the law provides for compensation to be paid by the accused to the survivor upon conviction.



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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