

HANDBOOK ON INVESTIGATION OF GENDER-BASED VIOLENCE OFFENSES FOR THE TIMOR-LESTE PUBLIC PROSECUTION SERVICE

May 2024



Ministério Público
Procuradoria Geral da República

ADB

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FOREWORD

Timor-Leste is a young democracy and is proud of the significant strides it has taken to combat violence against women and children. In addition to ratifying international conventions and adopting the Constitution of the Democratic Republic of Timor-Leste, which protects fundamental rights and freedoms, the passing of the Law against Domestic Violence in 2010 was a crucial initiative to address gender-based violence (GBV). The Preamble to this Law acknowledges:

Domestic violence is a problem that has occurred in all historical periods[,] and it is probably one of the most complex social problems of our times.

Addressing domestic and gender-based violence as a social problem requires a coordinated response from criminal justice agencies, such as the police who support the Public Prosecution Service to conduct criminal investigations, as well as external organizations. These organizations include civil society and community service organizations that provide emergency, medical, and counseling services; shelters; social assistance; and specialist services for children and disabled persons who are victims of GBV.

The Constitution of the Democratic Republic of Timor-Leste and Law No. 7/2022, from 19 May, that approves the Statute of the Public Prosecution Service, as amended by Law No. 7/2023, from 5 April, mention that the Public Prosecution Service is responsible for defending the legality, prosecuting and directing criminal investigations, and defending and promoting the rights and the interests of children, young people and the elderly with diminished capacity and those who are particularly vulnerable. These crucial roles bring the Public Prosecution Service into contact with various stakeholders involved in supporting victims of GBV. To ensure that these victims have access to justice and support services throughout the formal justice process, it is necessary to identify the relevant agencies and their roles. Additionally, appropriate mechanisms must be established to foster effective cooperation among these agencies to better protect, support, and assist victims and share information while maintaining privacy and confidentiality.

Best practice coordination can take many forms. In Timor-Leste, a special approach was adopted to address GBV investigations. The Office of the Prosecutor General (OPG) and the Asian Development Bank (ADB) signed a Memorandum of Understanding that required the ADB team to work with OPG to develop a Handbook containing best practices to harmonize and provide consistency in the processes used during the investigation of GBV cases by the Public Prosecution Service and criminal police organs that assist the PPS. The investigation process begins when a GBV crime is reported through a complaint, accusation, or notification. This process includes all steps leading up to when the Public Prosecution Service completes the inquiry through a writ of indictment or order of dismissal.

The Handbook was developed through a unique approach that involved not only Public Prosecution Service prosecutors, but also criminal police organs and judicial staff who support the Public Prosecution Service with criminal investigations, especially the National Police of Timor-Leste (PNTL), through the Support to Vulnerable People Section (SVPS). This Handbook also applies to civil society organizations (the Referral Network). Later, a representative from the Secretary of State for Equality and Inclusion (SSEI) had an intervention in combatting GBV.

The Handbook establishes best practice guidelines, forms, and guiding checklists to be used during the investigation process. The Handbook includes the impact of the second amendment to the Criminal Procedure Code, Law No. 15/2023 from 24 May, on subsequent processes following the issuance of a writ of indictment or order of dismissal, specifically the fact-finding stages of proceedings before a case proceeds to the trial stage.

The Handbook is designed to be comprehensive, simply expressed, accessible, and user-friendly, so that it can be used by individuals without a law degree or legal training. It can be utilized by GBV victims, civil society organizations, lawyers, and judges, and can also be used to train all actors involved in the investigation of GBV. Portions of the Handbook can also be used as posters, illustrations, or quick references to guide and explain processes, and could also be transformed into visuals for dissemination among stakeholders.

In particular, I would like to express my gratitude for the dedicated, sensitive and thoughtful work done by the ADB team and those who

collaborated with them in ensuring that this Handbook incorporates human rights principles, GBV and their elements, and investigation processes, while also reflecting the legal, cultural, and practical realities of Timor-Leste.

Dili, 15 April 2024



Procurador-geral República
Alfonso Lopez

ACKNOWLEDGMENTS

The *Handbook on Investigation of Gender-Based Violence Offenses for the Timor-Leste Public Prosecution Service* is the culmination of a collaborative effort between the Office of the Prosecutor General (OPG) of the Democratic Republic of Timor-Leste and the Asian Development Bank (ADB) under the Promotion of Gender-Responsive Judicial Systems Technical Assistance.

The ADB Handbook team, led by **Dr. Robyn Layton** (Principal Capacity Development Specialist [Consultant] and former Justice of the Supreme Court of South Australia), provided invaluable expertise in developing the Handbook's contents. Dr. Layton was joined by legal experts **Katarina Grenfell** and **Julia Davey** (Resource Persons) and **Nelania Sarmento** (National Communications and Liaison Officer [Consultant]). **Samar Minallah Khan** (Behavioral Change Specialist [Consultant]) provided the essential socio-cultural perspective throughout the exercise.

They worked alongside the OPG Working Group, comprised of representatives of the following organizations:

- The Office of the Prosecutor General (OPG), represented by His Excellency **Dr. Jacinto Babo Soares**, the Deputy Prosecutor General of the Republic;
- The National Police of Timor-Leste and the Support to Vulnerable People Subsection (PNTL/SVPS), represented by **Police Inspector Ricardo da Costa**;
- *Assistência Legal ba Feto no Labarik* (ALFeLa), represented by **Dra. Marcelina Amaral**, **Marcia Sequeira** and **Antoninho Marques**;
- The Judicial System Monitoring Program (JSMP), represented by **Ana Paula Marçal** and **Adolfo Soares**;
- Psychosocial Recovery and Development in East Timor (PRADET), represented by **Luisa dos Reis Marçal**, **Hortencia de F. Miranda**, **Silvia de Jesus**, and **Dilva G. de Araujo**;
- *Forum Komunikasaun Ba Feto Timor Leste* (Fokupers), represented by **Maria Fátima P. Guterres** and **Vilfrida Machado Fernandes**; and
- The Secretary of the State for Equality and Inclusion (SSEI), represented by **Adalziza Ferreira** and **Cecilia Vieira Cabral**.

Spearheaded by the Office of the General Counsel under the leadership of **Thomas M. Clark**, the Promotion of Gender-Responsive Judicial Systems Technical Assistance is a flagship initiative of ADB's Law and Policy Reform (LPR) Program. The technical assistance, co-led by **Christina Pak** (Principal Counsel and LPR Program Team Leader) and **Maria Cecilia T. Sicangco** (Counsel), with the dedicated support of the ADB administrative staff team composed of **Gladys Sangalang** and **Theingi Soe**, has made significant strides in Timor-Leste. Country Director **Stefania Dina** and the ADB Timor-Leste Resident Mission have been instrumental in driving the initiative's progress.

The technical assistance built a robust foundation by equipping all judges and prosecutors in Timor-Leste with comprehensive training in December 2022 and August 2023. This training encompassed gender sensitization, the legal framework surrounding violence against women and girls (VAWG), and the crucial social and cultural factors that underpin and interact with the law. The strengthened capacity of justice system actors has paved the way for lasting change, including stronger institutional arrangements and a more effective response to gender-based violence cases.

This vital knowledge is now enshrined in the Handbook, a comprehensive resource that will serve as a cornerstone for the forthcoming nationwide training of all justice officers scheduled for June 2024. Beyond this immediate impact, the Handbook is envisioned to empower a wider audience, serving as a key resource for lawyers and non-lawyers alike for years to come.

ADB and the OPG are grateful to all those who have played a role in bringing this Handbook to fruition.

ABBREVIATIONS

ADB	Asian Development Bank
CEDAW	Convention for the Elimination of Discrimination against Women
CID	Criminal Investigation Department of the National Police of Timor-Leste
CPC	Criminal Procedure Code, Law No. 15/2023
CPO	Child Protection Officer
GBV	gender-based violence
JO	Justice Officer
JSMP	Judicial System Monitoring Program*
LADV	Law Against Domestic Violence, Law No. 7/2010
LGBTIQ+	Refers to persons who are lesbian, gay, bisexual, transgender, intersex, or queer and includes others who may have a different gender identity from the sex assigned by birth.
LOIK	Law on the Organization of Criminal Investigations, Law No. 9/2022
LPC	Law on the Protection of Children and Youth in Danger, Law No. 6/2023
MSSI	Ministry of Social Solidarity and Inclusion*
NGO	nongovernment organization
NUC	Número Único Criminal (TET) Is a unique number assigned to a criminal case registered with the PPS
OHCHR	United Nations Office of the High Commissioner for Human Rights
OPG	Office of the Prosecutor General of the Democratic Republic of Timor-Leste

PCIC	Polícia Científica e de Investigação Criminal (Criminal Investigation Police)
PNTL	Polícia Nacional de Timor-Leste (National Police of Timor-Leste)
PPS	Public Prosecution Service of Timor-Leste
PPS	Statute of the Public Prosecution Service, Law No. 7/2023
SOPs	standard operating procedures
SSEI	Secretary of the State for Equality and Inclusion
SVPS	Support to Vulnerable People Subsection (formerly VPU)
UN	United Nations
UNDP	United Nations Development Programme
VPU	Vulnerable Persons Unit (now SVPS)

GLOSSARY

- *Aldeia* refers to community.
- “ALFeLa” (*Asisténsia Legál ba Feto no Labarik*) is a nongovernment organization in Timor-Leste that provides legal services for women and girls who are victims of gender-based violence.
- *Casa Vida* is a nongovernment organization in Timor-Leste.
- “Directives” or “instructions” are mandatory requirements that should be followed when undertaking certain activities.
- “*in flagrante delicto*” – when a person is caught in the act of committing an offense.
- *Fatin Hakmatek* refers to a “quiet place” shelter set up by PRADET to provide safety, care, and treatment for victims of domestic violence, sexual assault, child abuse, abandonment, and human trafficking.
- Fokupers (*Forum Komunikasaun Ba Feto Timor Leste*–Timorese Women’s Communication Forum) is the first women’s human rights NGO in Timor-Leste established in 1997 with the main mandate to address women’s rights especially victims of gender-based violence during the Indonesian occupation and initiated GBV Shelters.
- “Forms” refers to documents that are used when undertaking certain activities and includes warrants, file notes, register books, delegations, and pro forma applications seeking court orders.
- “Guidelines” is used to indicate principles or practices that can guide the relevant actors when performing their work.
- “Istanbul Convention” refers to The Council of Europe Convention on preventing and combating violence against women and domestic violence.
- “JSMP” is a national nongovernment organization called the Judicial System Monitoring Program.
- “PRADET” is a national nongovernment organization providing services for psychosocial, recovery, and development in Timor-Leste.

- "Referral Network" refers to the community service organizations in Timor-Leste that are involved in providing support to victims of GBV.
- "SOPs" is an abbreviation of "standard operating procedures" and refers to what is expected to be followed or done when performing work and allows for adjustments in non-standard circumstances.
- *Suco* refers to village.
- *Uma Mahon* refers to a shelter.



The background of the page features a series of vertical stripes. Each stripe contains a different geometric pattern, including diamonds, zig-zags, and horizontal lines, rendered in a light beige color on a slightly darker beige background. A horizontal bar with a blue-to-yellow gradient is positioned across the middle of the page, containing the text 'PART 1 OF HANDBOOK' in white, bold, uppercase letters.

PART 1 OF HANDBOOK

PART A:

Introduction and Purpose of the Handbook

Introduction

This Handbook was developed further to a memorandum of understanding (MOU) between the Office of the Prosecutor General of the Democratic Republic of Timor-Leste (OPG) and the Asian Development Bank (ADB) as concluded on 10 March 2023 (the MOU).

Under the MOU, the ADB team¹ worked with His Excellency Dr. Alfonso Lopez, Prosecutor General of the Democratic Republic of Timor-Leste, and His Excellency Dr. Jacinto Babo Soares, Deputy Prosecutor General of the Democratic Republic of Timor-Leste, together with the OPG Working Group, to develop guidelines and/or standard operating procedures (SOPs) for the use of the Public Prosecution Service (PPS) when investigating cases of gender-based violence (GBV). The initial OPG Working Group was comprised of His Excellency Dr. Jacinto Babo Soares, representatives from the National Police of Timor-Leste (PNTL) and the Support to Vulnerable People Subsection (SVPS), as well as nongovernmental organizations, the Judicial System Monitoring Program (JSMP), ALFeLa, and PRADET. Later, it was joined by representatives from the non-governmental organization Fokupers and the Secretary of the State for Equality and Inclusion (SSEI).²

The ADB team built on earlier research and consultations conducted in 2021 in Timor-Leste concerning the justice system and gender-based

¹ The ADB team for this Handbook comprised Dr. Robyn Layton, Katarina Grenfell, Julia Davey, and Nelania Sarmento.

² The final OPG Working Group comprised representatives of the following Organizations: Office of the Prosecutor General (OPG), Deputy Prosecutor General of the Republic His Excellency Dr. Jacinto Babo Soares; PNTL/SVPS, Police Inspector Ricardo da Costa; ALFeLa, Dra. Marcelina Amaral, Marcia Sequeira, and Antoninho Marques; JSMP, Ana Paula Marçal and Adolfo Soares; PRADET, Luisa dos Reis Marçal, Hortencia de F. Miranda, Silvia de Jesus, and Dilva G. de Araujo; Fokupers, Maria Fátima P. Guterres and Vilfrida Machado Fernandes; Secretary of the State for Equality and Inclusion (SSEI), Adalza Ferreira and Cecilia Vieira Cabral.

violence.³ This was not specific to the content of this Handbook. The research and stakeholder consultations relevant to the content of the Handbook commenced following the conclusion of the MOU. Additional information was obtained because of the helpful assistance provided by Dr. Jacinto Babo Soares and the OPG Working Group, as well as consultations with related stakeholders.

Brief History:

- (i) The work on the Handbook commenced in April 2023 after the ADB team provided the OPG Working Group with a document outlining the draft framework for the Handbook which set out suggested topics and an overview of potential content for the Handbook.
- (ii) On 17 April 2023, there was a discussion within the OPG Working Group about the content and process for inclusion in a Handbook, and no structural changes were suggested to the suggested framework. The working group emphasized the importance of the Handbook to provide guidance not only for the PPS but for all the actors including community service organizations that are variously involved in the investigation process and supporting the victims, referred to as the "Referral Network."⁴
- (iii) From April to July 2023 there was a series of follow-up meetings with members of the OPG Working Group including Dr. Soares.
- (iv) In August 2023, ADB conducted the *Training on Gender-Based Violence Cases for Timor-Leste Prosecutors*. Two training courses were held on 14–16 August and 19–21 August, which included magistrates from four municipalities, the Prosecutor General of the Republic, and other eminent prosecutors and coordinators from the OPG. This interactive training gave rise to many insights relevant to the Handbook.
- (v) During the development of the Handbook, substantial amendments were made to the Criminal Procedure Code (CPC). On 15 May 2023,

³ ADB technical assistance on the Promotion of Gender-Responsive Judicial Systems executed by the ADB Office of the General Counsel under its Law and Policy Reform Program.

⁴ The reference to "Referral Network" services does not include the community service organizations that are involved in providing advocacy services for GBV victims.

the President of the Republic promulgated Criminal Procedure Code, Law No. 15/2023 which amended Decree Law No. 13/2005. The amendments to the CPC required many changes to be made to already-drafted portions of the Handbook. Implementation of the amendments commenced on 22 August 2023.

- (vi) The amendments made in the Criminal Procedure Code, Law No. 15/2023 are reflected in this Handbook in two ways:
 - (a) major amendments made by the Criminal Procedure Code, Law No. 15/2023 which are relevant to the investigation of GBV offences, are specifically discussed in the Handbook;
 - (b) a summary of the major changes made by the Criminal Procedure Code, Law No. 15/2023 as relevant to GBV offenses and the investigation of GBV are outlined in parts H and P of the Handbook

Due to the recent amendments in Criminal Procedure Code, Law No. 15/2023 and the timing of the publication of the Handbook, there will undoubtedly be practices that emerge over time that cannot be reflected in this Handbook (Concluding Observations, p. 185).

In addition, the Statute of the Public Prosecution Service, Law No.7/2023 was passed on 5 April 2023 which amended the Law No. 7/2002.

Purpose of the Handbook

The purpose of the Handbook is to develop and publish best practice guidelines, standard operating procedures, forms, and guiding checklists to harmonize and provide consistency of practice in the investigation of GBV cases by the PPS and the other actors involved in the investigation processes.

The Handbook refers to laws and practices in Timor-Leste as of February 2024 and includes improved best practices that have been developed for the Handbook.

This Handbook also necessarily refers to the work undertaken by other actors involved in the GBV investigation process such as the PNTL (and its organizational structures), the Criminal Investigation Police (PCIC), and community service organizations involved in the processes of investigation, referred to in this Handbook as the “Referral Network.” It includes the interaction of these actors with each other.

Guidance in the Handbook is designed to be simply expressed, accessible, and user-friendly so that it can be understood and used by persons who do not have a law degree or legal training.

The Handbook is divided into two parts.

- (i) The first part contains the narrative and is an overall guide for the investigation of GBV offenses.
- (ii) The second part contains annexes that are referred to in the first part and includes the specific guidelines, forms, checklists, and tables, as well as other information relevant to the Handbook.

Scope of the Handbook

Why Gender-Based Violence Offenses?

This Handbook is limited to the investigation of GBV offenses. GBV is the most prevalent form of criminal offense committed worldwide against women and girls. It is also the most prevalent form of criminal offending in Timor-Leste. The prevalence of GBV offenses in Timor-Leste in 2021 was that three in five women between the ages of 15–49 experienced violence from a domestic or intimate partner.⁵ As the population of Timorese women between those ages is approximately 420,000, some 250,000 Timorese women have been subjected to such violence. Almost 75% of the criminal cases monitored by JSMP in 2020 were domestic violence-related and 80% of them were committed by husbands.⁶

These factors—together with their overall cumulative effect on the human rights of women and girls, as well as their impacts on families and communities in Timor-Leste—require urgent attention. Although the Handbook is developed for the investigation of GBV offenses, the content of the Handbook will also have relevance to the investigation of other offenses under the Penal Code.

⁵ United Nations Development Programme (UNDP) Timor-Leste. 2022. *Law and Practice of the Criminal Procedure in Cases of Gender-Based Violence in Timor-Leste*.

⁶ Judicial System Monitoring Program (JSMP) Timor-Leste. 2020. *Overview of the Justice Sector Report 2020*. Table 13.

Nature and Causes of Gender-Based Violence

GBV constitutes a serious violation of several human rights as it “impairs or nullifies the enjoyment by women of [their] human rights and fundamental freedoms.”⁷

GBV has also been recognized as a form of torture and discrimination:⁸

In essence domestic violence refers to physical, sexual, psychological, emotional or economic abuse happening within the home or between family members, including former spouses or partners... it includes a wide range of abusive conduct, from coercive or excessively controlling behavior aiming to isolate, humiliate, intimidate or subordinate a person, to various forms and degrees of physical violence, sexual abuse or even murder. In terms of severity, the pain or suffering caused by domestic violence often fall nothing short of that inflicted by torture and other cruel, inhuman or degrading treatment or punishment.

This is irrespective of where the violence takes place whether in the home, the street, or in places of detention; and regardless of the identity of the perpetrator whether it is a family member, member of the community, stranger, or state official.

The causes of GBV have been described in these terms:

...violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.⁹

⁷ Convention on the Elimination of All Forms of Violence against Women (CEDAW). 1993. *Committee General Recommendation No. 19, “Violence against women”*. UN Doc A/47/38. [7].

⁸ UN Office of the High Commissioner for Human Rights (OHCHR). n.d. *Special Rapporteur on Torture and Other Cruel and Inhuman Treatment or Punishment*. <https://www.ohchr.org/en/special-procedures/sr-torture/domestic-violence-and-prohibition-torture-and-ill-treatment>.

⁹ United Nations. 1993. *Declaration on Elimination of Violence against Women*. Resolution 48/104. Preamble para. 6. Adopted by the United Nations General Assembly in 1993.

The Investigation of Gender-Based Violence Offenses Differs from the Investigation of Other Offenses

The investigation of GBV offenses requires a different approach to the investigation of other crimes such as the stealing of a wallet, the commission of fraud, or an assault between males. GBV refers to violence committed against an individual because of the individual's biological sex or gender.

The nature and underlying causes of GBV also differ in nature and cause from other types of offenses. The victim is usually female, and the perpetrator is usually male. GBV is also not limited simply to acts of physical and sexual abuse but also includes threats, verbal abuse, emotional abuse, economic deprivation, and harassment. It is therefore broad in scope and every form is a breach of fundamental human rights.

The Handbook Is Limited to the Investigative Process

The Handbook primarily refers to the role and responsibilities of the PPS concerning the investigation process. It does not address, for example, the role of the PPS when prosecuting such cases in court.

The investigation process covered by this Handbook commences from the time of the reporting of a GBV offense by complaint, accusation, or notification and refers to all processes leading up to the time when the PPS either dismisses the case, issues a writ of indictment, or archives the case. Observations are also made on the effect of amendments made by the Criminal Procedure Code, Law No. 15/2023 regarding processes that may follow the issuance of a writ of indictment or dismissal, meaning the fact-finding stage of proceedings conducted by the judiciary before a case may proceed to trial.

As the focus of this Handbook is on GBV cases, it encompasses offenses under the Penal Code and the Law Against Domestic Violence (LADV).

PART B: Guiding Principles When Assisting Victims of Gender-Based Violence

As GBV offenses amount to a breach of fundamental human rights, the PPS needs to apply the guiding principles of human rights throughout its investigative processes. These human rights principles are incorporated in relevant Timor-Leste laws.

Respect for and Protection of Human Rights

Key International Instruments

Key international instruments which provide guiding principles at the international level include:

- (i) International Covenant on Civil and Political Rights;¹⁰
- (ii) Convention on the Elimination of All Forms of Violence against Women (CEDAW);¹¹
- (iii) Convention on the Rights of the Child;¹²
- (iv) Convention on the Rights of Persons with Disabilities;¹³
- (v) UN Declaration on the Elimination of Violence Against Women;¹⁴
- (vi) UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;¹⁵ and

¹⁰ Adopted by the United Nations (UN) General Assembly on 16 December 1966. UN Treaty Series. Vol. 999. p. 171.

¹¹ Adopted by the UN General Assembly on 18 December 1979. UN Treaty Series. Vol. 1249. p. 13.

¹² Adopted by the UN General Assembly on 20 November 1989 via General Assembly Resolution 44/25.

¹³ Adopted by the UN General Assembly via General Assembly Resolution 61/106.

¹⁴ Adopted by the UN General Assembly in 1993 via General Assembly Resolution 48/104.

¹⁵ Adopted by the UN General Assembly on 29 November 1985 via General Assembly Resolution 40/34.

- (vii) Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention).¹⁶

Guiding principles can also be found in authoritative texts such as:

- (i) United Nations (UN) treaty monitoring bodies including:
 - (a) Committee on the Elimination of All Forms of Discrimination against Women (the CEDAW Committee);
 - (b) Human Rights Committee; and
 - (c) Committee against Torture.
- (ii) Independent experts, such as on:
 - (a) Violence against women and girls; or
 - (b) Torture and other cruel, inhuman, or degrading treatment or punishment.
- (iii) Regional human rights systems, such as:
 - (a) European Court of Human Right; and
 - (b) Inter-American Court of Human Rights.

Collectively, these bodies recognize and elaborate on the international human rights law and standards in more detail.

Key legislation in Timor-Leste also provides guiding principles including:

- (i) The Constitution of the Democratic Republic of Timor-Leste.
- (ii) Law Against Domestic Violence Timor-Leste, Law No. 7/2010 (LADV).
- (iii) Law on International Treaties, Law No. 6/2010.

Timor-Leste Constitutional Provisions

The Constitution of the Democratic Republic of Timor-Leste sets out the fundamental rights and freedoms of its citizens. These include the rights of women to be free from discrimination and to have equal status as men, including to have equal access to opportunities. The Constitution also guarantees the rights of women and children to be free from all forms of violence and sexual abuse.

¹⁶ Council of Europe. 2014.

The Constitution also sets out the objectives and responsibilities of the state of Timor-Leste in terms of what it must do, through its authorities including the PPS, to protect the rights and freedoms of citizens including the rights of women and children to be free from GBV.

Intersection of Human Rights, Gender-Based Violence, and the Role of the Public Prosecution Service in Investigations

Prosecutors have a vital role in fulfilling the requirements of the state to provide access to justice for persons who are victims of GBV. This requires a two-pronged focus:

- (i) victim safety and empowerment; and
- (ii) perpetrator accountability.

A thorough investigation is required to ensure that perpetrators are properly charged, prosecuted, and appropriately sentenced.

GBV is complex in its forms and manifestations. It is a multi-dimensional social problem in that it is linked to psychological, social, economic, and health issues. It is not simply a legal and criminal law issue.

The opening sentence of the preamble to the LADV states, “Domestic violence is a problem that has occurred in all historical periods and it is probably one of the most complex social problems of our times.”

Legal and justice system responses should not ignore these complex factors, as failure to take them into account can worsen a victim’s situation and further retraumatize and revictimize them.

Relevant Human Rights Principles

Seven human rights principles are identified from both international and national law to guide the PPS in the investigation of GBV at all stages of the investigation efforts:

- (i) Taking a victim-centered approach.
- (ii) Taking a gender-sensitive approach.
- (iii) Do no harm.

- (iv) Non-discrimination and equality.
- (v) Informed and voluntary consent.
- (vi) Confidentiality and right to privacy.
- (vii) Safety and security.

Victim-Centered Approach

What is it?	What is the process?
<ul style="list-style-type: none"> • A victim-centered approach is a way of engaging with victims that prioritizes listening, avoids re-traumatization (such as blaming them for the offense), provides them with security, and focuses on their needs and choices. • At the same time, this must be done without prejudice to the accused and the right to be treated fairly. • Victims of GBV such as women, children, the elderly, and the disabled are regarded as being “vulnerable” as set out in the preamble to the LADV. • As such, they are entitled to special protections and support during the statement-taking process, investigation of offenses, and later during the court proceedings. (e.g. LADV Section II, Articles 20–26) • The purpose of adopting a victim-centered approach is to give as much control to victims as feasible and to ensure the empathetic delivery of services. • Services need to be provided in a non-judgmental manner. 	<ul style="list-style-type: none"> • Many steps in the investigation process require taking a victim-centered approach. • They commence from the time of the laying of a complaint, the taking of the statement, bringing the victim to a hospital or a shelter, applying for orders for their security, and other activities indicated in the legislation, up to the time when a decision is made by the PPS as to whether the case is to proceed to court or not. • A key ingredient is active listening which means taking a responsive empathetic approach to encourage victims to speak up. • Taking victims to a comfortable place enables them to talk about what was done to them and who did it. • Ensuring that where possible, victims are referred to services that can help them cope physically, psychologically, and economically.

Gender-Sensitive Approach

What is it?

- Taking a gender-sensitive approach in GBV investigations is a process that requires all persons dealing with GBV victims to think about how they personally regard sex and gender in their everyday lives.^a
- It requires all providers of services to reflect on how they personally categorize or generalize about a person, based on whether a person is male or female, and how that impacts their approach to GBV victims.
- This requires an understanding of the difference between sex and gender.

^a See *Understanding the Difference Between Sex and Gender*, p. 12 of this Handbook.

Understanding the Difference Between Sex and Gender

To better understand the nature of GBV, it is important to understand the difference between the “sex” of a person and the “gender” of a person.

According to the definition provided by the CEDAW Committee:¹⁷

“...sex refers to biological differences between men and women.”

“...“gender” refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men in the distribution of power and rights favouring men and disadvantaging women.”

The CEDAW Committee further noted:

“[The] social position of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors and can be changed by culture, society and community.”¹⁸

“Gender identity” refers to a person’s innate, deeply felt internal and individual experience of gender, which may or may not correspond to the person’s physiology or designated sex at birth. It includes both the personal sense of the body, which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical, or

¹⁷ CEDAW. 2010. *Committee General Recommendation. No. 28, The core obligations of States Parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*. UN Doc CEDAW/C/GC/28. para. 5.

¹⁸ OHCHR. 2014. *Women’s Rights are Human Rights*. p. 36. New York and Geneva: United Nations.

other means, and other expressions of gender, including dress, speech, and mannerisms.¹⁹ There are many gender identity variations and a person who identifies themselves as having a different gender identity from that assigned at birth is commonly referred to as being an LGBTQI+.”²⁰

The need to avoid gender stereotyping is also an important concept that is relevant to taking a gender-sensitive approach.

Gender Stereotyping

“Gender stereotyping” of a person refers to categorizing or characterizing persons by only having regard to whether those persons are male or female.

Both women and men can be victims of gender stereotyping, which leads to discrimination or inequality.

Humans tend to ascribe characteristics to people based on their gender instead of who they are. Persons involved in the investigation of GBV offenses must take positive steps to recognize this tendency and address it.

Taking a gender-sensitive approach does not mean that it is a “war between the sexes,” nor is it an anti-male process.

Men who are the subject of GBV crimes need to have their particular concerns addressed at all points during the investigation, just as women need to have their concerns addressed.

Gender stereotyping is closely linked to social, cultural, and religious norms and expectations that exist within society.

Social and cultural norms have a strong influence on how women are treated in all countries when they are the victims of GBV. Timor-Leste

¹⁹ United Nations. *UN Women Gender Equality Glossary* (accessed 21 December 2023). <https://trainingcentre.unwomen.org/mod/glossary/view.php?id=36&mode=letter&hook=G&sortkey&sortorder&fullsearch=0&page=1>.

²⁰ LGBTQI+ stands for lesbian, gay, bisexual, transgender, intersex, queer, or other persons who may have a different gender identity from the sex assigned by birth or a different sexual orientation from heterosexual. LGBTQI+ people share some things in common, but within that group, there is also diversity and many gender identity variations. “I” refers to persons who are intersex, meaning being born with variations of sex characteristics. The (+) includes persons who regard themselves as gender fluid or choose not to ascribe to a particular sex or gender identity. It is relevant to note that many countries use the acronym LGBTQIA+ with “A” referring to asexual. OHCHR. n.d. *OHCHR and the Human Rights of LGBTI People*, and *LGBTI People* (accessed 29 February 2024).

is no exception. There are particular features of the Timor-Leste social and cultural norms that need to be addressed when investigating GBV offenses and responding to the needs of women and girls.

There are common stereotypes about how women should behave when confronted with violence, in particular sexual offenses. There are also stereotypes about children who have been subjected to sexual crimes.

Example of Stereotypes about Women	Example of Stereotypes about Children
<p>It is said that a genuine woman victim of a sexual crime:</p> <ul style="list-style-type: none">• Would not delay in reporting• Will be crying and visibly upset when she reports• Would resist, attempt to flee, or shout for help• Would have visible injuries• Is more likely to be a virgin	<p>It is said that children:</p> <ul style="list-style-type: none">• Cannot remember• Fantasize and are suggestible• Tell lies and are unreliable

Each of these examples are erroneous stereotypes and should be avoided as they can adversely affect how a victim is perceived and treated during the investigation process. A woman may be regarded as unreliable and not credible when these and other gender-based assumptions are made about her.

Why Do the Needs of Women and Girls Require Special Attention Concerning Gender-Based Violence Offenses?

Who is Impacted by Gender-Based Violence?	What are the Special Needs of Women?
<p>Research reveals that:</p> <ul style="list-style-type: none">• Victims of GBV are almost overwhelmingly women and girls and the perpetrators are predominantly men.• Men are generally more valued in society than women.• Women are not treated equally with men.	<p>Attending to the special needs of women requires awareness that women and girl GBV victims:</p> <ul style="list-style-type: none">• are reluctant to come forward to report crimes;• can be subjected to impediments and pressure from various actors along the investigative process and become reluctant to pursue the crimes against them;

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Why Do the Needs of Women and Girls Require Special Attention ... *(continued)*

- | | |
|---|---|
| <ul style="list-style-type: none"> • Other victims of GBV include persons who are LGBTIQ+. They also have limited services and support to address their special needs.^a | <ul style="list-style-type: none"> • may have impediments that can continue up to the point of them giving evidence in court • require encouragement and protection for throughout the investigation process. |
|---|---|

^a See Abbreviations; definition of LGBTIQ+ in footnote 20, p. 13; and pp. 16 and 36 of this Handbook.

How are These Issues Addressed?

- In the context of GBV offenses, it is most important to be alert to the special needs of women victims during the entire investigation process.
- All actors involved in the investigation process—notably the PPS and the various police organizations—need to give primacy to the needs of GBV at every stage and should adjust their approaches accordingly.
- All actors must take care not to compromise the victim's welfare when ensuring that investigations are thorough and that all relevant evidence is collected to sustain an indictment.

Do No Harm

This principle is directed to ensuring that no measures should be undertaken during the investigation of GBV offenses that will make a victim's situation worse, either in the short term or the long term.

What	How
<ul style="list-style-type: none"> • All of the processes of documenting, reporting, monitoring, or providing a service to a victim should be avoided if the risks to the victim outweigh the benefits of undertaking the activity. • Re-victimization is to be avoided. • There is a delicate balance between the public interest in the prevention of GBV and the prosecution of offenders of GBV. • This may require a case to be pursued if it is a public crime. The opinion and needs of the victim need to be heard, but the victim of a public crime does not have the final say as to whether an offense will be pursued. 	<ul style="list-style-type: none"> • The PPS must ensure that throughout the investigation processes, delays are minimized, and all actors who are designated to assist in the process perform their roles in a professional and victim-sensitive manner (LADV Articles 7 and 8).

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Non-Discrimination and Equality

Non-Discrimination

What	How
<ul style="list-style-type: none"> • In the context of GBV, CEDAW General Recommendation No 19, paragraph 6, provides “The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately.” • This definition emphasizes the discriminatory aspect of GBV, in that women are being discriminated against and subjected to violence because they are women. • Women who are disabled, come from certain ethnic, religious, or other language backgrounds, or from lower socioeconomic circumstances, are more likely to suffer violence. • LGBTIQ+ persons may experience additional discrimination and difficulties when complaining about GBV offenses committed against them because of their gender identity. 	<ul style="list-style-type: none"> • In the context of GBV and its investigation, a victim who is disabled should be able to have their disability taken into account and not be less able to obtain access to justice in the laying of a complaint or in the way their statement is recorded. • Disability needs to be addressed so that a victim is not disadvantaged because of their disability. For example, they may need an interpreter, or additional communication aids for assistance. • Women victims may be disadvantaged in comparison to male victims as they are unable to drive a car or motorcycle or obtain a license to drive such vehicles. They may therefore be less able to report an offense committed against them or to escape from a violent domestic situation, than a man. • Women victims may be less able to read and write than male victims as they have not been able to gain sufficient education levels to do so. This needs also to be taken into account at a time when they report an offense or give a statement about what happened to them. • They may also feel embarrassed about not being able to read and may not admit it to the interviewer. They should therefore not be asked to read statements and instead, their statement should be read out to them before they sign it or acknowledge it with their fingerprint.

Equality

Generally, three principles of equality are commonly identified:

- (i) formal equality;
- (ii) protectionist equality; and
- (iii) substantive equality.

There is also a further linked principle of “special measures”.

CEDAW adopts “substantive equality” as being the correct equality principle.

Formal Equality	Protectionist Equality
<ul style="list-style-type: none"> • The principle of formal equality treats men and women the same and requires equal treatment of men and women. • Applying formal equality and treating women and men the same sometimes results in being discriminatory. • For example—in the context of persons with disability—sometimes treating persons without disabilities and persons with disabilities the same results in discrimination against persons who are disabled. 	<ul style="list-style-type: none"> • Protectionist equality considers that women’s assumed weakness is a basis for different treatment. • This is based on the misconceived notion that women’s weakness requires women to be protected from, or makes them unsuitable for, certain activities otherwise available to men. • The protectionist equality principle considers women’s weakness as justification for unequal treatment between men and women. • For example, women may be banned or dissuaded from holding certain jobs or offices that are considered too dangerous, too demanding, or unsuitable for women. This can include positions in the PNTL and senior positions in the PPS. • Consequently, women lose the chance to obtain a varied range of opportunities due to exclusion.

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Equality (continued)

Substantive Equality	Special Measures
<ul style="list-style-type: none"> • The principle of substantive equality recognizes differences and affirms equality between men and women. • It considers equality to have been achieved only when there is: <ul style="list-style-type: none"> • equality of opportunity; • equality of access; and • equality of results or outcomes. • The principle of substantive equality has been adopted under CEDAW. • In the context of GBV, there are many occasions when women do not have substantive equality with men. For example: • When domestic violence occurs against a woman in a community, blame is often placed on her for causing the violence, there is pressure put upon her by her family and the community to put up with the violence and remain at home and be a “good wife”. • A woman is doing unpaid work in the home caring for the children and running the house and cannot earn her own money. This is a common scenario, and it means that she does not have equality of opportunity, it can impede her access to justice to leave the home when domestic violence occurs and results in inequality. 	<ul style="list-style-type: none"> • Article 4 of CEDAW provides for the adoption by state parties of “special measures” that are not regarded as discrimination and are regarded instead as aimed at achieving substantive equality. • There are two forms and the most relevant in this context is “temporary special measures”. • Temporary special measures aim to address past (historical) and current discrimination and accelerate the achievement of equality between men and women (CEDAW Article 4.1). • For example, in the context of investigation of GBV offenses, it is well known that women are reluctant to report GBV offenses and they may require special assistance such as the additional appointment of women police officers to encourage them to report and make a complaint. • Having gender quotas for women police is not discriminatory because they are intended to address past and current discrimination and neutralize the barriers to women reporting GBV. • As soon as equality is achieved these measures may no longer be required.

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Equality *(continued)*

How are These Issues Addressed in Timor-Leste?

- In Timor-Leste, Articles 16 and 17 of the Constitution mainly refer to formal equality.
- Article 16(1) "All citizens are equal before the law, shall exercise the same rights and shall be subject to the same duties."
- Article 17 "Women and men have the same rights and duties in all areas of political, economic, social, cultural and family life."
- However, Article 21(1) recognizes substantive equality concerning disabled citizens, by providing:
- "A disabled citizen shall enjoy the same rights and shall be subject to the same duties as all other citizens, except for the rights and duties which they are unable to exercise or fulfill due to their disability." (underlining for emphasis)
- Other articles in the Constitution provide for special considerations, e.g., war-disabled persons (Article 11); special protection for children (Article 18) which includes against violence and sexual abuse; protection for old age citizens (Article 20); special protection for women in pregnancy and recognition that "maternity is dignified..." (Article 39[4]).
- The result is that in GBV investigation processes, additional care needs to be taken with persons in those named groups to ensure that their needs are appropriately and sensitively addressed.

Informed and Voluntary Consent

What

- The principle of informed and voluntary consent is relevant to several stages in the investigation process.
- The first stage is when the victim reports a crime. There may be an urgent need to undertake a search and seize items of clothing or objects relevant to the commission of the offense without a warrant. The victim needs to be informed about the reasons for the actions, and what will happen to any objects seized, and should be requested to give consent in writing to the search and seizure.
- The second stage is if the victim is taken for a medical examination. They should be fully informed about the process that will occur and the reasons for the actions, and should be requested to give consent in writing. They should also be able to receive a copy of the report of the examination in due course.
- The third stage is if the victim is taken for forensic testing. All aspects of the process must be explained to them—including the reasons for the actions—and they should be asked to provide consent in writing. They should be able to receive a copy of the report of the examination in due course.
- In the fourth stage, victims are entitled to obtain information from the case file kept by the PPS and access various documents on the file (CPC Article 77).

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Informed and Voluntary Consent *(continued)*

How
<ul style="list-style-type: none">• The victims or their legal representatives can request the information. This assumes that the victim is made aware of these rights.

Confidentiality and the Right to Privacy

What
<ul style="list-style-type: none">• All persons involved in the investigation process need to treat all information and communications about the offense and the victim as confidential and private, subject to a legal duty to report an offense to the relevant authorities. This is a right that the victim has under international norms and the Constitution Articles 36–38 and such as LADV Articles 17 and 19.• Confidentiality can be extremely difficult in small communities and where there are extended family connections.• Information received during the investigation must be kept confidential. This includes but is not limited to information that the victim gives to the PNTL, SVPS, PRADET, PCIC, and the PNTL Criminal Investigation Department (CID), as well as to shelters and those providing legal advice to the victim.• All data needs to be handled responsibly within all organizations and staff in those organizations.• Any sharing of information within any such organization should be shared on a “need to know” basis and at all times the victim’s informed consent needs to be obtained for any sharing of their confidential information.• A child—depending on their age and level of understanding—needs to be informed that information will be shared with parents or guardians to ensure their safety and security from the suspect or family or friends of the suspect.• This sharing does not apply if the parent or guardian is the offender.
How
<ul style="list-style-type: none">• All information collected from the victim needs to be kept in a secure place with either limited and/or no access to persons other than those agreed to by the victim.• It is preferable that the form that the victim signs when providing information also has a reference to confidentiality and that the victim confirms they have been informed that their information will be kept confidential.

Safety and Security

What	How
<ul style="list-style-type: none"> • It is vital that the victim feels safe from further violence. • Appropriate security measures and protective orders must be obtained to protect them from future violence or harassment from the suspect and/or the suspect's family and friends or others. • This enables the victim to feel supported throughout the formal justice process. It takes courage to pursue a GBV crime and a victim can easily be dissuaded if these protections are not applied. 	<p>This requires a risk assessment to be undertaken of the victim at various stages in the investigation process to ascertain whether the victim may be in danger or at risk of further harm from the suspect or others.</p> <p>It includes:</p> <ul style="list-style-type: none"> • referring the victim to services; • seeking court orders to prevent further contact by the suspect such as bail conditions and pretrial detention; • police and services speaking to the victim and/or supportive family and friends about the potential risks to the victim in the future, so that they may help the victim avoid the perpetrator and/or seek help if situations arise in the future.

PART C:

Gender-Based Violence Offenses, Their Different Forms, and the Elements Required for Their Proof

The investigation of GBV offenses requires an understanding of what the offenses are and what elements make up the offenses.

Relevant Laws

- Penal Code of the Democratic Republic of Timor-Leste (Decree Law 19/2009) (Penal Code)
- Law Against Domestic Violence, Law No. 7/2010 (LADV)

Offenses of GBV cover offenses under the Penal Code standing alone, as well as offenses under the LADV. If an offense falls within the scope of the LADV, the offense is considered an offense of domestic violence, and additional measures are required to be taken by the relevant authorities.

Penal Code of the Democratic Republic of Timor-Leste (Decree Law 19/2009) (Penal Code)

The Penal Code establishes crimes in Timor-Leste. It sets out the legal definition of the crimes and the fundamental principles of criminal law which apply in Timor-Leste.

The Penal Code establishes offenses which—depending on the circumstances of the offending—may comprise GBV. These include the following crimes—together with the circumstances of aggravation—as may apply depending on the facts of particular cases:

Crimes against Life	Homicide (Penal Code Article 138)	Aggravated Homicide (Penal Code Article 139)	Manslaughter (Penal Code Article 140)	Abandonment or Exposure (Penal Code Article 143)
Crimes against Physical Integrity	Simple Offenses Against Physical Integrity (Penal Code Article 145)	Serious Offenses Against Physical Integrity (Penal Code Article 146)	Aggravation (Penal Code Article 147)	
Crimes against Physical Integrity	Mistreatment of a Disabled Person (Penal Code Article 153)	Mistreatment of a Spouse (Penal Code Article 154)	Mistreatment of a Minor (Penal Code Article 155)	Aggravation due to Results (Penal Code Article 156)
Personal Aggressions	Threats (Penal Code Article 157)			
Sexual Aggression	Sexual Coercion (Penal Code Article 171)	Rape (Penal Code Article 172)	Aggravation (Penal Code Article 173)	
Sexual Aggression	Sexual Exploitation of Another (Penal Code Article 174)	Child Prostitution (Penal Code Article 175)	Child Pornography (Penal Code Article 176)	
Sexual Aggression	Sexual Abuse of a Minor (Penal Code Article 177)	Sexual Acts with an Adolescent (Penal Code Article 178)	Sexual Exhibitionism (Penal Code Article 181)	
Sexual Aggression	Aggravation (Penal Code Article 182)			
Other Crimes	Failure to Fulfill an Obligation to Provide Food Assistance (Penal Code Article 225)			

Law Against Domestic Violence (LADV)

The LADV supplements the Penal Code and “establishes the legal regime applicable to prevention of domestic violence and protection and assistance to its victims.”²¹

The LADV is designed to ensure respect for human rights. It acknowledges that families have first and foremost a special duty to protect and defend groups that are particularly vulnerable—such as women, children, the elderly, and the disabled—against all forms of violence, exploitation, discrimination, abandonment, oppression, sexual abuse, and other forms of ill-treatment.

The LADV states that the protection of the most vulnerable should not just be provided within families, but that all citizens have obligations to prevent acts of domestic violence and to aid victims of such violence.

What Kind of Violence Constitutes Domestic Violence?

Domestic violence includes physical violence, sexual violence, psychological violence, and economic violence (LADV Article 2[2]). A person who is subjected to that violence is a “victim of domestic violence.” Victims of domestic violence are entitled to a range of services under LADV such as support services in “shelters,” “emergency assistance services,” and “assistance in hospitals” under LADV Articles 15–20 and 22.

By contrast, a person who is established to be a **victim of a “crime of domestic violence”** is a person who is a victim of an offense that falls within LADV Article 35. Such a person is also entitled to the support services of LADV. However, when a person is established to be a victim of a “crime of domestic violence,” the court may order other measures under the LADV such as measures of restraint (LADV Article 37), in respect of penalty (LADV Article 38) or witness protection (LADV Article 39). This is an important matter to understand as certain provisions in the LADV only apply if a person is a victim of “a crime of domestic violence.”

²¹ LADV Article 1.

Physical Violence	Sexual Violence
<p>Physical violence is “any conduct which causes bodily harm or harms a person’s health.”</p> <p>Examples include acts of hitting, slapping, pushing, strangulation, using physical force, throwing items at another person, using a weapon to harm the victim, or killing someone.</p>	<p>Sexual violence is “any conduct that constrains any person to witness, engage or take part in an undesired sexual relation, even if within marriage, through intimidation, threat, coercion or use of force, or which that limits or annuls the exercise of sexual and reproductive rights.”</p> <p>Examples include using force or threatening another to engage in sexual relations or any sexual act; an adult engaging in sexual relations or any sexual act against minors even where there is “consent” and without using force.</p>
Psychological Violence	Economic Violence
<p>Psychological violence is “any conduct that causes emotional harm and reduces self-esteem, aimed at degrading or controlling the actions, behavior, beliefs and decisions of another person through threats, coercion, humiliation, manipulation, isolation, constant surveillance, systematic persecution, insults, blackmail, ridicule, exploitation, restrictions to the right to move freely or by any other means that cause harm to psychological well-being and self-determination.”</p> <p>Examples include making threats of harm, causing fear, harassment, insults causing humiliation, or emotional harm.</p>	<p>Economic violence is “any conduct that results in the retention, subtraction, partial, or total destruction of personal effects, working instruments, impediment to work inside or outside the home, personal documents, assets, valuables and rights or economic resources, including those intended to meet personal needs and the needs of the household.”</p> <p>Examples include not allowing others to go to work or school; destroying another's property; seizing another's money to spend on necessities or family needs.</p>

What Crimes Are Considered “Crimes of Domestic Violence”?

The LADV refers to certain offenses in the Penal Code and establishes a specific legal framework for these offenses.

Article 35 of the LADV refers to “Crimes of Domestic Violence.” It provides as follows:

For the purposes of this law, the following shall be considered crimes of domestic violence:

- a) the types of crime provided for in articles 153, 154, 155 and 156 of the Criminal Code;
- b) the types of unlawful conduct provided for in articles 138, 139, 141, 145, 146, 167, 171, 172, 175, 177, 178 and 179 whenever, in addition to fulfilling the typical elements of fact contained in the incriminating norm, any of the circumstances described in article 2 of this law occur.

There are two categories of “crimes of domestic violence” under Article 35:

- (i) criminal acts falling under Penal Code Articles 153, 154, 155, and 156 (LADV Article 35[a]);
- (ii) criminal acts falling under Articles 138, 139, 141, 145, 146, 167, 171, 172, 175, 177, 178, and 179 **if they fall within the definition of “domestic violence” as set forth by LADV Article 2** (LADV Article 35[b]).

The LADV will apply automatically if the criminal acts fall under LADV 35(a). If the crimes fall under LADV 35(b), it must additionally be proved that the conduct falls within LADV Article 2 for the LADV to apply to that conduct.

Conduct by Whom or in What Context?

Domestic violence is violence that happens between family members or is linked to an intimate relationship (LADV Article 2[1]).

Article 3 of the LADV defines members of a family. It is an inclusive definition and is relevant to whether a matter falls within Article 2 LADV. “Family members” include:

- (i) people who are married or used to be married;
- (ii) persons who are in relationships analogous to husband and wife, or who used to be in such relationships, whether or not they cohabit;
- (iii) relatives of either spouse who are part of the household; and
- (iv) any other persons who are part of the household, including persons who do work in the household and who have a subordinate status.

Special Protections for Victims

If the conduct is domestic violence within the LADV, the victim is legally entitled to receive special support and services from relevant government bodies, and the court may make special orders for the safety of the victim pending trial and in sentencing.

A victim is anyone who has experienced any form of violence.

Victims of domestic violence are entitled to rights, services, and protections under the LADV:

- (i) Principle of consent – LADV Articles 5 and 6;
- (ii) Principle on information – LADV Article 7;
- (iii) Support and assistance to victims through shelters, medical assistance, social security, and referrals – LADV Articles 15–18, 21–22; and
- (iv) Victim entitled to legal assistance – LADV Article 25.

Procedural Considerations

Whenever criminal proceedings depend on the filing of a complaint, those described as having the right shall have standing to do so (Penal Code Article 107).

A complaint must be filed within 6 months and is counted separately for each person bearing the right to file the complaint (Penal Code Article 108).

Crimes may be of a public or semi-public nature (Penal Code Article 106[1]). Whether a crime is considered a “public crime” or “semi-public crime” is important in terms of how the criminal prosecution of the crime is initiated.

Public Crimes	Semi-Public Crimes
<ul style="list-style-type: none">• Public crimes are those the criminal prosecution of which does not depend on a complaint being filed.^a• Under LADV Article 36, “crimes of domestic violence” are considered “public crimes.”• This means that prosecution of crimes of domestic violence does not depend on a complaint being filed by the victim (Penal Code Article 106[2]).	<ul style="list-style-type: none">• Semi-public crimes are those the prosecution of which may only be initiated after the right to file a complaint has been exercised.• Penal Code Article 106(4) states, “the right to file a complaint consists in the right bearer expressing the intent to initiate criminal proceedings.”• A GBV victim of a semi-public crime may be regarded as having waived their right to complain if they do not do it within the time limit.^b• Crimes within the scope of GBV, and which are considered “semi-public crimes” in the Penal Code include Articles 145, 148, 151, 157, 158, 180, and 181.

^a Penal Code Article 106(2).
^b CPC Article 216 and Penal Code Article 109.

Elements of Offenses - General

Understanding the elements of the offense is essential to the investigation of GBV offenses.

Relevant actors need to have an understanding of the elements of offenses to:

- (i) Direct the investigation to ensure that all necessary evidence is obtained, such as whether the alleged offense occurred in circumstances of domestic violence (LADV Article 2);
- (ii) Charge the appropriate offense;
- (iii) Issue the indictment; and
- (iv) State the necessary facts to identify the accused and the relevant acts.

The prosecution must prove every element of the offense and assess whether the evidence obtained in the investigation can prove each element.

Elements of Crimes Fall into Two Categories:

(1) Objective Elements: the Acts and Facts	(2) Subjective Elements: Intent and Knowledge
<p>These refer to:</p> <ul style="list-style-type: none">the behavior of the defendant (the commission of act/s of the defendant, or occasionally the omission of the defendant to act)^a andthe facts (such as the relationship between the suspect and the victim, or the age of the victim as referred to in the definition of the crime in the relevant law). <p>They are objective because they can be observed by another person.</p>	<p>These refer to the mental state of the defendant and mostly concern:</p> <ul style="list-style-type: none">the defendant’s intention when committing the act/s andthe defendant’s knowledge when committing the act/s. <p>They are subjective because they cannot be directly observed by another person. Despite the subjective nature of these elements, it is mostly the defendant’s actions in all of the circumstances that are used to prove his/her mental state.</p>

^a The Penal Code provides:
“Article 11. Commission by action and omission
Whenever a legal definition of a crime includes a certain result, the act comprises not only the specific action required to produce it, but the omission of any specific action that would avoid it as well, unless when intention of the law is otherwise.
A result caused by omission is only punishable when the perpetrator thereof is under a legal duty that personally obliges the perpetrator to avoid said result...”

The mental elements come from the text of the crime and the general principles and/or assumptions set out in the Penal Code (Articles 11–21).

General Principles of Criminal Responsibility

The general principles (“general assumptions”) regarding criminal responsibility—which always apply to a crime in the Penal Code—are set out in Penal Code Articles 11–21 and include principles regarding “intent” and the “knowledge” of a defendant.

Intent

The requirement of “intent” relates to the state of mind of the defendant when committing the alleged criminal act.

The **general rule** is that a person is only criminally responsible for acts contained in the Penal Code where the acts are done with intent (Penal Code Article 14).

The **exception** is where the law specifically states that a person can be criminally responsible for an act done with negligence, rather than intent (Penal Code Article 14).

Also, a defendant must know the facts underlying the crime. Penal Code Article 17 removes criminal responsibility where there is an error in the circumstances of the act.²²

Definition of "Intent"

Intent is defined by Penal Code Article 15 in three ways:

- (i) the defendant committed the act intending to do the act; or
- (ii) the defendant committed the act, the necessary consequence of which was the act defined as a crime; or
- (iii) the defendant committed the act while accepting that the act defined as a crime was a possible consequence of his or her conduct.

In addition, some articles in the Penal Code expressly refer to **specific requirements** of intent and knowledge, and in those cases, they must be proved in addition to the general principles set out above. For example, the crime of manslaughter requires proving that the defendant committed the act of killing the victim through negligence as defined in Penal Code Article 16.

Attempts and Forms of Participation in Crimes

A person may commit a crime—in terms of both the necessary acts and the intent—by him or herself. However, there are also other ways that a person can be criminally responsible, including by attempting to commit a crime or as a joint participant or accomplice.

²² Penal Code Article 17 **Error regarding circumstances of the act:**

- "1. Error regarding elements of the law or acts related to a legally defined crime or prohibition that would reasonably be considered essential for the perpetrator to have knowledge of in order to comprehend the unlawfulness of the act excludes intent.
- 2. The system described in the previous sub-article includes error regarding existence of assumptions of a cause for exclusion of unlawfulness or guilt.
- 3. Negligent conduct shall be punishable whenever provided for by law and the respective assumptions are present."

If a defendant does not appear to satisfy all the elements of a crime, it may be necessary to examine whether the defendant participated in the crime in another way, for example, by attempting to commit the crime.

An attempt is where someone tries to commit a crime by undertaking acts required to cause the occurrence of the crime but ultimately fails for reasons beyond his or her control. For example, if a person used a machete to try and kill the victim, but the victim survived the wounds, then the accused could be charged with attempted homicide (rather than homicide, which requires the act of death to occur), as the act was not completed.

An Attempt	More Than One Perpetrator
<p>An attempt is where the person tries to commit the elements of a crime but fails.</p> <p>Articles 23 to 27 of the Penal Code explain the circumstances in which a person will be criminally responsible for an attempt.</p>	<p>The commission of a crime may involve more than one perpetrator. Articles 29 to 34 of the Penal Code set out the different ways that a person can be involved in a crime, either alone, jointly with others, or by instigating or assisting in the crime.</p> <p>There are three general ways in which a person’s connection to a crime can create criminal responsibility: as principals/co-principals; principals by instigation; and accomplices.</p>

Alternative Charges – Choosing the Right Charge

The same conduct by a suspect may fall under several different criminal provisions. However, only one crime can be prosecuted. Where there is a possible choice of charges, Article 42 of the Penal Code becomes relevant:

<p>Article 42. Concurrence of provisions</p> <p>Except in the situations described above, whenever more than one legal provision may wholly or partially apply to an act that can be described as a crime, only one legal provision may be applied to the same, pursuant to the following rules:</p> <ul style="list-style-type: none">a) The specific provision shall apply with prejudice to the general provision;b) The subsidiary provision takes precedence over the main provision;c) The broadest and most complex provision supersedes that which provides for acts that can be subsumed thereunto.

Article 42 requires that specific provisions take precedence over general provisions; that main provisions are applied rather than subsidiary provisions; and that broad, complex provisions supersede others that can be subsumed within them.

When considering what charge is appropriate, the **PPS should consider all relevant crimes** (i.e. when the elements are all met by the conduct). The PPS should then apply Article 42 and determine which crime takes precedence and consider all relevant circumstances.

For example, where a victim suffers a serious physical injury from a suspect’s attack during an attempted rape, which leads to the permanent disfigurement of the victim, it may be relevant to consider whether the crime constituted mistreatment of a spouse or an attempted sexual offense. This will depend on the suspect’s intention, the relationship between the suspect and the victim, and other objective facts.

The most common forms of violence against women are crimes of domestic violence. Common scenarios are when a wife has been hit, slapped, pushed, hit with objects, threatened with violence, sworn at, verbally abused, and similar behavior. **These acts of violence can potentially be prosecuted under three different legal provisions of the Penal Code. However, only one crime can be prosecuted in relation to the same acts.** Violent conduct may fall under Penal Code Articles 145, 146, or 154. Each of these crimes is differently described and has different penalties.

Choosing Article 145 or 146	Choosing Article 145 or 154
<ul style="list-style-type: none">• Penal Code Articles 145 and 146 both refer to “harm to the body or health,” but in Penal Code Article 146, the subclauses refer additionally to what are serious and permanent forms of injury.• There is also a difference in penalties that reflect the difference in seriousness: a maximum of 3 years for Penal Code Article 145 and a maximum of 8 years for Article 146.	<ul style="list-style-type: none">• Penal Code Article 154 refers to inflicting “physical or mental mistreatment or cruel treatment” and it is “upon a spouse.” The fact that a victim is a spouse is a specific element of the offense that is not referred to in Article 145. In this situation, Penal Code Article 42 is relevant to assist in resolving the issue of selecting the most appropriate crime.

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Alternative Charges – Choosing the Right Charge *(continued)*

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| <ul style="list-style-type: none"> • The difference between these two offenses is the seriousness of the injuries inflicted and their impact on the victim. • When deciding what charge may be appropriate, the fact that serious injury or permanent disfigurement has not been caused does not prevent Article 146 from being the most appropriate charge. Article 146 refers to harm being caused with the “purpose of” causing serious injury or permanent forms of injury. Further, an “attempt” to cause such injury (under Penal Code Articles 23–27) may also be relevant. | <ul style="list-style-type: none"> • Penal Code Article 42 requires that the most specific legal provision take precedence over the general (Article 42[a]) and the broadest and most complex provision (Article 42[c]) supersedes the acts that can be subsumed. • Article 154 is the most specific because it applies to violence against a spouse whereas Article 145 does not. Article 154 is also the broadest and most complex provision, as acts against a spouse falling under Article 145 can be subsumed by Article 154. • This interpretation is reinforced because the nature of the crime is against a spouse. That is the special seriousness of the crime. • The difference in penalties also reflects the seriousness of the crime; Article 145 has a penalty of a maximum of 3 years whereas Article 154 is a maximum of years. |
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Further Observations

- Both Articles 146 and 154 refer to “harm to body or health”. This phrase has two types of harm: harm to the body and harm to health. Both offenses can cover either physical injury to the body or harm to health, which may be harm to the **physical health** or **mental health** of the victim. Victims of domestic violence often say that it is not the hit or the slap which has the worst effect on them, but the mental and psychological effects which linger and can be long lasting. They think, “When will it happen again? I no longer trust him. I must make sure I don’t do anything he doesn’t like.” There is often a constant feeling of fear and anxiety as they live together in a domestic relationship.
- The term “mistreatment” does not require a course of conduct or a pattern of behavior. Mistreatment may comprise physical mistreatment or psychological mistreatment. It is **not necessary for there to be repetitive acts** committed on the victim for it to meet the requirements of Article 154. A single act of mistreatment would be sufficient, and it could be violence inflicted on the victim that is physical sexual, psychological, or economic.

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Alternative Charges – Choosing the Right Charge *(continued)*

However, often crimes of domestic violence are repetitive, there is a pattern of behavior, and it escalates over time. That is why **it is important to obtain a history of violence** from a victim when they report or file a complaint. The history will affect the number of charges that are laid and whether there are circumstances of aggravation.

- Charges in GBV cases should reflect:
 - (i) the **seriousness** of what took place,
 - (ii) the **facts surrounding** the alleged offending,
 - (iii) the provable **intent** of the suspect, including any premeditation or persistence on the part of the suspect, and
 - (iv) the **severity of any injury**—whether physical or psychological—suffered by the victim.

PART D: Elements of Offenses of Gender-Based Violence – Specific Offenses

This part sets out a selection of offenses under the Penal Code which—depending on the circumstances of the offending—may comprise GBV. They include:

- (i) Crimes against Life (Penal Code Articles 138, 139, 140, and 143),
- (ii) Crimes against Physical Integrity (Penal Code Articles 145, 146, 147, 154, 155, and 156),
- (iii) Personal Aggressions (Penal Code Article 157).
- (iv) Crimes of Sexual Aggression (Penal Code Articles 171, 172, 173, 174, 175, 176, 177, 178, 181, and 182), and
- (v) Other Crimes (Penal Code Article 225).

Although not all of the selected offenses fall within the scope of LADV Article 35—and as such may not be “crimes of domestic violence”—the offenses have been selected to highlight the kinds of offending that are most likely to constitute GBV. In any event, if the circumstances of the offending fall within the context of domestic violence as set out in LADV Article 2, the victim is entitled to the support services provided under the LADV.

The elements of the individual offenses have been identified to assist in the conduct of investigations. They are also helpful to consider when decisions are being made as to which offense should be charged. Each offense also identifies the possible alternative charges as well as relevant circumstances of aggravation. When considering the charge, it is helpful to be aware of other alternative offenses which may be appropriate in the factual circumstances of the alleged conduct, and the elements required to prove those offenses. It is also important to review whether the circumstances of the offending fall within the circumstances of aggravation provided for under the Penal Code. Those circumstances, if proven, will establish the offending as more serious and give rise to a greater range of sentencing options.

It is important to note that the examples in Part D focus on offending by male defendants against female victims, as this is the most prevalent form of GBV offending.²³ However, other victims may also be subject to GBV and include persons who are lesbian, gay, bisexual, transgender, intersex or queer (LGBTIQ+). LGBTIQ+ persons may experience additional discrimination and forms of violence and have difficulties when complaining about GBV offenses committed against them. Further, there may be cases in which the female is the defendant, and the male is the victim. Such cases may include—in a situation of domestic violence—when the woman has been an earlier victim of violence and finally retaliates against the perpetrator. This is commonly referred to as “battered wife syndrome.”²⁴

Homicide

Law and Elements of an Offense

Article 138 – Penal Code of the Democratic Republic of Timor-Leste (Decree Law 19/2009)

“Any person who kills another person is punishable with 8 to 20 years imprisonment.”

Elements of offense to be proved:

Objective elements – Acts/Facts

- The defendant committed act/s.
- The act/s of the defendant resulted in the death of the victim.
- [the victim was in a family or intimate relationship with the defendant, if LADV Art 2 applies].

Subjective elements – Intent/Knowledge

- The defendant committed the act/s:
 - (i) with an intention to do the act/s; or
 - (ii) the necessary consequence of the act/s was the death of the victim; or
 - (iii) accepting that the death of the victim was a possible consequence of his/her acts.

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²³ Spotlight Initiative to Eliminate Violence against Women & Girls in Timor-Leste. 2021. *Social Norms Study Report*. p. 4.

²⁴ Judicial System Monitoring Programme (JSMP). 2017. *Battered Women and Self-Defence in Timor-Leste*. JSMP: Dili.

Homicide *(continued)*

Maximum Penalty: 20 years imprisonment.

Possible Alternative Charges

- Aggravated Homicide – Penal Code Article 139.
- Manslaughter – Penal Code Article 140.

Offense under the Law Against Domestic Violence

Homicide is a “crime of domestic violence” under LADV Article 35(b) if it falls within Article 2 of the LADV.

Examples
<p>Examples of homicide or femicide.</p> <ul style="list-style-type: none">• A man stabbing a woman with a knife or a machete resulting in her death.• A man beating a woman around the head with a blunt instrument, a stone, or a cooking pan leaving her to die.• A man strangling a woman.• A man drowning a woman or girl or pushing her off a steep ledge and she dies. <p>If the victim is the wife, parent, or child of the defendant, then it will be aggravated homicide, Penal Code Article 139.</p>

Aggravated Homicide

Law and Elements of an Offense
<p>Article 139 – Penal Code of the Democratic Republic of Timor-Leste (Decree Law 19/2009)</p> <p>“If homicide is committed under circumstances that are particularly reprehensible or reflect a particular degree of perversity:</p> <ul style="list-style-type: none">a) Through employment of poison, torture, asphyxia, fire, explosive or by another insidious means or that translates into the commission of a crime of collective danger or, with another act of cruelty to inflict greater suffering to the victim;b) Through treachery or disguise or another means or recourse that renders the defense of the victim difficult or impossible;c) Out of greed, pleasure in killing, seeking of excitement or satisfaction of a sexual nature, through payment or reward or promise of payment or reward, or for any other superfluous or insidious reason;d) For the purpose of preparing, executing or covering up another crime, facilitating escape or ensuring impunity of the perpetrator of a crime;e) Out of racial, religious or political hatred;

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Aggravated Homicide *(continued)*

- f) With premeditation, construed as cold-bloodedness, giving forethought to the means of performing the crime or delaying intent to kill for more than 24 hours;
- g) If the victim is a spouse, descendant, parent, collateral or similar relation to the second degree, a person adopted by the perpetrator or a person living with the perpetrator under analogous conditions where a hierarchical, economic or labor dependency exists;
- h) If the victim is particularly vulnerable by reason of age, illness or physical or mental disability;
- i) If the victim is a member of an organ of national sovereignty and constitutional political body, member of a local government body, magistrate, public defender, attorney, court clerk, public servant or any other person responsible for a public service, provided that the crime is committed while performing or because of performance of his or her duties;
- j) If the victim is a witness, declarant, expert, aggrieved party or victim and the crime is committed with the purpose of impeding the deposition, informing or filing of a complaint or because of the person's involvement in the proceedings, the perpetrator shall be punishable with 12 to 25 years imprisonment."

Elements of offense to be proved:**Objective elements – Acts/Facts**

- The defendant committed acts.
- The acts of the defendant resulted in the death of the victim.
- The circumstances of the death were particularly reprehensible or reflected a particular degree of perversity as in Article 139 sub-articles (a)–(j).
- [The victim was in a family or intimate relationship with the defendant, if LADV Article 2 applies].

Subjective elements – Intent/Knowledge

- The defendant committed the act/s
 - (i) with an intention to do the acts; or
 - (ii) the necessary consequence of the act/s was the death of the victim; or
 - (iii) accepting that the death of the victim was a possible consequence of his/her acts.

Maximum Penalty: 25 years imprisonment.

Possible Alternative Charges

- Homicide – Penal Code Article 138.
- Manslaughter – Penal Code Article 140.

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Aggravated Homicide *(continued)***Examples**

The crime of aggravated homicide (Penal Code Article 139) applies to causing the death of a person in particularly reprehensible ways or showing deliberateness and cruelty in causing death. The examples are given in the article.

In the context of GBV, this includes aggravation because the victim is a spouse, family member, intimate partner, or person who is in a situation of dependency on the defendant. Examples include:

- A husband kills his wife as he no longer wants to be with her and now lives with another woman.
- A husband kills his wife's sister who lives with them and the wife's sister is dependent on them for food and shelter.

Manslaughter**Law and Elements of an Offense****Article 140 – Penal Code of the Democratic Republic of Timor-Leste (Decree Law 19/2009)**

- "1. Any person who, by negligence, kills another person is punishable with up to 4 years imprisonment or a penalty of fine.
2. In cases where the perpetrator has acted with gross negligence, the same is punishable with up to 5 years imprisonment."

Elements of offense to be proved:**Objective elements – Acts/Facts**

- The defendant committed act/s:
 - (i) Failing to proceed with caution that he/she was obliged to use and was able to use in the circumstances.
 - (ii) The defendant's act/s were committed by negligence (Penal Code Article 16).
- The defendant's acts resulted in the death of the victim.

Subjective elements – Intent/Knowledge

- The defendant committed the act/s (by negligence, under Penal Code Article 16) with
 - (i) **ordinary negligence** – by using less caution than he/she was obliged to use, and was capable of proceeding with, by acting in a manner in which:

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Manslaughter *(continued)*

- a) death of the victim was a possibility; **or**
- b) the defendant did not realize that the death of the victim was a possibility; **or**
- (ii) **gross negligence** – by using less caution than he/she was obliged to use, and was capable of proceeding with, and circumstances indicate that the defendant acted with levity or temerity and failed to observe elementary duties of prudence.

Maximum Penalty: 4 years imprisonment where ordinary negligence, or 5 years where gross negligence.

Possible Alternative Charges

- Homicide – Penal Code Article 138
- Aggravated Homicide – Penal Code Article 139

Examples

There are two forms of the offense: (i) Article 140(1) which is causing death by **negligence**, and (ii) Article 140(2) which is causing death by **gross negligence**. Negligence and gross negligence are defined in Penal Code Article 16.^a

Examples of negligence under Article 140(1) in a GBV context include:

- A husband and wife are arguing, the wife is standing near a bench and the husband punches her in the head several times, she becomes unsteady on her feet, and then the husband pushes her backwards. She falls and her head strikes the edge of the table and she dies from a hemorrhage to the head. (Death by Negligence).
- A wife is an invalid and has a serious heart condition. The husband shouts and pushes her roughly against the bed, she falls and breaks her hip and dies of a heart attack. (Death by negligence).
- A husband has been beating his wife for years, sometimes leading to hospitalization. The husband complains about her cooking and throws a plate of food at her that hits her head. The wife already has a knife in her hand, expects he will beat her, and stabs him in the chest and he dies. (Death by negligence,^b battered spouse syndrome.^c)

Examples of gross negligence under Article 140(2) in a GBV context include:

- A wife is standing at an open fireplace cooking food. Her husband comes home and shouts and abuses her for the lateness of the meal. He hits her on the head with a lamp and shoves her from behind. She falls headfirst into the fire hitting her head on the fireplace and dies. (Death by **gross negligence** as she was already in a dangerous position at the fireplace before the violence of hitting her on the head and shoving her from behind).

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Manslaughter (*continued*)

- **Contrast** the above example to a similar situation where a wife is standing at an open fireplace cooking food. Her husband comes home and surprises her by grabbing her and tickling her from behind, she jumps with surprise and falls headfirst into the fire hitting her head on the fireplace and dies. (Death by **negligence** as she was already in a dangerous position at the fireplace before he grabbed and tickled her from behind. He should have used greater caution before grabbing and surprising her in that situation).

^a **Article 16. Definitions of Negligence**

(1) Any person who fails to proceed with caution to which, according to the circumstances, the same is obliged and capable of proceeding, acts with negligence, if the perpetrator: a) acts in such a manner that commission of a defined crime is a possibility, yet acts without accepting said result; or b) Does not even realize the possibility of committing said act.

(2) The type of negligence referred to in the preceding sub-article shall take on the form of gross negligence whenever circumstances reveal that the perpetrator acted with levity or temerity and failed to observe elementary duties of prudence required in such a case.

- ^b The use of a knife may be regarded as excessive self-defense, but it is arguable that as she already had the knife in her hand, it may have been a spontaneous act to protect herself against further violence from him.

- ^c Judicial System Monitoring Programme (JSMP). 2017. *Battered Women and Self-Defence in Timor-Leste*. JSMP: Dili. p. 34

Abandonment or Exposure

Law and Elements of an Offense

Article 143 – Penal Code of the Democratic Republic of Timor-Leste (Decree Law 19/2009)

- "1. Any person who, intentionally, endangers the life of another person by:
- Exposing said person in a place where the same is placed in a situation where he or she is unable to protect him or herself single-handed; or
 - Abandoning the person defenseless by reason of age, physical impairment or illness, when the perpetrator is responsible for protecting, caring for or assisting said person; Is punishable with 1 to 6 years imprisonment.
2. If the act results in:
- a) Serious harm to physical integrity, the perpetrator is punishable with 2 to 8 years imprisonment;
 - b) Death, the perpetrator is punishable with 5 to 15 years imprisonment.
3. If the victim is a spouse, descendant, parent or collateral kin to the second degree, a person who has adopted or is adopted by the perpetrator or

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Abandonment or Exposure *(continued)*

a person cohabiting with the perpetrator in conditions analogous to those of spouse, the limits to the penalties referred to in the previous sub-articles shall be increased by one-third."

Elements of offense to be proved:**Objective elements – Acts/Facts – Penal Code Article 143(1)(a)**

- The act/s of the defendant put the victim in a place where he or she was unable to protect himself or herself single-handed (that is by himself or herself alone).
- The defendant's act/s endangered the life of the victim.

Subjective elements – Intent/Knowledge – Penal Code Article 143(1)(a)

- The defendant committed the act/s:
 - (i) with the intention to commit the act/s and to endanger the life of the victim; or
 - (ii) the necessary consequence of the defendant's act/s was to endanger the life of the victim; or
 - (iii) accepting that endangering the life of the victim was a possible consequence of his or her acts.

Objective elements – Acts/Facts – Penal Code Article 143(1)(b)

- The act/s of the defendant were to abandon the victim.
- The victim was defenseless by reason of age, physical impairment, or illness.
- The defendant was responsible for protecting, caring for, or assisting the victim.
- The defendant's act/s endangered the life of the victim.

Subjective elements – Intent/Knowledge – Penal Code Article 143(1)(b)

- The defendant committed the act/s:
 - (i) with intention to commit the act/s and with the intention of endangering the life of the victim; or
 - (ii) the necessary consequence of the defendant's act/s was to endanger the life of the victim; or
 - (iii) accepting that endangering the life of the victim was a possible consequence of his or her acts.

Maximum Penalty: 6 years imprisonment. Or more if: Article 143(2a) – the defendant's acts caused serious harm to physical integrity of the victim; or Article 143 (2b) – the defendant's acts caused the death of the victim; or Article 143(3) – the victim has a relationship or situation with the defendant as described, such as a spouse.

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Abandonment or Exposure *(continued)*

Aggravation/Possible Alternative Charges	
<ul style="list-style-type: none">• Homicide – Penal Code Article 138• Aggravated Homicide – Penal Code Article 139• Manslaughter – Penal Code Article 140• Aggravation due to Results – Penal Code Article 156	<ul style="list-style-type: none">• Serious Offenses against Physical Integrity – Penal Code Article 146• Mistreatment of a Spouse – Penal Code Article 154• Mistreatment of a Minor – Penal Code Article• Mistreatment of a Disabled Person – Penal Code Article 153
Examples	
<p>There are many examples of this offense that may not relate to GBV. These are situations where a defendant endangers the lives of vulnerable children and aging parents by exposing or abandoning them.</p> <p>Examples which are related to GBV:</p> <ul style="list-style-type: none">• a husband leaves his wife after his wife has had a difficult birth and she is bedridden trying to breastfeed the baby. He does not make any arrangements to provide for her and she is unable to leave the house to buy food, cook for herself, or get medical necessities for herself and the baby.• A wife suffers from early dementia and is also in a wheelchair due to other health issues. The husband goes to visit friends who live in another village for a week, leaving his wife alone in the house with little food and water and no one to care for her. After 3 days, a passing neighbor hears her cries and finds her living in filth and severely dehydrated.	

Simple Offenses against Physical Integrity

Law and Elements of an Offense
<p>Article 145 – Penal Code of the Democratic Republic of Timor-Leste (Decree Law 19/2009)</p> <p>“1. Any person who causes harm to the body or health of another person is punishable with up to 3 years imprisonment or a fine.</p> <p>2. Prosecution depends on the filing of a complaint.”</p> <p>Elements of offense to be proved:</p> <p>Objective elements – Acts/Facts</p> <ul style="list-style-type: none">• The defendant committed act/s.• The defendant’s acts caused harm to the body or health of the victim.• [the victim was in a family or intimate relationship with the defendant, if LADV Article 2 applies].

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Simple Offenses against Physical Integrity *(continued)***Subjective elements – Intent/Knowledge**

- The defendant committed the act/s:
 - (i) with an intention to do the act/s and cause harm to the body and health of the victim, or
 - (ii) the necessary consequence of the act/s was the harm to the body or health of the victim; or
 - (iii) accepting that the harm to the body or health of the victim was a possible consequence of his or her acts.

Maximum Penalty: 3 years imprisonment (more if circumstances of aggravation apply).

Aggravation/Possible Alternative Charges

- Mistreatment of a Spouse – Penal Code Article 154.
- Serious offenses against Physical Integrity – Penal Code Article 146.
- Mistreatment of a Minor – Penal Code Article 155.
- Mistreatment of a Disabled Person – Penal Code Article 153.

Offense under the Law Against Domestic Violence

Simple offenses against physical integrity will be a “crime against domestic violence” under LADV Article 35(b) if they fall within Article 2 of the LADV.

Examples

- Article 145 is broadly expressed and can cover a wide variety of acts toward a victim. The harm caused can be physical harm or harm to the health of a person, which could include causing mental health and psychological harm.
- The offense may arise in many situations that are not in a GBV context.
- Common examples may be hitting, punching, slapping, pulling hair, pushing, throwing an object at a person, or chasing a person causing them to fall, causing injuries such as bruising, grazing, or wounding.
- In a GBV context, if the acts are committed against a spouse—most often a wife—or if the offender is in an intimate relationship with the victim, then LADV applies. The acts covered under this offense can include acts that amount to physical, sexual, psychological, or economic violence under the LADV. Acts that result in physical injury can also cause psychological harm to the victim.
- If the acts of the offender cause physical or psychological harm to the health of a wife, the acts may also fall under Article 154 which specifically refers to mistreatment of a spouse. See the examples under Article 154.

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Simple Offenses against Physical Integrity *(continued)*

- If the acts could fall also under Article 154, then Article 42 requires that *specific provisions* take precedence over *general provisions* (Article 42[a]), and the *broadest and most complex provision supersedes* the acts subsumed (Article 42[c]).
- Article 154 is the *most specific* because it applies to violence against a spouse, whereas Article 145 does not. Article 154 is the *broadest and most complex provision* as acts falling under Article 145 against a spouse can be subsumed by Article 154.
- In summary, acts that fall under Article 145, if committed against a spouse, need to be carefully assessed in the circumstances of the relationship including past violence and the seriousness of the effect of the act(s) on the spouse as the most appropriate offense is likely to be Article 154.

Serious Offenses against Physical Integrity

Law and Elements of an Offense

Article 146 – Penal Code of the Democratic Republic of Timor-Leste (Decree Law 19/2009)

“Any person who causes harm to the body or health of another person with the purpose of:

- a) Depriving such person of an important organ or limb;
- b) Seriously or permanently disfiguring said person;
- c) Seriously affecting, for a long period of time or definitively, a person’s working capacity, intellectual faculties, or capacity to procreate;
- d) Causing permanent illness or incurable mental disorder to such a person; or
- e) Endangering the life of said person;

is punishable with 2 to 8 years imprisonment.”

Elements of offense to be proved:

Objective elements – Acts/Facts

- The defendant committed act/s.
- The act/s of the defendant caused harm to the body or health of the victim as described in Penal Code Article 146 sub-articles (a)–(e).
- [the victim was in a family or intimate relationship with the defendant, if LADV Article 2 applies].

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Serious Offenses against Physical Integrity *(continued)***Subjective elements – Intent/Knowledge**

- The defendant committed the act/s:
 - (i) with an intention to do the acts and to cause one of the effects to the victim listed in Article 146 sub-articles (a)-(e); or
 - (ii) the necessary consequence of the act/s was to cause harm to the body or health of the victim in one or more of the effects listed Article 146 sub-articles (a)–(e); or
 - (iii) accepting that one or more of the effects listed Article 146 sub-articles (a)–(e) of harm to the victim were a possible consequence of his or her acts.

Maximum Penalty: 8 years imprisonment (more if circumstances of aggravation apply).

Aggravation/Possible Alternative Charges

- Mistreatment of a Spouse – Penal Code Article 154.
- Mistreatment of a Minor – Penal Code Article 155.
- Mistreatment of a Disabled Person – Penal Code Article 153.
- Aggravation – Penal Code Article 147.
- Simple Offenses against Physical Integrity – Penal Code Article 145.

Offense under the Law Against Domestic Violence

Article 146 will be “crime against domestic violence” under LADV Article 35(b) if it falls within Article 2 of the LADV.

Examples

Articles 145 and 146 both refer to “harm to the body or health,” but in Article 146, the sub-articles additionally describe what are serious and permanent forms of injury. The major difference between the two offenses is the seriousness of the injuries inflicted and the impact on the victim.

In a GBV context, examples of types of injuries and impacts under Article 146 include:

- Article 146(a) a husband using a knife and causing loss of his wife’s finger or a kidney; or punching her ears and causing deafness; or hitting her in the face with an object causing blindness or loss of her teeth.
- Article 146 (b) a husband disfiguring his wife’s face with a knife or a burn so that no other man will find her attractive.
- Article 146 (c) a husband beating his wife so badly that she is unable to work for a long time or causing her brain damage.
- Article 146 (d) a husband has physically beaten his wife so many times that she suffers from psychiatric depression and risks self- harm.

Mistreatment of a Disabled Person

Law and Elements of an Offense

Article 153 – Penal Code of the Democratic Republic of Timor-Leste (Decree Law 19/2009)

"1. Any person who has guardianship or custody, or is responsible for the education of a disabled person, even as a subordinate under employment, who is particularly vulnerable by reason of illness, advanced age, pregnancy, physical or mental impairment, and causes harm to said person's body or health, or inflicts physical or mental mistreatment or cruel treatment, is punishable with 2 to 6 years imprisonment, if no heavier penalty is applicable by force of another legal provision.

2. If the victim is a descendant, collateral kin, family or similar to the second degree, a person who has adopted or been adopted by the perpetrator or person cohabiting with the perpetrator under similar conditions, the limits of the sentence shall be increased by one third."

Elements of offense to be proved:

Objective elements – Acts/Facts

- The defendant committed the act/s toward the victim,
- The act/s of the defendant caused harm to the victim's body or health, or amounted to inflicting physical or mental mistreatment, or cruel treatment upon the victim,
- The victim is disabled, and is vulnerable by reason of illness, old age, pregnancy, or physical or mental impairment, and
- The defendant has guardianship or custody of the victim, or is responsible for the education of the victim, or is in a position of authority in relation to the victim in a professional context.

Subjective elements – Intent/Knowledge

- The defendant committed the act/s:
 - (i) with an intention to cause harm to the victim's body or health, or to inflict physical or mental mistreatment or cruel treatment upon the victim; or
 - (ii) the necessary consequence of the act/s was to cause harm to the victim's body or health, or inflict physical or mental mistreatment or cruel treatment upon the victim; or
 - (iii) accepting that harm to the victim's body or health, or physical or mental mistreatment, or cruel treatment upon the victim was a possible consequence of his or her acts.

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Mistreatment of a Disabled Person *(continued)*

Maximum Penalty: 6 years imprisonment (more if circumstances of aggravation apply).

Aggravation/Possible Alternative Charges

- Aggravation – Penal Code Article 156.
- Simple Offenses against Physical Integrity – Penal Code Article 145.
- Serious Offenses against Physical Integrity – Penal Code Article 146.
- Mistreatment of a Minor – Penal Code Article 155.
- Abandonment or Exposure – Penal Code Article 143.

Offense under the Law Against Domestic Violence

Mistreatment of a disabled person is a “crime of domestic violence” under the LADV Article 35(a).

Examples

The gravity of this offense is that it is committed against a disabled person who is vulnerable because of illness, old age, pregnancy, or a physical or mental impairment, and it is committed by a person who is in a position of responsibility for or authority over the disabled person. Penal Code Article 153(2) specifically addresses circumstances when that relationship is most likely to arise, such as in a family or extended family situations in which the disabled person is taken in or adopted into the family when such mistreatment increases the defendant’s penalty (similar to Mistreatment of a Minor, Penal Code Article 155[3]). The scope also includes a disabled person who is “...a subordinate under employment.”

Disability of the person

- The type of disability of the person that causes them to be particularly vulnerable is broad and includes permanent or temporary disability, e.g., temporary illness, temporary impairment, or during pregnancy.

Position of the defendant

- In addition to the mistreatment of a disabled person by a defendant who is in a position of responsibility for or authority over the disabled person in a domestic type of relationship (Penal Code Article 153[2]), its scope encompasses a disabled person who is “...a subordinate under employment” with the defendant. This may be a disabled person who is employed by the defendant.

Acts causing harm to the body or health of the victim

- Harm includes giving a mentally or physically disabled person food that is too hot and which burns their mouth or hands.
- Giving a disabled person medication or poison that harms their body or health, or giving them food they cannot tolerate that causes harm and may also worsen their disability.

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Mistreatment of a Disabled Person *(continued)*

- Requiring a disabled employee to undertake unsuitable harmful work tasks or exploiting their disability that causes stress and harm, either physical or mental. This could include a woman worker who is pregnant.
- Acts that result in physical injuries that require medical treatment or medicine may also cause psychological harm.

Acts of physical mistreatment

- Includes a family member hitting, punching, slapping, pulling hair, pushing, or throwing an object at a person who is disabled on account of old age or mental impairment. Such acts can result in physical injuries that require medical treatment or medicine and may also cause psychological harm.

Acts of mental mistreatment

- Can include the above examples noting that such physical acts of violence by a family member against a disabled relative often also cause psychological and mental harm to the person by putting him or her in fear of the family member, reducing personal confidence and self-esteem, and feeling unsafe in the home.
- Can include a person isolating his or her aged or otherwise disabled mother from her family or friends; preventing her from leaving the house; taking her money or other possessions; constantly criticizing her; shouting and yelling at her, telling her that she is disgusting.
- Can include a guardian of a mentally or physically disabled person threatening to abandon the disabled person, thus causing the victim to experience fear, anxiety, and mental distress.

Acts of cruel treatment

- Examples include locking an elderly person up, abusing them and calling the names, refusing to allow them to eat, drink, or go to the toilet; taunting a mentally disabled person, taking his or her prized possessions; not sharing food with the person.

Important note: This offense does not require that the acts be repetitive. A single act of physical or mental mistreatment or act causing harm to the body or health can amount to an offense. The term “mistreatment” includes both physical and psychological acts and does not require a course of conduct or a pattern of behavior. A single act of mistreatment may be sufficient. Physical mistreatment may involve several events on one occasion. For example, verbal abuse of an aged relative, pushing them causing them to fall, and then kicking them.

Mistreatment of a Spouse

Law and Elements of an Offense

Article 154 – Penal Code of the Democratic Republic of Timor-Leste (Decree Law 19/2009)

“Any person who inflicts physical or mental mistreatment or cruel treatment upon a spouse or person cohabiting with the perpetrator in a situation analogous to that of spouse is punishable with 2 to 6 years imprisonment if no heavier penalty is applicable by force of another legal provision.”

Elements of offense to be proved:

Objective elements – Acts/Facts

- The defendant committed the act/s toward the victim.
- The act/s of the defendant amounted to inflicting physical or mental mistreatment, or cruel treatment upon the victim.
- The victim is the spouse of the defendant or cohabits with the defendant in a situation analogous to that of a spouse.

Subjective elements – Intent/Knowledge

- The defendant committed the act/s:
 - (i) with an intention to inflict physical or mental mistreatment or cruel treatment upon the victim; or
 - (ii) the necessary consequence of the act/s was to inflict physical or mental mistreatment, or cruel treatment upon the victim harm; or
 - (iii) accepting that physical or mental mistreatment, or cruel treatment upon the victim was a possible consequence of his or her acts.

Maximum Penalty: 6 years imprisonment (more if circumstances of aggravation apply).

Aggravation/Possible Alternative Charges

- Aggravation – Penal Code Article 156.
- Simple offenses against Physical Integrity – Penal Code Article 145.
- Serious offenses against Physical Integrity – Penal Code Article 146.

Offense under the Law Against Domestic Violence

Mistreatment of a spouse is a “crime of domestic violence” under the LADV Article 35(a).

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Mistreatment of a Spouse *(continued)***Examples**

The gravity of these offenses is that they are offenses committed by and against the person who should be protected and respected in their intimate relationship of living together. Living at home with a spouse should be the safest place for a wife. Instead, it becomes the place where she is unsafe.

Acts of physical mistreatment

- Include a husband hitting, punching, slapping, pulling hair, pushing, using a weapon such as a blunt object or knife, or throwing an object at his wife. Such acts can result in physical injuries that require medical treatment or medicine and may also cause psychological harm.

Acts of mental mistreatment

- Can include the above examples noting that physical acts of domestic violence by a husband against his wife often cause psychological and mental harm to her by putting a wife in fear of her husband, reducing her confidence and self-esteem, and feeling unsafe in the home.
- Can include a husband isolating his wife from her family; monitoring his wife's daily activities; making jealous accusations; preventing her from leaving the house without his permission because of his jealousy and wrongly thinking she is having an affair; abusing her and calling her bad names; severe criticism; shouting and yelling at her; accusing her of being a bad wife, cook or mother.

Acts of a sexual nature

- Examples of acts of a sexual nature that result in physical or mental mistreatment include coercive sexual acts by a husband on his wife (not involving penetration) which she does not want to engage in either at all or at that time as it hurts her, or is a degrading form of sex, or she is unwell or is heavily pregnant.

Acts of economic violence

- Examples of acts of economic violence that result in psychological or mental mistreatment or cruel treatment include a husband preventing his wife from going out of the house to earn money; burning her clothes; selling her jewelry for his own benefit; controlling finances and her spending, all of which would affect her psychologically and may also affect her health if she is unable to buy chemist items and clothes that she needs.

Acts of cruel treatment

- Examples, include a husband tying his wife up, abusing her and calling her names, and refusing to allow her to eat, drink, or go to the toilet.

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Mistreatment of a Spouse *(continued)*

Important note: This offense does not require that the acts be repetitive. A single act of violence can amount to an offense. The term “mistreatment” includes both physical and psychological acts and it does not require a course of conduct or a pattern of behavior. A single act of mistreatment may be sufficient. Physical mistreatment may involve several events on one occasion. For example, verbal abuse of a spouse; chasing them out of the house with a weapon in hand; threatening to kill them; causing them to fall down and then beating them. Or a harrowing experience of sexual violence or physical violence when the spouse was pregnant.

Mistreatment of a Minor

Law and Elements of an Offense

Article 155 – Penal Code of the Democratic Republic of Timor-Leste (Decree Law 19/2009)

“1. Any person who provides guardianship or custody, or is responsible for the education of a minor aged less than 17 years, or does so under subordinate employment, and:

- a) Causes harm to the minor’s body or health, or inflicts physical or mental mistreatment or cruel treatment;
- b) Subjects the minor to economic exploitation, hazardous work or work capable of compromising his or her education or physical, mental, spiritual, moral or social development;
- c) Subjects the minor to any form of slavery or analogous practise;
- d) Uses, recruits or offers the minor for purposes of prostitution, production of pornographic material or pornographic shows; or
- e) Uses, recruits or offers the minor for practicing unlawful acts or activities, namely production and trafficking in narcotics as defined by international conventions, is punishable with 2 to 6 years imprisonment, if no heavier penalty is applicable by force of another legal provision.

2. Any person who, under similar circumstances, uses a minor for begging is punishable with up to 3 years imprisonment, if no heavier penalty is applicable by force of another legal provision.

3. If the victim is a descendant, collateral kin, relative or similar to the second degree, has adopted or been adopted by the perpetrator or a person cohabiting with the perpetrator under similar conditions, the limits to the penalties referred to in the preceding sub-articles shall be increased by one third.”

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Mistreatment of a Minor *(continued)***Elements of offense to be proved:****Objective elements – Acts/Facts**

- The victim is a child under the age of 17 years.
- The defendant is responsible to the victim for:
 - (i) his or her guardianship or custody; or
 - (ii) his or her education; or
 - (iii) employs him or her as a subordinate.
- The defendant in the above situations used the victim for begging, or
- The defendant in the above situations did act/s toward the victim that:
 - (i) caused harm to the body or health of the victim: or
 - (ii) inflicted physical or mental mistreatment or cruel treatment on the victim; or
 - (iii) subjected the victim to employment practices that amounted to economic exploitation or dangerous work or work that could compromise either the victim's education or the victim's physical, mental, moral, or social development; or
 - (iv) subjected the victim to slavery or similar control over the victim; or
 - (v) used, recruited, or offered the victim for prostitution or pornography; or
 - (vi) used, recruited, or offered the victim for the production and trafficking of drugs.

Subjective Elements – Intent/Knowledge

- The defendant committed the act/s:
 - (i) with an intention to do the acts and knowing that the victim was under the age of 17 years; or
 - (ii) the necessary consequence of the act/s was the harm or effects to the under 17-year-old victim in one or more ways as set out in Penal Code Article 155(1) sub-articles (a)–(e); or begging by the victim under Penal Code Article 155(2), or
 - (iii) accepting that the harm or effects to the under-17-year-old victim under one or more of Penal Code Article 155(1)(a)–(e), or begging by the victim under Penal Code Article 155(2), were a possible consequence of his or her acts.

Maximum Penalty: 6 years imprisonment (more if Penal Code Articles 155[3] or 156 apply).

Aggravation/Possible Alternative Charges

- Aggravation - Penal Code Article 156.

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Mistreatment of a Minor *(continued)***Offense under the Law Against Domestic Violence**

Mistreatment of a Minor is a “crime against domestic violence” under LADV Article 35(a).

Examples

The scope of this offense covers many different types of acts and situations against a minor.

In a GBV context, examples that involve girls that may not apply to her brothers either at all or to the same extent, include:

Penal Code Article 155(a)

- acts of physical violence such as a parent hitting, slapping, pushing, kicking, pulling ears or hair, throwing objects at, or burning a girl.
- acts of psychological abuse such as issuing threats, verbal abuse, name calling, severe criticism, and acts of humiliation against a girl.
- The term “mistreatment” includes both physical and psychological acts. It does not require a course of conduct or a pattern of behavior. A single act of mistreatment may be sufficient depending on the circumstances and the gravity of the conduct having regard to the fact that the perpetrator has a special responsibility to protect the child who is vulnerable because of their age.
- cruel treatment is also very broad, and includes not allowing the girl to play or read, threatening to hurt her, depriving her of food or medical treatment, or access to hygiene, or forcing her to do very unpleasant or unsafe work around the home.

Penal Code Article 155(b)

- making the child work either in the family street store or doing home chores instead of going to school, and preventing her from playing with her friends.

Penal Code Article 155(c)

- threatening to abandon her or marry her off to an old man unless she does the family chores as she is told.

Threats

Law and Elements of an Offense

Article 157 – Penal Code of the Democratic Republic of Timor-Leste (Decree Law 19/2009)

- "1. Any person who, by any means, threatens another person with commission of a crime in order to cause fear or unrest or to undermine that person's freedom of decision-making is punishable with up to 1 year imprisonment or a fine.
2. Prosecution depends on the filing of a complaint."

Elements of offense/Matters to be proved:

Objective elements – Acts/Facts

- The defendant committed the act/s.
- The defendant threatened the victim with the commission of a crime (by any means).
- The crime threatened to be committed by the defendant to the victim was a crime under the Penal Code.
- The crime threatened to be committed by the defendant to the victim was a "crime of domestic violence" under LADV Article 35(a) or Article 35(b), if the victim was in a family of intimate relationship with the defendant under LADV Article 2.
- The defendant's threat to cause fear or unrest or undermine the victim's freedom of decision-making.

Subjective elements – Intent/Knowledge

- The defendant committed the act/s:
 - (i) with the intention of causing fear or unrest, or undermine the victim's freedom of decision-making; or
 - a) the necessary consequence of the act/s was to cause fear or unrest, or to undermine the victim's freedom of decision-making; or
 - b) accepting that the victim's fear or unrest, or an undermining of the victim's freedom of decision-making were a possible consequence of his or her acts.

Maximum Penalty: 1 year imprisonment.

Aggravation/Possible Alternative Charges

- Mistreatment of a Spouse – Penal Code Article 154.
- Mistreatment of a Minor – Penal Code Article 155.
- Mistreatment of a Disabled Person – Penal Code Article 153.
- Coercion – Penal Code Article 158.
- Serious Coercion – Penal Code Article 159.

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Threats *(continued)***Examples**

Penal Code Article 157 is broad in scope and could cover many different situations in which a threat is made to a victim which amounts to a threat to commit a crime to cause fear or unrest, or control or undermine the victim's ability to make their own decision.

Examples of threats in the context of GBV often involve an **imbalance of power** and include a husband against his wife or an intimate partner against his female partner. Examples include:

- threats to kill his wife or beat her to death;
- threats to abandon his wife or other dependent family member;
- threats to expel his wife from the home;
- threats to take away their children, or to physically harm the children or other persons.
- threats to share her personal information or photographs on the internet.

Coercion**Law and Elements of an Offense****Article 158 – Penal Code of the Democratic Republic of Timor-Leste (Decree Law 19/2009)**

"1. Any person who, by means of violence or threat of serious harm, compels another person to commit an act or omission, or to accept an activity under duress is punishable with up to 2 years imprisonment or a fine.

2. Prosecution depends on the filing of a complaint."

Elements of offense to be proved:**Objective elements – Acts/Facts**

- The defendant committed the act/s:
 - (i) used violence against the victim; or
 - (ii) threatened serious harm to the victim.
- The defendant's acts:
 - (i) compelled the victim to do/or not do something; or
 - (ii) forced the victim to accept an activity under duress.

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Coercion (*continued*)**Subjective elements – Intent/Knowledge**

- The defendant committed the act/s:
 - (i) with an intention to do the act/s; or
 - (ii) the necessary consequence of the act/s was to compel or force the victim to behave as above described; or
 - (iii) accepting that a possible consequence of his or her acts was that the victim would be compelled or forced to behave as described.

Maximum Penalty: 2 years imprisonment (more if circumstances of aggravation in Article 159 apply).

Aggravation /Possible Alternative Charges

- Mistreatment of a Spouse – Penal Code Article 154.
- Mistreatment of a Minor – Penal Code Article 155.
- Mistreatment of a Disabled Person – Penal Code Article 153.
- Serious Coercion – Penal Code Article 159.
- Threats – Penal Code Article 157.

Examples

Penal Code Article 158 covers a wide range of conduct that involves violence or threats of serious harm to a victim to compel the victim to do something or not do something.

In a GBV context, like threats contrary to Penal Code Article 157, the offense often involves an imbalance of power. For example, in the context of a husband or intimate partner against his wife or intimate partner. The offense differs from threats under Penal Code Article 157, as it additionally requires either violence or threat of serious harm. Examples include:

- A husband uses physical violence toward his wife, by punching or hitting her, to make her give him her wages or to prepare food for him.
- A husband or intimate partner threatens to rape his wife or partner if she leaves the house to visit her friends or family.
- A husband or intimate partner threatens to kill his wife or partner if she ever leaves the house without his permission.

Sexual Coercion

Law and Elements of an Offense

Article 171 – Penal Code of the Democratic Republic of Timor-Leste (Decree Law 19/2009)

“Any person who, by means of violence, serious threat, or after having made, for the purpose of compelling another person to endure or to practise with the same or a third person any act of sexual relief, such a person unconscious or placed the same in a condition where resistance is impossible, is punishable with 2 to 8 years imprisonment.”

Elements of offense to be proved:

Objective elements – Acts/Facts

- The defendant committed act/s of:
 - (i) violence, or
 - (ii) making a serious threat toward the victim, or
 - (iii) making the victim unconscious or unable to resist.
- The defendant’s acts compelled the victim to engage in or endure an act of sexual relief with him/her or a third person.
- [the victim was in a family or intimate relationship with the defendant, if LADV Article 2 applies].

Subjective elements – Intent/Knowledge

- The defendant committed the act/s:
 - (i) with an intention to do the act/s and to compel the victim to engage in or to endure an act of sexual relief with him/her or a third person; or
 - (ii) the necessary consequence of the act/s was to compel the victim to engage in or to endure an act of sexual relief with him/her or a third person; or
 - (iii) accepting that the victim would be compelled to engage in or endure an act of sexual relief with him/her or a third person, were possible of the defendant’s acts.

Maximum Penalty: 8 years imprisonment (more if circumstances of aggravation apply).

Aggravated/Possible Alternative Charges

- Mistreatment of a Spouse – Penal Code Article 154.
- Mistreatment of a Minor – Penal Code Article 155.
- Mistreatment of a Disabled Person – Penal Code Article 153.
- Rape – Penal Code Article 172.
- Aggravation – Penal Code Article 173.
- Aggravation – Penal Code Article 182.

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Sexual Coercion (*continued*)**Offense under the Law Against Domestic Violence**

Sexual coercion will be a "crime against domestic violence" under LADV Article 35(b) if it falls within Article 2 of the LADV.

Examples

The offense of sexual coercion under Penal Code Article 171 describes three forms of sexual coercion:

- (i) compelling a victim to engage in or endure sexual act(s) by using *violence*; or
- (ii) compelling the victim to engage in or endure sexual act(s) by making a *serious threat*; or
- (iii) making the victim *unconscious or unable to resist* the sexual acts performed on them.

It is also an offense if the offender compels the victim to engage in or endure sexual act(s) with a third party.

Penal Code Article 171 should be used where the sexual act(s) is **not** an act of penile penetration of the vagina, mouth, or anus, or penetration of the vagina or anus with an object. If such penetration occurs in the circumstances, then Penal Code Article 172 should be applied.

Examples can be various and include:

- A husband threatens physical violence toward his wife to compel her to engage in sexual acts with himself and/or with another person. The sexual acts could include hand masturbation of himself and/or another.
- A husband threatens his wife with physical violence and requires her to expose her private parts in sexually provocative ways and takes photos or videos of her to compel her into enduring sexual acts otherwise he will share them with others in the future.
- An intimate partner causes his partner to become intoxicated with alcohol and is therefore unable to resist when he engages in sexual acts with her or when others engage in such acts with her. He may also take photographs or a video of this activity to compel her into enduring sexual acts, otherwise he will share them with others in the future.
- An offender may hit the victim and threaten to hurt her or her children if she does not agree to endure engaging in acts of sexual relief with him and or with others.

Rape

Law and Elements of an Offense

Article 172 – Penal Code of the Democratic Republic of Timor-Leste (Decree Law 19/2009)

"Any person who, by the means referred to in the previous article, practises vaginal, anal, or oral coitus with another person or forces the same to endure introduction of objects into the anus or vagina is punishable with 5 to 15 years imprisonment."

Elements of offense to be proved:

Objective elements – Acts/Facts

- (1) The defendant committed act/s of:
 - (i) violence, or
 - (ii) made a serious threat, or
 - (iii) made the victim unconscious or unable to resist (e.g. drugged or drunk).
 - (2) The defendant penetrated the victim:
 - (i) in the vagina, anus, or mouth by his penis,
 - (ii) in the vagina or anus by an object (including a body part such as a finger but not a penis).
- The defendant's acts in (1) forced the victim to have or endure penetration in (2).
 - [the victim was in a family or intimate relationship with the defendant, if LADV Article 2 applies].

Subjective elements – Intent/Knowledge

- The defendant committed the act/s in (1) and (2) with the intention of forcing the victim to have or endure penetration in (2); or
- the necessary consequence of the defendant's act/s in (1) was to force the victim to have or endure penetration in (2); or
- the defendant committed the act/s accepting that a possible consequence of his acts in (1) was that the victim would be forced to have or endure penetration in (2).

Maximum Penalty: 15 years imprisonment (more if circumstances of aggravation apply).

Aggravation/Possible Alternative Charges

- Sexual coercion – Penal Code Article 171.
- Aggravation – Penal Code Article 173.
- Aggravation – Penal Code Article 182.

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Rape *(continued)***Offense under the Law Against Domestic Violence**

Rape will be a “crime of domestic violence” under LADV Article 35(b) if it falls within Article 2 of the LADV.

Examples

Penal Code Article 172 covers sexual acts in which the offender—by using violence, making a serious threat, or making the victim unconscious or unable to resist—forces the victim to have coitus. Coitus can be penetration of her vagina, mouth, or anus by his penis, or penetration of her anus or vagina by an object other than a penis, e.g., by a finger, a piece of wood, or a sex toy.

Examples include where the offender:

- uses physical force to hold the victim down so that he can penetrate her vagina or anus with his penis;
- threatens her with a knife or threatens to disfigure her unless she has coitus;
- causes the victim to become intoxicated with alcohol and unable to resist and engages in coitus with her or penetrates her anus or vagina with an object such as a finger.
- threatens to beat her up if she does not engage in coitus with him.
- a former boyfriend threatens to share explicit photos of her on Facebook if she does not have coitus with him
- if the offender is a relative, parent or guardian, or teacher of the victim, there can be other forms of coercion that include power imbalance and the use of their more powerful position and threats to force the victim to have coitus. In a family context, it may include threats made to harm family members or siblings.

Note that the offense is committed even if the victim does not fight back, resist, shout out, or try to flee. These examples of inaction by the victim are **not elements** of the offense.

Sexual Exploitation of Another

Law and Elements of an Offense

Article 174 – Penal Code of the Democratic Republic of Timor-Leste (Decree Law 19/2009)

- "1. Any person who, with intent to derive profit or any person who makes a livelihood from, promotes, facilitates, or by any other means, contributes toward engaging another person in prostitution or other sexual acts, is punishable with 3 to 10 years imprisonment.
2. The perpetrator is punishable with 4 to 12 years imprisonment, if any of the following circumstances arises:
- Exploitation of the situation of abandonment or economic necessity of the victim;
 - Use of violence, serious threat or coercion over the victim;
 - Displacing the victim to a country different from where the victim was born or was resident;
 - Withholding any identification document belonging to the victim."

Elements of offense to be proved:

Objective elements – Acts/Facts – Penal Code Article 174(1)

- The defendant promoted, facilitated, or contributed to the engagement of another person (third party) in prostitution or sexual acts (the act/s of the defendant).
- the act/s of the defendant were done for profit or livelihood.
- the third party engaged in prostitution or other sexual acts.

Subjective elements – Intent/Knowledge – Penal Code Article 174(1)

- The defendant committed the act/s:
 - with the intention to commit the act/s and to commit those acts to make a profit or earn a livelihood;
 - the necessary consequence of the act/s of the defendant was that the third party was engaged in prostitution or sexual acts;
 - accepting that the engagement of the third party in prostitution or sexual acts was a possible consequence of his/her acts.

Additional Objective and Subjective elements – Penal Code Article 174(2)

- If in addition to the above Objective and Subjective elements of Penal Code Article 174(1), the act/s of the defendant included that the defendant engaged in one or more of the actions set out in Penal Code Article 174(2)(a)–(d) and that it was done with the intention of committing those acts, then the maximum penalty increases.

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Sexual Exploitation of Another *(continued)*

Maximum Penalty: 10 years imprisonment (or 12 years imprisonment if Article 174(2) applies, or more if Article 182 applies).

Aggravation/Possible Alternative Charges

- Sexual Coercion – Penal Code Article 171.
- Aggravation – Penal Code Article 182.

Examples

Penal Code Article 174 is in two parts. The first in Article 174(1) sets out the offense. The second part in Article 174(2) sets out in effect aggravated circumstances in which the penalty for the offense increases.

There are at least three persons involved in the offense. The offender (first person) engages a woman (second person/victim) to provide sexual services or sexual acts paid for by a recipient of the services (third person). The actions between the second person who provides the sexual services and the third person who pays for those services are commonly called prostitution. The offender under this article is the person who facilitates, engages, and connects the person engaged in prostitution to make money or a livelihood.

Examples of Penal Code Article 174(1) are broad and include:

- The offender finds and encourages and/or persuades a woman to provide sexual services or sexual acts to others and obtains money from the recipients for the woman's services. Some of the money may be given to the victim.
- The offender may keep, manage, or assist in running a place or rent a hotel room where paid sexual services can be obtained. This may be a form of organized crime with a group of persons who are offenders.
- The offense can also be committed in family circumstances where a family member such as a parent, spouse, uncle, or aunt (the offender) may arrange for a female family member (victim) to have sex with older men who pay for those services.

Examples of Penal Code Article 174(2) are broad and include aggravating circumstances which increase the penalties for Penal Code Article 174 (1) and include:

- The woman victim has been abandoned by her spouse, and the offender knows of her situation and exploits her economic needs to involve her in prostitution to enable her to get money for herself and the offender.
- The woman victim—who may be a family member—is threatened by the offender with violence or harm to herself or others unless she provides sexual services and acts for money.
- Mostly in an organized crime situation, the woman is trafficked to another country to provide sexual services or sexual acts paid for by a recipient, or she may be forced into prostitution in another country because she cannot leave the country as her identity documents are taken by the recipient of the services.

Child Prostitution

Law and Elements of an Offense

Article 175 – Penal Code of the Democratic Republic of Timor-Leste (Decree Law 19/2009)

"1. Any person who, even with consent of the victim, practises any of the acts of sexual exploitation referred to in the preceding article [Article 174] against a minor aged less than 17 years, is punishable with 4 to 12 years imprisonment in the case of sub-article 1 and 5 to 15 years imprisonment in cases where any of the circumstances described in sub-article 2 occur.

2. Any person who offers, obtains, seeks or delivers a minor aged less than 17 years for purposes of child prostitution is punishable with 4 to 12 years imprisonment if no heavier penalty is applicable by force of another legal provision."

Elements of offense to be proved:

Note in addition to the Objective and Subjective elements required to be proved under **Penal Code Article 174(1) or 174(2)**, the following additional objective and subjective elements **need to be proved under Penal Code Article 175:**

Additional Objective elements – Acts/Facts – Penal Code Article 175(1)

- The defendant committed the act/s (under Penal Code Articles 174[1] or 174[2]).
- The victim /third party was aged less than 17 years.
- [the victim/third party aged less than 17 years was in a family with the defendant if LADV Article 2 applies].

Additional Subjective elements – Intent/Knowledge – Penal Code Article 175(1)

- The defendant committed the act/s (under Penal Code Articles 174[1] or 174[2]):
 - (i) with an intention to do those act/s and knowing that the victim/third party was aged less than 17 years;
 - (ii) the necessary consequence of the defendant's act/s was to promote, facilitate, or contribute to engaging the victim/third party aged less than 17 years in prostitution or sexual acts; or
 - (iii) accepting that promoting, facilitating, or contributing to engaging the victim/third party aged less than 17 years in prostitution or sexual acts, was a possible consequence of his/her acts.

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Child Prostitution *(continued)***Additional Objective elements – Acts/Facts – Penal Code Article 175(2)**

- The defendant offered, obtained, sought, or delivered the victim for prostitution (the act/s of the defendant).
- The victim was aged less than 17 years.
- [the victim aged less than 17 years was in a family with the defendant if LADV Article 2 applies].

Additional Subjective elements – Intent/ Knowledge – Penal Code Article 175(2)

- The defendant committed the act/s under Penal Code Article 175(2):
 - (i) with the intention to do those act/s knowing that the victim was aged less than 17 years;
 - (ii) the necessary consequence of the act/s of the defendant would be for prostitution of a victim aged less than 17 years; or
 - (iii) accepting that a possible consequence of his/ her act/s was prostitution of a victim aged less than 17 years.

Maximum Penalty: 12 years imprisonment or (more if Penal Code Article 174[2] or 182 apply).

Aggravation/Possible Alternative Charges

- Sexual coercion – Penal Code Article 171.
- Sexual exploitation of a Third Party – Penal Code Article 174.
- Mistreatment of a Minor – Penal Code Article 155.
- Aggravation – Penal Code Article 182.

Offense under the Law Against Domestic Violence

Child prostitution will be a "crime of domestic violence" under LADV Article 35(b) if it falls within Article 2 of the LADV.

Examples

The offense under Penal Code Article 175—like Penal Code Article 174—is in two parts and is linked to Article 174(1) and (2). The essential difference between Penal Code Article 174 and Penal Code Article 175 is that the victim of prostitution is a child under the age of 17 years.

There are at least three persons involved in the offense under Article 175. The offender (first person) engages a child (second person/victim), even if it is with their consent to provide sexual services or sexual acts paid for by a recipient of the services (third person).

- The examples given under Penal Code Article 174 also apply to an offender(s) whose actions involve obtaining, offering, or delivering a child to be used for prostitution.

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Child Prostitution *(continued)*

- An example of the use of a child for prostitution is when a parent provides their child to older men to pay money for sex acts with the child. The child may be brought to a hotel for prostitution.
- Another example is if a man marries a girl who is under 17-years-old and uses her for prostitution and gets her to find other girls to be used for prostitution with older men.

Child Pornography

Law and Elements of an Offense

Article 176 – Penal Code of the Democratic Republic of Timor-Leste (Decree Law 19/2009)

"1. Any person who, for predominantly sexual purposes, uses, exposes or represents a minor aged less than 17 years performing any sexual activity, whether real or simulated, or by any other means, exhibits the sexual activity or sexual organs of a minor, is punishable with 3 to 10 years imprisonment;

2. The same penalty is applicable to any person who produces, distributes, disseminates, imports, exports, offers, sells or possesses any medium of communication, instrument, document or record for the purposes referred to in the previous sub-article or with the aim of disseminating such acts."

Elements of offense under Article 176 (1) to be proved:

Objective elements – Acts/Facts

- The defendant
 - (i) used, exposed, or represented the victim performing any sexual activity, whether real or simulated; or
 - (ii) by any means, exhibited the sexual activity or sexual organs of the victim;
- The defendant engaged in the said conduct for predominantly sexual purposes.
- The victim was aged less than 17 years.

Elements of offense under Article 176 (2) to be proved:

Objective elements – Acts/Facts

- The defendant
 - (i) produced, distributed, disseminated, imported, exported, offered, sold, or possessed an item;
 - (ii) engaged in the said conduct for predominantly sexual purposes, or to distribute the item.

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Child Pornography (*continued*)

- The item
 - (i) was a means of communication, instrument, document, or record for purposes under Penal Code Article 176(1);
 - (ii) portrayed the victim performing any sexual activity (simulated or real) or displayed the sexual organs of the victim.
- The victim was aged less than 17 years.

Subjective elements – Intent / Knowledge (for both Penal Code Articles 176(1) and 176(2))

- The defendant committed the act/s:
 - (i) with an intention to do the act/s and knowing the victim was under the age of 17 years; or
 - (ii) the necessary consequence of the act/s was displaying the sexual activity or sexual organs of a victim aged less than 17 years; or
 - (iii) accepting that the display of the sexual activity or sexual organs of a victim aged less than 17 years, was a possible consequence of his or her act/s.

Maximum Penalty: 10 years imprisonment (more if Penal Code Article 182 applies).

Aggravation/Possible Alternative Charges

- Aggravation – Penal Code Article 182.
- Mistreatment of a Minor – Penal Code Article 155.

Examples

Child pornography under Penal Code Article 176 covers a broad range of acts. Pornography refers to printed or visual material that shows a person performing or simulating sexual activity or displaying sexual organs. In this offense, the person or victim is a child under 17 years.

- Under Penal Code Article 176(1) the offender is a person who creates the child pornography, predominantly (but not solely) for sexual purposes. Examples include the offender taking photographs or videos of a naked child, or a child in sexual poses or being involved in actual or simulated sexual activity.
- Under Penal Code Article 176(2) the offender(s) is a person who possesses the child pornography and/or shares it or sells it to others. The offender may keep or collect child pornography for their own purposes, or may disseminate child pornography on the internet, export it to others, or import it from the internet.
- Examples include the use of websites for sharing child pornography which are easily accessible on the internet.

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Child Pornography *(continued)*

- Examples of the offense also include where an offender takes photos or videos on his cell phone of his 16-year-old girlfriend and himself having sex and when the relationship ends, shares them on Facebook. (Note also Penal Code Article 183 Public disclosure of private information without consent).

Sexual Abuse of a Minor

Law and Elements of an Offense

Article 177 – Penal Code of the Democratic Republic of Timor-Leste (Decree Law 19/2009)

- “1. Any person who practises vaginal, anal or oral coitus with a minor aged less than 14 years is punishable with 5 to 20 years imprisonment.
2. Any person who practises any act of sexual relief with a minor aged less than 14 years is punishable with 5 to 15 years imprisonment.”

Elements of offense to be proved under Penal Code Article 177(1):

Objective elements – Acts/Facts

- The defendant penetrated the vagina, anus, or mouth of the victim with his penis.
- The victim was under the age of 14 years.
- [the victim was in a family with the defendant if LADV Article 2 applies].

Subjective elements – Intent/Knowledge

- The defendant committed the act/s:
 - (i) with an intention to do the act/s and knowing that the victim was under the age of 14 years; or
 - (ii) the necessary consequence of the act/s was to penetrate the vagina, anus, or mouth of the victim aged less than 14 years, with his penis; or
 - (iii) accepting that it was a possible consequence of acts, that the victim who was penetrated vaginally, anally, or orally with his penis, was less than age 14 years.

Elements of offense to be proved under Penal Code Article 177(2):

Objective elements – Acts/Facts

- The defendant practiced any act of sexual relief with the victim.
- The victim was under the age of 14 years.
- [The victim was in a family with the defendant if LADV Article 2 applies].

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Sexual Abuse of a Minor *(continued)***Subjective elements – Intent / Knowledge**

- The defendant committed the act/s:
 - (i) with an intention to do the act/s and knowing that the victim was under the age of 14 years; or
 - (ii) the necessary consequence of the act/s was to practice an act of sexual relief with the victim, who was aged less than 14 years;
 - (iii) accepting that it was a possible consequence of his or her conduct that the victim with whom he or she practiced an act of sexual relief, was under the age of 14 years.

Maximum Penalty: 20 years imprisonment (more if Article 182 applies).

Aggravation/Possible Alternative Charges

- Aggravation – Penal Code Article 182.

Offense under the Law Against Domestic Violence

Sexual abuse of a minor will be a “crime of domestic violence” under LADV Article 35(b) if it falls within Article 2 of the LADV.

Examples

There are two forms of the offense, the first form—Penal Code Article 177(1)—is penetration by penis of the vagina, anus, or mouth of a child under 14 years, the second form—Article 177(2)—is other sexual acts that do not involve penile penetration.

Penal Code Article 177(1) examples:

- incest by a family member such as a father, stepfather, uncle, or cousin of a child who puts his penis in the vagina of the child. “Minors” includes babies and children up to 14 years.
- Any form of penile penetration including oral or anal sex which can also occur in a school environment.

Penal Code Article 177(2) examples are very broad:

- Sexual relief includes touching or fondling the child on their breasts or private parts or rubbing his penis against their body, licking or sucking their private parts, or penetrating the vagina or anus with an object such as a finger.
- Further, sexual relief under Penal Code Article 177(2) does not require touching. If an adult looks at a child’s genitalia and/or shows genitals to a child to satisfy the adult’s sexual desires or interest, that amounts to practicing sexual relief.

Note that the consent of the minor is irrelevant. Further that Penal Code Article 172 (rape) does not apply even if the acts against the minor may otherwise fall within Penal Code Article 172. This is because Penal Code Article 42(a) requires that the specific provision regarding the minor takes precedence over the general provision in Penal Code Article 172.

Sexual Acts with an Adolescent

Law and Elements of an Offense

Article 178 – Penal Code of the Democratic Republic of Timor-Leste (Decree Law 19/2009)

“Any person who, being an adult and apart from situations provided in this section, practises any relevant act of sexual relief with a minor aged between 14 and 16 years, taking advantage of the inexperience of the same, is punishable with up to 5 years imprisonment.”

Elements of offense to be proved:

Objective elements – Acts/Facts

- The defendant
 - (i) practiced any act of sexual relief with the victim;
 - (ii) was an adult at the relevant time; or
 - (iii) took advantage of the inexperience of the victim (the victim’s consent is irrelevant).
- The victim was between the ages of 14 and 16 years.
- [the victim was in a family with the defendant if LADV Article 2 applies].

Subjective elements – Intent/Knowledge

- The defendant committed the act/s:
 - (i) with an intention to do the act/s; or
 - (ii) the necessary consequence of the act/s was to practice an act of sexual relief with the victim, who was aged 14–16 years;
 - (iii) accepting that it was a possible consequence of his or her conduct, that the victim with whom he or she practiced an act of sexual relief, was aged 14–16 years.

Maximum Penalty: 5 years imprisonment (more if circumstances of aggravation apply).

Aggravation/Possible Alternative Charges

- Aggravation – Penal Code Article 182.
- Rape – Penal Code Article 172.
- Note that Penal Code Articles 177, 179, 180, and 181 are not available as alternative charges.

Offense under the Law Against Domestic Violence

Article 178 will be a “crime of domestic violence” under LADV Article 35(b) if it falls within Article 2 of the LADV.

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Sexual Abuse of a Adolescent *(continued)***Examples**

- This offense may be committed by an adult defendant even if the child aged 14 – 16 years agrees to the offender's sexual acts. The consent of the child is irrelevant. The offense is committed if the offender "takes advantage" of the child's "inexperience."
- "Inexperience" does not require that the child be ignorant of what sexual acts are, for example, what sexual intercourse is, or that sexual acts include touching of private parts. There is no requirement to prove that the adolescent lacked knowledge of such sexual matters. The offense is committed by an offender "taking advantage" of the fact that they are an adult and in a superior position and she is a child who is only 14–16 years of age.
- Examples are where an adult offender "grooms" a child between 14 and 16 years to engage in sexual acts such as sexually touching or fondling the child on their breasts or private parts or rubbing his penis against their body. Such acts may later lead to the offender putting his penis in their mouth, vagina, or anus.
- The offender may take advantage of a child by showing them pornography to normalize the sexual behavior before then having the child engage in the same sexual acts.
- The adult offender may be in a more powerful position because of significant age differences, a family member, or a person in authority such as a teacher.
- If the adult is close in age to the child, such as an 18-year-old male with a 16-year-old girl who consented to the sexual acts, then the sexual acts are less likely to be regarded as the adult "taking advantage" of the girl.

Sexual Abuse of a Person Incapable of Resistance

Law and Elements of an Offense
**Article 179 – Penal Code of the Democratic Republic of Timor-Leste
(Decree Law 19/2009)**

"Any person, who practises any relevant act of sexual relief with an unconscious or incapable person particularly vulnerable by virtue of illness, physical or mental deficiency, taking advantage of said situation of incapacity, is punishable with 4 to 12 years imprisonment."

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Sexual Abuse of a Person Incapable of Resistance (*continued*)**Elements of offense to be proved:**

- The defendant committed the act/s:
 - The defendant practiced act/s of sexual relief with the victim.
 - the victim was in a situation of *incapacity* at the time, meaning that;
 - (i) the victim was unconscious, or
 - (ii) the victim was incapable - particularly vulnerable because of an illness, or because of a physical or mental disability.
 - [the victim was in a family with the defendant if LADV Article 2 applies].

Subjective elements – Intent/Knowledge

- The defendant committed the act/s:
 - (i) with an intention to do the act/s and was aware of the victim's *incapacity* and took advantage of that *incapacity*; or
 - (ii) the necessary consequence of the defendant's act/s was that the defendant practiced act/s of sexual relief with the victim who was in a situation of *incapacity*; or
 - (iii) accepting that in engaging in an act/s of sexual relief with the victim, it was a possible consequence that the victim was in a situation of *incapacity*.

Maximum Penalty: 12 years imprisonment (more if circumstances of aggravation apply).

Aggravation/Possible Alternative Charges

- Aggravation – Penal Code Article 182.
- Mistreatment of a Person with a Disability – Penal Code Article 153.
- Sex Abuse of a Minor – Penal Code Article 177.

Offense under the Law Against Domestic Violence

Penal Code Article 179 will be a "crime of domestic violence" under LADV Article 35(b) if it falls within Article 2 of the LADV.

Examples

- A bedridden patient in a nursing home or hospital or who is an invalid at home in bed or a wheelchair is sexually touched, licked, or fondled by an offender, or an offender puts his penis in their mouth or rubs his penis against their body.
- A person who has a mental disability is sexually touched, licked, or fondled, or an offender puts his penis in their vagina, anus, or mouth.
- A person is unconscious or incapable due to excess alcohol consumption and the offender takes advantage of the victim's condition to subject the victim to sexual acts.

Sexual Exhibitionism

Law and Elements of an Offense

Article 181 – Penal Code of the Democratic Republic of Timor-Leste (Decree Law 19/2009)

- “1. Any person who publicly disturbs another person by committing acts of a sexual nature is punishable with up to 3 years imprisonment or a fine.
2. Any person who, in the presence of others, practises vaginal, anal or oral coitus, against the will of the latter, even if this occurs in private, incurs the same penalty.
3. The attempt is punishable.
4. Prosecution depends on the filing of a complaint.”

Elements of offense to be proved:

Objective elements – Acts/Facts – Penal Code Article 181(1)

- The defendant committed act/s:
 - (i) of a sexual nature – either alone or with another or others.
 - (ii) in public – in a public place or a place where the public has access.
 - (iii) The victim (the viewer) saw the acts committed by the defendant and was disturbed.

Subjective elements – Intent/Knowledge – Penal Code Article 181(1)

- The defendant committed the act/s:
 - (i) with an intention to do the act/s, knowing that he/she was committing the act/s publicly and knowing that the act/s were seen by a viewer; or
 - (ii) as the act/s were committed in that place, it was a necessary consequence that they were committed publicly and likely to be seen; or
 - (iii) accepting that as the act/s were committed in that place, a possible consequence was that a victim (the viewer) would see the act/s and be disturbed.

Objective elements – Acts/Facts – Penal Code Article 181(2)

- The defendant engaged in act/s:
 - (i) The defendant penetrated the vagina, anus, or mouth of a third party with his penis against the will of the third party.
 - (ii) The act/s were in public – in a public place or a place where the public has access; or
 - (iii) the acts were in a private place – but where they were seen by a victim (the viewer).
 - (iv) The victim (the viewer) saw the acts committed by the defendant and was disturbed.

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Sexual Exhibitionism *(continued)***Subjective elements – Intent/Knowledge – Penal Code Article 181(2)***Public place*

- The defendant committed the act/s:
 - (i) with an intention to do the act/s, knowing that he/she was committing the act/s publicly and knowing that the act/s were seen by a victim viewer; or
 - (ii) as the act/s were committed in that place, it was a necessary consequence that they were committed publicly and likely to be seen; or
 - (iii) accepting that as the act/s were committed in that place, a possible consequence was that a victim (the viewer) would see the act/s and be disturbed.

Private place

- The defendant committed the act/s:
 - (i) with an intention to do the act/s, knowing that he/she was committing the act/s in a private place and the act/s were seen by a victim (the viewer);
 - (ii) as the act/s were committed in a private place but where a person(s) would be able to view the acts, it was a necessary consequence that a victim (the viewer) would see the acts; or
 - (iii) accepting that as the act/s were committed in that place, a possible consequence was that a victim (the viewer) would see the act/s and be disturbed.

Maximum Penalty: 3 years imprisonment (more if circumstances of aggravation apply).

Possible Alternative Charges

- Aggravation – Penal Code Article 182.

Examples

- There are two basic forms of the offense and many ways in which the offense can occur under each of the two sub-articles. In each case, the viewer is the victim who is disturbed by seeing the sexual acts and files a complaint.

Penal Code Article 181(1)

- A viewer (the victim) sees a person (offender) masturbating in a shopping mall or a street.
- A viewer (the victim) sees a couple (offenders) having consensual sex on a beach.

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Sexual Exhibitionism *(continued)*

- A viewer (the victim) when walking along a street, sees a person(s) (offender/s) masturbating or having consensual sex through a house window, which can be seen by passersby.

Penal Code Article 181(2) in this example of the offense there are at least three persons involved in the sexual act:

- A viewer (the victim) (Person 1) sees a rape taking place in a street, on the beach, or in a public toilet by the offender or rapist (Person 2) and the person being raped (Person 3).
- A viewer (the victim) sees a rape taking place by an offender in a private house where the viewer is present or where a viewer would be able to view the rape.
- In each case of the above examples, there is also a further victim who is the person being raped contrary to Penal Code Article 172.

Penal Code Article 181(3) also punishes an attempt to commit the crime.

- An example under Penal Code Article 181(2) would be where a viewer sees actions that amount to an attempt to commit rape in a public place or a private home.

Failure to Fulfill an Obligation to Provide Food Assistance

Law and Elements of an Offense

Article 225 – Penal Code of the Democratic Republic of Timor-Leste (Decree Law 19/2009)

“1. Any person who has an obligation to provide food assistance, and being in a position to do so fails to fulfill such an obligation, in such a manner that jeopardizes the basic food security of the beneficiary, is punishable with up to 3 years imprisonment or a fine, even if assistance provided by another party removes said danger.

2. Prosecution depends on the filing of a complaint.”

Elements of offense to be proved:

Objective elements – Acts/Facts

- The defendant committed act/s:
 - (i) Failed to provide food for the victim.
 - (ii) Was under an obligation to provide food for the victim.
 - (iii) Was in a position to provide food for the victim.
 - The failure to provide food jeopardized the basic food security of the victim.

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Failure to Fulfill an Obligation to Provide Food Assistance *(continued)*

Subjective elements – Intent/Knowledge

- The defendant committed the act/s:
 - (i) with an intention to do the act/s; or
 - (ii) the necessary consequence of the act/s was to jeopardize the basic food security of the victim; or
 - (iii) accepting that it was a possible consequence of his/her conduct, that the victim would have basic food security jeopardized.

Maximum Penalty: 3 years imprisonment.

Aggravation/Possible Alternative Charges

- Abandonment or Exposure – Penal Code Article 143.
- Mistreatment of a Spouse – Penal Code Article 154.
- Mistreatment of a Minor – Penal Code Article 155.
- Mistreatment of a Disabled Person – Penal Code Article 153.
- Aggravation – Penal Code Article 156.

Examples

- A husband who is the sole or main financial provider in the household leaves his wife (and/or children) and does not give her any or sufficient money to buy basic food to live on for herself (and/or children). Even if the wife goes to live with her parents, or a family member provides her with food, this does not remove the obligation of her husband to support her (and/or children) with basic food necessities.
- This situation can occur when a husband leaves his wife to live with another woman and refuses to pay money or provide basic food to his wife. Polygamy is relatively common.

PART E: Overview of Role of Prosecution – International Standards

Key International Instruments

Key International Instruments	
<p>Key international instruments which provide guiding principles and standards as to the role of prosecutors in the protection of women and children include:</p> <ul style="list-style-type: none"> • United Nations <i>Declaration on the Elimination of Violence against Women</i>.^a • CEDAW Committee <i>Article 4 General Recommendation No. 19 Violence against Women</i>, 1992. • Inter-American <i>Convention on the Prevention, Punishment and Eradication of Violence against Women</i>.^b • Council of Europe <i>Convention Preventing and Combating Violence against Women and Domestic Violence (the "Istanbul Convention")</i>.^c • United Nations Human Rights Office of the High Commissioner <i>Guidelines on the Role of Prosecutors</i>, 1990.^d • 1985 UN <i>Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power</i>.^e 	
What	Who
<p>These international instruments set out guidelines and standards that are relevant to the investigation of GBV. These guidelines and standards are consistent with human rights principles enshrined in the Constitution and express provisions of the LADV and Law No. 7/2022 The Statute of the Public Prosecution Service, as amended by Law No. 7/2023 (PPS Law).</p> <p>International standards and requirements address the need for effective investigations, the professional</p>	<p>Prosecutors play an important role in ensuring respect for fundamental human rights, including the rights of women and children to be free from GBV. This role is acknowledged worldwide and is given expression in a range of international instruments.</p> <p>International instruments on the elimination of violence against women recognize the importance of legal means to prevent GBV and to ensure accountability. They refer to the responsibility of states to exercise due diligence to prevent, investigate,</p>

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Key International Instruments (continued)

role of prosecutors, and the need to provide victims with access to justice and support.	and punish acts of GBV, whether committed by the state or private persons. Prosecutors act on behalf of the state and play a vital role in ensuring that offenses of GBV are effectively investigated and that the rights of victims are respected during the investigation process.
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^a Adopted by the UN General Assembly by General Assembly Resolution 48/104, 1993.

^b Organization of American States, 9 June 1994.

^c Council of Europe. 2014. November.

^d Adopted on 7 September 1990 by the Eighth UN Congress on the Prevention of Crime and Treatment of Offenders.

^e Adopted by the UN General Assembly on 29 November 1985 via General Assembly Resolution 40/34.

Effective Investigations

International Standards
<ul style="list-style-type: none">• Customs, traditions, or religious considerations should not be invoked to avoid obligations to investigate and prosecute violence against women (<i>UN Declaration on Elimination of Violence against Women</i> [Article 4]).• Authorities must ensure that re-victimization of women does not occur in investigating and prosecuting GBV (<i>UN Declaration on Elimination of Violence against Women</i> (Article 4[f])).

Access to Justice

International Standards

Victims should be

- provided with timely access to mechanisms of justice;^a
- informed of their rights in seeking redress;^b
- provided with effective complaints procedures and remedies in a language they understand; and
- informed of their role and the scope, timing, and progress of the proceedings and the disposition of their cases.^c

^a United Nations. 1993. *Declaration on Elimination of Violence against Women*. Adopted by the United Nations General Assembly in 1993, Resolution 48/104 (Article 4[d]).

^b United Nations. 1993. *Declaration on Elimination of Violence against Women*. Adopted by the United Nations General Assembly in 1993, Resolution 48/104 (Article 4[d]).

^c United Nations. 1985. *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. A/RES/40/34. 6(a).

Access to Support Services

International Standards

Women subjected to violence and their children should be provided with

- specialized assistance such as rehabilitation, assistance in child-care and maintenance, treatment, counseling, health, and social services, etc.; and
- all appropriate measures to promote their safety and physical and psychological rehabilitation (*UN Declaration on Elimination of Violence against Women* (Article 4[g])).
- Services should be accessible to rural women. Where necessary, special services are provided to isolated communities.

Professional Responsibilities of Prosecutors

International Standards

Prosecutors shall:

- be individuals of **integrity and ability**, with **appropriate training and professional qualifications**;^a
- be aware of the **ideals and ethical duties** of their office, and the rights of the suspect and the victim;
- maintain the **honor and dignity** of their profession;^b
- be allowed to perform their functions **without intimidation, hindrance, harassment, and improper interference**;^c
- perform their duties **impartially, fairly, consistently, and expeditiously**;^d
- respect and uphold **human dignity and human rights**, and **avoid any kind of discrimination**;^e
- receive **training to sensitize them to the needs of women**, on equality between women and men, on protecting the needs and rights of victims, and how to **prevent secondary victimization**;^f
- receive training on coordinated **multi-agency cooperation** in respect of referrals and providing support and services to victims;
- consider the **views and concerns of victims** when their interests are affected and ensure that victims are informed of their rights;^g
- take **measures to minimize inconvenience to victims**, to protect their privacy and, where necessary, to ensure their safety as well as that of their families;^h
- strive to **cooperate** with the police, the courts, the legal profession, public defenders, and other government agencies or institutions;ⁱ and
- **collect data and compile statistics** relating to the prevalence of violence against women, especially domestic violence.^j

^a United Nations Congress. 1990. [Guidelines on the Role of Prosecutors](#) adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Havana, Cuba. 27 August–7 September. (UN Doc. A/CONF.144/28/Rev.1). Paras. 1–2.

^b United Nations Congress. 1990. [Guidelines on the Role of Prosecutors](#) adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August–7 September 1990 (UN Doc. A/CONF.144/28/Rev.1). Para. 3.

^c United Nations Congress. 1990. [Guidelines on the Role of Prosecutors](#) adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Havana, Cuba. 27 August–7 September. (UN Doc. A/CONF.144/28/Rev.1). Para. 4.

^d United Nations Congress. 1990. [Guidelines on the Role of Prosecutors](#) adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August–7 September 1990 (UN Doc. A/CONF.144/28/Rev.1). Para. 12.

^e United Nations Congress. 1990. [Guidelines on the Role of Prosecutors](#) adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August–7 September 1990 (UN Doc. A/CONF.144/28/Rev.1). Para. 13.

- ^f United Nations. 1993. Declaration on Elimination of Violence against Women. Article 4(i).
- ^g United Nations Congress. 1990. [Guidelines on the Role of Prosecutors](#) adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August–7 September 1990 (UN Doc. A/CONF.144/28/Rev.1). Para. 13(d).
- ^h United Nations. 1985. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. A/RES/40/34. 6(d).
- ⁱ United Nations Congress. 1990. [Guidelines on the Role of Prosecutors](#) adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August–7 September 1990 (UN Doc. A/CONF.144/28/Rev.1). Para 20.
- ^j United Nations. 1993. Declaration on Elimination of Violence against Women. Article 4(k).

PART F: Overview of Role of Prosecution in Timor-Leste

Three major laws apply to the role of the prosecutors. In each case, the laws referred to are highlighted by their relevance to GBV offenses.

In addition to these three laws, further powers and responsibilities are given to the PPS to be exercised during the process of investigations of GBV offenses in two other major laws, discussed in Part G.

Major Laws

- Constitution of the Democratic Republic of Timor-Leste
- The Statute of the Public Prosecution Service Law No. 7/2023 amended from Law No. 7/2022 (PPS Law)
- The Law on the Organization of Criminal Investigations No. 9/2022 (LOIK)

Constitution of the Democratic Republic of Timor-Leste

Human rights are guaranteed under the **Constitution of the Democratic Republic of Timor-Leste** ("the Constitution") and the Constitution bestows important responsibilities on the PPS in protecting human rights, including those of women and children.

Role of the Prosecution

- Public Prosecutors represent the state and are responsible for prosecuting and promoting the enforcement of the law. They are accountable to the Prosecutor General of the Republic and governed by their statute (PPS Law Article 132).
- The Office of the Prosecutor General is established as the "highest authority in public prosecution" and is directed by the Prosecutor General of the Republic. Its composition and competencies shall be defined by law" (PPS Law Article 133).

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Role of the Prosecution *(continued)*

- The Superior Council for the Public Prosecution is established as an integral part of the Office of the Prosecutor General and is required to be regulated by law (PPS Law Article 134).
- As referred to in the Constitution, the composition and competencies of the PPS—as well as the roles and functions—are set out in a dedicated PPS law.

The Constitution bestows responsibility on the PPS for

- (i) representing the state,
- (ii) prosecuting, and
- (iii) promoting the enforcement of the law.

Provisions of the Constitution that Have Particular Relevance to Gender-Based Violence	
Section 6(j)	"The fundamental objectives of the State shall be ... to create, promote and guarantee the effective equality of opportunities between women and men."
Section 16	"all citizens are equal before the law" and "no one shall be discriminated against on grounds of ... marital status, gender ...".
Section 17	"women and men shall have the same rights and duties in all areas of family, political, economic, social and cultural life."
Section 18(1)	"children shall be entitled to special protection by the family, the community and the State, particularly against all forms of abandonment, discrimination, violence, oppression, sexual abuse and exploitation."
Section 29(2)	"The State shall recognize and guarantee the right to life."
Section 30(1)	"Everyone has the right to personal freedom, security and integrity."
Section 36	"Every individual has the right to honor, good name and reputation ... and privacy of his or her personal and family life."
Section 39(3)	"Marriage shall be based on free consent by the parties and on terms of full equality of rights between the spouses, in accordance with law."
Section 39(4)	"... special protection shall be granted to all women during pregnancy and after delivery..."

The Statute of the Public Prosecution Service

Law No. 7/2023 Amended from

Law No. 7/2022 (PPS Law)

Role of the Public Prosecution Service

“The PPS represents the State, takes criminal action, ensures the defense of minors, absentees and legally incompetent persons, upholds democratic legality and promotes law enforcement.” (PPS Law Article 1).

Functions or competencies of the PPS

- Regarding investigating crimes of GBV, PPS functions include:
 - (i) To represent and protect the interests of the state;
 - (ii) To ensure the defense of legally incompetent persons, minors, and absentees;
 - (iii) To lead the criminal investigation, even when carried out by other entities; and
 - (iv) To monitor proceedings by the organs of the criminal police during inquiries (PPS Law Article 5).
- The PPS is to be assisted by the criminal investigation police bodies and by administrative staff and may have advisory and consultative services (PPS Law Article 7).
- Public entities are required to provide the PPS with any requested assistance, notably by providing information and providing documents and processes for examination (PPS Law Article 6).
- The PPS also has the power to intervene in proceedings when representing the state or minors, absentees, and legally incompetent persons (PPS Law Article 2).

Further aspects of the role of the PPS in investigating offenses—including GBV offenses—are set out in a third law, the Law on the Organization of Criminal Investigations No. 9/2022 (LOIK).

Law on the Organization of Criminal

Investigations No. 9/2022 (LOIK)

What

- LOIK concerns the “organization and operation of criminal investigations within the framework of criminal procedural law.”^a
- It defines processes and entities relevant to criminal investigations and assigns investigative functions among different entities.

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Who

Role of the Public Prosecution Service

- LOIK states that a criminal investigation is to be led by the competent judicial authority (LOIK Article 4[1]). In this context, the PPS is the relevant judicial authority.^b
- The PPS is to be assisted by the “bodies of the criminal police” (LOIK Article 4[2]) which are defined as the National Police of Timor-Leste (PNTL) and the Criminal Investigation Police (PCIC) (LOIK Article 6[2]).

The powers of the PPS in conducting a criminal investigation under the Act include (LOIK Article. 5[1]):

- leading the investigation;
- delegating the investigation to the bodies of the criminal police;
- coordinating and supervising activities of the investigation;
- issuing directives, orders, and specific instructions in connection with the investigation;
- guaranteeing cooperation and coordination between the bodies of the criminal police;
- requesting information about the progress of the case from the bodies of the criminal police;
- taking back the case at any time to deal with it directly;
- ordering inspections and inquiries of the organs of the criminal police in the context of criminal investigations; and
- exercising any other powers granted by law.

How

- The PPS directs criminal investigations and supervises the work of the bodies of the criminal police.
- The PPS has ultimate control over the investigation and usually directs investigation by issuing delegations, directives, orders, or giving specific instruction to the PNTL and PCIC (LOIK Articles 4[3], 5(1), 7, 10[3], and 11[2]). This is discussed further on pages 86–87 and 91–101 of this Handbook.
- The PNTL and PCIC are required to assist the PPS in criminal investigations and to undertake investigative activities within their powers as delegated to them (LOIK Article 7[1]).
- The PNTL and PCIC may also carry out precautionary or protective acts as deemed necessary and urgent to preserve evidence. They must immediately inform the PPS of any crime they know about (LOIK Article 7[2]).
- Concerns and disputes about investigative powers will be settled by the PPS following procedural law (LOIK Articles 7[4] and 8).

^a Law on the Organization of Criminal Investigations No. 9/2022, Article 1.

^b “Judicial authority” is defined as including judges or the PPS, depending on the relevant criminal procedure laws (LOIK Article 3 [c]).

PART G: Overview of the Role of Prosecution during Investigation

Laws	Who
<ul style="list-style-type: none"> • The Statute of the Public Prosecution Service, Law No. 7/2023 amended from Law No. 7/2022 (PPS) • Criminal Procedure Code, Law No. 15/2023 (CPC) • Law Against Domestic Violence, Law No. 7/2010 (LADV) • Law on the Organization of Criminal Investigations, Law No. 9/2022 (LOIK) 	<ul style="list-style-type: none"> • Both the CPC and the LADV give additional roles and responsibilities to the PPS. These reinforce the role of the PPS as set out under the Law on the Statute of the Public Prosecution Service and the Law on the Organization of Criminal Investigations described in Part F.

Criminal Procedure Code, Law No. 15/2023 (CPC)

Role of the Public Prosecution Service

Responsibilities and tasks to be undertaken by the PPS under the Criminal Procedure Code (CPC) during the GBV investigation process include:

- **receive claims, complaints, and reports** relating to allegations of criminal conduct (CPC Articles 48[2][a] and 210[2]);
- **initiate criminal proceedings** if the requirements for legitimacy have been met (CPC Article 48[2][a]);
- **collaborate with assistants in proceedings** who are involved in the criminal processes noting that the assistants are subordinate to the PPS in their interventions (CPC Articles 72[1] and 72[2]);
- **formulate or request civil compensation in the indictment on behalf of persons** under the conditions as set out in CPC Articles 72(B–H);
- **conduct the inquiry** and take over procedures it deems appropriate (CPC Articles 48[b] and 227);

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Criminal Procedure Code, Law No. 15/2023 (CPC) *(continued)*

- **request the intervention of the judge** in performing certain acts during the inquiry (CPC Articles 48[c] and 226) examples being the first questioning of an arrested defendant, statements for future use, and validations of search and seizure;
- **receive reports or information** from the police regarding the **identification of a suspect** (CPC Articles 53[5] and 55[2]);
- **request an examination by an expert**, including a medico-legal examination (CPC Articles 150, 151[3]);
- **undertake various pretrial detention** functions relating to the defendant (CPC Articles 196, 197–203);
- **require proof of identity and residence** of the accused (CPC Article 184);
- **undertake various responsibilities** when a **complaint is waived or withdrawn** (CPC Article 216);
- **receive the final report** and records from the entity tasked with carrying out investigation actions (CPC Article 234);
- **review the report and records**, and **may order further inquiries** (CPC Article 234[2]);
- **review and analyze the evidence** gathered and decide:
 - (i) whether a **writ of indictment** should be issued if there is sufficient evidence of the crime, the perpetrator and the evidence would reasonably satisfy the court to find the charge proven and to impose a penalty or security measure (CPC Articles 236[1] and [2]); or
 - (ii) whether the case should be **dismissed** (CPC Articles 235[1])[a]–[c]); or
 - (iii) whether the case should be **archived** (if for example the defendant cannot be located at that time).

Finally, the PPS is to **sustain the indictment** (CPC Article 114).

How

The processes used by the PPS in implementing these responsibilities are discussed in other sections of this Handbook (Parts J, K, N, O and P).

Law Against Domestic Violence, Law No. 7/2010 (LADV)

What	How
<ul style="list-style-type: none">• The LADV is dedicated to establishing the legal regime that applies to the prevention of domestic violence as well as protection and assistance to be given to victims. It includes the roles and responsibilities of many actors, including the PPS.	<ul style="list-style-type: none">• The processes used by the PPS in implementing these responsibilities are discussed in other sections of this Handbook (pages 90 and 107–110).

Role of the Public Prosecution Service

- Where the crime is a crime of domestic violence (as defined by LADV Article 2), the PPS has additional roles and responsibilities:
- provide **direct assistance to victims** and inform them of their rights and how to exercise them, including their right to services of the Office of the Public Defender when they lack the means to engage private lawyers (LADV Article 28[a]);
 - refer victims to **hospitals** for assistance or to **shelters** as needed (LADV Article 28[b]);
 - ensure that the victim is **provided with information** appropriate to the protection of his or her rights (LADV Article 7);
 - receive **reports of domestic violence cases** from reception centers for criminal prosecution, recognizing that victim and/or counselor information is to be treated confidentially (LADV Article 19);
 - receive reports of domestic violence cases from hospitals (LADV Article 22);
 - receive reports and documents of domestic violence cases from social assistance services (LADV Article 23[f]);
 - receive a **summary report** from the SVPS of the observations made, measures adopted, the evidence collected, and the complaint of the victim (LADV Article 24[2][e]);
 - receive a **report from either a lawyer or a public defender** regarding a domestic violence case (LADV Article 25).

Law on the Protection of Children and Youth in Danger, Law No. 6/2023 (LPC)

What	How
<ul style="list-style-type: none">• The LPC creates an integrated child protection system by establishing legal and procedural frameworks to prevent violations and protect the rights of children and young people. It also includes the roles and responsibilities of many actors, including the PPS.	<ul style="list-style-type: none">• The PPS is involved in several processes under the LPC, but those most relevant to investigating GBV offenses are under three headings: Chapter IV on Communications, Chapter V on Intervention by the PPS, and Chapter VII on Emergency Procedures.• Other responsibilities are discussed in other sections of this Handbook (pages 126, 161, 164, and 166).

Role of the Public Prosecution Service

LPC Chapter IV on Communication.

LPC Article 50: When the facts that led to a situation of danger to a child or youth amount to a crime, the entities with competence in matters of children and youth and the services for the protection of children and young people must communicate this situation to the PPS or the police authorities.

LPC Chapter V on Intervention.

LPC Article 52(2): The PPS may request the parents, legal representative, or whoever has de facto custody for clarification about matters concerning the promotion and defense of the rights of children and young people in danger.

LPC Article 52(3): The PPS may monitor child and youth protection services to assess the legality and adequacy of decisions and also monitor their procedural activity and promote appropriate judicial procedures.

LPC Article 52(4): The PPS represents children and young people in danger, proposing actions, requesting civil guardianship measures, and using any judicial means necessary for their promotion and defense of their rights and protection.

LPC Article 53: The PPS may initiate a judicial process for judicial assessment of the decision of the services for the protection of children and the promotion of rights and protection of children and youth.

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Law on the Protection of Children and Youth in Danger... *(continued)***LPC Chapter VII on Emergency Procedures.**

LPC Article 71 provides for urgent procedures to be applied when the child or youth is in current or imminent danger but consent is absent and there is a need to request the intervention of the court or law enforcement agencies. In this situation, the PPS is to be informed and request the competent court to proceed under LPC Article 72 with the judicial procedure to protect the child or youth. If it is not possible for the court to intervene, the police authorities will remove the child or young person from the danger they are in and ensure their protection.

Note. As also referred to on page 103 of this Handbook, the effectiveness of the LPC law to protect children and youth will heavily rely on the ability of all relevant services and organizations to collaborate, notably the Support to Vulnerable People Subsection (SVPS) formerly the Vulnerable Persons Unit (VPU), the Referral Network services, and the PPS.

PART H: Overview of Roles of Various Organs Involved in the Investigation of Gender-Based Violence Cases

This section sets out the roles and functions of various actors involved in the investigation of GBV offenses and their interaction.

Four Primary Organs Involved in the Investigation of Gender-Based Violence Offenses	
1. Public Prosecution Service (PPS)	2. National Police of Timor-Leste (PNTL)
The PPS (including Justice Officers)	<p>PNTL includes one of its Operation Command Departments, the Criminal Investigation Department (CID) (PNTL Law Article 55[2][c]), and special sections within its organizational structure:</p> <ul style="list-style-type: none"> (i) The Vulnerable Persons Unit (SVPS/VPU)(PNTL Law Article 58[4]); and (ii) The PNTL Forensic Laboratory (PNTL Law Article 58[3]).
3. Criminal Investigation Police (PCIC)	4. Judges
	<p>Judges (have a more limited role which is not described in this section but is referred to on pages 133–134 and 138 of this Handbook)</p>

The interaction of these organs is outlined in the LOIK. Before addressing the LOIK, it is first necessary to refer to other laws that describe the individual roles and functions of the relevant actors.

The role of the **PPS** has already been set out in Part F, therefore this section will discuss the following:

- The role of the **PNTL** in the investigation of GBV (which includes the SVPS, CID, and the PNTL Forensic Laboratory).
- The role of **PCIC**.
- The **LOIK** and its effect on the PPS, the PNTL, and PCIC.
- The **recommendations made for standard operating procedures, guidelines, and forms** to harmonize and provide consistency of practice between the organs when investigating GBV offenses under the LOIK.

Role of the National Police of Timor-Leste

Law	How
<ul style="list-style-type: none">• Constitution of the Democratic Republic of Timor-Leste, Article 147.• Criminal Procedure Code, Law No. 15/2023 (CPC), Articles 52, 53, 54, 55, 56–57.• Decree Law on Timor-Leste’s National Police No. 55/2022 (PNTL Law), Articles 6(2), 6(3)(e), (g) and (l), 13, 55 (2)(c) and (d), 58, 60, and 83.• Law on the Organization of Criminal Investigations No. 9/2022 (LOIK), Articles 3–9, 10.1, 10.2, 10.5, 29, and Annex.• Law Against Domestic Violence, Law No.7/2010 (LADV), Articles 7, 13(4), 19, 20, 21, 22(c) and (d), 23(c) and (f), 24, 25(b).	<ul style="list-style-type: none">• The PNTL implements its powers and functions to investigate GBV offenses following the laws outlined in this table. It does so following its internal processes which are not the subject of this Handbook.• The work of the PNTL is mostly undertaken by delegations from the PPS (CPC Article 57). The delegation process is discussed in this Handbook on pages 123–133.• The delegations made by the PPS to the PNTL can be implemented by its specialist sections such as the SVPS and the PNTL Forensic Laboratory as appropriate.
Who	
<p>The PNTL:</p> <ul style="list-style-type: none">• is usually the first point of contact for complaints of GBV through its specialized service Support to Vulnerable People Subsection (SVPS) formerly the Vulnerable Persons Unit (VPU), described on pages 94–95 and 116–117 of this Handbook.• includes the Criminal Investigation Department (CID) and two special sections or units:<ul style="list-style-type: none">(i) the SVPS (PNTL Law Articles 80[1][a][iv] and 58[4]), and(ii) the PNTL Forensic Laboratory (PNTL Law Article 58[3]).	

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Role of the National Police of Timor-Leste *(continued)*

- is a major investigator of domestic violence under the LADV as well as other GBV crimes, except those offenses for which PCIC has exclusive responsibility, described on pages 97–101 of this Handbook.
- has an essential role in preventing crime with due respect for human rights (Constitution Article 147[2], PNTL Law Articles 6[2], 6[3][r]).
- is to proactively gather information and reports of crime, track down perpetrators, and take necessary and urgent precautionary acts to secure evidence (CPC Article 52[1]).
- is required to assist judicial authorities—particularly the PPS—during investigation (CPC Article 52[2], PNTL Law Article 6[3][e]).
- is required to collect information to discover the perpetrator of a criminal offense and their identification, even before a criminal case has been initiated by the PPS (CPC Article 55).
- has many additional functions under the CPC which are referred to under the investigation process.

The PNTL has an increased emphasis on community policing, as indicated in the PNTL Law No. 55/2022:

- a Community Policing Department has been set up to supervise and implement special programs on community policing and respect for the principles of equality and non-discrimination (PNTL Law Articles 55[2][c] and 60).
- a Gender and Equality and Inclusion Office is responsible for proposing and disseminating good practices regarding gender equality, inclusion, and non-discrimination as well as contributing to the preparation and evaluation of internal policies and standards (PNTL Law Article 46)
- the preamble to the PNTL Law refers to ensuring that one-third of the police members who consult with the General Commander are female. This is an example of the application of special measures being applied within the PNTL.^a

In summary, the PNTL has a broad range of roles and responsibilities under the laws of Timor-Leste that are relevant to the investigation of GBV offenses. If applied, they will lead to an effective, victim-centered, and gender-sensitive approach for victims.

^a Special measures are defined on page 18 of this Handbook.

Role of the Support to Vulnerable People Subsection (SVPS), Formerly the Vulnerable Persons Unit (VPU)

Law
<ul style="list-style-type: none">• Law Against Domestic Violence, Law No. 7/2010, Articles 21, 24.
Who
<p>The Support to Vulnerable People Subsection (SVPS) formerly the Vulnerable Persons Unit (VPU):</p> <ul style="list-style-type: none">• is a special unit of the PNTL and was established initially as the VPU in 2001 to assist victims of sexual assault, domestic violence, and child abuse at national, district, and municipal levels;• is now formally recognized as a unit within the Criminal Investigation Department (PNTL Law Articles 80[1][a][iv] and 58[4]);• is responsible for receiving complaints and investigating allegations of domestic violence (LADV Articles 21 and 24);• has an office in every district’s PNTL headquarters;• is an identifiable access point with designated police officers within the police services for victims of GBV and service providers;• works closely with communities and the Referral Network;• has been designed to be victim-centered and gender-sensitive in its approach and has usually received training;• has special and important multiple legal responsibilities under LADV Article 24, including:<ul style="list-style-type: none">(i) providing the victim with all necessary assistance including informing them of their rights;(ii) referring the victim where necessary to a shelter or support center;(iii) taking measures to ensure that the victim receives immediate medical and psychological support by specialized staff, where necessary;(iv) in case of danger to the mental stability of the victim, taking measures to ensure that a mental health professional undertakes an evaluation so that the victim may continue to benefit from other supports from competent bodies;(v) informing the Office of the Public Defender if the victim lacks the financial means to hire the services of a lawyer within 5 days of being aware of those facts;(vi) responding to requests from hospital services and victim support services to intervene in cases of domestic violence; and(vii) responding to anonymous calls for victim assistance (LADV Article 20).

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Role of the Support to Vulnerable People Subsection... *(continued)*

How
<ul style="list-style-type: none">• The SVPS implements its powers and functions to investigate GBV offenses following the LADV. The SVPS members are police, and their powers and functions are the same as those set out under the role of the PNTL set out above.• The SVPS operates according to its internal processes, which are not the subject of this Handbook.• Their work is mostly undertaken by delegations from the PPS to the PNTL (CPC Article 57). There is potential for the SVPS to be specifically delegated by the PPS directly. The delegation process is discussed further in this Handbook on page 130.• The SVPS has the additional obligation to prepare a summary report of the observations made, the measures adopted, and the evidence collected. The report is to be attached to the complaint and submitted to the PPS within 5 days from the date when it became aware of the facts (LADV Article 24).• The content of the summary report will vary depending on the nature of the crime, their role, and the short period in which this report is to be provided to the PPS (Annex A: Common Summary Report Form for SVPS).

Role of the National Police of Timor-Leste (PNTL) Criminal Investigation Department (CID)

Law	
<ul style="list-style-type: none">• The Decree on the Organization of the PNTL Law No. 55/2022 (PNTL Law) Articles 55 and 58.	
Criminal Investigation Department	National Police of Timor-Leste (PNTL) Forensic Laboratory
<p>The Criminal Investigation Department (CID), previously known as PNSIC:</p> <ul style="list-style-type: none">• is one of seven operation commands within the PNTL (PNTL Law Article 55).	<p>The PNTL Forensic Laboratory:</p> <ul style="list-style-type: none">• performs forensic testing relevant to the investigation of GBV offenses, not otherwise covered by PCIC;

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Role of the National Police of Timor-Leste Criminal Investigation Department *(continued)*

- | | |
|---|---|
| <ul style="list-style-type: none"> • in the context of the investigation of GBV criminal offenses, is involved in supervising police investigators throughout the districts and municipalities (PNTL Law Article 58). • has a role in the investigation of GBV offenses that includes: <ul style="list-style-type: none"> (i) supervising the criminal investigation activity of the PNTL; (ii) preparing, disseminating, and supervising the execution of orders and instructions relating to criminal investigation activity of the PNTL; (iii) coordinating the activities of the criminal investigation sections of the regional and municipal commands; (iv) taking steps as requested by the investigations section to obtain evidence, in other words, for carrying out expert examinations in certain circumstances (PNTL Law Article 58); • includes the PNTL Forensic Laboratory (PNTL Law Article 58 [4]). | <ul style="list-style-type: none"> • can do its work when the PNTL is informed about the commission of a crime after a complaint is made to the PNTL, or after a delegation is made by the PPS to the PNTL; • can immediately start work if the situation is urgent. For example, urgent forensic work may be performed at the scene of the offense, or to identify persons. This aspect of the allocation of work is internal to the PNTL; • most often concerning GBV offenses, will examine objects that have been seized by the PNTL; • ensures that CID is given the opportunity to conduct the necessary examination of items before being taken by the PPS for secure storage. This is to avoid the risk of contamination and to enable important corroborative evidence to be obtained and safely preserved; • work is included in the final report provided by the PNTL after it has completed its examination. |
|---|---|

Role of the Criminal Investigation Police (PCIC)

Law
<ul style="list-style-type: none">• Law on the Organization of Criminal Investigations No. 9/2022 Articles 3–9, 10(1), 10(2), 10(5), 29 and Annex.
What
<ul style="list-style-type: none">• The Criminal Investigation Police (PCIC) was established on 14 May 2014 and tasked with assisting judicial authorities—particularly the PPS—in the investigation of the most serious, organized, and complex crimes.• PCIC is set up under the “principle of specialization” related to particular criminal investigations (LOIK Article 2[b]).• It has exclusive power to investigate specific crimes related to GBV to the exclusion of other bodies, particularly the PNTL, which includes CID.• PCIC (and CID) can provide specialist forensic testing relevant to the investigation of GBV offenses.

Forensic Investigation Activities of the Criminal Investigation Police and Criminal Investigation Department

Both PCIC and CID can undertake forensic investigation although their techniques and processes may differ. Victims and suspects should be able to expect that the best standards will be used. Timor-Leste is continuing to develop and establish additional investigative tools and methods for analysis of collected samples, but as of 2023 they need to be sent to Portugal and other countries for analysis.

Forensic testing may be conducted on samples taken during the examination of the crime scene, which may include collection and analysis of

- fingerprints, footprints, palmprints;
- shoe prints and tire tracks;
- toxicology examination of drugs and poisons (sent to Portugal or other countries for analysis);
- semen, blood, and bodily fluids identification (pending DNA training being enabled for the DNA equipment already in Timor-Leste, samples are sent to Portugal or other countries for analysis);

- ballistics; and
- fire debris and causes.

Other kinds of forensic examination techniques include

- digital forensic examination (cyber-crime),
- financial accounting examination, and
- manual handwriting examination (sent to Portugal or other countries for analysis).

Law on the Organization of Criminal Investigations No. 9/2022 (LOIK)

Before May 2014, the PNTL investigated all GBV offenses, including any forensic examinations required. These examinations were conducted through the PNTL Criminal Investigation Department (then called PNSIC but now called **CID**) as well as forensic testing undertaken by the PNTL Forensic Laboratory. In 2014, the Criminal Investigation Police (**PCIC**) was established to assist with the investigation of the most serious, organized, and complex crimes (see page 97 of this Handbook).

The LOIK was passed on 13 July 2022. As a result of the LOIK, **PCIC was given exclusive and reserved powers to investigate specifically-named crimes** (LOIK Article 10[2]). These specific crimes are particularized in the Annex to the LOIK, which identifies the crimes for which PCIC has exclusive jurisdiction and those that remain within the competency of the PNTL. With GBV offenses, the PCIC designated crimes relating to those involving the death of the victim, such as homicide, aggravated homicide, and manslaughter (Penal Code Articles 138–139) and particular sexual offenses (Penal Code Articles 171–179).

Relationship between the LOIK and LADV: Not all GBV offenses in the Penal Code are captured by the LADV (see page 99 of this Handbook). Some offenses under the Penal Code are not offenses under LADV. In the allocation of responsibilities between PCIC and the PNTL, some offenses under the LADV are within the jurisdiction of PCIC to investigate, while others remain for the PNTL. Different organizations have different competencies and responsibilities for investigating GBV offenses.

This table shows the effect of the [LOIK](#) on the competencies of the PNTL and PCIC across different offenses. The corresponding articles of the [Penal Code](#) are listed for each offense. Those that are also addressed by the [LADV](#) are marked with *.

Competencies of the National Police of Timor-Leste (PNTL)	Competencies of the Criminal Investigation Police (PCIC)
Offenses against physical integrity	Death of a person
<ul style="list-style-type: none">• Simple Offenses Against Physical Integrity (Article 145) *• Serious Offenses Against Physical Integrity (Article 146) *• Aggravation (Art 147) (infer it is included by Article 146) *• Mistreatment of a Disabled Person (Article 153) *• Mistreatment of a Spouse (Article 154) *• Mistreatment of a Minor (Article 155) *• Aggravation Due to Results (Article 156) *• Threats (Article 157)• Coercion (Article 158)• Serious Coercion (Article 159)	<ul style="list-style-type: none">• Homicide (Article 138) *• Aggravated Homicide (Article 139) *• Manslaughter (Article 140)
	Sexual offenses
	<ul style="list-style-type: none">• Sexual Coercion (Article 171) *• Rape (Article 172) *• Aggravation (Article 173) (infer inclusion by Article 172) *• Sexual Exploitation of a Third Party (Article 174)• Sexual Abuse of a Minor (Article 177) *• Sexual Act with an Adolescent (Article 178) *• Sexual Abuse of a Person Incapable of Resistance (Article 179) *

Practical Implementation of the Law on the Organization of Criminal Investigations and the Law Against Domestic Violence Regarding Gender-Based Violence Offenses

PCIC was designed to operate as a specialist crime investigation organization with significant technical and forensic capabilities. It now has jurisdiction for the **whole** of the investigation of certain GBV crimes, without, for example, the victim-sensitive services provided by the SVPS.

Criminal and forensic resources are scarce and need to be used in the most practical, applied, and coordinated manner. This is to ensure that the best evidence is obtained so that GBV crimes are appropriately prosecuted. All institutions of the criminal justice system need to work together in a coordinated manner to respond to violence against women.²⁵

The LOIK has provisions that relate to the working relationships between the PNTL and PCIC. There is an obligation on and between all bodies of the criminal police to cooperate in the performance of their duties (LOIK Article 29). Such cooperation is to consider the following:

- Some situations may require necessary and urgent acts to preserve evidence and carry out the cautionary or protective acts, but the bodies of criminal police must immediately inform the competent judicial authority of any crime they may have witnessed or that they have knowledge about (LOIK Article 7[2]).
- Generally, organs of the criminal police with general power (e.g., the PNTL) should “Abstain from initiating or pursuing investigations about crimes **that are specifically being investigated** by bodies of the criminal police with **special powers and expertise**.” (LOIK Article 7[3]) [emphasis added]. This refers to situations where a PCIC investigation has already commenced, but it does not refer to a situation where an investigation has not been started by PCIC.
- In judicial districts where PCIC does not have an established office, the PNTL shall carry out the activities requested by the PPS (PNTL Law Article 9[2]).

There are important practical challenges that need to be addressed, particularly when offenses occur in remote communities. This is to ensure that all relevant evidence is obtained effectively and efficiently and that victims are not re-traumatized by having to re-tell their ordeal to different police agencies.

²⁵ United Nations. 1993. *Declaration on the Elimination of Violence against Women*; and the General Assembly Resolution. 2010. United Nations A/RES/65/228 updated *Model Strategies and Practical Measures* refer to the need for institutions of the criminal justice system to work together in a coordinated manner to respond to violence against women. This includes relevant sectors of civil society to ensure a comprehensive response and that support agencies could work with police and prosecutors to ensure support to victims during the statement taking and providing information on the progress of the case. See United Nations Office on Drugs and Crime (UNDOC). 2014. *Handbook on Affective Prosecution Responses to Violence Against Women and Girls*. Criminal Justice Handbook Series. p. 25. New York: United Nations.

The PPS has overall oversight of the investigation process. As such, the decision as to which organs of the criminal police should undertake or continue to investigate a complaint, notification, or accusation should rest with the PPS and the delegation process.

The following general principles guide the PPS to ensure clarity and consistency in investigations, and consider the different organs of the criminal police, their roles, functions, and expertise.

Public Prosecution Service General Guiding Principles – Organs of the Criminal Police in the Investigation Process

- (i) **Cooperation between bodies of the criminal police**—as required under LOIK Article 29—should commence as soon as there is a complaint, notification, or accusation of a GBV offense, and should continue throughout the entire investigation process.
- (ii) It is highly preferable—in the interests of the victim—that the **police organization that starts the investigation, continue with the investigation**. The PPS should, wherever possible, avoid delegating investigations to two different bodies if this is neither required by law nor necessary because of a lack of competency or capacity. For example, if the PNTL has the competency—including the necessary GBV training—to undertake the entire investigation of the GBV offense in all circumstances, then the PNTL should continue with the investigation rather than delegating it to PCIC. Likewise, if PCIC has competency—including the necessary GBV training to undertake the entire investigation of the GBV offense in all of the circumstances—then PCIC should continue.
- (iii) In the event of a **requirement for specific forensic services** to be undertaken during the investigation—including such things as identification of bodily fluids, footprints, hand and fingerprints, toxicology, or DNA comparison—it is expected that the PPS would know which criminal investigation service is best able to provide the service required in all of the circumstances (e.g., PCIC or CID).
- (iv) If the PNTL or SVPS/ receive a complaint about an offense under the LADV, and the **victim's needs and convenience** suggest that their complaint and statement should be recorded straightaway, and/or that they be sent for medical examination, counseling services, or be taken to a shelter, those steps should occur promptly rather than await a PPS delegation and the arrival of PCIC to conduct the investigation.

Role of Child Protection Officers

Law
Law on the Protection of Children and Youth in Danger, Law No. 6/2023 (LPC).
Scope of the Law
<p>The Law on the Protection of Children and Youth in Danger, Law No. 6/2023 (LPC) creates an integrated child protection system by establishing legal and procedural frameworks to prevent violations and protect the rights of children and young people. The law assigns responsibilities to relevant authorities to act when children and youth rights are violated and to protect them when in danger (LPC Article 1).</p> <p>Child or young person means a person under the age of 17 (LPC Article 4[1][b]).^a Danger means any threat to the life, physical or mental integrity, safety, health, training, education, or development of the child or young person (LPC Article 4[1][g]). The law amplifies the circumstances in which a child or young person is considered to be in danger in LPC Article 4(2). The most relevant in this context is LPC Article 4(2)(b) which provides:</p> <p>b) Is a victim, directly or indirectly, of physical or psychological abuse, sexual abuse, child pornography, domestic violence, or any other crime provided for in criminal law.</p> <p>The child and youth protection system and services that have responsibilities to protect children are broad. They include judicial entities, including the courts, the Public Prosecutor’s Office, and the Public Defenders Office (LPC Article 4[1][j][v]) as well as police authorities (LPC Article 4[1][j][vi]).</p> <p>LPC Article 48 makes it every person’s business to communicate about situations that put the life, physical or mental integrity, or freedom of the child or young person at risk. This can be communicated to either police authorities, judicial authorities, the PPS, or other entities or services that protect children and young persons.</p> <p>LPC Article 18(1) requires collaboration between public services and entities and police authorities with child and youth protection services.</p>
Role of Child Protection Officers
<p>Child Protection Officers (CPOs) are not specifically named in the LPC. They are employed by the Ministry of Social Solidarity and Inclusion (MSSI) and perform the role of a caseworker in situations where a child needs protection because he or she is in danger as defined under the LPC. The CPO will undertake a case management process that addresses the needs of an individual child and their family and identifies if their needs can be provided</p>

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Role of Child Protection Officers *(continued)*

by direct support and/or referrals to other bodies. The case management process involves: (i) identification and registration of the case; (ii) assessment; (iii) development of a case plan; (iv) implementation of the case plan; (v) follow up and review; and (vi) closure.

The competency of the CPO is provided by LPC Article 17 and includes several activities that involve the PPS and the judicial system. During an investigation of GBV cases, CPO actions may include:

- submit promotion and protection processes to the PPS and communicate the situations provided for in the law (LPC Article 17[1][k]);
- carry out urgent measures aimed at ensuring the immediate protection of the child or young person determined by the PPS under the guidance of the PPS (LPC Article 17[1][m]);
- prepare and submit social reports to the judicial authorities and provide them with the necessary clarifications under the terms of the law or whenever requested by the judicial authorities
- (LPC Article 17[1][n]);
- monitor the implementation of promotion and protection measures applied by the courts (LPC Article 17[1][o]).

In the context of GBV offenses, a CPO will work alongside a GVB focal point and, between them, they will ensure that relevant protections and services are provided to children and young persons and women victims of GBV under the Penal Code and LADV provisions.

Note. The effectiveness of the law to protect children and youth will heavily rely on the ability of all relevant services and organizations to collaborate, notably the SVPS, the Referral Network services, and the PPS. In the context of the investigation of GBV offenses, this will rely in turn upon effective implementation of known and standardized procedures, regular communications and monitoring of protections and supports, and ensuring that the PPS is kept up-to-date with the whereabouts and protections being provided to children, youth and GBV victims.

^a Although it can be extended to age 21 years and above (LPC Article 3).

Role of Assistants in the Proceedings

Law
Criminal Procedure Code, Law No. 15/2023, Articles 71, 72, 235, 235A, 235B, 236, 236A, 238, 238A–238 AC.
What
<ul style="list-style-type: none"> • The role of assistants in the proceedings (assistants) is a major innovation of the Criminal Procedure Code (CPC), Law No. 15/2023. Their role and functions are set out in many articles of the CPC. • Assistants can play an essential role not only in the investigation process but also in the new “fact-finding stage of the proceedings” (CPC Articles 238A–238AC) and all proceedings including the trial and any appeal processes. • Whereas formerly an aggrieved person was “a mere assistant to the public prosecutor and assign[ed] all of his or her procedural activity to the latter,” the amended provisions enable a proactive position and approach, which has the potential to be very beneficial to victims of GBV. • CPC Articles 71 and 72 set forth who can become assistants, and how. • Assistants can include: <ul style="list-style-type: none"> (i) the injured parties above 16 years of age (CPC Article 71[1][a]); (ii) the aggrieved party on whose complaint criminal action depends (CPC Article 71[1][b]); (iii) if the injured party dies, then the surviving spouse or person who lived in a situation analogous to that of a spouse; or relatives; or adopted/ adopters; or siblings and their descendants (so long as they were not participants in the crime) (CPC Article 71[1][c]); (iv) if the injured party is below 16 years of age or deemed incapacitated for any reason, then the legal representative or persons described above; or the person responsible for legal custody or educational protection (so long as they were not abettors or participants in the crime) (CPC Article 71[1][d]); (v) associations or other legally recognized legal entities, if the crimes directly affect the collective interests pursued by them (CPC Article 71[1][e]); (vi) anyone, in crimes against peace and humanity, as well as in crimes of corruption (CPC Article 71[1][f]). • Assistants can intervene in any stage of the proceedings (CPC Article 71[3][f]). <p>Importantly, assistants “are always to be represented by a public defender or private lawyer” and where there are several assistants “they are all represented</p>

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Role of Assistants in the Proceedings *(continued)*

by a single public defender or private lawyer.” Where there are differences of opinion about the choice of legal representative, the judge decides (CPC Article 72A[1]). If there is a conflict of interest between the assistants (e.g., the injured party and the aggrieved party), or there are different crimes, they can be separately represented (CPC Article 72A[2]).

How to Be an Assistant and the Process

- To become an assistant, the **person** or **legal entity** can make either a statement in the proceedings or make a request before a judge (CPC Articles 71[2] and [3]).
- The legislation is silent about whether the statement or request can be oral or in writing. It appears either would be acceptable. It also appears to be automatically applicable to injured or aggrieved persons as described in CPC Article 71(1).
- CPC Article 71(1)(e) refers to **associations** or other **legally recognized legal entities** being an assistant “if the crimes directly affect the collective interests pursued by them.” This is an assistant of a different character from the other examples of assistants. It appears to require the legal entity to
 - (i) identify how the crime directly affects their pursued interests.
 - (i) It may not be an assistant in respect of all procedures but only those that directly impact their interests.
 - (i) It would be expected to be represented by the same public defender or lawyer as other assistants.

This provision may apply if the association or entity facts become directly involved in the facts relating to the offense. This could occur, for example, if the victim used the services of the association or entity, or if a person within the association or entity is required to give evidence. This could include organizations in the Referral Network. The use of this provision will develop over time.

- The **timing of the request to be an assistant** to a judge under CPC Article 71(3) depends on the type of proceeding, for example:
 - (i) at least 5 days before the start of the discussion during the fact-finding stage of the proceedings (CPC Article 71[3][a]);
 - (ii) at least 5 days before the start of the trial hearing (CPC Article 71[3][a]);
 - (iii) within 5 days after a notification of the writ of indictment is served by the PPS (CPC Articles 71[3][b], 237) a request may be made before a judge to be an assistant and then under CPC Article 236A to either:
 - a) bring charges based on facts in the PPS writ of indictment (provided they are not a substantial modification of the facts) (CPC Article 236A[1]); or

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Role of Assistants in the Proceedings *(continued)*

- b) indicate that the assistant agrees with the charges in the PPS indictment and indicate additional evidence sought to be adduced (CPC Article 236A[2]);
 - (iv) within 30 days after notification of the PPS writ of indictment, a request can be made to be an assistant and request a judicial fact-finding proceeding. This proceeding is to refer to additional facts not included in the writ of indictment that either comprises a different crime or an aggravation of the upper limits of the penalty (CPC Articles 71[3][b], 238B[1] and [2]);
 - (v) within 30 days of the date after the notification of the order of closure of the investigation (CPC Articles 238C[1] and [2]);
 - (vi) within 30 days of the date of the notification of a sentence, a request can be made to be an assistant and lodge an appeal against the sentence (CPC Articles 71[3][c], 300[1]).
- The request to become an assistant is heard by a judge. The process includes the judge notifying the PPS and formal suspect of the request and receiving their views on the request (CPC Article 71[4]).
- No more than five assistants are permitted if it is a crime against peace and humanity or a crime of corruption (CPC Articles 71[5] and 71[1][f]).

What Can the Assistant Do?

- The assistant can:
 - intervene in the investigation (CPC Article 72[2][a]);
 - intervene in the fact-finding stage (CPC Article 72[2][a]) (see also provisions on the fact-finding process in CPC Articles 238 –238Z and 238AA–238AC);
 - supply evidence and request the activities that the assistant deems necessary (CPC Article 72[2][a]);
 - take note of the rulings that concern such initiatives (CPC Article 72[2][a]);
 - bring charges independently from the PPS (CPC Article 72[2][b]);
 - appeal against decisions that affect the assistant, even if the PPS hasn't done so (CPC Article 72[2][c]);
 - bring a civil claim for compensation if a claim is not made in the indictment in criminal proceedings, which is the expected and appropriate time to claim (CPC Article 72B[1] and 72H[1]) (Note the provisions on separate request for compensation before a civil court (CPC Article 72C including and also 72C[2]);
 - request a hierarchical intervention that the investigation be continued or that an indictment be drafted if an investigation has been closed and after the date for requesting a fact-finding stage has passed (CPC Article 235A).

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Role of Assistants in the Proceedings *(continued)*

- **Importantly** the assistant is required to collaborate with the PPS and the intervention of the assistant is subordinate to the activities of the PPS (CPC Article 72[1]).
- The **effectiveness of this new role of assistants** will depend heavily on how the collaboration between the PPS and the assistants occurs. This process of collaboration could be set out in guidelines that can be developed as the process unfolds and could later be added to this Handbook.

Role of Community Organizations or Institutions Providing Services to Gender-Based Violence Victims (Referral Network Services)

Law
Law Against Domestic Violence, Law No. 7/2010, Articles 15, 19, 22, 23, and 25.
What
<ul style="list-style-type: none">• Referral Network services play an essential role in the investigation process both directly and indirectly.^a They provide excellent services that include forensic medical services, victim support and empowerment services, shelters, counseling, psycho-social support, economic assistance, and legal aid. These services cater to the needs of GBV victims before, during, and after the investigation process.• There are also government agencies that provide similar services. These— together with the Referral Network services—provide support to GBV victims using standard operating procedures.^b The Referral Network services regularly connect and also collectively meet. They cross-refer with each other to enable GBV victims to have the best assistance to meet their needs.
How
<ul style="list-style-type: none">• The Referral Network services use common approaches depending on the types of services provided. They use similar common forms which include consent forms, risk assessment forms, and forms to obtain information and record details of the circumstances of the violence and any injuries sustained by the victim. These common forms include checklists to ensure that they collect information on psychological and physical welfare, provide them with information and counseling, and help them with protections they may need and how that can be achieved. They are victim-centered, their interactions with victims are gender-sensitive, and they undergo training.

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Role of Community Organizations or Institutions Providing Services... *(continued)*

- Victims sometimes come directly to the Referral Network services to disclose the violence against them. The Referral Network services sometimes accompany victims to make a complaint to the police or obtain the consent of the victim to share their information with others including police and other Referral Network services.
- The LADV sets out obligations for certain organizations providing services to report situations of domestic violence to the PNTL or the PPS. This reporting is to respect the confidentiality and privileged nature of certain information arising from the relationship between a victim and the person providing the service. The obligation provisions include reception centers including persons working in shelters (LADV Articles 15[2] and [19]); hospitals (LADV Article 22 [e]); social assistance services (LADV Articles 23[c] and [f]); and lawyer and public defender (LADV Article 25). These provisions are consistent with CPC Article 211 when the service is provided by a government service or agency. However, a private person who knows about a crime has a right to report it but is under no duty to do so.

^a Part 2, Annex X: List of Referral Network Services.

^b Government of Timor-Leste, Ministry of Social Solidarity and Inclusion (MSSI). 2017. Standard Operating Procedures.

Additional Actions Regularly Undertaken by the Referral Network Services during an Investigation

Providing Reports and Sharing Information about Gender-Based Violence Victims

- Apart from the LADV requirement to report domestic violence to the PNTL or the PPS, it is common for Referral Network services to provide additional reports, information, or documents to the SVPS, the PNTL, and the PPS. This can arise from the following actions:
 - (i) a request by the victim, or
 - (ii) a request by the SPVS or the PNTL to the Referral Network service (this could be a consequence of a delegation made by the PPS to those police organizations), or a request from the PPS (see page 109 and Annex Q on page 280), or
 - (iii) the PPS can refer a victim to Referral Network services for assistance. This may result in information relevant to the investigation process being sent to the person making the referral.

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Additional Actions Regularly Undertaken by the Referral Network Services... *(continued)*

- Unlike the Referral Network services process of sharing and referring information or reports between themselves with the consent of the victim following standard operating procedures set out in the MSSI SOP 2017, no document or guideline formalizes the process of the exchange of information and reports between Referral Network services and SPVS, the PNTL, or the PPS.
- Valuable information or evidence about the crime, its circumstances, and consequences may be obtained during the process of Referral Network services speaking with the victim. Such information can be important in deciding what offense(s) should be charged, whether other charges should be laid because of a history of violence, whether it is an aggravated offense(s), and if so, what orders for the victim's protection should be obtained. However, information may not always be conveyed, or may be overlooked by the PPS in the final reports received by the investigating authorities.
- As a result, the victim may be required to give numerous statements to various organizations and repeat the same or similar information each time. This situation is re-traumatizing to the victim and increases the risk that the confidentiality of the victim's personal information is breached. It may be re-traumatizing, as may suggest to the victim that their earlier statement was inadequate or wrong, or that they have not been heard. It may also undermine their confidence in the formal justice process and can lead to victims not wanting to pursue their cases.

Coordination Between the Organizations Investigating Gender-Based Violence Offenses

How to Achieve Greater Coordination

To achieve greater communication and coordination between the Referral Network services and the PPS relevant to the investigation process, this Handbook provides guidelines for referral of information or requests for services between the PPS and Referral Network services and the other way around (**Part 2, Annex P Handover Letter of Evidence to the PPS or the PNTL**. Also, **Part 2, Annex Q Referral Form – Police Bodies/PPS to Referral Network Services**). These guidelines are to ensure that:

- (i) information and evidence relevant to the prosecution of the offense, the sentence, and compensation are conveyed by the **Referral Network services to the PPS**. Similarly, information about the circumstances of the victim and their need for protection can be conveyed to the PPS;

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Coordination Between the Organizations Investigating GBV Offenses *(continued)*

- (ii) referral of victims **by the PPS to Referral Network services** for legal and other assistance also request Referral Network services to assess and provide for the victim's needs, particularly during the investigation process and when a notification of the issue of a writ of indictment is given to the defendant; and
- (iii) there is greater clarity, formality, and consistency to the process including how it is to be done and the contact points, for example to the Central Office of the PPS.

In addition, to provide consistency of approach in the communications between Referral Network Services when referring victims or clients to each other, guidelines have been developed in **Part 2, Annex R** for a **Referral Form between Referral Network Services**. The combination of these guidelines will ultimately benefit the GBV victims and increase the chance of a successful prosecution and outcomes for the GBV victims.

PART I: Common Steps – Investigation, Timelines, and Process Framework

The Basic Common Steps of Investigations

The basic common steps in an investigation may be undertaken simultaneously or may overlap. They are not linear.



Common Steps	
Commencement	<ul style="list-style-type: none">• Report of crime by complaint or notification.• Statement taken from victim.• Registration of the crime with the PPS and registration number allocated.
Investigation	<ul style="list-style-type: none">• The PPS delegates investigation of the crime to the PNTL, PCIC, CID, and PPS Justice Officers, and makes requests to Judges as needed.• Crime scene is examined, evidence is collected and later examined, and witness statements taken.• Suspect arrested with or without a warrant provides identification and is questioned by a judge.• Assistants become involved in the proceedings.• Victim is taken to specialized services such as shelters, medical examination at hospital, community center, PRADET.

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The Basic Common Steps of Investigation *(continued)*

Victim safety and services	<ul style="list-style-type: none"> • Risk assessments undertaken by all investigating bodies and the Referral Network. • Security measures are taken such as court orders on bail conditions, pretrial detention, removal of suspect from the home. • Victim obtains legal aid, counseling, psychological, and economic assistance. • Applications made for the early taking of a statement for the future CPC Article 230 before a judge.
Final investigation	<ul style="list-style-type: none"> • PPS obtains reports from investigating bodies. • PPS decides whether further investigation is required. • PPS decides whether to issue a writ of indictment, dismiss the charge, or archive the file. • PPS personally serves notification to close the investigation or issue a writ of indictment on the suspect, victim, and their legal representative or agent.
Judicial fact-finding stage	<ul style="list-style-type: none"> • Request can be made to a judge by an assistant to reopen the investigation for a fact-finding stage; • Request can be made to a judge for a fact-finding by the formal suspect based on facts in the writ; • An assistant may file charges based on facts in the writ; • An assistant can request a judge for a fact-finding based on facts not in the writ, for a different crime, or an aggravation; • Alternative request for an internal PPS hierarchical intervention.

Relevant Timelines during Investigation

Complaint	<p>The time limit for lodging a complaint:</p> <ul style="list-style-type: none"> • 6 months from the time a GBV victim is aware that they have the right to complain.^a • Usually, this means from the time the offense was committed unless e.g., a child later becomes aware of the right to complain (CPC Article 215 and Penal Code Article 108).^b
Notification	<p>Notification of crime by a police officer, civil servant, public agent, or authority:</p> <ul style="list-style-type: none"> • The victim or aggrieved person of a semi-public crime must initiate a criminal proceeding within 15 days of the written notice being prepared (CPC Article 211[3]).
Procedural Acts	<p>Procedural acts^c</p> <ul style="list-style-type: none"> • Must be completed within 5 days, unless another time limit is indicated (CPC Article 79). • The time for recording a proceeding and issuing a warrant is 2 days, except where the accused is detained when the procedural act must be performed immediately. • A suspect must be brought before a judge for an initial questioning within 72 hours of an arrest, with or without a warrant for arrest (CPC Article 217). • In a case of <i>flagrante delicto arrest</i>, an expedited hearing is to be held within 72 hours (CPC Article 217).
Assistants in the Proceedings	<p>The timing of a request to be an assistant in the proceedings can range from 5 days before the start of certain proceedings to within 30 days after notification of certain processes (CPC Articles 72[3][a]–72[3][c], 236A, 237, 238B–238C).</p>
Investigations	<p>Investigations</p> <ul style="list-style-type: none"> • A summary report of an investigation by SVPS containing the observations made, measures adopted, and evidence collected must be submitted to the PPS within 5 days (LADV Article 24[2][e]).

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Relevant Timelines during Investigation *(continued)*

	<ul style="list-style-type: none"> Investigations must be completed within 6 months if the suspect is in detention, or 12 months if not. Both limits can be doubled but only in complex cases (CPC Article 232). Prosecutors may extend time for additional investigations by a delegation after the investigating body delegated has completed a final report (CPC Article 234[2]). A specific time limit should be imposed for this additional investigation.
Writ of Indictment	<p>A writ of indictment</p> <ul style="list-style-type: none"> Must be issued within 15 days of the completion of the investigation where the prosecutor assesses that there is “sufficient evidence of a crime and identification of the perpetrator” (CPC Article 236). Within 5 days after service of notification of a writ of indictment on the suspect, victim, and their legal representative or agent (includes an assistant), the assistant may file charges based on the facts in the indictment if it is not a substantial modification of the facts (CPC Article 236A[1]).
Request for Judicial Fact-Finding Proceeding after Service of Notification by PPS^d	<p>Within 15 days after service of notification of closure of an investigation, a request can be made to a judge by an assistant for a fact-finding proceeding (CPC Articles 92A[2], 238C[2], 238C[4] and 238D[3]).</p> <p>Within 30 days after service of the notification of a writ of indictment, a request may be made for a fact-finding process by:</p> <ul style="list-style-type: none"> the formal suspect concerning facts that the PPS used to prepare its indictment; the assistant concerning facts not included in the indictment and that amount to a different crime or an aggravation of the upper limits of the penalty (CPC Article 236B[2]).

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Relevant Timelines during Investigation *(continued)*

Hierarchical Review if PPS Decision Made to Close the Investigation	<p>If the assistant or complainant either does not or chooses not to request a reopening under Art 238C(2), they may request an internal hierarchical intervention within the PPS within 20 days of the date of notification of closure of investigation. This can be a request to either reopen the investigation or to charge the accused (CPC Article 235A). See further reference to the internal process after 20 days on page 178 of this Handbook.</p>
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- ^a A victim may not be aware that an offense has been committed against them at the time it is committed, and it can become a complex legal issue as to when and how they later came to know that they had the right to complain after 6 months had lapsed.
- ^b A victim may be regarded as having waived their right to complain about a semi-public offense if they do not make the complaint within the time limit (CPC Article 216 and Penal Code Article 109).
- ^c The term “procedural acts” is not defined in the CPC but refers to procedural steps or actions. These may be taken before or within an investigation, or in court processes: e.g., CPC preamble para. 6, Articles 1(b), 30, 31, 32, 72, 78, 217. Examples would be acts of search and seizure or an order for restrictive measures.
- ^d Personal service of the notice is required on the suspect, victim, and their legal representative or agent (includes an assistant) (CPC Article 92A [2]).

PART J:

Detail of Investigation Process

Purpose of Investigation

Law

Criminal Procedure Code, Law No. 15/2023 Article 225 sets out the purpose of investigation in these terms:

“The enquiry is the investigative procedural phase intended to collect proofs and take the action required to demonstrate that a crime has been committed, hold its perpetrators liable, and secure any elements of relevance in determining the damage caused by the crime and the compensation amount, where the perpetrators are not to be tried in an expedited proceeding.”

First Contact with a Victim and Reporting a Gender-Based Violence Crime

Law	What
<ul style="list-style-type: none">• Criminal Procedure Code, Law No. 15/2023, Articles 49(2), 49(3), 71, 210, 211(1), 211(2), 212, 213, 214, 215, 216• Penal Code of the Democratic Republic of Timor-Leste (Decree Law No. 19/2009), Title V, Articles 6–108	<ul style="list-style-type: none">• The first contact by a victim to report a GBV crime can occur in many ways, and many entry points can lead to a notification, accusation, or complaint to an authority.
Examples	
<ul style="list-style-type: none">• A phone call made to an entity such as the SVPS or the PNTL to get help. This may be done by the victim or a member of the public. Sometimes this is very difficult in remote areas as there are problems with different cell phone providers that do not connect with the SVPS or the PNTL number.	

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First Contact with a Victim and Reporting a Gender-Based Violence Crime *(continued)*

This problem needs attention within each of the communities to identify an emergency number within each community and for the Suco Chief and Aldeia Chief and community police to provide community awareness about an emergency contact.

- **A citizen who becomes aware of a GBV public crime:** for example, a witness to domestic violence or the occurrence of a public crime may report it to the PPS or the police can make an accusation.
- **In-person victim contact.** This may also take place in various ways.

The most common examples are that the victim (or in the case of a child or disabled person, another person such as a legal representative or family member) may report a GBV offense to:

Local Community Persons	Police and Criminal Investigation Organizations	Hospital, Medical, Community Health Services	Community Organizations	Lawyers	Government Employees
Suco Chief	SVPS	Hospital	PRADET	Public	Teachers
Aldeia Chief	PNTL	Doctor	ALFeLa	Defenders	Social security
Community police	PCIC	Community health centers	JSMP	Office	
Citizen	CID	Shelters (either government or private)	Fokupers	Private lawyer	
			Other Referral Network services (Part 2, Annexes)		

Responding to Information about a Gender-Based Violence Offense - General Approach by Civil Society and Referral Network Services

The following are some best practice basic approaches that are already applied by most if not all Referral Network services and are set out in the MSSI SOP 2017 concerning what is often a victim’s first disclosure of a GBV offense:

- How child or women victims are treated by the person who listens to their information is highly relevant as to whether or not they will feel able to pursue the matter further.
- They need to be given time to talk.
- They need to be treated in a non-judgmental manner and feel that they are being listened to.
- They need to be treated sensitively, noting that they may also be suffering psychologically because of the impact of both past and present violence committed against them.
- Victims may be concerned about retaliation by the suspect and family members.
- Women victims may be concerned about where they can live and how they can support themselves and their children.
- Keep a note of the date and time when the information is provided and record the information in writing.
- Have the victim sign a consent permitting the organization or person to, in turn, provide the information to the PPS. This consent is not required if it is mandatory under the law to give the information to the PPS (such as notifications under CPC Article 211), but it would be the best practice to follow so that the victim knows what is to happen and it is a safeguard to the notifier.
- A risk assessment of the victim should be undertaken. This is to obtain information to ascertain whether a victim may be in danger or at risk of further harm from the suspect or others. One example is set out in the MSSI SOP 2017.
- Keep a note of the date and time when the information is sent to the PPS.

In short, the sensitivity of response, safety, and security are highly important at this early stage. If the victim can be assisted to go to either a Referral Network service or the police as early as possible, that would be a good response.

Formal Reporting Process of a Gender-Based Violence Offense

There are four forms of reporting of a GBV offense (CPC Article 210):

- (i) *Personal knowledge* of a person that is to initiate the investigation, such as the PPS or police (CPC Article 210[1][a]);
- (ii) *Notification of the occurrence* by a police officer, civil servant, public manager, or other public agent or authority who learns that a public or semi-public crime has been committed and the provision of a written notice (CPC Articles 210[1][b], 211[1] and 211[2]);
- (iii) *Accusation* filed by a citizen of a public crime (CPC Article 210[1][c]); and
- (iv) *Complaint* made by a victim or aggrieved person (CPC Article 210[1][d]).

The most common reporting process in the case of GBV offenses is the lodgment of a *complaint* by or on behalf of a victim. A complaint is a prerequisite for a semi-public crime but not a public crime (Penal Code Article 106).

Recording of Complaints, Notifications, and Accusations

Notifications and Notices	
<ul style="list-style-type: none">These are required to be in writing identifying (i) the elements of the suspect and the aggrieved person; (ii) the facts that constitute the crime; (iii) the date, time, place, and the circumstances in which the crime was committed; (iv) the evidence if known; and (v) the date and signature of the person giving the notice (CPC Articles 211 and 212).	
Accusations	Complaints
<ul style="list-style-type: none">A similar recording approach would also be appropriate for accusations.	<ul style="list-style-type: none">There is no provision in either the Penal Code or the CPC that specifies the content requirements for a complaint.

Content and Form of Complaint

Complaints Process

Who Can Report	To whom
<ul style="list-style-type: none">A victim, an aggrieved person, an authority, and a member of the public can report a crime and there are multiple ways to report.	<ul style="list-style-type: none">All complaints, accusations, or notifications are required to be received by the PPS.
When	
<ul style="list-style-type: none">The time limit for lodging a complaint is 6 months from when the GBV victim is aware that they have the right to complain (usually this means from the time the offense was committed unless e.g., a child later becomes aware of the right to complain) (CPC Article 215 and Penal Code Article 108).A GBV victim may be regarded as having waived their right to complain about a semi-public offense if they do not make the complaint within the time limit (CPC Article 216 and Penal Code Article 109).A GBV victim can withdraw a complaint for a semi-public crime until the sentence is first handed down (CPC Article 216 and Penal Code Article 109).	
How	
<ul style="list-style-type: none">Use a Common Complaint Form (Part 2, Annex A). In addition, a Risk Assessment Form for a Victim of Gender-Based Violence should be completed and attached (Part 2 Annexes). Annex D is for an adult GBV victim and Annex E is for a child victim of a sexual offense. These Risk Assessment forms for victims of GBV should be understood and informed by the General Guidelines on Risk Assessment in Part 2, Annex B (adult victim of GBV) and Annex C (child victim of GBV).The person to whom the complaint is made must apply a victim-centered approach with sensitive questioning.When the PPS and police organizations such as the PNTL, the SVPS, and PCIC (as well as the Referral Network) are taking statements and receiving information from GBV victims, good practice requires a victim-sensitive approach.It is recommended that Guidelines for Questioning Women Victims of Violence and Sexual Offenses and Guidelines for Questioning Child Victims of Violence and Sexual Offenses (Part 2 Annexes F and G), be used to inform the questioning process. Training is recommended to better understand their implementation.	

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Complaints Process *(continued)*

Forms
<ul style="list-style-type: none">• Common Complaint Report (Part 2, Annex A)• Risk Assessment Form for a Victim of Gender-Based Violence- adult and child victims (Part 2, Annexes D and E)• General Guidelines on Risk Assessment for adult and child victims (Part 2, Annexes B and C)• Guidelines for Questioning Women Victims of Violence and Sexual Offenses (Part 2, Annex F)• Guidelines for Questioning Child Victims of Violence and Sexual Offenses (Part 2, Annex G)

Early Investigation Processes by the Public Prosecution Service

Law	What
Criminal Procedure Code, Law No. 15/2023, Articles 57, 210(2), 211, 212, 214, 224, 225, 227, 228, 232.	<ul style="list-style-type: none">• The PPS takes the lead in the investigation of all complaints, notifications, and accusations about GBV offenses. They must be either in writing or reduced to writing from all sources and be received by and registered with the PPS. This starts the investigation process (CPC Article 224).• The process undertaken by the PPS depends on the form of reporting (CPC Article 210).

The Public Prosecution Service Process

In brief, the most common process undertaken at the PPS is:

The Most Common Public Prosecution Service Process	
⇓	A complaint, notification, or accusation (referred to for convenience in this Handbook as the “initiating report”) is sent or delivered to the PPS.
⇓	The initiating report is stamped as having been received by the PPS in the Central Section and is entered in a register book with details of the date and time received, and an <i>Numero Unico Criminal</i> (NUC) case number is allocated.

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The Public Prosecution Service Process *(continued)*

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The initiating report is passed to the *prosecutor on shift* who makes a preliminary assessment as to whether the person making the complaint has the *legitimacy* to do so, and that information at hand of the incident described potentially amounts to a crime and whether it should go forward for investigation.^a

↓

The decision by the *prosecutor on shift* should be formally recorded with brief reasons.

↓

If the *prosecutor on shift* assesses that the complaint or notification should proceed to an investigation, the initiating report is returned to the *Central Section*, registered in the yellow book, and given a number.

↓

The numbered file is sent to the *Inquiry Section* for investigation and a *specific prosecutor* is allocated to be responsible for the carrying out of the investigation process who is then the *Prosecutor in Charge* of the case.

↓

The prosecutor who is allocated to undertake the investigation depends on factors such as availability, the seriousness of the alleged crime, and their seniority or competence for the case.

When
<ul style="list-style-type: none">• After the PPS is first informed and the initiating report is registered at the PPS, the Prosecutor in Charge as assigned by the Inquiry Section in turn decides on the investigation processes to be followed, and whether and how then to delegate any investigation to the most relevant “competent authority.”• The investigation process is to be completed in 6 months if a suspect is in detention, or 1 year if it is complex. If the suspect or defendant is not in detention, both time limits can be doubled (CPC Article 232).• The delegation and notification process is described in the next section.

^a This includes whether it is a *flagrante delicto* crime notice and whether urgent processes need to be taken for arrest and detention of the accused, or whether the initiating report should be archived.

Delegations and Requests Used during Investigations

Overview of Delegations

Law	
Law on the Organization of Criminal Investigations No. (9/2022), Articles 3(e), 4(3), 5(1), 7, 9, 10(3), and 11(2) (LOIK)	
What	Who
<ul style="list-style-type: none"> There are various types of delegations. LOIK Article 3(e) defines "judicial authority" as judges and the PPS concerning the procedural acts that the law assigns to them. LOIK Article 5 refers to the PPS powers to delegate. LOIK Articles 4(3), 5(1), 7, 9, 10(3) and 11(2) refer to delegations to the PNTL and PCIC. The purpose of delegations in GBV cases is to have a mechanism by which the PPS can direct the investigation and gather all of the evidence on all relevant elements of the crime to achieve a successful prosecution. Clear and specific delegations help to ensure that appropriate information and relevant evidence are obtained to prove that the offense has been committed (CPC Article 225). 	<p>The most common bodies delegated or requested to undertake various aspects of the investigation are:</p> <ul style="list-style-type: none"> (i) PNTL (SVPS/ CID) (ii) PCIC (iii) Justice Officers of the PPS <ul style="list-style-type: none"> <i>Judges</i> are not delegated, instead they can be requested to undertake specific acts as set out in CPC Articles 226(1)–226(2) (see pages 133–134 of this Handbook). The PPS delegates according to competency and—in the case of police bodies—which organization has the legal power to investigate (either the PNTL or PCIC). The process differs when the PPS requests a judge to perform certain actions that are within the exclusive jurisdiction of a judge or as requested by the PPS (see pages 133–134 of this Handbook).
How	
<ul style="list-style-type: none"> Often, not all information and evidence are available at the time of the taking of a complaint or filing a notification concerning the victim, and further evidence is required. A statement may be taken from the victim by the PNTL/SVPS and may later require further detail or information to be obtained. 	

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Overview of Delegations *(continued)*

- No common or consistent delegation forms are used, although certain types of investigation processes are common to GBV and appear to be similarly worded. Delegations are commonly used to take statements from the victim.
- All delegations by the PPS should be written on formal letterhead, precisely expressed, with set time limits within which they are to be undertaken, and be signed and dated by the delegating authority who is a public prosecutor.
- The body or person delegated should note when the delegation is received and formally record receipt of the delegation either using a form or a stamp. The elements of GBV offenses vary, and delegations may similarly vary.
- At the same time, there needs to be some added flexibility to allow for other relevant information to be collected which may not have been known until the delegation was exercised, or to make recommendations on further information or evidence that should be obtained.

Delegation to Take a Statement from a Victim

One of the most used PPS delegations is for the person delegated to **take a statement and obtain information from a victim**. The PPS frequently delegates investigation processes to the Justice Officers. When such a delegation is made by the PPS after the complaint has been made, a well-constructed delegation can assist the investigation, take account of the needs of the victim, and later enable the PPS to sustain the charge. Sometimes more than one statement needs to be taken from a victim.

When a body is delegated to take an additional statement from a victim several factors and topics need to be addressed. These should be set out in a specific **delegation**.

If a **Common Complaint Report** form (Annex A) and **Risk Assessment Form for a Victim of Gender-Based Violence – adult and child victims** (Annexes D and E) have been used, much of the information will already have been covered and may simply be updated.

Delegation – General Guidance When Taking a Gender-Based Violence Victim's Statement

- When taking a further statement from a victim, the person delegated should not proceed to take a statement from the victim afresh without **acknowledging and referring back to the victim's earlier statement**. This will help reduce anxiety in the victim who may think their earlier statement was either ignored or not good enough.
- The topics indicated below provide general guidance for the taking of a comprehensive statement from the victim:
 - Clarify the **type of violence** (whether it was physical, sexual, psychological, and/or economic violence. LADV Articles 2 and 35). Note that questions about psychological and/or economic violence are frequently overlooked.
 - Obtain detailed information about the **nature and seriousness of the physical and/or psychological injuries sustained** and any medical reports or supporting information on the treatment.
 - Obtain information on any **monetary losses** sustained by the victim because of the offense, such as damaged property, treatment costs, or loss of income (relevant to compensation).
 - Obtain a history of **previous violence** by the suspect to the victim, including whether it is physical, sexual, psychological, and/or economic. It does not need to be the same type of violence as in the complaint and it may lead to further offenses being charged.
 - Ascertain the victim's **current living circumstances** and also the **defendant's whereabouts**.
 - Undertake an up-to-date **risk assessment** and determine whether any protections are required to ensure the victim's safety.
 - **Refer** the victim to a relevant Referral Network service or other service to address their needs (List of Referral Network Services for GBV Victims, Part 2, Annex X).
 - Assess the ability of the victim to **give evidence** and what their requirements may be when they give their evidence in court, including an interpreter.
 - Provide the victim with **information on future processes**.
- Include a section to make any **recommendations for further actions** to be undertaken by the prosecutor to investigate the crime or to protect the needs of the victim.
- During the taking of the statement, the victim needs to be **sensitively questioned**, reassured, and **provided with information** about the future processes and timings.

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Delegation – General Guidance When Taking a GBV Victim’s Statement *(continued)*

- The following guidelines should also be used:
 - **General Guidelines on Risk Assessment – for adult and child victims** (Part 2, Annexes B and C)
 - **Guidelines for Questioning Women Victims of Violence and Sexual Offenses** (Part 2, Annex F)
 - **Guidelines for Questioning Child Victims of Violence and Sexual Offenses** (Part 2, Annex G)

Note: Under no circumstances should a delegation include a request for information from the victim as to whether they wish to pursue their complaint if it is a public crime such as an LADV offense (noting that a crime under Penal Code Article 145 is a public crime and not a semi-public crime, if the relationship is domestic or intimate relationship under the LADV).

IMPORTANT NOTE ABOUT TAKING A STATEMENT FROM A CHILD VICTIM

Taking a statement from a child victim is more complex than taking a statement from an adult victim of a GBV offense. Children have a range of ages and vulnerabilities, and they lack power in their lives. They rely on adults to protect them with a limited range of self-protection capabilities. There are also a range of offenses that are specific to their age and there are different ways in which they can be both direct and indirect victims of violence.

The most prevalent forms of GBV offenses against children occur in the home which should be their safe place. When parents or other persons close to the family become perpetrators of violence (psychological, physical, economic, or sexual) this can cause them great harm. There can also be accumulated exposure to violence.

Previously, it was accepted practice to speak about children as witnesses of domestic violence perpetrated against the abused parent. As a result of research, it is now recognized that children are not merely witnesses to violence, but are **indirect** or **secondary victims** themselves. Children experience violence with all their senses as though it is happening to them. Research also reveals that when domestic violence occurs, a high percentage of children are either in the same room or very close by.

The *Istanbul Convention* addresses this issue and as the Council of Europe commented:^a

While it is important to recognize that most victims of domestic violence are women, it is equally important to recognize that many of these women have children. In some cases, the violence is directed at both women and children. In other cases, children are not targeted themselves but witness violence against their mothers. Either way they suffer and either way they need to be protected.

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Important Note about Taking a Statement from a Child Victim *(continued)*

Research on children exposed to domestic violence has focused on the emotional and behavioral consequences for the individual child. Studies concluded that exposure to domestic violence has strong adverse consequences for children resulting in—among other things—depression, anxiety, social withdrawal, nightmares, loss of appetite, anger, raised levels of aggression, developmental regression, and learning difficulties. There are also inter-generational effects where children later may become abusers or abused victims.^b

Articles 22, 23, and 26 of the *Istanbul Convention* call for further specialist support for children exposed to domestic violence based on their needs. This includes age-appropriate psychosocial counseling and respect for the best interests of the child.

In 2010, the Supreme Court in Norway decided that children who witness domestic violence are entitled to independent legal representation and protection. Therefore, children in domestic violence cases are deemed to be victims of violence and not just witnesses. This decision has also affected police priorities in terms of who is interviewed in a domestic violence case. Generally, where there has been violence and abuse in a family, the police try to interview all the children. The court's decision means that children under 18 who witness repeated physical and psychological violence in the family have independent protection and are also entitled to redress from the family member who exercises violence.^c

Children must be approached with a combination of confidence and kindness so that they feel safe about speaking about their experience. Re-traumatization during the statement-taking process must be avoided.

(Annex G - Guidelines for Questioning Child Victims of Violence and Sexual Offenses)

^a Council of Europe. 2013. *Convention on preventing and combatting violence against women and domestic violence* (Istanbul Convention). Children's Rights. Safe from fear, Safe from harm.

^b C.M. Forke et al. 2019. Intergenerational effects of witnessing domestic violence: Health of the witnesses and their children. *Preventative Medicine Reports* 15. 10094.

^c Council of Europe and Politiet Politidirektoratet. 2016. *Preventing and Combatting Domestic Violence against Women. A learning resource for training law enforcement and justice officers*. p. 30.

Delegations to Justice Officers

Each of the public prosecutors has three justice officers allocated to them to assist them with their work.

(1) Justice Officer to Assist with Investigation	(2) Justice Officer to Serve Notifications
<ul style="list-style-type: none">• A prosecutor commonly uses a justice officer (JO) during an investigation. They are frequently delegated to obtain further information and statements, including statements from the victim, other witnesses, and the suspect.• Other delegations made by prosecutors to JOs to seek medical reports, to receive information from the victims, and to annex all the information together with the statement of the victim.	<ul style="list-style-type: none">• The Justice Officer (JO) is required to send out notifications to persons such as the victim, witnesses, and defendant regarding e.g., trial processes. If they cannot be located, the JO will coordinate with the police to deliver the notification.• The JO is in charge of preparing a conclusion or summary of all of the evidence collected from the investigation and sending it to the prosecutor in charge of the case. The Prosecutor in Charge then reviews it and decides whether to issue a writ of indictment or whether the case should be dismissed.• The JO then notifies the victim and the defendant about that decision.
(3) Justice Officer to Assist with Dispatch	Further Notes
<p>The JO’s role includes:</p> <ul style="list-style-type: none">• delivering the writ of indictment to the court.• maintaining the file and ensuring that all of the documents are kept.• If information and or documents are sent to the PPS by community service organizations, the PNTL, or PCIC, they are received by the Central Section and then passed on to the JO who keeps it on the file.	<ul style="list-style-type: none">• It is suggested that legally the delegations by the PPS ought not to include delegations to JOs to perform “procedural acts” in a criminal investigation.• The “police” or “court staff” may be delegated by the PPS to carry out inquiries or perform any acts relating to an inquiry (CPC Article 57) and “police” are empowered to carry out “procedural acts” during the inquiry (CPC Article 228).• It follows that JOs are not so enabled under legislation and a delegation by

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Delegations to Justice Officers *(continued)*

	the PPS does not legitimize their actions. Therefore, JOs should be confined to performing non-procedural acts. ^a
When	
<ul style="list-style-type: none"> As required throughout the investigation process. 	
How	
<ul style="list-style-type: none"> The process to be followed by JOs when taking a statement from the victims is to be in accordance with the guidelines. 	
Forms	
<ul style="list-style-type: none"> Guidelines for Questioning Women Victims of Violence and Sexual Offenses (Part 2, Annex F) Guidelines for Questioning Child Victims of Violence and Sexual Offenses (Part 2, Annex G) General Guidelines on Risk Assessment – for adult and child victims (Part 2, Annexes B and C) 	

^a UNDP Timor-Leste. 2022. *Law and Practise of the Criminal Procedure in Cases of Gender-Based Violence in Timor-Leste*. p. 72.

IMPORTANT NOTE

- If a statement is taken by a justice officer from the victim, defendant, or witness and not by the prosecutor—who is defined as being a “judicial authority” in CPC Article 1(b) then the statement cannot be produced at the hearing of the trial under CPC Articles 267(2), (3), or (4) and the victim is required to give their evidence in court.^a
- If the victim’s statement has been taken by a judge, the PPS, or a criminal police body, the statement may be read out in court without the victim’s attendance at the hearing, if this is agreed by the PPS, the defendant, and the assistant (CPC Articles 267[2][a] and [b] and 267[5]).
- This would potentially minimize the victim’s trauma. It similarly applies to statements made by witnesses.
- It is suggested that when a justice officer has taken a statement from the victim or witness and it is signed, the prosecutor may later have the victim or witness come them and re-confirm the entire content of the statement with a further confirmatory signature or modify it or add to, it. This would enable CPC Articles 267(2)(b) and 267(5) to be complied with.

^a CPC Article 1(b) “Judicial authority” means the judge and the public prosecutor, each one concerning procedural acts falling under their respective competence.

Delegations to the Support to Vulnerable People Subsection (SVPS), Formerly the Vulnerable Persons Unit (VPU), and National Police of Timor-Leste

What	How
<ul style="list-style-type: none">• The PNTL and SVPS are the most likely bodies to whom a complaint, notification, accusation, or report of a GBV offense is made.• The use of the Common Complaint Report Form in Part 2, Annex A is recommended together with the completion of Risk Assessment Form for a Victim of Gender-Based Violence – adult and child victims (Part 2, Annexes D and E).	<ul style="list-style-type: none">• If delegations are required to take a further statement from a GBV victim then Delegation - General Guidance when Taking a GBV Victim Statement should be used (see pages 125–127 of this Handbook).• If other evidence or information is required, delegations from the PPS should be specific to the investigation of the particular offense and the victim's needs.• When undertaking the investigations delegated by the PPS, the relevant PNTL organization needs to take a victim-centered approach sensitively questioning the victim, and following the guidelines.• Note that If the victim's statement has been taken by the PPS or by a criminal police body such as the PNTL or SVPS, the statement may be read out in court without the victim's attendance at the hearing, if this is agreed to by the PPS, the defendant and the assistant (CPC Articles 267[2][a] and [b] and 267[5]).
Law	Forms
<ul style="list-style-type: none">• Law on the Organization of Criminal Investigations No. (9/2022), Articles 4(3), 5(1), 7, 9, and 11(2).	<ul style="list-style-type: none">• Guidelines for Questioning Women Victims of Violence and Sexual Offenses (Part 2, Annex F).• Guidelines for Questioning Child Victims of Violence and Sexual Offenses (Part 2, Annex G).

Delegations to the Criminal Investigation Police

What	How
<ul style="list-style-type: none"> • As PCIC has exclusive jurisdiction to conduct the whole investigation of certain offenses (see pages 98–99 of this Handbook). Delegation by the PPS is likely to include interviewing a victim (again), as well as the accused and witnesses. • Delegations by the PPS to PCIC can assume the professionalism of the organization and set out the act or topic of examination or information sought. • In certain cases, generally worded delegations may not necessarily capture all that needs to be investigated and greater specificity may be required. • Delegations should be time-bound. • If PCIC is contacted directly by a person making a complaint, then—as with the PNTL—the use of the Common Complaint Report Form (Annex A) is recommended together with the completion of Risk Assessment Form for a Victim of Gender-Based Violence – adult and child victims (Part 2, Annexes D and E). 	<ul style="list-style-type: none"> • If PCIC is delegated by the PPS to take a further statement from a GBV victim then as with the PNTL, the Delegation – General Guidance When Taking a GBV Victim Statement is relevant (see pages 125–127 of this Handbook). • The delegation by the PPS to PCIC should include any statement already taken from the victim as well as other supporting information. • A victim should not have to repeat information that they have already provided at a previous point in time. This is re-traumatizing. • Instead, the victim could either read their earlier statement or have the statement read out to them asking them to confirm it and then asking for any further details that may be required. • Note that if the victim’s statement has been taken by the PPS or by a criminal police body such as PCIC, the statement may be read out in court without the victim’s attendance at the hearing, if this is agreed to by the PPS, the defendant and the assistant (CPC Articles 267[2][a] and [b] and 267[5]).
Law	Forms
<p>Law on the Organization of Criminal Investigations No. (9/2022), Articles 4(3), 5(1), 7, 10, and 11(2).</p>	<ul style="list-style-type: none"> • General Guidelines on Risk Assessment for adult and child victims (Part 2, Annexes B and C). • Guidelines for Questioning Women Victims of Violence and Sexual Offenses (Part 2, Annex F). • Guidelines for Questioning Child Victims of Violence and Sexual Offenses (Part 2, Annex G).

Delegations to the National Police of Timor-Leste Forensic Laboratory

What	
<ul style="list-style-type: none">• The PNTL Forensic Laboratory is a special unit within the PNTL structure. The work it undertakes can be performed internally as part of the work required to be done by the PNTL.• Delegations to the PNTL Forensic Laboratory should be specific and time-bound.• The most likely work to be undertaken by the laboratory concerning GBV offenses is the examination of objects that have been seized by the PNTL.• Before seized objects are taken by the PPS for secure storage, the laboratory should be given the opportunity to conduct the necessary examination on them. This is to enable important corroborative evidence to be obtained and not lost to avoid any additional risk of contamination and to reduce complications with the chain of custody (see pages 150–151 of this Handbook).• A description of the work performed by the PNTL Forensic Laboratory and its results are usually included in the final report provided by the PNTL after it has completed all of its investigations.	
How	Forms
<ul style="list-style-type: none">• Specificity should be used in the wording of delegations so that all relevant and available information and evidence is obtained for that case.	<ul style="list-style-type: none">• If the PNTL Forensic Laboratory is required to obtain information directly from the GBV victims, then—as with the PNTL—the Delegation - General Guidance When Taking a GBV Victim Statement is relevant (see pages 125–127 of this Handbook) and the use of the following is recommended:<ul style="list-style-type: none">• General Guidelines on Risk Assessment – for adult and child victims (Part 2, Annexes B and C).• Guidelines for Questioning Women Victims of Violence and Sexual Offenses (Part 2, Annex F).• Guidelines for Questioning Child Victims of Violence and Sexual Offenses (Part 2, Annex G).

Requests Made to Judges

What	
<ul style="list-style-type: none">Judges perform several functions that are relevant to the GBV investigation. They do so at the request of the PPS (CPC Article 48[2][c]). Some functions are under the exclusive jurisdiction of the judge in the area where the investigation is being conducted (CPC Article 226).Those acts include:<ul style="list-style-type: none">(i) to carry out the first questioning of an arrested defendant within 72 hours of arrest (CPC Article 217);(ii) to conduct the committal of statements to writing for future use (CPC Article 230);(iii) to decide about the search of items and/or persons where the law reserves the judge the competence to do so, namely the search of a lawyer’s or doctor’s office, a bank, or other credit institution (to be carried out personally by the judge);(iv) to authorize telephone tapping (CPC Article 178);(v) to authorize the seizure of mail and to become acquainted with its contents before any other entity does, as well as to seize any items from a lawyer’s or doctor’s office, bank, or other credit institution, examining any records deemed necessary for that purpose (to be carried out personally by the judge); and(vi) to perform such other acts as may be assigned by the law.Examples are orders for:<ul style="list-style-type: none">(i) Search of Persons and Items (CPC Article 169),(ii) Seizure of Items (CPC Article 172),(iii) Pretrial Detention (CPC Articles 183, 194, 197, 198, 199),(iv) Restrictive Measure (CPC Article 184),(v) Prohibiting Travel (CPC Article 193), and(vi) Warrant for Arrest (CPC Article 221 and Release Article 223)	
Law	When
Criminal Procedure Code, Law No. 15/2023, Articles 48(c), 169, 172, 178,183,184, 193, 194, 197, 198, 199, 217, 221, 223, 226, and 230.	The requests for orders are made as required throughout the investigation.

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Requests Made to Judges *(continued)*

How	Forms
<ul style="list-style-type: none">• Written applications are made by the PNTL or PPS.• It is good practice for standard application forms to be developed for each procedure.• This would ensure that all the necessary information and evidence required to obtain the order are collected and produced to the court.	<p>It is recommended that standard forms for common court applications for GBV offenses be used (Part 2, Annexes J and K).</p> <p>Annex J is an Application for a Judge’s Order for Search and Seizure of Places and People.</p> <p>Annex K is for an Application for Validation of Search and Seizure of Places and People where this is done without a judge’s order.</p>
<p>Additional note: If, for example, in an application for pretrial detention, the victim or witnesses gives a statement before the judge about the offense and other related matters, that statement can be read at the trial if the prerequisites under CPC Article 267(2) are fulfilled.</p>	

PART K: Evidence Gathering

Law

Criminal Procedure Code, Law No. 15/2023.

- Article 52 – General Powers of the Organs of the Criminal Police
- Article 52-A – Guidance and Functional Dependence of the Organs of the Criminal Police
- Article 53 – Identifying a Suspect
- Article 55 – Collecting Information
- Article 56 – Urgent Searches, Checks, and Seizures
- Article 59 – Being Declared a Defendant
- Article 61 – Duties of the Defendant
- Article 109 – Elements of Proof
- Article 116 – Admissibility of Evidence
- Article 120 – Indirect Disposition
- Article 121 – Public Voices and Personal Convictions
- Article 163 – Recognizing a Person (Identification)
- Article 168 – Concept (Search of Persons and Places)
- Article 169 – Formalities (Search)
- Article 171 – Relevance of Consent (By the Suspect of Search)
- Article 172 – Seizing Items
- Article 174 – Concept and Prerequisites (Search)
- Article 175 – Subjection to Checks (Search)
- Article 176 – People at the Crime Scene

Overview of Evidence Gathering

Topics Covered in this Part
<p>Purpose of evidence gathering – addressing the underlying aims of gathering evidence and what it is used for.</p> <p>Who undertakes evidence gathering - the prime bodies are the PPS and “organs of the criminal police” (which in this part covers the PNTL, the SVPS and PCIC).</p> <p>Key considerations in evidence gathering – addressing relevance, admissibility, corroborating evidence, and circumstantial evidence.</p> <p>What evidence to gather and how – this large topic is discussed from the point of view of the PPS and describes what the PPS would expect to be undertaken by police bodies when undertaking investigations either immediately upon receiving a complaint or notification, and on arrival at a scene of a recent incident, or after a delegation by the PPS.</p>

Purpose of Evidence Gathering

What to Identify
<p>The purpose of gathering evidence is to ensure that all evidence that is admissible under the CPC is collected concerning the crime to identify:</p> <ul style="list-style-type: none">• the victim of the crime;• what crime was committed, and how, concerning the elements of the crime (Part D);• where the crime was committed; and• who committed the crime (CPC Article 225).

Who Undertakes the Evidence Gathering

Law
<p>Criminal Procedure Code, Law No. 15/2023, Articles 55, 48, and 102.</p> <p>Law on the Statute of the Public Prosecution Service No. 7/2022 as amended by Law No. 7/ 2023, Articles 1 and 5.</p> <p>Law on the Organization of Criminal Investigations No.9/2022, Articles 4 and 5.</p>

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Who Undertakes the Evidence Gathering *(continued)***Role of Prosecutors**

- The competence to conduct and carry out investigations of GBV crimes rests with the PPS (CPC Articles 48 and 55).
- The PPS may delegate the investigation and gathering of evidence to police (CPC Articles 48 and 55) (Part J). When delegating the gathering of evidence to the police, it is necessary to have regard to the competency of the police and their powers under CPC Article 52 as well as under other laws (Part H).
- Prosecutors must actively monitor the lawfulness and propriety of investigations which would include the processes of gathering evidence (CPC Articles 48 and 102, PPS Law Articles 1 and 5, and LOIK Articles 4 and 5).
- A comprehensive and sensitive investigation is fundamental to ensure accountability for the crimes and provide protection to the GBV victims. Evidence needs to be gathered promptly and efficiently. A thorough and rigorous gathering of evidence is necessary to support the victim's allegations.
- It is incumbent on the prosecutor to ensure not only that all relevant evidence is seized or gathered, but also that those acts occur following the law (CPC Articles 48 and 102).
- The gathering of evidence needs to be lawful, independent, and free of any bias or interference.
- The relationship between the PPS and the police needs to also take account of the fact that even before the PPS become involved, the police have legal powers and responsibilities to gather evidence and would be expected to use internal policies and procedures in the process (police practices).
- The PPS should know what the police will do according to their police practices when gathering evidence, including whether they have specific police practices when gathering evidence on GBV crimes.
- The PPS should also have a sound understanding of:
 - (i) what types of evidence are relevant to be collected in the various types of GBV crimes according to the elements of the GBV offenses (Part D);
 - (ii) what facilities are available to collect or examine the evidence; and
 - (iii) the legal procedures to be followed in that process.

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Who Undertakes the Evidence Gathering *(continued)*

Role of Police

- It is incumbent upon the organs of the criminal police, even on their own initiative, to prevent criminal offenses from being committed, gather reports thereof, track down their perpetrators, and take the necessary and urgent precautionary acts to secure evidence (CPC Article 52[1]).
- It is incumbent upon the organs of the criminal police to collect information from persons who might facilitate the discovery of the perpetrator of the criminal offense and his or her identification (CPC Article 55[1]).
- Organs of the criminal police may request the identity of any person when they are in a public place, a place open to the public, or under police surveillance where there is well-founded suspicion that such a person has committed a criminal offense (CPC Article 53[1] and (CPC Article 55[1]).
- The organs of the criminal police—subject to conditions—have important functions under CPC Articles 174 and 176:
 - (i) to conduct checks of persons, premises, and items to examine any clues that may have been left behind at the scene of a crime CPC Article 174(1);
 - (ii) to take action to avoid the changing or effacing of clues before they are examined and prevent entry or movement into and across the crime scene CPC Article 174(2);
 - (iii) to take precautionary measures CPC Article 174(3);
 - (iv) to stop persons leaving the scene while checks are being conducted CPC Article 176.
- The organs of the criminal police also have powers to conduct searches of persons or homes, seizures of items, the inspection of a crime scene, and telephone tapping (CPC Articles 56, 168, 169, 170, and 172).

Role of Judges

Concerning the gathering of evidence, the role of a judge is mainly concerned with ordering the search of places and persons and the seizure of items, or their later validation. Judges must be present during searches of a lawyer's office or doctor's surgery (CPC Articles 56[2], 169, 170, 171, 172, and 176). Judges may also seize correspondence (CPC Article 172A), items from lawyer's offices or medical practices (CPC Article 172B), and banks (CPC Article 172C) and examine them to determine if they are relevant before placing them on the case file.

Key Considerations When Gathering Evidence

Relevance

A **first consideration** in the collection of evidence is relevance (CPC Article 109). An item or a statement from a witness needs to be relevant, which means that it goes to establishing the existence or not of a material fact in issue. This is determined with reference to the charge and the elements of the charge (Part D).

There must be a link between the evidence and the legal elements that the prosecutor is trying to prove.

The question is – *Does this piece of evidence make it more or less likely that an element of the offense occurred?*

Admissibility

A second consideration is whether relevant evidence is admissible.

Evidence that is not prohibited by law is admissible in a criminal case (CPC Article 116). This includes:

- statements made by the defendant
- statements made by the injured party
- witness statements
- expert evidence
- documentary evidence
- inspection of the crime scene
- factual reconstructions

These general forms of evidence are relevant to gathering evidence for GBV cases. Also important are:

- observations made by police officers of the victim, the suspect, and witnesses at the scene of the crime, and photographs and diagrams of the scene;
- the results of their searches and seizures and examinations of items; and
- the medico-legal reports and forensic examinations of the scene or items.

Admissibility of evidence also requires that how evidence is gathered needs to comply with the legal requirements in the CPC (for example, the legal requirements for searches of persons and homes and seizure of items from a crime scene).

There are also specific rules of evidence that need to be kept in mind concerning taking statements from witnesses as they may not be admissible in court, such as “hearsay evidence” (CPC Article 120) and personal opinion evidence (CPC Article 121).^a

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Key Considerations When Gathering Evidence *(continued)*

Corroborating Evidence

A third consideration is evidence supporting that the crime was committed on the victim in the way in which they describe the offending behavior, and that the suspect is the person that committed the offense. This is referred to as “corroborating evidence.”

Examples of this type of evidence include:

- witnesses who saw the crime occurring;
- injuries seen on the victim;
- results of the medico-legal examination and forensic examination of the victim;
- marks or injuries seen on the suspect;
- objects found at the scene;
- fingerprints, bodily fluids, or footprints found at the scene;
- state of clothing of the victim and the suspect and the results of forensic examination on that clothing.

Circumstantial Evidence

A fourth consideration that is particularly important in investigating GBV crimes, is whether there is circumstantial evidence that can support the victim’s statement about the offense and how it occurred.^b

GBV crimes by their very nature usually occur without witnesses and in private. Domestic violence often occurs in the home. Sexual offending may occur in a house or building, or outdoors where they cannot be seen. Therefore, there is often no witness who was present and saw the offense when it happened.

Often, as there is no direct witness who can corroborate the evidence of the victim, prosecutors and investigators need to consider *circumstantial evidence*.^c

- A witness may not have seen what happened, but they may have seen or heard what happened before or after.
- A witness may have heard banging and yelling, which would support a victim’s evidence who stated they were physically abused. A witness may have seen the victim run from the location of a crime, with clothing ripped, blood on their face, and upset. This would support a victim who states that they were raped in that location.

Even though it is not direct evidence, this evidence—when considered together with other evidence—can be strong. All people in the vicinity need to be spoken to and it must be ascertained if they saw or heard anything.

^a “Hearsay evidence” refers to evidence from a person who did not themselves see, hear, or experience the event, but who was told what happened by another person.

^b “Circumstantial evidence” is **indirect evidence** of facts from which one can infer other facts. For example, if a suspect was seen with injuries to their knuckles, one can use this evidence to infer that they were involved in punching the victim.

^c “Corroborating evidence” is **direct evidence** from a source other than the victim, that supports the victim’s allegations. For example, eyewitnesses to the commission of crime, photographs of injuries, and forensic evidence.

What Evidence to Gather and How

Where to Start

The Starting Point

The starting point for the gathering of evidence commences with the complaint of the victim and the statement taken from the victim early in the investigation process (Part J). This information will identify how, when, and where the offending behavior took place; and who the suspect is, either by name or description. This will set the scope for the gathering of evidence.

Similarly, a notification by another person may also start the process. The notifier can be spoken to and a statement can be taken. An investigation can take place as a follow-up to that notification. CPC Article 55 requires information to be collected from persons who may assist with the discovery of the perpetrator of a criminal offense.

Identifying Evidence and Items Relevant to the Crime

The complaint and statement of the victim about the incident and the circumstances will assist investigators in identifying the potential offense(s) committed against the victim.

Investigators need to be familiar with the elements of GBV offenses as described in Part D as those are the elements that need to be proved through the investigation process and the gathering of evidence.

The Processes Used to Gather Evidence

Law

Criminal Procedure Code, Law No. 15/2023, Articles 168, 169, 170, 171, 172, 174.

Introduction: Search of Places and Persons and Seizure of Items

Some legal provisions and processes apply to the searches of places and persons. Often they will occur at the same time, but sometimes they may occur separately. There are also different considerations because of the personal nature of body searches.

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Search of Places and Seizure of Items

Search of Places

The general rule is that conducting searches of places that are private requires an order to be issued by a judge and the judge may choose to preside over such as search (CPC Article 169[1]).

If it is an inhabited place such as a house or home, the search is required to be undertaken between the hours of 6 a.m. and 8 p.m. (CPC Article 170), unless the person consents otherwise in writing (CPC Article 171[2]).

The grounds for a valid search of a private place include that it is likely that there are items of evidence that are relevant to the commission of the crime or to arrest a person.

Exceptions to the general rule that a court order is required:

- When there is a situation of urgency or danger posed by the delay in obtaining a court order (CPC Article 169[6]). A search may be conducted by police and the fact of the search having been undertaken needs to be reported to a judge (CPC Article 169[6]);
- Where there is a strong suspicion that items related to the criminal offense are hidden and a delay in obtaining a court order to retrieve them might lead to modification, removal, or destruction of the items or pose a danger to the safety of persons and goods (CPC Article 56[1][b]).
 - (i) A **report** of the occurrence of the urgent search and seizure of evidence is to be provided to the PPS and later the validity of the acts will be assessed by a judge (CPC Article 56[2]). However, if no items related to a criminal offense are found in the search, no judicial validation is required (CPC Article 56[3]).
 - (ii) **Note:** this power to search does not apply to the search of a “**home**” (for example a victim or suspect’s home)(CPC Article 56[4]).
- When there is a case of in flagrante delicto in connection with a criminal offense that carries imprisonment (CPC Article 56[1][a]). In this situation, a **report** of the occurrence of the urgent search and seizure of evidence is to be included in the criminal proceedings themselves (CPC Article 56[2])
 - **Note:** this does not apply to search of a “**home**” (for example a victim or suspect’s home) (CPC Article 56[4]).
- When the person whose place is to be searched consents in writing to the search (CPC Article 171[2]). Further, the hours of search of a house or home may be dispensed with if the person consents in writing to searching outside those hours (CPC Article 171[2]).

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Search of Places and Seizure of Items *(continued)*

Seizure of Items from Places

The general rule is that the seizure of an item related to a criminal offense, or that may serve as a means of evidence, must be authorized by a judge (CPC Article 172[1]).

Exceptions to this general rule are that the organs of the criminal police may seize such items without prior authorization if there is a case of urgency or danger posed by a delay (CPC Article 172[2]).

A seizure without authorization is to be reported to a judge to have the seizure validated (CPC Article 172[3]) and the items seized are attached to the records of validation, or, if necessary, are placed in the care of a trustee who may be the court clerk (CPC Article 172[3]). If the object is hazardous or perishable, the judge can order the preservation or maintenance of the item.

Search of Persons and Seizure of Items

Search of Persons

A body search of a person is permitted when there is a need to seize items that are relevant to the commission of a crime that are being carried on the person, or hidden on the person (CPC Article 168[1]). This search is to be conducted in either a reserved place or a place that is not freely accessible to the public, for example, it may take place in the suspect's or victim's home (CPC Article 168[2]).

The general rule is that a search of a person must be authorized through the order of a judge, who may direct the search if the judge deems it advisable (CPC Article 169[1]). The search is to be carried out by the police or by persons appointed by the PPS for that purpose (CPC Article 169[2]). The search of a person is to be conducted with dignity and decency (CPC Article 169[3]).

Exceptions to the general rule that a court order is required:

- Where there is urgency or danger posed by the delay in securing an order by a judge, a bodily search may be conducted by police and the fact of the search having been undertaken needs to be reported to a judge (CPC Article 169[6]).
- In the case of *flagrante delicto* in connection with a criminal offense that carries imprisonment (CPC Article 56[1][a]). In this situation, the occurrence of the urgent search and seizure of evidence is to be reported in the criminal proceedings themselves (CPC Article 56[2]).

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Search of Persons and Seizure of Items *(continued)***Seizure of Items from Persons**

The general rule is that seizure from a person of an item related to a criminal offense or that may serve as a means of evidence, must be authorized by a judge (CPC Article 172[1]).

Exceptions to this general rule apply:

- When there is a case of urgency or danger posed by a delay, police may seize such items from the person without prior authorization (CPC Article 172[2]). A seizure without authorization is to be reported to a judge to have the seizure validated (CPC Article 172[3]) and the items seized are attached to the records of validation or, if necessary, placed in the care of a trustee who may be the court clerk (CPC Article 172[3]). If the object is hazardous or perishable, the judge can order the preservation or maintenance of the item.
- Where there is a strong suspicion that items related to the criminal offense are hidden on the person and a delay in obtaining a court order to retrieve them might lead to modification, removal, or destruction of the items, or pose a danger to the safety of persons and goods (CPC Article 56[1][b]). In this situation, the occurrence of the urgent search and seizure of evidence is to be reported to the PPS and later **validated** by a judge (CPC Article 56[2]). However, if no items related to a criminal offense are found in the search, no judicial validation is required (CPC Article 56[3]).

Applications to the Court for Search and Seizure and Validations

The following forms have been developed for use as a guide when making an application to the court for search and seizure of places and persons, on an application to validate search and seizure of items from places and persons (Part 2, Annexes J, K, and L).

Communications Between the Suspect and Victim

Often the ongoing or prior violent relationship between the suspect and victim can be evident through their communications. This may include written communication through letters, SMS, social media, and/or phone calls. Seizures or recordings of these communications can provide evidence of the nature of that relationship.

Written correspondence can only be seized if there are well-founded reasons that (CPC Article 172-A[1]):

- the correspondence was sent or addressed to the suspect (even under a different name or through a third person);

- a crime punishable with a prison sentence of more than 3 years is involved; or
- it is necessary for the discovery of the truth.

If an order for seizure was not made by the judge, these items should not be opened but delivered to the judge, who then decides if they are relevant (CPC Articles 172-A[3]–[4]).

Seizure cannot occur of communications between the defendant and their lawyer (CPC Article 172-A[2]).

Telephones may be tapped or recorded only with a court order, and only when it is of great importance to the discovery of the truth and involves a crime with over 3 years imprisonment (CPC Article 177). However, this does not include conversations between the defendant and their lawyer.

If communications have occurred in the past, the usual search and seizure provisions (see pages 141–145 and Annex J) may be used to obtain the call history or SMS communication between the defendant and the victim and/or others. This can also be obtained—with the consent of the victim—from their phone. If the information is in the public domain—such as on Facebook or Instagram—then the organs of the criminal police may access it themselves.

Location of the Defendant during the Crime

The location of the defendant at the relevant time can often be determined simply through civilian witness statements, other than the victim. Another way in which the location of the defendant can be shown—particularly if the crime involves the movement of the defendant—is through cell phone data.

Cell Phone Location Data

Judges, the PPS, and criminal police authorities may obtain data on cell phone locations under strict adherence to conditions. Pursuant to CPC Article 172F (1), cell phone location data may be obtained if:

- (i) the crime involves a crime against property and the cell phone holder either requests or consents to the measure, which is then documented; or
- (ii) the crime involves terrorism, violent, or highly organized crime or there is well-founded evidence of the imminent commission of a

crime that puts the life or physical integrity of a person at serious risk, the information may be obtained;

- (a) in an existing case after a request is made to the PPS who then seeks the judge's order for the measure and its duration; or
- (b) if there is no criminal case in progress the PPS requests the measure and its duration to a judge on shift for validation and immediate authorization.

CPC Articles 172F (2), (3), and (4) require a report to be drawn up after the end of the measure's duration that outlines the reasons for the measure, its duration, and results.

What Evidence to Gather and Document

Introduction

What evidence to gather and its documentation depends on multiple factors such as:

- whether the incident is recent in nature and police attend the scene soon after it occurs;
- whether the incident being investigated occurred at an earlier point in time and is more historical;
- the nature of the incident: whether it involves sexual offending, homicide or manslaughter, or concerns offenses against physical integrity or mistreatment of a spouse or a minor.

This section does not cover all GBV offenses.

The purpose of this section is to illustrate the processes that the PPS could reasonably expect police to apply when investigating an incident of domestic violence that has recently occurred and they need to attend the scene quickly and document their response and the evidence gathered.^a

^a Noting that there are many variables including location, time of day, availability of police, and the dynamics of the scene on arrival.

The Crime Scene

Identify the Place

The information provided by the victim and/or a person who notified the crime will assist in identifying the scene of the crime and potentially other places where relevant evidence may be collected to prove the commission of the crime.

Places that could be identified could be public places, private places such as a building, and homes, which may be the home of the victim, the suspect, or another person's home.

Whenever a scene of a crime is identified the following processes would apply.

Important Note:

A Checklist to Ensure All Evidence Is Collected during Investigation is set out in this Handbook in Part 2, Annex U.

The pocket card Crimes of Gender-Based Violence (GBV)—developed for the PNTL by *JU,S Juridico Social*—is a useful reference to assist evidence collection concerning particular offenses.

The Crime Scene

A crime scene must be visited as soon as possible before contamination and removal of items.

There are three important aspects:

- *Protection of evidence* – securing the scene and making sure the evidence remains the same as it was when the crime was committed;
- *Documenting the process of Identification and retrieval of items* – referring to processes finding and seizing items of evidence; as discussed above; and
- *Ensuring a chain of custody* – appropriate retrieval and storage of the items seized.

On Arrival at the Scene

Protection of Evidence

- If an incident has recently occurred, it is expected that the scene will be secured and that people will be prevented from entering the scene to preserve any evidence, and that people will be prevented from leaving the area before being spoken to (for identification details and as to whether they witnessed anything).

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On Arrival at the Scene *(continued)*

- The law requires the preservation of evidence and the crime scene (CPC Article 174[2]) and to note items that may have changed including how they may have changed (CPC Article 174[3]).
- This should occur immediately by “an authorized agency” which in most cases would be the police, pending the arrival of a “competent judicial authority” which could be either the PPS or a judge. (CPC Articles 174[4] and 176).
- If someone refuses to comply with an examination, they can be compelled to do so by the competent judicial authority (CPC Article 175[1]). Examinations that might infringe on someone’s dignity, must be conducted with sensitivity (CPC Article 175[2]).

Documenting the Process of Identification and Retrieval of Items

Crime Scene Observations

Recording the location and the time of arrival at the scene

Such as the suco, aldeia, street, or house.

Observations upon approach of the scene

The demeanor of the victim, suspect (if present), and witnesses

Speaking to the victim about the incident, focusing sensitively on the information needed to understand the nature and circumstances of the incident, and the behavior of the suspect including any threats and intimidation, also ensuring the victim is safe and whether medical attention is required (Part J).

Recording the names of all persons at the scene

For example: the victim, neighbors, eyewitnesses, or children, noting their relationship to the victim and the suspect. Include the names of all police and others involved in assisting the investigation and what they did.

Recording the physical features of the scene

- Where the incident is alleged to have occurred.
- Any signs of a struggle—such as broken furniture and items—take photographs and record and seize where possible.
- Drawing a diagram of the scene such as with measurements, a plan of the house, the location of permanent structures, furniture, the fire, the garden or trees.
- Taking photographs of the scene from all angles.
- Blood splatter – taking photographs and then swabs.

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Documenting the Process of Identification and Retrieval of Items *(continued)*

- Footprints.
- Weapons at the scene, recording where they are found and photographing them and the location.

**Observations about the Victim, Suspect, and Witnesses
and Taking Statements****Observations of the Victim**

- Note demeanor and physical presentation (e.g., distress, crying, shock).
- Visible injuries noting any signs or symptoms (e.g., of strangulation).^a
- Complaints by the victim (e.g., of pain and symptoms and nonvisible injuries) noting that domestic violence refers to physical, sexual, psychological, and economic violence.
- The state of the victim's clothing (e.g., whether they are ripped or stained).
- Blood or bodily fluids may not be visible – seize clothes.
- Take photos of the victim and clothing.
- Record everything that the victim says or does.

Observations of the Suspect (if present)

- Note demeanor and physical presentation.
- The state of the suspect's clothing (e.g., whether they are ripped or stained).
- Blood or bodily fluids may not be visible– seize clothes.
- Note any injuries (e.g., injuries to knuckles could be from punching the victim, scratches to the suspect's face might have been in self-defense by the victim).
- Take photos of the suspect and clothing.
- Search of the suspect including for weapons.
- Record everything that the suspect says or does.
- Question and obtain information provided by the suspect on identification (Identification of the Suspect, pages 151–154 of this Handbook).

Taking statements from all persons at the scene about:

- What they saw or heard, and how, concerning the incident.
- Include any utterances made by the victim or the suspect after the incident occurred.
- Has the suspect said anything to anyone about what happened?
- Note where the persons said they were at the time when incident the occurred or after.
- How the victim was behaving before or after the incident.
- Their knowledge of the victim and/or the suspect and their relationship.
- Their knowledge as to any previous violent conduct between the victim and the suspect, and details of the knowledge.

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Documenting the Process of Identification and Retrieval of Items *(continued)*

What Items Should Be Seized
<p>Weapons used to cause injury or to threaten injury – they need to be found and seized, for example:</p> <ul style="list-style-type: none">• Electrical cord or rope used to strangle.• Knife or machete used to cause cuts.• Broken bottles, sticks, or saucepans used to strike and wound.• Plates or any objects thrown at the victim to wound. <p>These items can be forensically examined to determine the presence of blood or swabbed for DNA analysis.</p> <p>Cell phones can be seized – messages and phone calls between the victim and suspect, and the timing of those, may be relevant.</p> <p>Clothing, bedding, or similar items for blood or bodily fluids that can be forensically tested to determine the presence of semen or blood.</p>
Other Actions to Be Recorded
<ul style="list-style-type: none">• Refer victim to services as required such as shelters, psychological counseling, medical examination of injuries, and forensic procedures for sexual abuse (Parts L and M).• Arresting the suspect and taking protective measures (after following procedures referred to in Part M).

^a The reason for highlighting this form of violence is that research reveals that strangulation is an important predictor of the risk in the future of homicide and aggravated homicide. N.Glass et al. 2008. Non-fatal strangulation is an important risk factor for homicide of women. *Journal of Emerg. Med.* October. 35(3). pp. 329–395. It is frequently overlooked.

Chain of Custody

Chain of custody ensures that evidence is not contaminated during its seizure and storage. Prosecutors need to present evidence at trial and show that the evidence is in the same condition as it was at the time of the crime.

How	Who
<p>This means that:</p> <ul style="list-style-type: none">• when the item is taken it is not contaminated by the person seizing it (use single-use gloves)(i) it is stored appropriately so it is not contaminated by the method of storage and any	<p>Every person who handles an exhibit should provide a statement that outlines:</p> <ul style="list-style-type: none">• where;• when;• what they did; and• why they handled the exhibit.

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Chain of Custody *(continued)*

<p>evidence on it is preserved (one item per new sealed evidence bag);</p> <p>(ii) it is stored securely and safely to ensure it is not tampered with or contaminated during storage (in an appropriate storage facility that records who has access, and when, and identified by a unique number); and</p> <p>(iii) it is only opened by an authorized officer for an authorized reason (e.g. forensic scientist to do scientific tests) and when that occurs it is documented with photographs, note taking, and then resealed and stored again until trial.</p>	<ul style="list-style-type: none"> • The statement should include where they got the item from, confirm the unique number, and confirm that they placed it back in storage (or gave it to someone else who then placed it back in storage, e.g., a police officer). • There should not be any gaps in the chain of custody. An exhibit's location and any handling of it needs to be verified from the moment it was seized until it is used at trial.
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Timor-Leste is in the process of developing and establishing additional investigative tools and methods to analyze evidence. Several methods are not currently available as of 2023, for example, DNA analysis or forensic analysis of fibers (see pages 97, 101, and 150 of this Handbook).

These items of interest should still be obtained and stored correctly. If the chain of evidence remains in place and the items are stored and preserved correctly, these items can be tested in the future and the results may be both admissible and probative.

Identification of the Suspect

Who Is a Suspect

Law	What
Criminal Procedure Code, Law No. 15/2023, Article 53.	A suspect is any person in relation to whom there is evidence that they have committed or are about to commit a crime, or have participated in it, or are preparing to participate in it (CPC Article 53).

What Identification Is Required from a Suspect

Law
Criminal Procedure Code, Law No. 15/2023, Article 53.
What
<p>The organs of the criminal police may request that a person found in a public place, a place open to the public, or under police surveillance to provide identification (CPC Article 53[1]). This means:</p> <ul style="list-style-type: none">• their full name;• date of birth; and• place of residence. <p>If they are not able or refuse to do so, then the police can take that person to the nearest police station (CPC Article 53[2]).</p> <p>The suspect must comply with tests to identify them, such as taking fingerprints, photographs, or physical recognition (CPC Article 53[3]).</p> <p>Unless there are grounds for ongoing detention, a suspect must be released after 12 hours (CPC Article 53[4]).</p> <p>These acts must be reported to the PPS in writing forthwith (CPC Article 53[5]).</p> <p>The organs of the criminal police must collect information from persons who might facilitate the identification of a suspect and report this forthwith to the PPS (CPC Article 55).</p>

Conducting Suspect Identification Procedures

Often in GBV offenses, the identification of the person who committed the crime is straightforward, as usually the crime is perpetrated by a person known to the complainant. However, this may not always be the case.

A general description of a suspect should be obtained from the victim and/or witnesses before any formalized identification process. Consider whether another witness might be able to provide further identification of the suspect. This includes any features such as specific identifying marks, like a particular tattoo, scar, or birthmark.

Sometimes, it is necessary to perform an identification procedure with the victim and/or witnesses.

Law
Criminal Procedure Code, Law No. 15/2023, Article 163.
What
<p>The procedure for identifying a suspect is to conduct a line-up procedure (CPC Article 163). This can take place as long as:</p> <ul style="list-style-type: none"> • The suspect is among other people that look the same and are dressed the same (CPC Article 163[2]); • Where there are multiple defendants, they have separate line-ups conducted (CPC Article 163[3]). • The victim or witness needs to state whether any of the persons are the person to be identified and state which one (CPC Article 163[2]). • This can occur without the victim or witness being able to be seen by the persons in the line-up.

When Does a Suspect Become a “Defendant”?

A person has the status of being a “defendant” when an indictment is presented or a request is lodged for the opening of a fact-finding stage in a criminal proceeding (CPC Article 59[1]).

Who is a Defendant?	Defendant’s Duties
<p>A defendant also can be declared if they are someone who (CPC Article 59[2]):</p> <ul style="list-style-type: none"> • has an investigation commenced about them and they have made a statement to an organ of the criminal police or judicial authority; • has had a restrictive or property-guarantee measure imposed upon them; • has been arrested; • has been reported as a person who has committed a crime and has been notified of the report; or • the status of being a defendant must be notified to them either orally or in writing (CPC Article 59[3]). 	<p>Defendants’ duties (CPC Article 61):</p> <ul style="list-style-type: none"> • Appear before the judge, the PPS, or the organs of the criminal police when required by law and summonsed. • Answer truthfully to questions about their identity when asked by a competent authority. • Provide proof of identity and residence as soon as they assume the status of a defendant. • Subject themselves to any measures of inquiry, restrictive measures, and measures aimed at securing assets provided by law, prescribed and enforced by a competent authority.

Finalizing the Gathering of Evidence

Report to the Public Prosecution Service

In addition to gathering evidence at the scene and taking statements, the police—upon delegation by the PPS—will also examine evidence, undertake forensic testing of items, and arrange for medical reports and medico-forensic reports to be obtained and other matters as delegated by the PPS. The results of these examinations will be included in a summary progress report submitted to the PPS by the SVPS within 5 days from the date when they become aware of the facts (LADV Article 24[2][e]). A form to guide the **Progress Report from PNTL/SVPS to the PPS** is set out in **Part 2, Annex S**. Thereafter, further investigations may continue upon delegation by the PPS, and a final report is required to be provided within 6 months if the suspect is in detention, or 12 months if not, or double the times in a complex case (CPC Article 232).

The final report and its contents are crucial to the assessment of whether there is sufficient evidence of the commission of a crime and that the perpetrator has been identified. A form to guide the **Final Report from PNTL/SVPS to the PPS** is set out in **Part 2, Annex T**.

The PPS needs to critically analyze and assess the information in the report and decide whether any further investigation is required (CPC Article 234(2), Part N) and whether a writ of indictment can be issued (Part O).

PART L: Services Relevant to Evidence for Gender-Based Violence Cases and Responding to Victim Needs

Medical Examination – Hospital – Doctors – Community Health Centers

Laws	
<ul style="list-style-type: none"> • Criminal Procedure Code, Law No. 15/2023, Articles 116(e), 150(3), 174, 175 and following, Article 629 and following. • Law Against Domestic Violence, Article 22(b). 	
What	How
<ul style="list-style-type: none"> • A forensic medical examination may be sought by a victim on their own or through a referral from support services. • A forensic medical examination can also be sought through a request from the police or the PPS. • Performing medico-legal examinations is the responsibility of the medico-legal services or private medical practitioners (CPC Article 150[3] or hospital facilities (LADV Article 22[b]). • PRADET is the most well-known, highly regarded, and the most-used facility. • Forensic medico-legal examinations should not include “virginity tests” where the main objective is to determine whether the victim has had prior sexual acts or not. Such testing is a human rights violation. 	<ul style="list-style-type: none"> • The laws do not contain any information on the content of a medical examination procedure. • The Ministry of Health in late 2023 approved a protocol for medical forensic examination. This is called the Medical Forensic Examination and Report Protocol and is to be used by hospitals and other places.^a It is a good model of the type of information that needs to be collected for a GBV case of an adult or a child, with a thorough examination and what should be reported. A copy of the Medical Forensic Examination and Report Protocol is set out in Part 2, Annex M.^b • This protocol has been developed in response to criticisms about the quality and utility of the current examinations and reports from some doctors in some hospitals, health centers, and private

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Medical Examination – Hospital – Doctors – Community Health Centers (continued)

<ul style="list-style-type: none">• The Office of the UN High Commissioner for Human Rights has stated that such tests are scientifically unsound and medically unnecessary and their practice is associated with short and long-term health problems.^c• It is important to ensure that GBV victims are not referred for medico-legal examination without analyzing case facts to assess whether such examination is relevant.	<p>practitioners concerning GBV victims.</p> <ul style="list-style-type: none">• The protocol includes:<ul style="list-style-type: none">(i) details of the victim, noting whether the victim has any disability;(ii) statement about the circumstances of the violence, the type and symptoms suffered;(iii) details of any sexual assault;(iv) noting injuries including past injuries or medical conditions;(v) the physical and emotional state of the victim; and(vi) a history of violence against the victim.• Informed consent for the medico-legal examination should first be obtained from the victim. It includes that victims between 12–16 years are to provide their consent.^d• Victims should be able to obtain a copy of the report.
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^a Approved by the Ministry of Health after working with PRADET. Pursuant to an MOU in 2023 between the Ministry of Health and PRADET, PRADET Fatin Hakmatek will assume much of the responsibility for training on the protocol and supervision of its implementation.

^b Annex M excludes the body diagrams of adults and children used by the examiner to mark the body part where the injuries or markings are seen.

^c World Health Organization. 2018. *Eliminating virginity testing: an interagency statement*, 5; cited in UNDP Timor-Leste. 2022. *Law and Practise of the Criminal Procedure in Cases of Gender-Based Violence in Timor-Leste*. P. 60

^d The reasons for this are set out in the protocol.

Medical Examination – Hospital – Doctors – Community Health Centers *(continued)*

When	Forms
<ul style="list-style-type: none">• Forensic medical examinations may be undertaken even before a complaint is made and before an investigation has commenced.• It is important in sexual offenses that the victim be sent as soon as possible to a facility so that relevant traces may be collected from them and analyzed in sufficient time before there is degradation of any evidence.	Medical Forensic Examination and Report Protocol set out in Part 2, Annex M .

Medical Forensic Examination

PRADET was constituted as a national NGO in 2002 to provide psycho-social services for people who had experienced trauma, mental illness, and other psycho-social problems in Timor-Leste. In 2003, it expanded its services to set up “*Fatin Hakmatek*” (“Quiet Place”) places to provide safety, care, and treatment for victims of domestic violence, sexual assault, child abuse, abandonment, and human trafficking.

PRADET has five *Fatin Hakmatek* facilities. Four of them are physically attached to hospitals in Baucau, Oecusse, Maliana, and Suai. The service in Dili is in a free-standing building physically separate but linked to the Dili Hospital. Each of the *Fatin Hakmatek* facilities services outlying municipalities.

PRADET occupies a special position and an essential role in the investigation of GBV offenses. It is not an organization that is the subject of a delegation by the PPS but instead is a body to which victims are referred for their services. *Fatin Hakmatek* facilities provide medical forensic examinations for GBV victims. They are performed by accredited medical forensic examiners, nurses or midwives, as well as doctors if the victim’s injuries are severe.

Medical Forensic Examination (continued)

What	Who
<ul style="list-style-type: none">• A comprehensive Medical Forensic Examination and Report Protocol has been developed by the Ministry of Health and PRADET for use by PRADET, but is also to be used in hospitals and other places.• In addition to having the protocol, PRADET has also developed a template of the client assessment to be used by Fatin Hakmatek when there is a client referral. This is a comprehensive client assessment and describes the types of information to be gathered that is highly relevant to the investigation of the case, the offenses that may be relevant, the protections required, and the services needs of the victim. It uses a thorough risk assessment. It also includes a detailed action plan.• This client assessment is used together with the Medical Forensic Examination and Report Protocol, as may be required. It is a good model of the type of information that needs to be collected for a GBV case. A copy of the Client Assessment – Fatin Hakmatek is set out in Part 2, Annex N.	<ul style="list-style-type: none">• <i>Fatin Hakmatek</i> makes referrals as needed to the PNTL/SVPS, PCIC, hospitals and clinics, longer-term accommodation in safe houses or refuges, child protection officers, legal advice services, economic assistance, and other services (a List of Referral Network Services for GBV Victims is in Part 2, Annex X).• <i>Fatin Hakmatek</i> also provides complete crisis care to victims that includes 3 days emergency accommodation, basic needs supplied such as transport, food, and clothes, and there is a referral to other relevant services as required.

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Medical Forensic Examination *(continued)*

When	How
<ul style="list-style-type: none"> • Generally, the major service provided by PRADET commences very soon after an offense has occurred, but their assistance goes well beyond that time and includes quarterly visits to the victims and other ongoing assistance and services. 	<ul style="list-style-type: none"> • Most referrals come from the PNTL or SVPS (estimated to be 75%), but also includes referrals from family, neighbors, hospital emergency departments, and other sources. • Not all victims who come to PRADET for assistance undergo a medical forensic protocol examination. It depends on what services the victim requires. • If the victim is referred from the PNTL, SVPS, PCIC, or the PPS, then with the consent of the victim, a medical examination is undertaken. However, if the referral comes through other sources, the victims receive counseling assistance. Some victims may choose not to proceed further with an offense. • After a victim has undergone a full medical forensic examination according to the protocol, the report is signed by the victim who confirms the accuracy of the information and indicates consent for a “blue copy” of the report to be placed in a sealed envelope and provided to the referring entity, usually the PNTL or SVPS . • This “handover” process is recorded with the date, time, and name of the handover person.

PART M: Victim Safety, Coercive Measures, Restrictive Measures, and Protection Orders

The safety of victims is a highly significant issue in cases of GBV. It must be considered by the PPS when making decisions concerning the arrest of the suspect or defendant and the imposition of restrictive measures, bail, and pretrial detention.

The role of the PPS is crucial in ensuring the protection of victims. Involvement in the criminal justice system may be dangerous for some victims. They may be at risk of intimidation, further harm, and retaliation. Protective measures need to consider the physical and emotional needs of the victim.

This part refers to the various measures that can be taken to protect the safety and security of the victim, or that have the effect of providing at least temporary protection and security to GBV victims. The measures cover shelter for victims; arrest of accused; protection of witnesses; bail and conditions; report to court or police; prohibition on travel; removal from residence and “no contact”; pretrial detention; and relevance of proof of identity and residence requirements to the security of the victim.

There is a range of protective measures for GBV victims with differing requirements and outcomes (**Checklist of Restrictive and Protective Measures in GBV Cases, Part 2, Annex O**).

Shelters for Victims

What	Who
<ul style="list-style-type: none">• An important way of protecting GBV victims quickly is to take them to a shelter or “<i>Uma Mahon</i>.” Most shelters are run by NGOs such	<ul style="list-style-type: none">• Police and the PPS are required to refer victims to shelters (LADV Articles 20, 24, and 28) if the victim consents (LADV Article 5).

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Shelters for Victims *(continued)*

<p>as <i>Casa Vida</i> and Fokupers and other Referral Network services (List of Referral Network services, Part 2, Annex X).</p> <ul style="list-style-type: none">• There are government-run safe space shelters in some areas but not in all municipalities. Under the LADV, the government is required to establish, manage, and supervise a national network of support centers for victims of domestic violence that provide shelter (LADV Article 15).• The support centers comprise reception centers and shelters that work in coordination with each other (LADV Article 15). They are free of charge (LADV Article 18). They provide psychological support and/or medical care, social assistance, and legal support, as well as promote skills for the users (LADV Article 16).	<ul style="list-style-type: none">• Hospital services are required to inform the victim of their rights and refer them to a shelter (LADV Article 22).• Social assistance services are also required, where needed, to facilitate the removal of a victim to a place that is adequate to their needs (LADV Article 23).• Shelters and the persons who work there are to report to the PNTL or the PPS cases regarding victims of domestic violence. They must, however, abide by the requirements of confidentiality and privilege (LADV Article 19).• The LADV provides that specialized assistance services be established for filing complaints (LADV Article 21).
When	
<ul style="list-style-type: none">• Shelters are an important option for victims if their safety is at risk and they have nowhere else to go. It might be the only option in cases where the suspect is at large and cannot be found. They are, however, only an emergency and temporary solution.• After the defendant is arrested, the defendant should be appropriately restrained—either through restrictive measures or pretrial detention—or be removed from the house and prevented from contact with the victim (LADV Article 37).• If these measures still do not protect the victim and/or their children, a more permanent solution may need to be investigated. This situation may arise where the family of the defendant, or the <i>aldeia</i> where they reside, are not supportive or are placing undue pressure or threats on the victim. In those circumstances, relocating the victim to a different residence after a placement in a shelter should be investigated.	

Arrest of Suspect or Defendant

Law	
Criminal Procedure Code, Law No. 15/2023, Articles 217, 219, 220, 221.	
What	How
<p>Detention is carried out (CPC Article 217):</p> <ul style="list-style-type: none">• within 72 hours to bring the suspect or defendant before the court in an expedited proceeding;• to present that person before a judge for their first judicial questioning;• for the imposition of a restrictive measure; or• ensuring that the person is immediately brought before the judicial authority in a procedural act at the earliest opportunity and not after 72 hours. <p>The relevance of arrest and detention is that it allows the GBV victim for up to 72 hours, to get emergency assistance at a shelter, obtain one-off police protection measures under the Witness Protection Law, or make an application for a restrictive measure.</p>	<p>Arrest can occur in three different situations:</p> <ol style="list-style-type: none">1. <i>In flagrante delicto</i> by any person (CPC Article 219);2. After a warrant is issued by the judge (CPC Article 221); or3. By the police or the PPS after certain preconditions are met (CPC Article 220).
1. <i>In Flagrante Delicto</i> by Any Person (CPC Article 219)	
<p><i>In flagrante delicto</i> refers to:</p> <ul style="list-style-type: none">• a crime that is in the process of being committed or that has just been committed. <p>Arrest <i>in flagrante delicto</i> applies when:</p> <ul style="list-style-type: none">• the perpetrator is found by any person as soon as the crime has been committed or is found with items or evidence that clearly shows that they have just committed a crime or have taken part in it.• In the case of a crime in progress, when there are indications that the crime is currently in the process of being committed, and the perpetrator is taking part in it. <p>Arrest not <i>in flagrante delicto</i> can only occur after obtaining a warrant issued by a judge (CPC Article 220(1)) or in an urgent situation, police, or the PPS (CPC Article 220[c]).</p>	

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Arrest of Suspect or Defendant (continued)

2. After a Warrant Is Issued by the Judge (CPC Article 221)

- An application for a warrant needs to be made to a judge by the PPS;
- The application for a warrant should provide brief reasons for the arrest and the purpose;
- A warrant must contain certain information as outlined in CPC Article 221(2), and a duplicate should be handed over to the person to be arrested;
- An arrest must be immediately notified to either a judge or prosecutor depending on the circumstances (CPC Article 222).

3. Order for Arrest by the Police or Public Prosecution Service after Certain Preconditions Are Met (CPC Article 220)

Police authorities and the PPS—or other agencies with similar status—may order the arrest of a suspect or defendant (other than *flagrante delicto*) when (CPC Article 220[2]):

- pretrial detention is available,
- there is strong evidence that the person is preparing to evade legal action, and
- in an urgent situation where it would be too late to wait for a warrant from a judge.

ADDITIONAL NOTE: Comment has been made that it is common for authorities not to arrest a perpetrator of GBV even in *flagrante delicto* because of widely held views that such cases are a *family or private matter*.^a This is inappropriate and could amount to a dereliction of duty.

^a UNDP Timor-Leste. 2022. *Law and Practise of the Criminal Procedure in Cases of Gender-Based Violence in Timor-Leste*. p. 57.

Protection of Witnesses

Law

Law on Protection of Witnesses, Decree Law No. 2/2009, Articles 1, 19, 20.

What

The Law on the Protection of Witnesses (LPW) has application in GBV crimes in certain circumstances. This law applies concerning the application of measures for the protection of witnesses in criminal proceedings where “their lives, physical or mental integrity, freedom...” is jeopardized due to their contributing to ascertaining the facts or the truth in the proceedings (LPW Article 1[1]).

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Protection of Witnesses (continued)

Witnesses are defined in LPW Article 2(a) as:
“any person who...is in possession of information or knowledge necessary to the disclosure, apprehension or evaluation of the facts subject to the investigation and which are likely to represent a danger to himself or to spouse, relatives in the ascending line, children or siblings and other persons close to the witness...”

The **Specific Measures of Security** set out in LPW Article 19 of the law have particular relevance to the security and protection of GBV victims. This article enables **police protection** (LPW Articles 19[6] and 19[1][d]) to be given on a sporadic or temporary basis to a GBV witness (which would include a GBV victim), when there is a justified security need and the criminal offense may result in a penalty of over 5 years.

The type of security that can be provided as a temporary one-off security measure is access to a space in the court or police premises under surveillance and security (LPW Article 19[1][c]), and this police protection can be extended to spouse, parents, children, siblings, or other close contacts (LPW Article 19[1][d]).

These police protection and security measures may be obtained urgently to protect GBV victims and family members.

How
During the criminal investigation, one-off security measures can be applied based on an ex officio instruction by the public prosecutor, at the request of the witness or victim or their legal representative, or the proposal of police authorities (LPW Article 19[2]). No court order is required at this stage. After the investigation, the judge presiding may order the security measure, ex officio or upon the request of the public prosecutor.

Restrictive Measures

Law
Criminal Procedure Code, Law No. 15/2023, Articles 181, 182, 183, 184, 185, 186, 187, 188, 197.

Background

The prosecutor represents the community and the victim in determining whether a defendant should be released on bail, detained upon arrest, or be subject to other restrictive measures. Restrictive measures are vital to

ensure the victim's immediate and ongoing safety and ability to engage in the judicial process without fear or intimidation. Prosecutors should carefully review the options available that would protect the victim.

In **reviewing these options**, CPC Article 182 provides:

"In choosing a restrictive or property-guarantee measure to be actually imposed, the following shall be taken into consideration:

- (a) conform the measure to the procedural needs that are expected to be safeguarded;
- (b) take a measure proportionate to the gravity of the crime and the penalties that are likely to be imposed in the given case;
- (c) give preference to the measure that, being adequate to the preventive requirements, interferes the least with the normal exercise of the fundamental rights of the citizen."

Only a **defendant** can have restrictive or property guarantee measures placed on them (CPC Article 181) (See CPC Article 59 as to when a suspect becomes a defendant, page 153 of this Handbook.)

The **options available to be considered** are:

- Bail (CPC Articles 187 and 189)
- Residence and Travel Restrictions (CPC Articles 193 and 194)
- Reporting Requirements (CPC Article 191)
- Residence Requirements and "No Contact" Orders (LADV Article 37)
- Pretrial Detention (CPC Articles 195, 196)

Victim Risk Assessments – Relevance and Overview

A risk assessment of the victim is a crucial factor to be considered in reviewing options for restrictive measures for GBV offenses. Such risk assessment should include the background of the relationship between the victim and the suspect. Restrictive conditions should prioritize the safety of the victim and their family.

A risk assessment should be undertaken at the time when a complaint is made to the PNTL, SVPS, PCIC, or the PPS, using the Risk Assessment Form for a Victim of Gender-Based Violence – adult and child victims in Part 2, Annexes D and E. This is a fundamental first step in providing the victim with the right assistance. This will help guide what measures are required and what the court should be requested to consider.

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Victim Risk Assessments – Relevance and Overview *(continued)*

In the context of restrictive measures, a risk assessment includes the background of the relationship between the victim and the suspect and whether the suspect has:

- committed prior acts of violence against the victim or others;
- violated any previous restrictive measures or other court orders (e.g., a protection order or a sentence); or
- a history of alcohol or drug problems or mental illness.

Other considerations include:

- whether the victim fears further violence, danger, or threats and the basis of that fear;
- the likelihood that the defendant will obey a no contact order and removal from the family home;
- if there is a history of offending, then the decision may weigh more heavily toward requesting pretrial detention. Pretrial detention should be considered in cases where there is a risk of further violence and intimidation upon the victim; or
- if the victim is a child, there is a special need to consider whether the child may require referral to a Child Protection Officer under the Law on the Protection of Children and Youth in Danger, LPC Law No. 6/2023.

General Requirement for a Restrictive Measure (CPC Article 183)

What

The imposition of a restrictive or property guarantee measure is required to meet one of the following three requirements (CPC Article 183):

- Reasonable fear that the defendant may escape.
- Reasonable fear that the investigation or trial might be disrupted, meaning that the obtaining, conserving, or veracity of the evidence may be negatively impacted.
- Reasonable fear that further crimes may be committed or that public order and peace might be disrupted given the nature of the criminal offense and personal factors of the defendant.

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General Requirement for a Restrictive Measure (CPC Article 183) *(continued)*

What	How many
Restrictive or property guarantee measures can only be imposed by the judge at the request of the prosecutor in the inquiry phase and at any procedural phase thereafter, after consultation with the prosecutor. The defendant also has a right to be heard (CPC Articles 184[2] and 184[3]).	One or more restrictive or property guarantee measures or bail can be imposed on one defendant (CPC Article 185[1]), except when the defendant is in pretrial detention (CPC Article 185[2]).

Bail

What	How
<ul style="list-style-type: none">• Bail is the payment of a sum of money to the court, the imposition of a lien, pledge, or bank or personal surety in favor of the court (CPC Article 187[3]) to ensure compliance of the defendant with procedural obligations arising out the restrictive measures imposed or attending to a procedural act (CPC Article 189[1]).• It is only imposed if the crime is punishable by imprisonment (CPC Article 187[1]).• The defendant may have another measure (apart from pretrial detention) substituted for bail if they can prove that they do not have the means to pay (CPC Article 188).	<ul style="list-style-type: none">• The amount of the bail must consider:<ul style="list-style-type: none">(i) the socioeconomic status of the defendant;(ii) the damage caused; and(iii) the gravity of the criminal conduct and the objectives of the preventative measure. (CPC Article 187[2]).• This can be increased or modified should new circumstances justify it (CPC Article 187[5])

Reporting to the Court or Police

A defendant can be required to appear before a judicial authority or police entity on particular days and times:

- with consideration given to their residential address and work commitments; and
- in cases where the punishment exceeds 1 year (CPC Article 191).

The entity is to keep records of the appearances. The defendant's failure to appear within 5 days of the date is to be reported to the court (CPC Articles 191[2], 191[3]).

Prohibition on Travel

Where the case involves an intentional offense punishable by over 3 years imprisonment, the judge may prohibit the defendant from:

- traveling overseas without authorization and seizing their passport (CPC Article 192); or
- prevent the defendant from leaving their residence or only leaving with authorization (CPC Articles 192[2][b] and 193).

Residence Requirements and “No Contact” Orders (Law Against Domestic Violence Article 37)

Two measures of great relevance in domestic violence cases to protect victims of domestic violence are:

- Removing the defendant from the residence; and
- Preventing the defendant from having contact with the victim (LADV Article 37).

It is important to note that:

- these measures are only available in relation to crimes of domestic violence under the Law on Domestic Violence. Therefore, crimes must be appropriately identified in deciding which criminal offenses to apply.
- There is a need to comply with the general requirements in CPC Article 183.

The LADV provides that in cases involving crimes of domestic violence, the judge may decide whether:

- there are signs of violence; and
- there is a reasonable likelihood that acts of aggression may occur again, which will place the life, physical, mental, or sexual integrity of the victim at risk.

If so, the judge may then order that the defendant:

- be removed from the place of family residence; and
- bar them from having any contact with the victim. (See pages 161, 165, 166, and 168 of this Handbook.)

LADV Article 7 requires that information be provided to the victim by (among others) the prosecution service about the protection of their rights. The victim should also be:

- notified if and when the defendant is released;
- provided with a copy of the order outlining the conditions of release; and
- told who they should contact if the defendant breaches any of those conditions.

The LADV also provides that the court shall apply procedural measures for the protection of witnesses in proceedings relating to crimes of domestic violence (LADV Article 39).

Pretrial Detention

Law

Criminal Procedure Code, Law No. 15/2023, Articles 183, 192, 193, 194, 195, 196, 197, 198, 199, 202.

Pretrial detention may be ordered (CPC Article 194[1]) when one of the prerequisites in Article 183 are met and all of the following are satisfied:

- There is strong evidence of an intentional crime punishable with more than 3 years imprisonment; and
- The imposition of any other restrictive measure would be inadequate or insufficient.

If the defendant suffers from a mental disorder, they shall be preventatively admitted to a psychiatric hospital (CPC Article 194[4]). If

the mental disorder is intermittent or sporadic then the judge may, on an exceptional basis, order that the defendant be admitted to a hospital with or without police surveillance in substitution for pretrial detention (CPC Article 199).

A pretrial detention order must be preceded by a hearing from the defendant, except in situations of impossibility or where this puts the implementation of the measure at serious risk. In such situations, the defendant is to be heard after the application of the measure (CPC Article 194[3]).

The length of pretrial detention may not exceed (CPC Article 195[1]):

- 1 year without the presentation of an indictment.
- 1 year and 6 months without a decision having been delivered following a fact-finding stage.
- 2 years without a first instance conviction.
- 3 years without a final conviction, except where an appeal has been filed over constitutional issues, then 3½ years.
- If the case is exceptionally complex, then the time limits may be increased by 6 months.
- The time limit for restrictive measures in Articles 192 and 193 shall lapse after twice the time limits as outlined above.
- The judge must review the prerequisites that form the basis for maintaining the defendant under pretrial conditions every 6 months (CPC Article 196[1]). The prosecutor must issue an opinion 10 days before that time lapses.
- Restrictive measures are immediately revoked by a judge when they are unlawful or the circumstances that justified their use no longer exist (CPC Article 197).
- Pretrial detention may be suspended on the grounds of serious disease, pregnancy, or labor, for a period deemed necessary and other suitable restrictive measures may be imposed instead, consistent with the circumstances (CPC Article 198). This can also apply to other restrictive measures (CPC Article 202).

Proof of Identity and Residence

Although the obligation of a citizen to identify themselves before a competent authority is not considered a restrictive measure (CPC Article 181[3]), some of the requirements for proof of identity of the perpetrator may give some protections and security to the victim. It allows authorities—and therefore the victim—to be able to know where he is living.

Proof of identity and residence may be required by either the public prosecutor or any criminal police entity responsible for conducting an inquiry (CPC Article 184[1]). The request for proof of identity does not need to fulfill any of the requirements outlined in CPC Article 183. Every person declared a defendant must provide proof of identity and residence (CPC Article 186[1]).

Requirements
<p>Provision of proof of identity and residence means (CPC Article 186[2]):</p> <ul style="list-style-type: none">• Providing full identification; home and work address; and address for service of documents.• Appearing before a competent authority when required.• Reporting any change of residence or intention to be absent from their residence for more than 15 days.• Failure to comply with the above two requirements can legitimize the defender to represent them in procedural acts including the trial in the absence of the defendant.

Non-Compliance with Bail or Restrictive Measures

Law
<p>Criminal Procedure Code, Law No. 15/2023, Articles 189, 202.</p>

Non-compliance with bail: The court may order that a defendant has broken bail where the defendant fails to comply with a restrictive measure or through non-attendance at a procedural act without justification (CPC Article 189). When bail is broken the amount of the bail is forfeited to the state.

Non-compliance with a restrictive measure: When a defendant fails to comply with a restrictive measure, other measures may be imposed or the original measure substituted (CPC Article 202[2]).

- If a defendant does not comply with a restrictive measure then the prosecutor should request more onerous restrictive measures, or even pretrial detention.
- If, for example, the defendant is subject to a no-contact provision due to fears of the victim being subject to ongoing violence and threats, then non-compliance with this condition would suggest the only remedy to ensure the victim's safety would be pretrial detention.
- It does not matter if the victim agreed or initiated any contact with the defendant, the condition of no contact applies only to the defendant and it is the defendant who must comply with it.

When Do Restrictive Measures Lapse?

Law
Criminal Procedure Code, Law No. 15/2023, Article 203.

Restrictive measures lapse immediately after (CPC Article 203):

- The case is archived after the investigation.
- An order is issued dismissing a case.
- An order is issued rejecting the indictment under CPC Article 239(2) (a) or (b).
- A sentence of acquittal is handed down even though an appeal has been filed, if the defendant is then convicted, they may be subject to restrictive measures until the sentence comes into effect.
- A final unappealable conviction is entered.
- Pretrial detention and the obligation to remain in one's residence will lapse immediately after a conviction, even though an appeal has been lodged if the penalty does not exceed the period that the defendant has spent in pretrial detention or within their residence.
- If the restrictive measure is bail and the defendant is convicted to imprisonment restrictive measures lapse when the penalty begins.

PART N: Closing an Investigation

Law	What
Criminal Procedure Code, Law No. 15/2023, Articles 233, 234.	<p>The LADV (Article 24.2[e]) requires the PNTL/SVPS to prepare a summary report within 5 days of becoming aware of the facts of a domestic violence crime. This report is to be submitted to the PPS and is to attach the complaint and set out: observations made, measures adopted, and evidence collected.</p> <p>This summary report is likely to be followed up by the PPS delegating further investigation activities to the PNTL or PCIC (depending on the type of offense) (Parts H and I).</p> <p>When an investigation has been completed, the police body delegated to carry out the investigation prepares a final report and submits it to the PPS (CPC Article 234[1]).</p>
Who	When
<ul style="list-style-type: none"> • The police body submits a final report of the investigation. • The PPS assesses the final report—including any other information provided to the PPS about the crime received from other sources—and decides whether further investigation actions are required. 	<ul style="list-style-type: none"> • Investigations are to be completed within 6 months if the suspect is in detention, or 12 months if not. Both limits can be doubled but only in complex cases (CPC Article 232) • The PPS may extend the time for additional investigations after a final report and set a specific time limit for this to be undertaken (CPC Article 234[2]).

Assessing the Adequacy of the Final Report

- The task of assessing and analyzing the contents of the final report by the PPS is critical. It is not simply a matter of ticking off a notional box of what evidence is required to be gathered for certain types of cases (although that is also an important process as referred to in Part K). The content of the final report needs to address the **individual victim in all of the circumstances** of the offense.
- The PPS needs to ensure that all available evidence has been collected and that a full and comprehensive investigation has taken place. If this is done, it will reduce the reliance on the victim's testimony only, reduce retaliation by the perpetrator, and increase the likelihood of a successful prosecution.
- This assessment process undertaken by the PPS should critically consider whether any lack of evidence or inadequate information is due to police having stereotyped views of what is appropriate to be collected in, for example, a domestic violence case, which may still be privately viewed as a family matter and not a public crime. It also may indicate that police are not correctly identifying the evidence required to satisfy all elements of the offense.
- Sometimes attitudes by police can affect the quantity and quality of the evidence gathered and it may include whether they have been sensitive in their approach to the victims and their security. These are proper considerations for the PPS as the body responsible for the investigation and its processes.
- Police bodies themselves need to have a good understanding of the nature of GBV offenses, their different forms and elements, and also have undertaken gender-sensitivity training when undertaking their work. This should also be addressed between the PPS and the police bodies, especially if trends can be seen of inadequacies that need to be systematically addressed.
- The assessment of the final report and whether further actions are required include not only matters related to the elements of the offense and whether all evidence has been collected for all potentially relevant offenses, but should also include up-to-date information about the situation of the victim and whether a recent risk assessment

has been recently conducted (**Risk Assessment Guidelines** for adult and child victims, Annexes D and E).

- This assessment needs to be undertaken by the prosecutor in charge and not referred to a justice officer, or if it is so referred for an initial assessment, it must be scrutinized and independently assessed by the prosecutor.

To encourage a consistent and high standard of evaluation and assessment of the final report refer to the **Checklist to Ensure all Evidence is Collected in Investigation, Part 2, Annex U**.

PART O: Decision Whether to Order Indictment, Dismiss, or Archive the Case

Law

Criminal Procedure Code, Law No. 15/2023, Articles 48, 92, 122, 125, 234, 235, 236, 237, 346, 347.

Law Against Domestic Violence, Law No. 7/2010, Articles 2, 35, 36, 37.

Dismiss or Issue a Writ of Indictment

What	Who
<p>This Part assumes that all available evidence relevant to the case has been collected (Part N).</p> <p>The issue to be decided is whether the PPS should issue a writ of indictment, dismiss the case, or archive the case.</p> <p>Both the victim and the defendant need to be notified about orders of dismissal or the writ of indictment (CPC Article 237).</p>	<p>This is the sole responsibility of the PPS which is required to present the indictment and sustain it during the fact-finding stage and present it in court (CPC Article 48[2][d]).</p>
Closure or Archiving	Issue of an indictment
<p>After the receipt of the final report under CPC Article 234 or after the investigation is closed, the PPS shall issue an order of closure of the inquiry if (CPC Article 235):</p> <ul style="list-style-type: none">• sufficient evidence was gathered that no crime has occurred or that the defendant has not committed it in any capacity;• there is not sufficient evidence amounting to a crime;	<p>An indictment is issued by the PPS within 15 days if (CPC Article 236[1]):</p> <ul style="list-style-type: none">• there is sufficient evidence of a crime; and• sufficient evidence of who committed it. <p>Evidence is considered to be sufficient where a penalty or security measure may be reasonably imposed on the defendant in trial under the evidence (CPC Article 236[2]).</p>

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Dismiss or Issue a Writ of Indictment *(continued)*

- the perpetrator of the crime is unknown (note that this differs from a situation where the perpetrator cannot be found in which situation the case can be **archived**, pending their being located);
- the criminal proceeding is legally inadmissible;
- archiving may be total or partial (CPC Article 235[2]).

The processes

- Notification of the closure of the investigation is to be served in person on the suspect and victim and also on their legal representative or agent (CPC Article 92A[2]);
- A request can be made for a reopening of the investigation within **15 days** of receipt of notification by an assistant (CPC Article 238C[2]).
- This is a request for a judicial fact-finding process under CPC Title III;
- The request for reopening must be served personally on the accused and the defender, and only then is the case file sent to the court (CPC Article 238C[4]);
- The request to reopen must be addressed to the judge and delivered to the PPS (CPC Article 238D[3]).

Alternative process - Hierarchical process

- If the assistant or complainant either does not, or chooses not to, request a reopening under Article 238C (2), they may request a hierarchical intervention within the

An indictment must contain (CPC Article 236[3]–[5]):

- the basis of the identification of the defendant;
- the factual basis of the crime (a brief description of the essential facts);
- the applicable substantive provision (identifying the crime(s) and the applicable law (e.g., the CPC Article and the LADV Articles);
- date and signature.
- list of witnesses and any other proofs to be presented at the hearing.
- In the case of related charges, a single writ of indictment is issued (CPC Article 236[4]).

The processes

- Must be issued by the PPS within **15 days** of completion of the investigation if evidence is sufficient (CPC Article 236).
- Notification of the issuing of the writ is to be served in person on the suspect and victim and also their legal representative or agent (CPC Article 92A[2]).
- Within **5 days** of the receipt of notification, the assistant may file charges based on the facts in the indictment if it is not a substantial modification of the facts (CPC Article 236A[1]).
- Within **30 days** of the notification of indictment, a request may be made for a fact-finding process. The request may be made by:
 - (i) the formal suspect concerning facts that the

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Dismiss or Issue a Writ of Indictment *(continued)*

<p>PPS within 20 days of the date of notification. This can request either a reopening of the investigation or to charge the accused (CPC Article 235A). The decision to refuse or grant that request may be appealed against an immediate superior (CPC Article 235B).</p> <ul style="list-style-type: none">• If more than 20 days have elapsed, then there can only be a reopening of the investigation if new evidence emerges (CPC Article 235B[1]). <p>Note: Before there is a closure of the investigation—even if there is no request made within 15 days for a reopening under CPC Article 238C and no request made for hierarchical intervention within 20 days under CPC Article 235A—the PPS will initiate a hierarchical review after 20 days. This process is a review by a prosecutor who holds the position of First Instance Coordinator, or Prosecutor General of the Republic, in the PPS who is a superior to the prosecutor who decided to give notification of closure, to ensure that closure is appropriate and that there is no further investigation required or charge to be laid</p> <p>New evidence</p> <ul style="list-style-type: none">• If the time limits referred to above expire, the investigation can only be reopened if new evidence arises that invalidates the grounds upon which the order was made by the PPS (CPC Article 235-B[1]).• This decision is also reviewable by an immediate superior (CPC Article 235-B[2]).	<p>PPS used to prepare its indictment;</p> <ul style="list-style-type: none">(ii) the assistant concerning facts that were not included in the indictment and amount to a different crime or an aggravation of the upper limits of the penalty (CPC Article 236B[2]). <p>In summary, the PPS cannot forward the writ of indictment to the court until 30 days after the parties and their representatives have received notification unless, within those 30 days, a request is made to a judge for fact-finding.</p>
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Expedited Trial Process

Law	What
Criminal Procedure Code, Law No. 15/2023, Articles 346, 347, 348, and 349.	An expedited trial takes place when: <ul style="list-style-type: none">• a person is arrested in flagrante delicto; and• it involves a crime carrying a prison term of up to 5 years; and• the trial needs to be initiated within 72 hours following a suspect’s arrest (CPC Article 346).
Who	How
The entity or person receiving the arrested person shall forthwith refer them to the PPS or in urgent cases directly to the court for trial and notify the PPS at the same time (CPC Article 347).	<ul style="list-style-type: none">• The indictment shall be replaced with a report prepared by the PPS before the hearing begins after consultation with the arresting entity (CPC Article 347).• The procedures for the expedited trial are set out in CPC Articles 347, 348, 349.• The PPS must still decide whether to proceed with the trial, using the same decision-making processes set out below, but in an expedited situation.

Decision-Making Process

The decision of whether to prosecute is one of the most significant steps in the criminal justice process. The interests of the victim, the defendant, and the community expect that the right decision is made. A wrong decision will undermine public confidence in the criminal justice system.

A prosecution should only commence if there is admissible, sufficient, and reliable evidence that a crime has been committed by the defendant. This requires an evaluation of how strong the case is when presented in court.

It must consider factors such as the availability, competence, and credibility of witnesses, their likely impression, and the admissibility of any alleged admissions and other evidence. The application of this test should occur with due diligence by a person with experience in weighing available evidence, dispassionately, and without reliance on bias and stereotypes.

Prosecutors need to be fair, independent, and courageous. A prosecutor has a vital role in ensuring access to justice for victims of GBV and to ensure that the offenders are properly charged and fairly brought to justice for their crimes. Community expectations are that victims are protected and that defendants are held accountable for their actions.

In the end: a successful prosecution only needs one piece of reliable evidence for each element.

The Decision to Prosecute or Not Prosecute

As required by international norms and standards for prosecutors, a decision to prosecute or not prosecute must not be influenced by any of the following:

- Race, religion, sex, national origin, or political associations, activities, or beliefs of the victim or the defendant;
- Political advantages or disadvantages to the government or any political group or party;
- The possible effect of the decision on the personal or professional circumstances of the prosecutor; or
- The possible effect of the decision on the personal or professional circumstances of the defendant.
- Personal feelings or views concerning the defendant or the victim.

Studies show that in cases involving violence against women and girls, prosecutors often include in their assessment irrelevant characteristics of the suspect and the victim.^a A prosecutor's subjective evaluation of the credibility of the victim is often one of the key factors in determining whether or not to prosecute and can be at least as important as the "objective" evidence about the crime or the characteristics of the suspect in a sexual assault case.

Research shows that prosecutors are more likely to file charges where they believe the evidence is strong (that is if there is physical evidence to connect the suspect to the crime), the suspect is culpable (such as a prior criminal record), and the victim is blameless (there are no questions about the victim's character or behavior at the time of the incident).^b

^a C. Spohn and D. Holleran. 2004. *Prosecuting Sexual Assault: A Comparison of Charging Decisions in Sexual Assault Cases Involving Strangers, Acquaintances and Intimate Partners*.

^b C. Spohn and D. Holleran. 2004. *Prosecuting Sexual Assault: A Comparison of Charging Decisions in Sexual Assault Cases Involving Strangers, Acquaintances and Intimate Partners*.

Assumptions and Biases about Witnesses and the Suspect

Negative stereotypes, biases, and myths about women and children should not play a part in decision-making (Part B, Gender Stereotyping).

Examples of assumptions and biases:

- **All victims lie!** Prosecutors should not assume that victims or witnesses are lying unless there is clear and cogent evidence to suggest that they are. All complaints should be considered credible and valid unless the contrary is clearly indicated.
- **But he couldn't have done it!** The decision should not be based on biases or assumptions about the suspect. Their standing in the community or the position they may hold are not relevant factors when deciding whether to proceed or not.
- **She was not a virgin!** The victim is not more or less credible if she is a prostitute or a virgin. Virginity is not an element of the crime of rape. No questions should be directed to the victim about any sexual history with others or the number of boyfriends.
- **But look what she was wearing!** Be wary not to blame the victim. The clothes worn by the victim, whether she was walking home late at night by herself, or whether she willingly went to the defendant's house, are irrelevant factors.
- **But she didn't complain right away!** The absence of an immediate complaint is irrelevant to the credibility of the victim. There are many reasons women may not complain immediately, including fear, intimidation, and embarrassment.

"Lack" of Evidence

- It is imperative to not dismiss a case due to the lack of physical evidence and an assumption that this is indicative that a GBV crime did not take place.
- While evidence of injuries can be used to support a victim's version, the converse does not automatically follow.
- The absence of supporting evidence is a consideration but is not fatal to a prosecution. GBV crimes usually occur without witnesses and in private. This is where circumstantial evidence can be important (Part K).

Inconsistencies in Evidence – Internal and External

- Inconsistencies in a victim's or witness's version of events do not automatically lead to the conclusion that they are lying or mistaken.
- **External Inconsistencies** refer to inconsistencies between witnesses, or between witnesses and physical evidence. It would be very strange to have two people give exactly the same version when they have viewed the same incident.
- **Internal Inconsistencies** refer to inconsistencies within a witness's proof. It is important to note that sometimes inconsistencies may be due to the psychological impact of the GBV offense which may affect a victim's recall because, for example, of post-traumatic stress disorder. This situation should ideally be professionally assessed.
- Some inconsistencies may go to the "heart of the matter," others may be peripheral. Peripheral inconsistencies are often inconsequential and not fatal to a successful prosecution. For example, if a victim cannot remember the color of the pants of her rapist or said one day they were blue and the next that they were green, but can give a clear version about the sexual acts he forced upon her, then that peripheral inconsistency about the color of his pants is likely to be immaterial.

Choice of Charges

- In many cases, the evidence will disclose several possible offenses. Care must be taken to choose a charge or charges that adequately reflect the nature and extent of the criminal conduct disclosed by the evidence and provide the court with an appropriate basis for sentence (Part D). In the ordinary course, the charge or charges laid will be the most serious disclosed on the evidence.
- If the same acts can be prosecuted under several different provisions, then only one crime can be prosecuted and will be the one that is most specific, extensive, and complex to the particular acts (Penal Code Article 42) (Part D).
- The application of the LADV must always be considered, and if the crime is appropriately classified as a crime of domestic violence (LADV Article 35). This is fundamental as it has an impact on the classification of it as a public crime (LADV Article 36) and the ability of the court to impose measures of restraint (LADV Article 37).

If a Victim Does Not Wish to Proceed?

- If a victim does not wish to proceed with their complaint, then this is not fatal to the criminal prosecution.
- The first consideration is whether it is a semi-public or public crime (see page 28 of this Handbook).
- If it is a public crime, two considerations arise: (i) the compellability of the victim, and (ii) the strength of the case without reliance on the victim's proof.
- **Compellability of the victim:** A victim can still be summoned as a witness in their case (CPC Article 122). Some witnesses cannot be compelled to attend to give evidence where they are a close relative or spouse of the defendant (CPC Article 125). However, if they attend and make themselves available to give evidence, they cannot refuse to answer questions because of their relationship.
- **Assessment of Evidence:** The absence of proof of a victim will impact the strength of the case and whether the charge can be substantiated, however it is not always fatal, and an assessment must still occur.
- A review of the risk assessment and provision of support services can also assist a victim in wanting to proceed with their proof.

Internal Procedures/Policies

- Decisions on whether to proceed and issue an indictment or not concerning GBV offenses need to be taken by experienced prosecutors with specialized knowledge and training in GBV matters or be supervised by such a prosecutor.
- It is not appropriate for a justice officer to make this decision. If there is a need for a justice officer to be involved in providing a summary or an assessment of the sufficiency of the evidence, then their work must be independently assessed by the prosecutor, and written reasons for the decision need to be clearly identified by the prosecutor.
- Similarly, if a final report provided by a police body indicates that in their view there is sufficient evidence or not, this should not be simply endorsed with a signature of the PPS. Again, all the evidence must be independently assessed by the prosecutor, and written reasons for the decision need to be clearly identified by the prosecutor.

See Checklist to Ensure All Evidence Is Collected in Investigation, Part 2, Annex U.

See also Checklist for Preparation of Writ of Indictment, Part 2, Annex V. Note also the hierarchical internal process (see pages 115 and 178 of this Handbook).

PART P: Fact-Finding Stage of Proceedings

Criminal Procedure Code, Law No. 15/2023 (CPC)

Relevance of Fact-Finding Stage of Proceedings to Investigation of Gender-Based Violence

- Substantial amendments were made to the Criminal Procedure Code by the Criminal Procedure Code, Law No. 15/2023, which amended Decree Law No. 13/2005. More than 200 amendments were passed and are being implemented since 22 August 2023.
- An important new topic that relates to investigations is procedures that can follow the investigation and the decisions made by the PPS to indict, dismiss, or archive a case. It is a new judicial process called the fact-finding stage of the proceedings.

Fact-Finding Stage of Proceedings

CPC Articles 238, 238A – 238Z set out the process.

- The process commences after the closure of the investigation and indictment or a dismissal of the case is notified (CPC Article 238[1]).

Purpose of the fact-finding stage of the proceedings

- The purpose of the fact-finding stage of the proceedings, if it is undertaken, is to provide a judicial assessment of the decision made by the PPS to either bring charges by way of indictment or the decision by the PPS to close the investigation or dismiss the case (CPC Article 238A[1]).
- It is also a means of bringing the case to a judgment or not depending on the outcome of the judicial process (CPC Article 238A[1]).
- Having a fact-finding process in between a decision made by a prosecutor to, for example, issue a writ of indictment and any trial process by having an intervening judicial appraisal of the facts and the decision, can be found in many national jurisdictions in both code and common law jurisdictions. All have different provisions and varying procedures.
- In Timor-Leste, the fact-finding stage of the proceedings is optional and there is no fact-finding stage in expedited proceedings and the compromise procedure (CPC Article 238A[3]).
- The assistants also have an important role in the process.

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Criminal Procedure Code, Law No. 15/2023 (CPC) *(continued)*

- The potential for this process to be used to evaluate the decision made by the PPS makes it more important for the PPS to ensure that they have a rigorous process of decision-making as discussed in PART O. Also use the Checklist to Ensure All Evidence Is Collected in Investigation in Part 2, Annex U to assist in identifying all the necessary elements to prove the charges. Also the Checklist for Preparation of Writ of Indictment in Part 2, Annex V.

PART Q: Concluding Observations

It is inevitable that after this Handbook is published there will be further laws or amendments to laws. It is also likely that the new provisions of the CPC will give rise to new practices and procedures that will develop as the CPC amendments are implemented. With this in mind, the Handbook includes additional blank pages for **NOTES** that can be used to insert modifications.

It is also recommended that a **SUPPLEMENT** be published every 2 years that reflects additions or changes. In this way, the Handbook can continue to be a practical and relevant publication to be used for information and training on best practices for the investigation of GBV offenses for all stakeholders.





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Annex A:

COMMON COMPLAINT FORM – NATIONAL
POLICE/SUPPORT TO VULNERABLE
PEOPLE SUBSECTION (PNTL/SVPS)

[LOGO]

Station/Unit/Section	
Case Number	
Investigator	

COMPLAINT REPORT

DETAILS OF COMPLAINT:

Date :

Time :

Location:

PNTL Police Officer:

Station/Unit/Section:

TYPE OF INCIDENT

Type of alleged incident (s):

Against life

Against physical integrity

Assault against Person

Against property

Other type

[] Yes

[] No

[] Yes

[] No

[] Yes

[] No

[] Yes

[] No

Date/Time of Incident:

Location:

Police Station with jurisdiction over the location where the incident occurred:

NOTE: If the alleged incident is 1, 2, or 3 above, then provide specific details in **BLOCK E.**

PARTIES INVOLVED

VICTIM/COMPLAINANT:

Full name:

POB & DOB:

Age:

Marital Status:

Occupation:

Workplace:

Parents:

Origin:

Nationality:

Educational qualifications:

Residence:

Telephone No:

Identity Card Number:

SUSPECT:

Full name:

POB & DOB:

Age:

Marital Status:

Occupation:

Workplace:

Parents:

Origin:
Nationality:
Educational qualifications:
Residence:
Telephone No:
Identity Card Number:

Are there multiple suspects ☐ Yes ☐ No (If answered yes, fill in the details in **Annex B**).

RELATIONSHIP/LINK BETWEEN VICTIM/ COMPLAINANT AND SUSPECT

Family relationship	<input type="checkbox"/> Yes <input type="checkbox"/> No
Other relationship	<input type="checkbox"/> Yes <input type="checkbox"/> No
Known person	<input type="checkbox"/> Yes <input type="checkbox"/> No
Stranger	<input type="checkbox"/> Yes <input type="checkbox"/> No
Details	

WITNESSES

WITNESSES

(Name, residence, workplace, and cell phone number)

LINK/RELATIONSHIP BETWEEN VICTIM/COMPLAINANT AND WITNESS

Family relationship	<input type="checkbox"/> Yes <input type="checkbox"/> No
Other relationship	<input type="checkbox"/> Yes <input type="checkbox"/> No
Known person	<input type="checkbox"/> Yes <input type="checkbox"/> No
Stranger	<input type="checkbox"/> Yes <input type="checkbox"/> No
Details	

DETAILS OF TYPE OF INCIDENT

In all cases, provide a complete and accurate description of the incident including what happened before and after the incident(s)

Additional Notes

Is the type of incident one of violence;

Against life? ☐ Yes ☐ No

Against physical integrity? ☐ Yes ☐ No

Assault against Person? ☐ Yes ☐ No

If yes - is the violence:

Physical? ☐ Yes ☐ No

Sexual? ☐ Yes ☐ No

Psychological? ☐ Yes ☐ No

Economic? ☐ Yes ☐ No

Threat? ☐ Yes ☐ No

Attempted? ☐ Yes ☐ No

Other? ☐ Yes ☐ No

NOTE: If yes – Complete a Risk Assessment for an Adult Victim of Gender-Based Violence or a Risk Assessment for a Child Victim of Gender-Based Violence

DETAILS RELATING TO PROPERTY

In all cases, provide a complete and accurate description of the incident that led to property damage including a description of the time or object damaged.

FINAL DECLARATION

The Victim/Complainant declares that he/she wants criminal proceedings to be initiated against the suspect in accordance with the applicable law in Timor-Leste;

The Victim/Complainant declares that he/she wants to be reimbursed for the item(s) that were lost or damaged as the result of the criminal offense.

Time interview finished:

Signature of Victim/Complainant

Signature of Police Officer

Annex B:

GENERAL GUIDELINES ON RISK ASSESSMENT FOR ADULT VICTIM

While there are many risk assessment guidelines or tools available, it often depends on the organization that is conducting them and there may be different purposes.

In the context of the investigation of GBV offenses by the PPS and others delegated to assist, a common goal would be to **make sure that the victim is safe, supported, and empowered** when reporting GBV offenses and to ensure that relevant services are provided and court orders obtained under the CPC and the LADV.

The general guidelines are based on research that indicates that certain factors are linked to an increased risk of repetition of violence and elevated risk of serious injury or lethal outcomes for victims. The most dangerous times are often in the days and months after the alleged perpetrator discovers that the victim might attempt to separate from them, terminate the relationship, or disclose the abuse to others, especially in the legal system.

These general guidelines are drawn up to assist the PPS as well as the PNTL, PCIC, the SVPS, as well as community service organizations and others who provide GBV-related services. The Referral Network are more aware and sensitive to these factors and are already taking them into account using their own risk assessment tools when providing their services. These general guidelines have been suggested so the PPS and police bodies can consistently identify the major points to cover when investigating GBV cases.

These guidelines on the left-hand side describe the type of risk factor, and the right-hand side provides further details.¹

¹ This guideline has been adapted from a detailed standard risk and danger assessment: United Nations. 2014. *Handbook on Effective Prosecution Responses to Violence Against Women and Girls*. Criminal Justice Handbook Series. Table 5. pp. 54–55. New York: United Nations.

Risk Factor	Details Relevant to the Risk
Prior history of perpetrator and victim violent incidents	<ul style="list-style-type: none">• Type, severity, and frequency of earlier violence, including all forms of physical, sexual, psychological, and economic violence under LADV.• Date of the most recent violence.• Severity of violence, such as strangulation, burning, permanent physical damage, head injuries, weapons involved, sexual aggression and coercion, confinement of victim.^a• History of injuries (physical and psychological) caused by the perpetrator to the victim.• Was the victim assaulted during pregnancy or shortly after birth?• Any there any current or past orders for protection?• Previous occasions when violence has been reported to persons in authority including Suco and Aldea chiefs or elders or church leaders.
Perpetrator’s alcohol or drug problems and usage	<ul style="list-style-type: none">• Frequency and extent of use of alcohol and/or drugs.
Perpetrator’s obsessive or possessive behavior and jealousy	<ul style="list-style-type: none">• Jealous and controlling behavior.• Threats of injury or death.• Threats to use a weapon.• Threats of abandonment of victim and children.• Threats of child removal or restricting children’s access.• Confinement of the victim to the house.• Verbal abuse and offensive name-calling.
Perpetrator’s mental health history or symptoms suggestive of mental health and emotional issues	<ul style="list-style-type: none">• Symptoms of depression.• Paranoid thinking.• Emotional extremes.• Problems or history of mental health.• Perpetrator threatening suicide.

continued on next page

Risk Factor	Details Relevant to the Risk
Perpetrator threatens to kill the victim or children	<ul style="list-style-type: none"> • Has the perpetrator threatened to harm or harmed children? How? • Have children witnessed the offense or earlier violence or threats by perpetrator to victim and how often?
Perpetrator's use of violence in settings outside the home	<ul style="list-style-type: none"> • Does perpetrator have a criminal history, particularly of violence? • Including violence in prior domestic or intimate relationships?
Information about the escalating violence or intimidation	<ul style="list-style-type: none"> • Stalking behavior. • Use of weapon. • Animal abuse. • Property damage or threats of property damage. • Victim's increased vulnerability due to age, disability, or pregnancy.
Perpetrator's access to or possession of firearms or weapons	<ul style="list-style-type: none"> • Does the perpetrator have ready access to weapons or firearms?
Current status of the relationship between perpetrator and victim	<ul style="list-style-type: none"> • Are the victim and perpetrator separated, separating, or estranged? • Is breakup imminent? • Is the victim in the process of fleeing the home? • What is the status of any family court or other court case including maintenance child custody or similar?
Obtaining information from a variety of sources on the risks above	<ul style="list-style-type: none"> • Information about the risks should not be limited only to what the victim says, but also what can be obtained or reinforced through information from other agencies

^a Research shows that strangulation is linked to higher risks of death. Many countries are introducing strangulation as a separate form of violence. It is to be noted that strangulation does not necessarily show visible marks, depending on its severity and manner of infliction.

Annex C:

GENERAL GUIDELINES ON RISK ASSESSMENT FOR CHILD VICTIM

Guidelines for undertaking a risk assessment for children are more complex than conducting such assessments for adult victims of GBV offenses. Children have a range of ages and vulnerabilities with a limited range of self-protection capabilities. There are also a range of offenses that are specific to their age and ways in which they can be both direct victims of violence and indirect victims (see page 126 of this Handbook).

There are two basic guidelines for undertaking a risk assessment for children. The first is for a child who is a direct or indirect victim of domestic violence (but not involving sexual violence themselves). The second is for a child who has been the direct victim of a sexual offense. In these guidelines,

The purpose of undertaking risk assessments for children is to obtain information from the child about their experiences and perceptions to guide what services they may require and also what protections they may need to ensure they are not exposed to the risk of future violence. A prime focus is on knowing how the violence has affected them because of the risk to their health and welfare for the present and the future.

The risk assessment process is in addition to information about the violent incident which leads to questioning of the child. Both processes need to be undertaken using the approach in **Guidelines for Sensitive Age-Appropriate Questioning of Children** in Annex G. The risk assessments include taking a statement from a parent or family member who is not the offender.

On the left-hand side is the type of risk factors and on the right-hand side are the details of information relevant to the risk factor.

Child Victim of Domestic Violence, Direct or Indirect

Risk Factor	Details Relevant to the Risk
Prior history of perpetrator and victim violent incidents	<ul style="list-style-type: none"> • Type, severity, and frequency of earlier violent behavior of the perpetrator to the child or a family member (including siblings), physical, psychological, and economic violence. • Whether this violent behavior was directed at the child or another family victim. • How was this heard, seen, or experienced by the child? • Dates (if these can be given) of the most recent violence. • Severity of violence including verbal, offensive name-calling, physical, use of weapons, damage to the house or personal possessions, confinement, or telling the child or family member to leave the house. • Any injuries seen or experienced by the child or a family member? • What if any actions were taken by the child or a family member?
Perpetrator's alcohol or drug problems and usage	<ul style="list-style-type: none"> • Whether the perpetrator used alcohol and/or drugs. • How often?
Perpetrator's mental health history or symptoms suggestive of mental health and emotional issues	<ul style="list-style-type: none"> • Observations by the child about the perpetrator. • Whether the perpetrator appeared sad. • Emotional extremes of the perpetrator: very happy, very sad, or very angry. • Perpetrator threatening to kill himself.
Perpetrator threatens to kill victim or children	<ul style="list-style-type: none"> • Has perpetrator threatened to harm the child or other members of the family including siblings? How often? When and how? • Threats of injury or death, use of a weapon, threat to leave the child or family member.
Perpetrator's use of violence in settings outside the home	<ul style="list-style-type: none"> • Whether violent behavior of the perpetrator to the child or a family member has occurred in places other than the home. • What behavior, when, and how often?

continued on next page

Child Victim of Domestic Violence Direct or Indirect *(continued)*

Risk Factor	Details Relevant to the Risk
Information about the escalating violence or intimidation	<ul style="list-style-type: none">• Has the violence become worse? Since when?• Abuse of an animal or pet?
How the child behaves and feels and whether the child feels safe or afraid	<p>In obtaining the following details, it is important that these should not be suggested to the child. Questions should be open and not directive. However, these are common concerns and fears of a child exposed to domestic violence.</p> <ul style="list-style-type: none">• Information about how the child feels, such as whether afraid, angry, not able to eat, sleep, do schoolwork, play with friends.• Information about what or who makes them feel happy and safe.• If they express fear, what are they afraid of: the perpetrator, it will happen again, they may have to leave home, their school, and their friends, or afraid that the perpetrator may go to jail?• Noting how the child appears and also their behavior, such as tearful, anxious, angry, sad, detached.
Current status of the relationship between perpetrator and victim	<ul style="list-style-type: none">• Is the child still in the home with the perpetrator?• Is there a safe place the child can stay and be, without unwanted exposure to the perpetrator?
Obtaining information from a variety of sources on the risks above	Information about the risks should not be limited only to what the child says, but also what can be obtained from family members and others or reinforced through information from other agencies

Child Victim of Sexual Offense

There are so many different sexual offenses that concern children, but a common form is sexual acts or incest by a family member, or by a family friend, or teacher, who is known to them. The descriptions and details to be obtained from the child are in addition to information about the sexual offense and immediate circumstances that lead to the questioning of the child.

Risk Factor	Details Relevant to the Risk
Prior history of perpetrator and victim intimacy and sexual acts	<ul style="list-style-type: none"> • How the child knows the perpetrator, since when, and their relationship. • Type and frequency of intimate and sexual acts by the perpetrator to the child. • Dates (if these can be given) and circumstances, when, where, and how, particularly most recent sexual acts. • In what places have sexual acts occurred? • Any injuries experienced by the child.
Perpetrator's alcohol or drug problems and usage	<ul style="list-style-type: none"> • Whether the perpetrator used alcohol and/or drugs. • How often.
Perpetrator's mental health history or symptoms suggestive of mental health and emotional issues	<ul style="list-style-type: none"> • Observations by the child about the perpetrator. • Whether the perpetrator appeared sad. • Emotional extremes of the perpetrator: very happy, very sad, or very angry. • Perpetrator threatening to kill himself.
Perpetrator threatens to harm the child or others	<ul style="list-style-type: none"> • Has perpetrator threatened to harm the child or members of the family including siblings? How often, when, and how?
Perpetrator's sexual acts toward the child or other children in settings outside the home	<ul style="list-style-type: none"> • Whether sexual acts toward the child have occurred in places other than the home. What behavior, where, when, and how often? • Has the child seen or heard about the behavior of the perpetrator to other children?
Information about the escalating sexual acts or intimidation	<ul style="list-style-type: none"> • Have sexual acts become worse or more frequent? Since when? • Have any threats to the child become worse or more frequent?

continued on next page

Child Victim of Sexual Offense *(continued)*

Risk Factor	Details Relevant to the Risk
How the child behaves and feels and whether the child feels safe or afraid	<p>In obtaining the following details, it is important that these should not be suggested to the child. However, these are common concerns and fears of a child exposed to domestic violence.</p> <ul style="list-style-type: none">• Information about how the child feels: such as afraid, angry, not able to eat, sleep, do schoolwork, play with friends.• Information about what or who makes the child feel happy and safe.• If the child expresses fear, what is the child afraid of: the perpetrator, it will happen again, family members are or will be angry, fear of blame, being told they are lying? Fear that they may have to leave home, school, and friends, or afraid that the perpetrator may go to jail?• Noting how the child appears and also their behavior; for example, tearful, anxious, angry, sad, detached, agitated.
Current status of the relationship between perpetrator and victim	<ul style="list-style-type: none">• Is the child still in the home, school with the perpetrator?• Where does the perpetrator live, work, or go, which is near to where the child goes?• Is there a safe place the child can stay and be without unwanted exposure to the perpetrator?
Obtaining information from a variety of sources on the risks above	<ul style="list-style-type: none">• Information about the risks should not be limited only to what the child says, but also be informed by family members, friends, and others or reinforced through information from other agencies

Annex D:

RISK ASSESSMENT FORM FOR ADULT VICTIM OF GENDER-BASED VIOLENCE

[LOGO]

RISK ASSESSMENT FORM FOR ADULT VICTIM OF GENDER-BASED VIOLENCE

Approved by:.....

Date submitted :

Police Unit/Section/Station :

Followed up by :

PART I IDENTIFICATION OF PARTIES

Name of Victim/Aggrieved person :

Nationality :

Address (Municipality, Village, Sub-Village) :

Sex

() Male () Female () LGBTIQ+

Marital Status:

() Married; () Traditional/customary marriage (*barlake*); () Divorced;
() De facto Union () Unmarried

Name of perpetrator :

Sex :

() Male () Female () LGBTIQ+

Nationality :

Link/Relationship between the Victim and the Perpetrator:

() Spouse () Boyfriend/Girlfriend () Former spouse () Former Boyfriend/Girlfriend, () Relative in ascending line – Father, Mother, Grandparent () Relative in descending line - Child, Grandchild
() Other (neighbor, teacher, carer) () no relationship

PART II IDENTIFICATION OF COMPLAINT**Case Number****Brief description of complaint of violence**

Physical () Yes () No

Sexual () Yes () No

Psychological () Yes () No

Economic () Yes () No

Threat () Yes () No

Attempt () Yes () No

Other _____

BLOCK I - HISTORY OF VIOLENCE**Has the perpetrator previously physically assaulted you?**

() Hit/Punched () Kicked () Squeezed () Pushed () Pulled Hair
() Hanged () Burned () Shot ()

Others: _____

Has the perpetrator previously forced you to have sexual intercourse or practice sexual acts against your will?

() Yes () No

Has the perpetrator previously committed psychological violence against you by demonstrated jealousy, tried to control your life (*what you do, where you go, who you talk to, the type of clothes you wear, followed or stalked you, isolated you, or prevented you from leaving the home without permission*)?

() Yes () No

Has the perpetrator previously committed psychological violence against you (*called you insulting names, yelled, verbally insulted, criticized, humiliated, degraded, ridiculed, harassed, or threatened to harm you, or other behavior*)?

() Yes () No

Has the perpetrator previously committed economic violence against you (*refused to allow you to work, destroyed or withheld your personal effects, valuables, or documents, taken your money, refused to provide you with money to buy necessities for yourself or your family, or other*)?

() Yes () No

Has the perpetrator previously threatened you or a family member? And, if so how?

() Yes, used a firearm; () Used a knife or machete; () Other type; () Verbal threats of harm to you or family members () No.

Has the violent behavior of the perpetrator happened more frequently or become more serious in the last few months?

() Yes () No

Have you received any medical or health treatment in the past due to the perpetrator's violent behavior?

() Yes () No

BLOCK II – ABOUT THE PERPETRATOR

Does the perpetrator use or abuse alcohol or drugs?

() Yes, alcohol; () Yes, drugs () No

Does the perpetrator have financial problems, or is unemployed?

() Yes () No

Does the perpetrator have easy access to the weapon he has used to threaten you or a family member?

() Yes () Has easy access () No. What kind of weapons does he have easy access to?

Has the perpetrator threatened your daughter/son, family member, work colleague, or any other person?

() Yes, child () Yes, family member () Yes, friend () Yes, work colleague () No

If yes, how?

BLOCK III- ABOUT THE VICTIM

Do you require medical assistance or psychological or counseling assistance?

() PRADET () Hospitalization-Guido Valadares National Hospital / Health Clinic () Referral Network ()

Do you require legal aid?

() Office of the Public Defender () ALFeLa () JSMP

Have you recently separated from the perpetrator or tried to carry out your intention to separate from the perpetrator?

() Yes () No

How many children do you have together? Any adopted children?

() Yes, with the perpetrator _____ children () Yes, a relationship with another man/woman _____ children () Adopted _____ children

What are the ages of your children?

() 0–11; () 12–17; () 18 and above.

Do any of your children suffer a physical or mental disability?

() Yes () No

Since you have been living together, has there been any conflict relating to looking after the children, any visits, pension payments/ maintenance allowance by the perpetrator?

() Yes () No

Have your children witnessed or been present when the perpetrator committed violence against you?

() Yes () No (If yes, then obtain details and consider whether the children are in danger under the Law on the Protection of Children and Youth in Danger, Law No. 6/2023 and whether a Child Protection Officer should be advised).

Did you suffer any violence when you were pregnant, or within 3 months after you gave birth?

() Yes () No

Do you have any disabilities or degenerative illnesses or are you physically or mentally vulnerable?

() Yes, What _____ () No

BLOCK IV – OTHER IMPORTANT INFORMATION

Do you consider that your home in the neighborhood, community, rural area, or location places you at risk of violence?

() Yes () No

What are the circumstances regarding your home in this neighborhood?

() Own; () Rented

Do you consider yourself to be financially dependent on the perpetrator?

() Yes () No

This concludes the written information and has been verified by the victim or complainant

Signature of the Victim/Complainant _____

POLICE OFFICER TO FILL OUT THIS SECTION

() The victim was accompanied by:

Name

Relationship

Contact details

() The victim responded to this form without the help of a professional;

() The victim was not able to respond to this form;

() The victim refused to fill out this form;

() The complainant responded to this form

PART III TO BE COMPLETED EXCLUSIVELY

When providing support, did the victim indicate that she/he regarded themselves at risk from the perpetrator or family or other person regarding his/her situation? (Is there a perceived risk or not)

When providing support, did the victim show any emotions/ physical response? (Describe if the victim cried, was nervous, afraid, embarrassed, distressed, or other)

Did the victim show or demonstrate any behavior that they could harm themselves or commit suicide, in any way?

Did the victim feel insecure and want to be referred to a shelter or safe house:

() Safehouse – 3 days - PRADET

() Casa Vida

() Fokupers

() Others: _____

If children/youth were threatened, present, or witnessed violence by the perpetrator either directly or indirectly, is there potential that they are in danger under the Law on the Protection of Children and Youth in Danger, Law No.6/2023, and a Child Protection Officer should be advised?

Does the victim agree to refer this legal process to the Public Prosecution Service that has jurisdiction?

() Yes

() No, Why

Name of Police SVPS :

Position :

Signature : _____

Annex E:

RISK ASSESSMENT FORM FOR CHILD
VICTIM OF GENDER-BASED VIOLENCE

[LOGO]

RISK ASSESSMENT FORM FOR CHILD VICTIM
OF GENDER-BASED VIOLENCE

Approved by:.....

Date submitted :
Police Unit/Section/Station :
Followed up by :

PART I IDENTIFICATION OF PARTIES

Name of Victim/Aggrieved person :
Nationality :
Address (Municipality, Village, Sub-Village) :

Sex

() Male () Female () LGBTIQ+

Date of birth ()

Below 14 years ()
Between 14 – 16 years ()
17 years and above ()

Name of parent/guardian of victim/aggrieved person :

Address (Municipality, Village, Sub-Village) :

Name of perpetrator :

Sex :

() Male () Female () LGBTIQ+

Nationality _____ :

Address (Municipality, Village, Sub-Village) _____ :

Link/Relationship between the Victim and the Perpetrator:

() Boyfriend/Girlfriend () Former Boyfriend/Girlfriend, () Relative in ascending line – Father, Mother, Grandparent () Relative in descending line – Child () Other (e.g. neighbor, teacher, priest, health worker. () no relationship ()

PART II IDENTIFICATION OF COMPLAINT

IMPORTANT NOTE: The information requested in this form when obtained from the child should always be requested using age-appropriate language, open-ended questioning, and in the presence of a support person that the child chooses. **See also Annex G: Guidelines for Questioning Child Victim of Violence and Sexual Offenses**

Case Number

Brief description by reference to the Complaint

Physical () Yes () No

Sexual () Yes () No

Psychological () Yes () No

Economic () Yes () No

Threat () Yes () No

Attempt () Yes () No

Other _____

BLOCK I HISTORY OF VIOLENCE taken from the Child

Has the perpetrator previously physically hurt the child? () a family member of the child? ()

If yes, how is this known?

If yes how?

() Hit/Punched () Kicked () Squeezed () Pushed () Pulled Hair

() Hanged () Burned () Shot ()

Others: _____

Has the perpetrator previously forced the child to engage in sexual acts with him/her/another person?

☐ Yes ☐ No

Has the perpetrator previously tried to exercise too much control or restricted the freedom of the child or members of the child's family?

(e.g. telling the child where to go (or not go), who the child may talk to, the type of clothes to wear, followed the child, stopped the child from seeing friends or family, or prevented the child from leaving the home without his permission)? Similar questions for child's family members.

☐ Yes ☐ No

Has the perpetrator previously committed any of the following acts against the child or the child's family? (e.g. called the child insulting names, yelled, verbally insulted, criticized, humiliated, ridiculed, harassed, or threatened to harm the child, other behavior)? Similar questions for child's family members.

☐ Yes ☐ No

Has the perpetrator previously committed any of the following acts against the child or the child's family members (e.g. refused to allow the child to go to school/work or earn money, destroyed or withheld personal effects, valuables, or documents, taken the child's money, refused to provide the child with money to buy personal necessities)? Similar questions for child's family members.

☐ Yes ☐ No

Has the perpetrator previously threatened the child? ☐ a family member? ☐ If yes how? If a family member, how is this known?

☐ Used a firearm ☐ Used a knife or machete ☐ Other type
☐ Verbal threats of harm to the child or family members ☐ No.

Has any person witnessed or been present when the perpetrator committed violence against the child or family member?

☐ Yes ☐ No

If yes, give details

Has the violent behavior of the perpetrator happened more frequently or become more serious in the last few months?

☐ Yes ☐ No

Has the child received any medical or health treatment in the past due to the perpetrator's violent behavior?

☐ Yes ☐ No

As the child told anyone about the perpetrator's history of violence?

☐ Yes ☐ No If yes, who and when?

BLOCK II – ABOUT THE PERPETRATOR

Does the perpetrator use or abuse alcohol or drugs?

☐ Yes, alcohol; ☐ Yes, drugs ☐ No ☐ Don't know

Does the perpetrator have financial problems, or is unemployed?

☐ Yes ☐ No ☐ Don't know

Has the perpetrator used a firearm or bladed weapon or other weapon to threaten the child or family members?

☐ Yes ☐ Always uses it to make threats; ☐ Has easy access; ☐ No.

Has the perpetrator threatened a friend of the child, family members, or any other person?

☐ Yes, child ☐ Yes, family member ☐ Yes, friend ☐ No ☐ Don't know

How does the perpetrator behave? (e.g., are there sudden changes of mood from happy to sad to angry, have they threatened to harm/kill themselves?

☐ Yes ☐ No ☐ Don't know

BLOCK III- ABOUT THE VICTIM

Where are you living?

Who are you living with?

Does it include the perpetrator?

() Yes () No

How many are in your family? How many are children?

What are the ages of children in your family?

() 0–11; () 12–17; () 18 and above

How are you feeling?

Do you feel safe? () Yes () No If no why?

Do you feel worried? () Yes () No If yes why?

Is your health and sleep good? () Yes () No If no, why?

Do you have other concerns? () Yes () No If yes, what?

What do you think would make you feel better?

Do you think you or a family member need any help or assistance?

() Yes () No

Do you have any disabilities, illnesses, or physical or mental issues?

() Yes () No

BLOCK IV – OTHER IMPORTANT INFORMATION

Do you think that your home in the neighborhood, community, rural area, or location places you at risk of being hurt?

() Yes () No If yes, why?

This concludes the written information and has been verified by the victim or complainant

Signature of the Victim/Complainant /or child's parent/guardian

POLICE OFFICER TO FILL OUT THIS SECTION

() The victim was accompanied by:

Name

Relationship

Contact details

() The victim responded to this form without the help of a professional;

() The victim was not able to respond to this form;

() The victim refused to fill out this form;

() The complainant responded to this form;

PART III TO BE COMPLETED EXCLUSIVELY

When providing support, did the victim indicate that they regarded themselves at risk from the perpetrator or family or other person regarding their situation? (Is there a perceived risk or not)

When providing support, did the victim show any emotions/ physical response? (Describe if the victim cried, was nervous, afraid, embarrassed, distressed, or other)

Did the victim show or demonstrate any behavior that they could harm themselves or commit suicide, in any way?

Did the victim feel insecure and want to be referred to a shelter or safe house:

() Safehouse – 3 days - PRADET

() Casa Vida

- ☐ Fokupers
- ☐ Others:_____

If children/youths were threatened, present, or witnessed violence by the perpetrator either directly or indirectly, is there potential that they are in danger under the Law on the Protection of Children and Youth in Danger, Law No. 6/2023, and a Child Protection Officer should be advised?

Does the victim/their parent/guardian agree to refer this legal process to the Public Prosecution Service that has jurisdiction?

- ☐ Yes
- ☐ No, Why
- _____
- _____
- _____

Name of Police SVPS

:

Position

:

Signature

:

Name of Police SVPS

:

Position

:

Signature

:

Annex F:

GUIDELINES FOR QUESTIONING WOMEN VICTIMS OF VIOLENCE AND SEXUAL OFFENSES

These guidelines set out best practices when questioning women victims of GBV offenses including domestic violence and sex offenses. However, training is preferably required for their implementation and improved manner of questioning.

Understanding Some Common Characteristics of Women Victims of GBV Offenses

- It takes courage for women to file a complaint for GBV, and frequently they do not report it at all.
- They are also likely to feel that intimate partner violence is a private matter and they are unlikely to report it until it has happened many times and they cannot take it anymore.
- Often before women have a formal statement taken, they have been encouraged by community leaders and others to whom they have reported their situation, to resolve domestic violence offenses informally and return to the house after a community leader may have reprimanded the husband/partner and told him to change his ways.
- There are different points in the investigation process when statements are taken. That could include taking of statement by police or police agencies, or a variety of other organizations including the Referral Network, or a hospital, depending on the nature of the offense and the circumstances, or a statement can be taken later by the PPS as part of the investigation.
- How women victims are treated by the person who first responds to a crime to take a statement—particularly a sexual offense—is highly relevant to whether or not they feel able to pursue the case in court.

- Women victims are often concerned about retaliation by the suspect, where they can live, and how they can support themselves and their children.
- Further, they are concerned about pressure placed upon them by family members—in particular in-laws—if a complaint is made and about family and community rejection.

In short, safety and security are highly important needs of women victims and need to be addressed as early as possible.

Process to Follow

- Take woman to a safe and comfortable space, with water and tissues at hand.
- Introduce yourself and your role.
- The woman victim may also be accompanied by a person they trust or by an organization such as ALFeLa, JSMP, or other organizations. This is their choice and needs to be respected.
- Try and relax the woman and build rapport with her so that they feel they can trust you. This is sometimes not easy.
- Women may vary in the way they talk about the circumstances of the offense, depending on their socioeconomic position, education, and whether or not they suffer from any mental or psychological disability.
- When giving a statement, they are likely to be suffering from stress and trauma as a result of what has happened, and it is important to try and calm them down before taking any statement or information from them. Also, the questioner should offer a break during the interview if the person becomes stressed or uncomfortable.
- They may also suffer from embarrassment, shame, and self-blame and feel uncomfortable if the questioner is a male person.
- Start to build rapport by asking simple questions that are unrelated to the circumstances of the offense itself. This may relate to their community background and general family circumstances such as their children, siblings, and parents.

- Remain calm and actively listen by using eye contact and nodding, using a calming tone of voice.

Asking about the Offense

When asking questions about the offense, the questions should start openly and simply e.g. Is there something that has (recently) happened that you wish to report? Would you like to tell me about it? (For example, do not start by stating the alleged offense followed by questions).

The aim when questioning the woman is to allow her to tell her story in her own way about what happened. To encourage her to use her words in the way she wants. Not to use your words and not to make assumptions or be judgmental. It is important to give them time to think and answer and be aware that they may sometimes be disorganized in the way they give information. They may sometimes struggle to remember details.

General Guidance on What Questions to Use or Do and What Questions to Avoid or Not:

Use/Do	Avoid/Don't	Suggested Alternative
Keep questions simple and short		
Use open questions which start with "what," "where," "who," "how," "which," and "when"	Avoid closed or directive questions that suggest the answer Often these questions start with the word "Did." For example, "Did he then hit you with the stick?"	Instead, ask <i>"You have told me that he picked up a stick... what happened next?"</i>
	Introducing your assumptions such as "Did he also punch you about the body?" particularly when the woman has not mentioned this earlier.	Instead, ask <i>"Is there anything else that he did to you that you have not told me about?"</i>

continued on next page

General Guidance on What Questions to Use or Do... (continued)

Use/Do	Avoid/Don't	Suggested Alternative
One main idea or topic in a question	Avoid multiple topics in the one question <i>"When you left the house, what were the neighbors doing, did they help you or did you go to the police station and if so, how did you get there?"</i>	Instead, ask separate questions <i>"When you left the house did you see anyone?"</i> <i>"Who did you see?"</i> <i>"What were they doing?"</i> <i>"What happened next?"</i> <i>"Where did you go?"</i> <i>"How did you get there?"</i>
Follow a logical progression, preferably a chronological sequence of events. <i>"You have told me about XX, what happened next? "</i>	Do not jump around, particularly time sequences in the one question. <i>"You told me that you went to the hospital, why did you go there and was this before or after your husband and you were arguing in the kitchen and was it after he punched you in the eye?"</i>	Instead, ask separate questions and if her earlier story was out of chronological order ask: <i>"You told me that you and your husband were arguing in the kitchen I would like to ask you some further questions about that and the order in which things happened</i> <i>You said that you and your husband were arguing in the kitchen. What happened next? "</i> (then follow through with questions asking what happened after that, to get the history and sequence).

continued on next page

General Guidance on What Questions to Use or Do... (continued)

Use/Do	Avoid/Don't	Suggested Alternative
<p>To obtain more detail, questions can be asked such as:</p> <p><i>"You have said that XXX, can you tell me more about that?"</i></p> <p><i>"You have said that he came into the room, what happened next?"</i></p>	<p>Avoid, if possible, questions that give limited answer options of "Yes" or "No." Sometimes the question cannot be accurately answered so simply. It may contain both or it may not have been correctly asked and requires qualification.</p>	
	<p>Avoid judgmental questions which are victim-blaming in a domestic violence situation such as:</p> <p><i>"What did you do to make him hit you?"</i></p> <p><i>"You knew that your husband had a quick temper. Why did you provoke him by answering him back?"</i></p> <p><i>"Why did you go out without telling your husband?"</i></p> <p><i>"You knew he liked food to be on the table when he got home from work and it wasn't on that day was it?"</i></p>	
	<p>Avoid victim-blaming questions concerning a sexual offense such as:</p> <p><i>"Why didn't you run away or put up a fight when this happened when you had plenty of time to do this?"</i></p> <p>See also examples of assumptions and biases, page 181 of this Handbook.</p>	

continued on next page

General Guidance on What Questions to Use or Do... (continued)

Use/Do	Avoid/Don't	Suggested Alternative
	<div>Avoid making blaming or judgmental statements or assertions such as: "It's only a domestic." "It can't have been that bad, otherwise you would have left." "He never hit you, so it's not really abuses." "You should have left him earlier."</div>	

In relation to a sexual offense, show a woman a diagram or drawing of a body rather than asking the woman to describe or point to a part of her own body.

With domestic violence, it is important to note that it is unlikely to be the first time that the suspect has committed violence against the victim. A full history needs to be gained of earlier violent conduct, noting the different forms of violence under the LADV Article 2 such as physical, sexual, psychological, and economic violence.

The statement also needs to include a risk assessment using **General Guidelines on Risk Assessment for Adult Victim**, Part 2, Annex B.

Finishing the Statement

- At the end of questioning, ask a question about whether there is anything else the woman wants to talk about, or whether they have any questions.
- The statement taken from the woman needs to be read out and signed/fingerprinted by her.
- If the woman is to be taken somewhere for forensic examination, it is important that she is told what is to happen.

- Assure the woman that the information you have taken will be kept confidential except it will be shared on a need-to-know basis.
- Inform the woman about the next steps that will be taken, by whom, and whether she needs any other assistance.

Annex G:

GUIDELINES FOR QUESTIONING CHILD VICTIMS OF VIOLENCE AND SEXUAL OFFENSES

These guidelines set out best practices when questioning children. However, training is preferably required for their implementation and to improve the manner of questioning.

Understanding Children

Children differ from adults in many important ways.

- They lack power and can be intimidated by adults, particularly a person in uniform or who looks important.
- Their comprehension and communication skills differ depending on their age and development level.
- They have different language development skills that depend on their socioeconomic position, education, and whether or not they suffer from any mental disability.
- They use different words from adults and have a more limited range of words.
- They are adversely affected by inappropriate questioning.
- They are likely to be suffering from stress and trauma as a result of what has happened, and it is important to try and calm them down before taking any statement or information from them.
- Girls may also suffer from embarrassment, shame, and self-blame and feel uncomfortable if the questioner is a male person.

The following general features relevant to children need to be taken into account and require more careful consideration before questioning children. These are general as all children develop at different rates as referred to in understanding children.

General Features of Children – Ages, Understanding, and Language

It is important to note that these age categories are generalizations and individual children vary and develop at different rates.¹

Early childhood–pre-school - 3 to 5 years

- They have little understanding of abstract concepts such as height (how tall), weight (how heavy), distance (how far), time (when or how long), and numbers (how many);
- They can confuse pronouns such as "she," "he," and "they," and it is best to use the names or the descriptions of the person;
- They can give information about the main action(s) but not necessarily the sequence and may give details that they notice, which may not be what an adult would notice.

Middle childhood–school-age - 6 to 9 years

- They are beginning to understand, but have limitations on abstract concepts such as estimating height (how tall), weight (how heavy), distance (how far), and numbers (how many). This understanding increases with age, but may not be accurate;
- They can however give information on abstract concepts by reference e.g., to objects or using fingers for numbers;
- Time (how long something happens for) is still difficult and they may sometimes estimate about 5 minutes as a default answer;
- They can still confuse pronouns such as "she," "he," and "they" and it is best to use the names or the descriptions of the person;
- They tend to use language literally and "touch" is by hand and not by other body contact such as mouth, leg, body, penis.

¹ Council of Europe and Politiet Politidirektoratet. 2016. *Preventing and Combatting Domestic Violence against Women. A learning resource for training law enforcement and justice officers*. p. 34 et seq.; Government of Fiji, Judicial Department. 2016. *Bench Book on Children*. p. 14, et seq.

Late childhood–pre-adolescence - 10 to 12 years

- These are years of considerable physical, social, and intellectual changes;
- They still have some difficulties with abstract concepts such as estimating height (how tall), weight (how heavy), and distance (how far) and they may not be accurate;
- They still tend to use language literally and “touch” is by hand and not by other body parts contact such as mouth, leg, body, penis.

Adolescence – 13 to 17 years

- They may be able to give more accurate estimates of height (how tall), weight (how heavy), distance (how far);
- They may be embarrassed about admitting that they do not understand the question and try to answer it anyway;
- They can give more detailed accounts of events;
- They have more “adult-like” reasoning and planning, but they are often not able to foresee the consequences of their actions

Additional features of particular relevance to adolescents

- The frontal lobe or “command center” is one of the last parts of the brain to fully develop. It controls decision-making including long-term planning, risk assessment, impulse control, and other behaviors. This is particularly relevant to adolescents.
- In addition, there are hormonal changes. Puberty is reached during adolescence and can be stressful and the hormonal changes can awaken their sexuality, curiosity, and experimentation.
- In short, scientific research highlights that children under the age of 18 cannot take on full adult responsibilities. Children cannot be held to the same standards of behavior as adults because their brains aren’t developed enough to make good decisions, assess the consequences of their actions, and restrain impulses in the same way that adults can.

These are all relevant features to take into account when questioning children, particularly concerning sexual offenses against them.

Process to Follow

- Take children to a safe and comfortable space, with water and tissues at hand.
- Ensure they have a support person whom they trust when a statement is taken. This may be the family member unless that family member will adversely influence the accuracy of the information you are seeking, because they may have a conflicting interest, particularly if the suspect is a family member. It could also include a person from an organization such as ALFeLa, JSMP, or a public defender.
- Try and relax the child and build rapport with them so that they feel they can trust you. This is sometimes not easy.

Building Rapport

Start by easily introducing yourself without impressing them with your importance.

- Start talking with the child about matters other than the offense itself. For example, ask questions about things they like to do, their favorite foods, favorite subjects at school (if relevant).
- Do not start by asking questions about their family and siblings etc. if it is a case that involves incest.
- These simple questions build rapport and enable the questioner to understand their use of language and their level of stress depending on how easily they answer them.

Asking about the Offense

- When asking questions about the offense, the questions should start openly and simply, e.g. "Is there something that has (recently) happened that has upset you? Would you like to tell me about it?" (For example, do not start by naming the offense followed by the questions).
- Let the child tell their story in their own way about what happened to them.

- Children may give information in a disorganized way.
- It is important to give them time to think and answer in their own way.
- Listen to them actively so that they feel encouraged to speak about what is difficult for them to do. Active listening includes head nodding and similar actions.
- Questions should be simple and short using words that are appropriate to their age and education level.

General Guidance on What Questions to Use or Do
and What Questions to Avoid or Don't Do

Use/Do	Avoid/Don't Do	Suggested Alternative
Keep questions simple and short		
Use open questions which start with "what," "where," "who," "how," "which," and "when" Additional note, young children may not be able to answer questions such as "why" or "how."	Avoid closed or directive questions that suggest the answer. Often these questions start with the word "Did." For example, "Did he grab your arm?"	Instead, ask <i>"You told me that your uncle came up to you ... what happened next?"</i>
	Introducing your assumptions such as "Did he also hit you about the body with the stick ?" particularly when the child has not mentioned this earlier.	Instead, ask <i>"You told me that your dad hit you on the legs with a stick, is there anything else that he did to you with the stick?"</i>

continued on next page

General Guidance on What Questions to Use or Do... (continued)

Use/Do	Avoid/Don't Do	Suggested Alternative
One main idea or topic in a question	<p>Avoid multiple topics in the one question</p> <p><i>"When you ran out of the house to go to the neighbour's to get help, did they tell you that you should go to the police station and did they take you there?"</i></p>	<p>Instead, ask separate questions to get the information as needed if not given by the child</p> <p><i>"When you ran out of the house did you see anyone?"</i></p> <p><i>"Who did you see?"</i></p> <p><i>"What were they doing?"</i></p> <p><i>"What happened next?"</i></p> <p><i>"Was anything said to you?"</i></p> <p><i>"What happened next?"</i></p> <p><i>"Where did you go?"</i></p> <p><i>"How did you get there?"</i></p>
<p>Follow a logical progression, preferably a chronological sequence of events.</p> <p><i>"You have told me about XX, what happened next?"</i></p>	<p>Do not jump around, particularly time sequences in the one question.</p> <p><i>"You told me that your mum ran from the kitchen into the bedroom and that your parents were arguing, and that you hid in a cupboard. Was this before or after your dad ate his dinner?"</i></p> <p>Note that young children find difficulty distinguishing between an event occurring "before" or "after."</p>	<p>Instead, ask separate questions and if their earlier story was out of chronological order ask:</p> <p><i>"You told me that you heard your dad and mum arguing. I want to ask you some further questions about that."</i></p> <p><i>"Where were you when they started arguing?"</i></p> <p><i>"Where were your mum and dad when they started arguing?"</i></p> <p><i>"Do you know whether your dad had eaten his dinner before they started arguing?"</i></p> <p><i>"What did you hear them saying or doing?"</i></p> <p><i>"What did you do when you heard them arguing?"</i></p>

continued on next page

General Guidance on What Questions to Use or Do... (continued)

Use/Do	Avoid/Don't Do	Suggested Alternative
		<i>"What happened next?"</i> (then follow through with questions asking what happened then, to get the story and sequence).
<p>To obtain more detail, questions can be asked such as:</p> <p><i>"You have said that XXX, can you tell me more about that?"</i></p> <p><i>"You have said that he came into the room, what happened next?"</i></p>	<p>Avoid if possible questions that give limited answer options of "Yes" or "No." Sometimes the question cannot be accurately answered so simply. It may contain both or it may not have been correctly asked and requires qualification.</p>	
	<p>Avoid judgmental questions which are victim-blaming particularly in a sexual violence situation such as:</p> <p><i>"Why didn't you run away?"</i></p> <p><i>"Why didn't you tell your mum straight away?"</i></p> <p><i>"Why did you wait a month before telling anyone about what he did?"</i></p> <p><i>"You knew it was wrong to let him touch you there?"</i></p> <p><i>"You still kept talking to your uncle on family visits, didn't you?"</i></p>	

- Show a child a diagram or drawing of a body rather than asking the child to point to a part of their own body.
- Do not question the child for a lengthy period without a break and regularly take breaks every 10–15 minutes.
- Be mindful that the incident described by a child may not be the first time that the suspect has had contact with the child. A full history needs to be gained including gradual or earlier behaviors.
- Children who have been sexually abused have often been groomed by the suspect over some time, particularly if it is a case of incest.

Finishing the Statement

- At the end of questioning, ask a question about whether there is anything else the child wants to talk about or whether they have any questions.
- The statement taken from the child needs to be read out and signed by them and the guardian.
- If a child is to be taken somewhere for forensic examination, they must be told what is to happen and why. This should be done using simple, calm language. The consent of the guardian or family member is required for a forensic examination.
- Further, a modified risk assessment needs to be conducted to ascertain the status of the relationship between perpetrator and victim, whether there are court protections or other arrangements required. Also, importantly, whether the child requires counseling and other assistance to support and help the child recover from the trauma of the GBV offense.

Annex H:

CHECKLIST FOR EXAMINATION
OF THE SCENE OF CRIME

CASE NUMBER : _____

TYPE OF CRIME : _____

INVESTIGATOR : _____

CHECKLIST FOR EXAMINATION OF THE SCENE OF THE CRIME

No.	Description of the Examination	Execution of the Examination			Notes and Observations
		Identified	Collected	Not Yet	
INCIDENT INFORMATION					
1	Date/time when the call was received				
2	Person who provided the information: name, address, and contact number				
3	The type of crime identified				
4	Date/time/incident				
5	Location of incident				
VICTIM INFORMATION					
6	Victim Name, Address, and Contact Number				

continued on next page

Checklist for Examination of the Scene of the Crime *(continued)*

No.	Description of the Examination	Execution of the Examination			Notes and Observations
		Identified	Collected	Not Yet	
7	Current location of victim				
8	Immediate security concerns (has risk assessment been done?)				
9	Presence of children – safety concerns? Referral to CPO?				
10	Observations of physical presentation including injuries, blood, and clothing (photograph)				
11	Observations of demeanor, including mental state and intoxication				
12	Seizure of clothing or other items from victim (CPC Articles 56, 169, and 172)				
13	Immediate medical assistance required - Ambulance?				

continued on next page

Checklist for Examination of the Scene of the Crime *(continued)*

No.	Description of the Examination	Execution of the Examination			Notes and Observations
		Identified	Collected	Not Yet	
14	Forensic Medical Procedure referral to PRADET				
15	Appropriate Referral Network provider information provided				
SUSPECT INFORMATION					
16	Name and Address, Contact Number of suspect (CPC Article 53 if non-compliant)				
17	Description of suspect				
18	Location of suspect? Immediate arrest? (CPC Articles 60, 218, and 221)				
19	Observations of physical presentation including injuries, blood, and clothing (photograph)				

continued on next page

Checklist for Examination of the Scene of the Crime *(continued)*

No.	Description of the Examination	Execution of the Examination			Notes and Observations
		Identified	Collected	Not Yet	
20	Observations of demeanor, including mental state and intoxication				
21	Seizure of clothing or other items from suspect (CPC Articles 56, 169, and 172)				
22	Crime scene under guard and supervision (CPC Article 174)				
WITNESSES					
23	Name and Address, Contact Number of witnesses				
24	Seeking to identify other witnesses at the scene and check them (CPC Articles 175 and 176)				
THE SCENE INFORMATION					
25	Diagram/sketch of the crime scene				
26	Photographs taken of the crime scene				

continued on next page

Checklist for Examination of the Scene of the Crime *(continued)*

No.	Description of the Examination	Execution of the Examination			Notes and Observations
		Identified	Collected	Not Yet	
27	Fingerprints and/or footprints from the crime scene				
28	Bodily fluids identified, photographed				
SEIZURE AND EVIDENCE					
29	Seizure of items with bodily fluids on them (CPC Articles 56, 169. and 172)				
30	Any other relevant items seized from crime scene (CPC Articles 56, 169, and 172) e.g. broken items, ripped clothing, and check the area for items disposed of				
31	Notes on evidence (Evidence Log)				
32	Notes on the seizing and movement of evidence				

CPC = Criminal Procedure Code, CPO = Child Protection Officer

Annex I:

ARREST AND DETENTION REPORT – NATIONAL POLICE/SUPPORT TO VULNERABLE PEOPLE SUBSECTION (PNTL/SVPS)

[LOGO]

ARREST AND DETENTION REPORT

_____/_____/_____

CIRCUMSTANCES OF DETENTION

Date/Time of Detention: [drop down menu to enter date]

Date/Time of expiration of Detention:

TIMELINES

For identification of a suspect (CPC Article 53) 12 hours

If not tried in expedited proceedings must be questioned by a judge within 48 hours (CPC Article 63[2])

For arrest, *Flagrante Delicto* must be presented to PPS as soon as possible (CPC Article 63[1])

Within 72 hours in other cases, including expedited proceedings, for first questioning or the imposition of a restrictive measure (CPC Article 217)

PLACE

Location: District Sub-District Village Sub-Village Location

Police Station with jurisdiction over the place where the incident occurred.

Officer performing the detention: [drop down menu] ID Telephone No.

Police Officer

Senior Police Officer

Chief Police Officer
Sergeant
1st Sergeant
Chief Sergeant
Assistant Inspector
Inspector
Chief Inspector

IDENTIFICATION OF THE DETAINEE

Registration No. of the detainee *(to be completed when placed in the cell)*

Full Name:

Alias:

Date of Birth:

Age:

Marital Status: [drop down menu]

Occupation:

Single

Married

Divorced

Widower/Widow

Non-marital partnership

Workplace: District Sub-District: Village: Sub-Village:

Location:

Name of Father and Mother: and

From: District Sub-District: Village: Sub-Village:

Location:

Nationality:

Current Residence: District Sub-District: Village: Sub-Village:

Location:

Telephone No:

Identification Document: [drop down menu] Number:

Identity Card

Electoral Card

Passport

Driving Licence

Other

Photo: Yes/No Fingerprints: Yes/No

Are there any other detainees? Yes/No (if answered yes, fill out Annex C)

IDENTIFICATION OF VICTIM

Full Name:

Alias:

Date of Birth:

Age:

Marital Status:

Occupation:

Workplace: District Sub-District: Village: Sub-Village:

Location:

Name of Father and Mother: and

From: District Sub-District: Village: Sub-Village:

Location:

Nationality:

Current Residence: District Sub-District: Village: Sub-Village:

Location:

Telephone No:

Identification Document: [drop down menu] Number:

DEFENDANT'S RIGHTS

Has the defendant been informed of their rights? (CPC Article 60)

Has the defendant been informed of:

Right to be present during all procedures?

Right to be heard by the court?

The allegations against them?

Right not to answer questions?

Right to choose a defender or have one designated?

Right to be assisted during proceedings by defender and to speak with them privately?

Right to intervene in the investigation, Fact Finding stage and provide evidence?

REASON FOR ARREST

Flagrante delicto (CPC Article 218)

Warrant from judge? (CPC Article 220) (attach to form CPC Article 221[3])

CPC Article 220(2) requirements fulfilled?

NOTIFICATION OF ARREST (CPC Article 222)

Judge who ordered arrest

In any other case the PPS?

REASON FOR DETENTION

Ensure fulfills the purpose set out in CPC Article 217

Expedited proceeding

Presentation for first questioning before a judge

Imposition of a restrictive measure

Procedural act

NOTE: If the crime relates to gender-based violence then the risk assessment of the victim needs to be taken into account in relation to the arrest and detention of the defendant, with regard to the victim's safety and/or the need to impose restrictive measures

DETAILS OF INCIDENT

(WHO, HOW, WHY, WHAT, WHERE, WHEN) [Insert Complaint Number _____ or attach Complaint Form)

DETAILS RELATING TO PROPERTY

(provide drawing, model, item, value, has it been damaged or stolen)

CONTACT PERSON(S) PROVIDED BY SUSPECT (CPC Article 60[f])

(please include the contact details if the suspect is arrested) contact with family, friend, or public defender, to provide more information enter the date, time of the contact, and the name of the person in question)

WITNESSES

ANNEXES

The detainee was formally accused and ordered to provide his/her identity and address and was given copies of his/her statement.

ID:

Date and time of delivery to the PPS:

Annex J:

APPLICATION FOR JUDGE’S ORDER
FOR SEARCH AND SEIZURE OF PLACES
AND PEOPLE

APPLICATION FOR A JUDGE’S ORDER FOR SEARCH AND
SEIZURE OF PLACES AND PEOPLE¹

Date of application:	/	/	
Date of crime alleged:	/	/	
Date of report of crime:	/	/	
Police officer undertaking investigation	ID	Telephone Number	
Prosecutor with conduct	Office	Telephone Number	

The Place to be searched:

Location:	District	Sub-District:	Village:	Sub-Village:
Private uninhabited	[]			
Industrial/Workshop	[]			
Office	[]			
Workplace	[]			
House/Home ²	[]			
Lawyers Office	[]			
Medical Practice	[]			
Bank	[]			

Owner/Occupier if known

¹ CPC Articles 169, 170(1), 172(2), and 172A–F

² Noting that the search can only be conducted between 6 a.m. and 8 p.m. (CPC Article 170[1]).

Nature of crime alleged _____

Attach the relevant forms:

Complaint Form or Incident Report []

Type or description of Item(s) sought

Relevance of the type or description of item(s) to the crime being investigated

Item(s) may have been used in the commission of the crime []

Item(s) may have bodily fluids on them []

Item(s) may have been damaged during commission of the crime []

Item(s) may contain communications relevant to the commission of the crime []

Any other reasons for relevance

The Person to be searched

Full Name:

Alias:

Date of Birth:

Age:

Marital Status:

Occupation:

Workplace: District Sub-District: Village: Sub-Village:

Location:

Telephone No:

Identification Document: Number:

Relevance of Searching a Person

The person to be searched is a suspect or defendant []

The person to be searched may have assisted in the commission of the crime []

The person to be searched may carry evidence related to the crime being investigated or may be hiding relevant evidence on their person []

Any other reasons for relevance

Identification of the Police Officer or Prosecutor

ID

Signature of the Police Officer or Prosecutor

Print Name:

Date:

Annex K:

APPLICATION FOR VALIDATION OF SEARCH AND SEIZURE OF PLACES AND PEOPLE

VALIDATION OF SEARCH AND SEIZURE OF PLACES AND PEOPLE: Without Judge's Order¹

Date of report:² / /

Date and time of Search and Seizure: / /

Date of crime alleged: / /

Police officer undertaking investigation ID Telephone Number

Prosecutor with conduct Office Telephone Number

Place of search³

Location: District Sub-District: Village: Sub-Village:

Private uninhabited []

Industrial/Workshop []

Office []

Workplace []

House/Home⁴ []

Owner, if known [] _____

Attach photographs/maps of search location and of items where they are found

¹ CPC Articles 56, 169(6), 171, 172(2).

² This must occur immediately and no longer than 72 hours.

³ NOTE: Police can assist judges but cannot initiate seizures from: Banks (CPC Article 172-C); Lawyers and Doctors (CPC Articles 170 and 172-B) and Home Searches if acting under CPC Article 56(1).

⁴ Noting that search can only be conducted between 6 a.m. and 8 p.m. (CPC Article 170[1]).

Nature of crime alleged ⁵ _____

Attach the relevant forms:

Complaint Form or Incident Report []

Consent to search and seizure given ⁶ []

Seizure Report (list of items seized) []

If no consent - reasons for Search and Seizure

Reason for Urgency or Danger in Delay

Potential Destruction of Items []

Reason(s) for the belief:

Potential Movement or Removal of Items []

Reason(s) for the belief:

Potential Alteration of the Crime Scene or Items []

Reason(s) for the belief:

Item posed a danger to persons or property []

Reason(s) for the belief:

If acting under CPC Article 56(1)(b) and it is not a home search:⁷ the reasons for the strong suspicion that the items relating to a criminal offence were hidden

⁵ If Flagrante Delicto under CCPC Article 56, this needs to involve a crime that carries imprisonment.

⁶ Written and signed compliance with CPC Article 171.

⁷ CPC Article 56(4).

Relevance of the search and seizure of the item(s) to crime being investigated

- They are relevant to the proof of the crime being investigated []
- The item(s) may have been used in the commission of the crime []
- The Item(s) may have bodily fluids on them []
- The Item(s) may have been damaged during commission of the crime []
- The Item(s) may contain communications relevant to the commission of the crime⁸ []
- Any other reasons for relevance
-

Search of a Person: The Person searched

Full Name:

Alias:

Date of Birth:

Age:

Marital Status:

Occupation:

Workplace:

District

Sub-District:

Village:

Sub-Village:

Location:

Telephone No:

Identification Document:

Number:

Relevance of Searching the Person

- The person searched was a suspect or defendant []
- The person searched may have assisted in the commission of the crime []
- The person searched may have carried evidence related to the crime being investigated or may be hiding relevant evidence on their person []

⁸ In the case of correspondence, CPC Art 172-A needs to be complied with.

Any other reasons for relevance

Signature of Police Officer who conducted the Search

Print Name and Rank:

ID number:

Date:

Annex L:
SEIZURE REPORT

[LOGO]

SEIZURE REPORT

Date/Time of Seizure: Date/Time expiration of validation:
Location: District Sub-District: Village: Sub-Village: Location
PNTL Senior Police Officer ID acting in accordance with
Article 56(1) or 172(2) of the Timor-Leste Criminal Procedure Code, has
seized the items mentioned below and has identified the owner of the
items as follows:

Full Name:
Alias:
Date of Birth: Age:
Marital Status: Occupation:
Workplace: District Sub-District: Village: Sub-Village:
Location:
Name of Father and Mother: and
From: District Sub-District: Village: Sub-Village:
Location:
Nationality:
Current Residence: District Sub-District: Village: Sub-Village:
Location:
Telephone No:
Identification Document: [drop down menu] Number:

Items Seized

Ref. No.	Complete Description	Location
EG Ev1.	Blue t-shirt with Nike logo	National Police Criminal Investigations Service
Ev2.	Machete blade 40 cm long	As above
Ev3.	Brown shorts torn near the zipper with stains	As above
Ev4.		
Ev5.		

The aforementioned documents have been prepared in duplicate and signed by the Police Officer/Investigator and owner of the item, and the owner of the item will receive a copy of this duplicate.

Signature of the Owner of the Item _____

Signature of the PNTL Officer _____

Annex M:

MEDICAL FORENSIC EXAMINATION AND REPORT PROTOCOL

MEDICAL FORENSIC EXAMINATION AND REPORT PROTOCOL

Form to guide medical forensic examination and report on presentations and/or requests requiring examination and/or treatment of victims of domestic violence, sexual assault, or child abuse

Ref. No.	
NUC	
Name of the survivor	
Date of medical examination	
Name of the examiner	
Place of the medical examination	
Reviewed by	
Date when the police or the PPS received this protocol:	<div><div></div><div>/</div><div></div><div>/</div><div></div><div>Day</div><div>Month</div><div>Year</div></div>

DETAILS OF THE INJURED PARTY/OFFENDED:

Complete name:

Date of birth:

Gender: ☐ Male ☐ Female ☐ Others

Disability Status ☐ Yes ☐ No

If yes, what type of disability?

Physical disability ☐ speaking ☐ hearing ☐ vision

☐ Intellectual ☐ Mental ☐ Others

Mother or Father's name/person who looks after the child (if the survivor is a minor):

Date of the aggression:

Time of the aggression (if remembered; or estimate)

Name of the referrer:

DETAILS OF THE EXAMINATION

Name and place of work:

Name of the medical forensic examiner:

Professional title:

Signature of the medical forensic examiner

Date of the examination:

Time examination began:

Time examination concluded:

CONSENT FORM TO DO THE MEDICAL FORENSIC EXAMINATION:

I, _____ consent to a medical examination for medico-legal purposes. I am aware that any record of the examinations, in accordance with the consent expressed above, may be used as evidence/testimony in court.

A. Consent from the injured party/offended

Signature:

Name:

B. Or other person given his/her consent on behalf of the s injured party/offended

My relationship with the survivor: ☐ Father-Mother

☐ Person who looks after the child

Signature:

Survivors between the ages of 12–16 provide their own consent because:

- ☐ It is necessary to safeguard the evidence.
- ☐ It is necessary to protect the survivor's safety.
- ☐ Unable to contact the Public Prosecution Service.
- ☐ The parent or person who looks after the child is unable to mark their presence.
- ☐ The survivor has understood the purpose of the examination.

I have explained to the survivor or parent/guardian the nature of the examination that will be carried out. I have also explained that conclusive lesions and documentation can be used as evidence in court.

Examiner's signature:

Name and professional title

Date

Witness Signature:

Name and professional title

Date

Interpreter's signature:

Name and professional title

Signature

Date

REPORT OF THE AGGRESSION (CHILDREN AND ADULTS)

Occurrence reported by:

- ☐ Victim ☐ Parents ☐ Person looking after the child
- ☐ Other person – Specify: ____

Name of the individuals who marked their presence during the examination:

Complete name:

Professional Title:

Description of the occurrence/please tell me what happened.

If it is sexual assault

Was there an ejaculation? ☐ Yes ☐ No

Comments on the ejaculation (if any)

Details of the sexual assault case

Penetration	Yes	No	Not sure	Describe (Orál, Vaginal, Anal)
Penis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Fingers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Others (describe)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Did the suspect use a condom? ☐ Yes ☐ No

General symptoms since the day of the violence

- Body aches☐ Yes☐ No
- Pain in lower abdomen☐ Yes☐ No
- Vomit☐ Yes☐ No
- Nauseous☐ Yes☐ No
- Pain during urination☐ Yes☐ No
- White blood☐ Yes☐ No
- Painful defecation☐ Yes☐ No
- Bleeding (defecation)☐ Yes☐ No
- Blood in urine☐ Yes☐ No
- Bleeding☐ Yes☐ No
- Others☐ Yes☐ No

Relevant past injuries and medical conditions (including any allergies?)

First day of the last menstruation (___/___/___)

Menstruation during the assault (___/___/___)

Pregnancy? ☐ Yes ☐ No

CHILDREN/ADULTS – GENERAL EXAMINATION

Ask the survivor if he/she has

Vomited?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Washed their mouth?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Urinated?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Changed clothes?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Defecated?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Taken a shower or washed face?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Brushed their teeth?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Used any period supplies?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Other evidence:			

Weight			
Pulse			
Respiratory rate			
How the survivor presents emotionally/Impact Including immediate and future impact			
Temperature			
Blood Pressure			

I examined the head and neck ☐ Yes ☐ No

No injuries were found ☐ Yes ☐ No If yes, please describe below:

No.	Type	Size	Description	From assault

CHILDREN – BODY - BACK AND FRONT – MALE AND FEMALE

I examined the back and front

☐ Yes

☐ No

Any injuries found

☐ Yes

☐ No

If Injuries – please describe below

No.	Type	Size	Description	From assault

CHILDREN - EXAMINATION OF GENITALS

I examined the genitals

☐ Yes

☐ No

Hymen

☐ Yes

☐ No

Shape

Acute tear wound

☐ Yes

☐ No

☐ What is the number of the clock's position?

An old wound that has been torn all the way to the posterior base of the hymen?

☐ Yes

☐ No

☐ What is the number of the clock's position?

An old wound in the posterior hymen that has been torn more than 50%?

☐ Yes

☐ No

☐ What is the number of the clock's position?

An old wound in the posterior hymen that has been torn less than 50%?

☐ Yes

☐ No

☐ What is the number of the clock's position?

Swollen or lump ☐ Yes ☐ No ☐ What is the number of the clock's position? _____

Vaginal discharge ☐ Yes ☐ No ☐ _____

Other injuries

No.	Type	Size	Description	From assault

Penis

Circumcised ☐ Yes ☐ No

Axis of the Penis/Eixo de penis ☐ Normal ☐ Not normal
Number _____

Prepuce/Prepucio ☐ Normal ☐ Not normal
Number _____

Glande/Glande ☐ Normal ☐ Not normal
Number _____

Scrotum/Escroto ☐ Normal ☐ Not normal
Number _____

Urethral opening ☐ Normal ☐ Not normal
Number _____

CHILDREN/ADULTS – HANDS AND FEET

I examined the hands and feet ☐ Yes ☐ No

Any injuries found ☐ Yes ☐ No

If Injuries – please describe below

No.	Type	Size	Description	From assault

ADULTS – BODY – BACK AND FRONT – FEMALE

I examined the body – back and front

☐ Yes

☐ No

Any injuries found

☐ Yes

☐ No

If injuries – please describe below

No.	Type	Size	Description	From assault

ADULTS – CENTRAL AND LATERAL BODY REPRESENTATION – FEMALE

I examined the central and lateral bodies

☐ Yes

☐ No

Any injuries found

☐ Yes

☐ No

If Injuries – please describe below

No.	Type	Size	Description	From assault

ADULTS - FEMALE GENITALS

I examined the genitals.

Hymen

☐ Yes

☐ No

Shape _____

Acute tear wound

☐ Yes

☐ No

☐ What is the number of the clock's position? _____

An old wound that has been torn all the way to the posterior base of the hymen? ☐ Yes ☐ No ☐ What is the number of the clock's position?

An old wound in the posterior hymen that has been torn more than 50%?

☐ Yes ☐ No ☐ What is the number of the clock's position?

An old wound in the posterior hymen that has been torn less than 50%?

☐ Yes ☐ No ☐ What is the number of the clock's position?

Swollen or lump ☐ Yes ☐ No ☐ What is the number of the clock's position? _____

Vaginal exudates ☐ Yes ☐ No _____

No.	Type	Size	Description	From assault

Require examination through speculum? ☐ Yes ☐ No

If yes -- ☐ Normal ☐ Not normal

Anus _____

ADULT – BODY – BACK AND FRONT – MALE

I examined the back and front

☐ Yes

☐ No

Any injuries found

☐ Yes

☐ No

If Injuries – please describe below

No.	Type	Size	Description	From assault

ADULTS – CENTRAL AND LATERAL BODY REPRESENTATION – MALE

I examined the central and lateral bodies

☐ Yes

☐ No

Any injuries found

☐ Yes

☐ No

If Injuries – please describe below

No.	Type	Size	Description	From assault

ADULTS - MALE GENITAL AREA

I examined the genitals

☐ Yes

☐ No

Circumcised

☐ Yes

☐ No

Perineum

Axis of the Penis

Prepuce

Glande

Scrotum

Urethral opening

Ânus

Other evidence of the medico-legal exam

Summary of the written history and forensic examination

What is recorded here is taken from the historical record collected, the physical examination carried out, and the forensic examination.

History of the Aggression

Physical Condition

Impact on the victim

Physical

Psychological

Socioeconomic

Others

Consent to disclose the protocol to the police

I consent to provide a copy of the investigation protocol and any other material collected to the Police or Public Prosecution Service.

A: Consent of the survivor

Signature

Name

Date

B: Or other person gives their consent on behalf of the survivor

My relationship with the survivor:

☐ Father – Mother

☐ Guardian

☐ Other – specify

Signature

Name

Date

Witness Signature

Name and professional title

Date

Signature

Interpreter' signature

Name and professional title

Date

Signature

I, the medico-legal examiner, declare that the information documented by me in this protocol is a true record of the information provided to me by the survivor.

Examiner's signature

Name

Date

Date of the examination

Time concluded the examination

Annex N:

CLIENT ASSESSMENT

[LOGO]

CLIENT ASSESMENT

Date received the client: __/__/__

Date of the referral: __/__/__ Date of the assessment: __/__/__

Referred by: _____

Name of accompanying person _____ Cell: _____

1. Client's Information:

Complete name of the Client: _____ Cell: _____

Date of birth: __/__/__ Age: ____ Sex: ☐ Female ☐ Male ☐ Others

Address (Municipality, Village, Sub-Village): _____

Who does the client live with (e.g. husband, parents, alone): _____

Is the client the head of the family? ☐ Yes ☐ No

If the client is a minor:

Name of the person in charge of the child: _____

Relationship with the child: _____

Address: _____ Cell: _____

Name of the
mother: _____

Address: _____ Cell: _____

Name of the
Father: _____

Address _____ Cell: _____

Disability Status: ☐ With disability ☐ No Disability

If any disability, please describe: _____

Marital Status	Educational Level	Occupation	
<input type="checkbox"/> Children (Age 0–14) <input type="checkbox"/> Single <input type="checkbox"/> Married/has a partner <input type="checkbox"/> Separated/divorced <input type="checkbox"/> Widow <input type="checkbox"/> Don't know	<input type="checkbox"/> Primary School <input type="checkbox"/> Junior School <input type="checkbox"/> Secondary School <input type="checkbox"/> University <input type="checkbox"/> Others	<input type="checkbox"/> Employed <input type="checkbox"/> Unemployed <input type="checkbox"/> Study Describe:	Language Nationality Religion

How many children? _____ How old are the children? _____

Where do the children currently live? _____

Client can take care of the children:

Detail: _____

2. Type of case:

Domestic Violence (DV) (Violence from family members)

- ☐ Physical violence ☐ Sexual violence ☐ Emotional violence
☐ Economic violence ☐ Incest

Sexual Violence (Non DV)

- ☐ Physical violence (Non DV) – Adults or ☐ Children

☐ Others _____

- ☐ Threat ☐ Sharp objects ☐ Frequent violence

Date submitting the MFE (Medical Forensic Examination) to the Police:

___/___/___

3. History:

Last date of the occurrence: ___/___/___ Time of the occurrence: _____

Location (Municipality): _____

Has the client ever been to Fatin Hakmatek? ☐ Yes ☐ No Details: _____

4. Psychological Assessment

<input type="checkbox"/> Cry a lot	<input type="checkbox"/> Cannot sleep	<input type="checkbox"/> Feeling isolated
<input type="checkbox"/> Tremble	<input type="checkbox"/> Regular nightmare	<input type="checkbox"/> Cannot take care of herself
<input type="checkbox"/> Very sad	<input type="checkbox"/> Lots of sleep	<input type="checkbox"/> Not active
<input type="checkbox"/> Scared	<input type="checkbox"/> Headache	<input type="checkbox"/> Drink wine
<input type="checkbox"/> Disoriented	<input type="checkbox"/> Poor concentration	<input type="checkbox"/> Use drugs
<input type="checkbox"/> Palpitation	<input type="checkbox"/> Shy	<input type="checkbox"/> Too much smoke
<input type="checkbox"/> Silent	<input type="checkbox"/> Self-blamed	<input type="checkbox"/> Chewing lots of betel nut
<input type="checkbox"/> Worried/anxious	<input type="checkbox"/> Have no appetite	<input type="checkbox"/> Injured themselves: details:

Other issues, or information: _____

5. Risk Assessments

A woman who responded to “yes” to at least three of the following questions may have a high immediate risk of violence:

Questions	Yes	No
Is the victim afraid to go home?		
Has the violence increased over the past six months?		
Is there anything sharp in the house?		
Did the suspect strangle the victim around the neck?		
Is the suspect affected by drugs or alcohol?		
Is the victim afraid that the suspect could kill her?		
Is there any other person currently staying at home who might be at risk or in danger (for example, victim's child, or if the victim is a minor), other children that are still at home.		
Can the victim encounter threats from the suspect (or her family)?		
The suspect has control over the victim's access to the community and family.		
Does the victim have any deficiencies?		

If there are high risk of violence, you can inform her that

“I am very concerned about your safety. Let us talk about what should be done to avoid injuries.

Maybe it is not safe for you to return home.”

- Provide information about the options we have, such as contact the police or make arrangements to stay in a shelter

- If that is not an option, work with her to find a safe place for her to stay such as a friend's house, family, church, or one night at the hospital
- Help her to do a safe plan

6. Medical forensic examination and medical treatment:

Do MFE for the client? ☐ Yes ☐ No If "no", why? _____

Date of issuance of MFE ____/____/____ Examiner's name: _____

Brief summary about the MFE result: _____

Medical treatment:

Has there been any treatment done in other places? ☐ Yes ☐ No

Details: _____

First day of last menstruation: ____/____/____

Pregnancy test? ☐ Yes ☐ No Results: ☐ Positive ☐ Negative

Pregnant? ☐ Yes ☐ No If pregnant, for how long? _____

Did the Client use contraception? ☐ Yes ☐ No If yes, details: _____

Does the client need an emergency pill? ☐ Yes ☐ No

☐ Levonorgestrel 750mg: 2 tablets once

Signature: _____ Date: ____/____/____

STI –prevention ☐ Yes ☐ No or treatment ☐ Yes ☐ No

☐ Cefixime 400mg once OR ☐ Children <age 12: 8mg/kg _____mg once OR

☐ Ceftriaxone 500mg IM once

Signature: _____ Date: ____/____/____

☐ Doxycycline 100mg twice in a week OR ☐ Client <45kg: 2.2mg/kg _____mg twice in a week OR ☐ Azithromycin 1g once

Signature: _____ Date: ____/____/____

☐ Metronidazole 2g only once OR ☐ Metronidazole 400mg twice in a week OR ☐ prepubertal child: metronidazole 30mg/kg _____ stat or

☐ Metronidazole 10mg/kg _____ mg twice in a week

Signature: _____ Date: __/__/__

Does the client need a vaccine? ☐ Yes ☐ No

☐ Tetanus Signature: _____ Date: __/__/__

☐ Hepatitis B Signature: _____ Date: __/__/__

PEP HIV Assessment:

1. Can we begin with PEP medicine within 72 hours starting from the assault? ☐ Yes ☐ No if yes, go to question no. 2.

2. Is there any high risk from the assault (please refer to the list below)?
☐ Yes ☐ No If yes about the counselling on PEP, then go to question 3.

Know/remember whether the suspect is HIV positive

☐ *More than one suspect*

☐ *Injury in the genital area – bleeding from the genitals*

☐ *Sexual assault from the anus*

☐ *Sexual assault between men*

☐ *Suspect comes from a high-risk situation (prevalence HIV >1% - please refer to the list in the folder)*

3. Did the client decide to consult with an HIV Counselor? ☐ Yes ☐ No
 If yes, please refer to the HIV counselor

Other medication/treatment in Fatin Hakmatek (eg. Wash the injuries)

☐ Yes ☐ No

Details: _____

Name of the staff who provide other medication/treatment: _____

7. Action Plan

1) Safety

Client is safe to return home ☐ Yes ☐ No

Client stays in ☐ Fatin Hakmatek ☐ Uma mahon
 (name) _____

Other place (name) _____

Date of stay in FH: __/__/__ until __/__/__

How many people accompanied the client: (eg: *family*) F:___ M:___

Name of the staff accompanying the victim in FH:

2) Counselling

☐ Immediate counselling

☐ Follow-up counselling:

Details: _____

Person responsible: _____

When: _____

3) Medical treatment

☐ Need specific follow-up? (including HIV blood testing, Hepatitis B, syphilis – 3 months)

Details: _____

Person responsible: _____

When: _____

☐ Need another referral? ☐ Yes ☐ No

Details: _____

Person responsible: _____

When: _____

4) Justice

Do the police know about the case? ☐ Yes ☐ No Detail: _____

☐ Refer to ALFeLa or JSMP: Date of the referral: __/__/__

Name of the person received the client _____

5) Reintegration support

☐ Financial Support: Detail: _____

☐ Hygiene package support: Detail: _____

☐ Food and clothing: Detail: _____

☐ Client needs a referral to MSS: _____

Date of the referral: __/__/__

Name of the person receiving the client _____

Client continues to go to school: ☐ Yes ☐ No Details: _____

Does the client have an interest in starting a business? ☐ Yes ☐ No
Details: _____

☐ Client needs to refer to other partners (ez RHTO): Partners: _____
Date of the referral: __/__/____
Name of the person receiving the client: _____

8. Accessed by (PRADET FH's staff): Name: _____

Signature: _____ Date: __/__/____

9. Closure of the case

Has the case closed? ☐ Yes ☐ No

Date of the closure: __/__/____

Does the client know how to contact Fatin Hakmatek? ☐ Yes ☐ No

Reason for the closure: _____

Name of the person/staff that closed the case: _____

Signature: _____ Date: __/__/____

Annex O:

CHECKLIST OF RESTRICTIVE AND PROTECTIVE MEASURES IN GENDER-BASED VIOLENCE CASES

- Restrictive measures should prioritize the safety of the victim and the **General Guidelines on Risk Assessment for Adult and Child Victims of Violence and Sexual Assault (Part 2, Annexes B and C)** is a fundamental first step. A risk assessment will help guide what restrictive measures are required to ensure the victim's ongoing safety and to protect her ability to engage in the judicial process without fear or intimidation.
- The scope of restrictive measures goes beyond the safety and security of the victim but includes the victim's family particularly children, as well as witnesses in the case. It also includes measures to ensure that the defendant does not commit crimes against others in the community and does not evade justice.
- The restrictive measures are requested by the PPS and imposed by a judge (Criminal Procedure Code [CPC] Article 184) and should be reviewed throughout the case. They are in addition to the provisions for proof of identity and residence in CPC Articles 184(1) and 186.
- The requirements in CPC Articles 181–183 need to be fulfilled.
- Article 182 requires that in choosing a measure, consideration is given to the procedural need to be protected, proportionate to the type and gravity of the crime, and the least restrictive measure to achieve the preventative requirement (Part M, page 165 of this Handbook).
- Article 183 requires that the restrictive measure meets at least one of the listed criteria. This includes reasonable fear that the defendant might escape, reasonable fear the investigation might be disrupted, or a reasonable fear that criminal activity might be pursued, or public order disrupted (Part M, pages 166–167 of this Handbook).
- A defendant may be subjected to one or more restrictive measures (CPC Article 185).
- The Law Against Domestic Violence (LADV), Law No. 7/2010 also includes further restrictive measures in Article 37.

- The provisions under the Law on Protection of Witnesses No.2/2009 (LPW) include provisions that are not direct restrictive measures on the offender, but protect the victims including witnesses, relatives in ascending line, children, or siblings.

Table A.O1: Initial Checklist for All Cases

		Yes	No	Action/ Comments
1	Has a risk assessment already been conducted by a police entity or another body? a. If no, delegate one to occur b. If yes, review and follow up to discuss protective measures with the victim			
2	Has the suspect been arrested and detained? (Note: arrest can occur in 3 different ways, see CPC Articles 218–220, but detention can only occur for the purposes set out in Penal Code Article 217, one of which is to impose a restrictive measure) a. If there is any risk to the safety of the victim after conducting the risk assessment; then b. Arrange for arrest and detention of the defendant for the imposition of restrictive measures and ensure immediate safety of the victim (CPC Article 217[1][a])			
3	Is the relationship between the offender and victim a family relationship? (LADV Articles 2 and 3) a. If yes, go to Tables 2 and 3 b. If no, go to Table 3			

Table A.O2: Considerations When There is a Family Relationship

		Yes	No	Action/ Comments
4	What is the assessed risk to the victim’s safety?			
5	<p>If the home or the community is not safe for the victim and/or there are signs of violence that reasonably suggest that acts of aggression may occur again in a manner that will place the life, physical, mental, or sexual integrity of the victim at risk (LADV Article 37), then:</p> <p>a. Request measure of restraint to remove the defendant from the home (LADV Article 37)</p> <p>b. Request measure of restraint to bar contact between the defendant and victim (LADV Article 37)</p>			
6	Transport to shelter can also occur (for emergencies but is only temporary)			
7	<p>Is there a risk that witnesses with a knowledge of facts relevant to the facts of the case or relevant to the decision require protection? (LADV Article 39)</p> <p>If yes then:</p> <p>a. procedural measures under the CPC would apply, or</p> <p>b. provisions under LWD may apply</p>			
	Continue to Table 3			

Table A.O3: Checklist for All Cases

		Yes	No	Action/ Comments
8	What is the assessed risk to the victim's or witness's safety?			
9	<p>If the home or the community is not safe for the victim, her dependents, and/or witnesses and the prerequisites for pretrial detention are not met then:</p> <ul style="list-style-type: none"> a. Transport to a shelter (for emergencies and only temporary) b. The defendant can be prohibited from leaving their residence, or area of residence, or only leave with authorization (CPC Articles 192 and 193) 			
10	<p>Is there is risk the defendant may leave the jurisdiction or need some supervision in the community to ensure compliance?</p> <ul style="list-style-type: none"> a. Report to court or police (CPC Article 191) b. Request bail (CPC Articles 187–189) 			
11	<p>Is there is a fear about giving a statement or testimony and the witness's (including the victim's) life, physical or psychological integrity, freedom, or assets of considerable value are jeopardized (LPW Article 1) then:</p> <ul style="list-style-type: none"> a. A witness can give the statement or testimony in a public building with access to that place restricted (LPW Articles 6 and 7) 			

continued on next page

Table A.O3: Checklist for All Cases *(continued)*

		Yes	No	Action/ Comments
	<div><div>b. A witness’s identity can be concealed by concealing their image and/or voice (LPW Article 4)</div><div>c. Testimony can be taken through a teleconference (LPW Article 5 and 18)</div></div>			
12	<div><div>If the LPW Article 1 applies and witness’s (including victim’s) life, physical or psychological integrity, freedom, or assets of considerable value are jeopardized; and the crime may result in a maximum penalty of over 5 years jail; and there are significant grounds for security or involves the guardianship of minors or assets of considerable value (LPW Article 19) then the witness/victim can have the following protections:</div><div><div>a. Address can be suppressed (LPW Article 19[a])</div><div>b. During the proceedings being in a separate room with security at the court or police station without the defendant having access (LPW Article 19[c])</div><div>c. Be provided with police protection, including for spouses (not including the defendant), siblings, persons in close contact, and/or children (LPW Article 19[d])</div></div></div>			

continued on next page

Table A.O3: Checklist for All Cases *(continued)*

		Yes	No	Action/ Comments
13	<p>If the home or the community is not safe for the victim* her dependents or witnesses; and there are strong indications that a crime punishable with over 3 years jail has been committed; any other restrictive measure would be inadequate or insufficient; (CPC Article 194) then the victim may:</p> <p>a. Request pretrial detention (CPC Articles 183 and 194)</p>			
14	<p>What is the date for review of pretrial detention?</p> <p>Has this date and the date for provision of the report by the PPS been marked on the file or in a central diary? (CPC Article 196)</p>			
15	<p>Has there been a failure to comply with a restrictive measure or bail?</p> <p>a. If with bail then the money is forfeited (CPC Article 189)</p> <p>b. If with restrictive measure (CPC Article 202[2]) then impose another measure in addition; or substitute a measure</p> <p>c. If the original restrictive measure not complied with was designed to protect the victim's safety against physical, sexual, or psychological harm; then</p> <p>(i) impose a more substantial restrictive measure and consider whether pretrial detention is required.</p>			

* Some examples of cases requiring pretrial detention would be if there is or has been a risk to her life (or her family), or serious harm or escalation of violence and/or offending. Or, if there has been prior noncompliance with protective measures.

Annex P:

HAND OVER LETTER OF EVIDENCE TO THE PUBLIC PROSECUTION SERVICE (PPS) OR THE NATIONAL POLICE (PNTL)

HAND OVER LETTER OF THE EVIDENCE TO THE PUBLIC PROSECUTION SERVICE (PPS) OR THE NATIONAL POLICE (PNTL)

This form can be used to guide Referral Network services when assisting victims or clients during the investigation and judicial process, to hand over evidence from a Referral Network service to the PPS, the PNTL, or other police investigation services.

On _____, date ____ / ____ / ____, time ____:____ TLT,
I _____, ID no. _____, Electoral Card no. _____, as
an officer or employee of ¹_____ hand over the victim/
client's evidence to _____.²

Details of the victim/client:

Name:

Address:

Age:

Case no. (NUC): _____ NUC from: ☐ Police ☐ PPS ☐ Court

Evidence handed over by _____:

☐ Medical examination results from _____

☐ Other evidence: _____

The client requests that this evidence be used as proof to support his/her

¹ Name the organization, person, whom we can contact, his/her designation and contact number.

² Name the organization, person, whom we can contact, his/her designation and contact number.

statement during the process of the case in accordance with the formal justice system. Respectfully,

The person who submitted the evidence:	The person who received the evidence:
Signature	Signature
Name of the organization that is providing the evidence	Name of the person who received the evidence
	Name of the Institution
Date	Date
Ph:	

Annex Q:

REFERRAL FORM – POLICE BODIES/
PUBLIC PROSECUTION SERVICE TO
REFERRAL NETWORK SERVICES

REFERRAL FORM – POLICE BODIES AND
PUBLIC PROSECUTION SERVICE (PPS) TO
REFERRAL NETWORK SERVICES

Details of the Victim/Client:

NUC. : _____

Name : _____

Date of Birth : _____

Address : _____

Referred to:

(name of the organization, person whom we can contact, his/her designation, and contact number)

Referred by:

☐ PNTL/SVPS

☐ Public Prosecution Office

☐ PCIC

Supports/assistance required by the Victim/Client:

☐ Medical Examination and treatment

☐ Counselling

☐ Shelter

☐ Emergency fund

☐ Psychosocial assistance

☐ Social Assistance

☐ Legal Assistance

☐ Others: _____

Comments/please specify:

Support/assistance that has been provided:

Permission to give information about the victim/client:

Name and Signature/Fingerprint
(Victim/Client)

Parent/Family Representative
(if inor)

Date of the referral: ____/____/____

Person completing the referral:

Name : _____

Designation : _____

Contact details : _____

Name and Signature (Referrer)

Name and Signature (Person received)

Annex R:

REFERRAL FORM BETWEEN REFERRAL
NETWORK SERVICES

Referral Form to Guide Referring Victims/Clients
Between Referral Network Services

This form can be used to guide Referral Network services when referring victims/clients from their own service to another Referral Network service during the investigation and judicial process.

Victim/client:

Name : _____

Date of Birth : _____

Address : _____

Refer to:

(name of the organization, person whom we can contact, his/her designation, and contact number)

Referred by:

(name of the organization, person whom we can contact, his/her designation, and contact number)

Summary of the assistance required by the victim/client :

Summary of the victim’s situation and the assistance that has already been provided:

Permission given by the victim to make the referral and share the information with

(Name of the Organization)

Victim's signature/ fingerprints

Date ____ / ____ / 20____

Name

Annex S:

PROGRESS REPORT: NATIONAL POLICE/
SUPPORT TO VULNERABLE PEOPLE
SUBSECTION (PNTL/SVPS) TO
THE PUBLIC PROSECUTION SERVICE (PPS)

[LOGO]

Case Number
Day/Date of Report (if domestic violence, must be no more than 5 days after report)
Unit/Office
Investigator

PROGRESS REPORT

Date of Incident	Location of Incident	Time It Started
Date and time when notified to police	How: <input type="checkbox"/> In-person <input type="checkbox"/> Phone <input type="checkbox"/> Other	By whom: <input type="checkbox"/> Victim <input type="checkbox"/> Neighbor <input type="checkbox"/> Relative <input type="checkbox"/> Chefe de Suco/Aldeia <input type="checkbox"/> Hospital or Doctor <input type="checkbox"/> Referral Network <input type="checkbox"/> Other
Type of Crime/ Crime Identified		

continued on next page

Progress Report *(continued)*

Victim	<p>Name: _____ ID: _____</p> <p>Place Living:</p> <p><input type="checkbox"/> At home <input type="checkbox"/> Shelter <input type="checkbox"/> Relatives</p> <p>Children</p> <ul style="list-style-type: none"> • Number of children _____ • Living with victim <input type="checkbox"/> Yes <input type="checkbox"/> No • Child Protective Services involved? <input type="checkbox"/> Yes <input type="checkbox"/> No • If yes CPO Name and Contact Details _____ <p>Risk assessment undertaken <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <ul style="list-style-type: none"> • Referral to Shelter <input type="checkbox"/> Yes <input type="checkbox"/> No • Referral to Referral Network <input type="checkbox"/> Yes <input type="checkbox"/> No • PRADET or Medical Examination <input type="checkbox"/> Yes <input type="checkbox"/> No • Psychological/Psychiatric referral <input type="checkbox"/> Yes <input type="checkbox"/> No • Informed of their Rights? <input type="checkbox"/> Yes <input type="checkbox"/> No • Referral to Legal Representative? <input type="checkbox"/> Yes <input type="checkbox"/> No • Further information or referrals? _____
Suspect	<p>Name: _____ ID: _____</p> <p>Place Living:</p> <p><input type="checkbox"/> At home <input type="checkbox"/> Detention <input type="checkbox"/> Relatives</p> <p><input type="checkbox"/> Other place _____</p> <p>Subject to restrictive measures? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, when and what conditions? _____</p>
Witness(es)	Name(s) _____
Police Officer	Statement(s) _____

CPO = Child Protection Officer

1. SUBSTANCE OF THE INVESTIGATION:**(a) Background**

- (i) Investigation at crime scene ☐ Yes ☐ No
- (ii) Observations, plans, photographs, and maps attached
- ☐ Yes ☐ No

Brief description: _____

- (iii) Search and seizure conducted ☐ Yes ☐ No

If yes:

Court order obtained? ☐ Yes ☐ No

Court validation obtained? ☐ Yes ☐ No

Seizure report(s) completed and attached ☐ Yes

If no:

Is search and seizure required? ☐ Yes ☐ No

If Yes, attach application/information for court order

- (iv) Statements taken

Victim ☐ Yes ☐ No

Witnesses ☐ Yes ☐ No

Other statements ☐ Yes ☐ No

Type of information and Name

Statements attached ☐ Yes ☐ No

Other evidence or information obtained ☐ Yes ☐ No

2. SUMMARY OF INVESTIGATION OUTCOME:

(a) Overview of Investigation

Evidence that has been gathered and its relevance to proof of the crime(s) with reference to :

(i) Statements

(ii) Observations

(iii) Plans

(iv) Photographs

(v) Maps

(vi) Reports

(vii) Items seized

(viii) Other information

3. STATUS OF INVESTIGATION:

Further Investigation required? ☐ Yes ☐ No

Type of investigation required and by whom?

Further judicial applications required?

4. DOCUMENTS AND INFORMATION ATTACHED:

Number and type of documents attached	
Incident Report	PRADET, medical health center report
Complaint form	Statements
Risk assessment Forms	Seizure report
IDs of victim, suspect, witnesses, etc.	Other reports
Photos	Other information, documents
Plans	
Maps	
Diagrams	

5. CONCLUSION

Report from the Officer handling the case

Police Sergeant _____ ID _____

Annex T:

FINAL REPORT: NATIONAL POLICE/
SUPPORT TO VULNERABLE PEOPLE
SUBSECTION (PNTL/SVPS) TO
PUBLIC PROSECUTION SERVICE (PPS)

[LOGO]

Case Number
Day/Date of Report
Unit/Office
Investigator

FINAL REPORT

Date of Incident	Location of Incident	Time It Started
Date and time when notified to police	How: <input type="checkbox"/> In-person <input type="checkbox"/> Phone <input type="checkbox"/> Other	By whom: <input type="checkbox"/> Victim <input type="checkbox"/> Neighbor <input type="checkbox"/> Relative <input type="checkbox"/> Chefe de Suco/Aldeia <input type="checkbox"/> Hospital or Doctor <input type="checkbox"/> Referral Network <input type="checkbox"/> Other
Type of Crime/ Crime Identified		

continued on next page

Final Report *(continued)*

Victim	<p>Name: _____ ID: _____</p> <p>Place Living:</p> <p><input type="checkbox"/> At home <input type="checkbox"/> Shelter <input type="checkbox"/> Relatives</p> <p>Children</p> <ul style="list-style-type: none"> • Number of children _____ • Living with victim <input type="checkbox"/> Yes <input type="checkbox"/> No • Child Protective Services involved? <input type="checkbox"/> Yes <input type="checkbox"/> No • If yes CPO Name and Contact Details _____ <p>Risk assessment undertaken <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <ul style="list-style-type: none"> • Referral to Shelter <input type="checkbox"/> Yes <input type="checkbox"/> No • Referral to Referral Network <input type="checkbox"/> Yes <input type="checkbox"/> No • PRADET or Medical Examination <input type="checkbox"/> Yes <input type="checkbox"/> No • Psychological/Psychiatric referral <input type="checkbox"/> Yes <input type="checkbox"/> No • Informed of their Rights? <input type="checkbox"/> Yes <input type="checkbox"/> No • Referral to Legal Representative? <input type="checkbox"/> Yes <input type="checkbox"/> No • Further information or referrals? _____
Suspect	<p>Name: _____ ID: _____</p> <p>Place Living:</p> <p><input type="checkbox"/> At home <input type="checkbox"/> Detention <input type="checkbox"/> Relatives</p> <p><input type="checkbox"/> Other place _____</p> <p>Subject to restrictive measures? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, when and what conditions? _____</p>
Witness(es)	Name(s) _____
Police Officer	Statement(s) _____

CPO = Child Protection Officer

1. SUBSTANCE OF THE INVESTIGATION:**(a) Background**

- (i) Investigation at crime scene ☐ Yes ☐ No
- (ii) Observations, plans, photographs, and maps attached
☐ Yes ☐ No

Brief description: _____

(iii) Search and seizure conducted ☐ Yes ☐ No

If yes:

Court order obtained? ☐ Yes ☐ No

Court validation obtained? ☐ Yes ☐ No

Seizure report(s) completed and attached ☐ Yes

If no: Give reasons

Is search and seizure required? ☐ Yes ☐ No

If Yes, attach application/information for court order

(iv) Statements taken

Victim ☐ Yes ☐ No

Witnesses ☐ Yes ☐ No

Other statements ☐ Yes ☐ No

Type of information and Name

Statements attached ☐ Yes ☐ No

If no: give reasons

Other evidence or information obtained ☐ Yes ☐ No

2. SUMMARY OF INVESTIGATION OUTCOME:

(b) Overview of Investigation

Evidence that has been gathered and its relevance to proof of the crime(s) with reference to:

- (i) Statements
- (ii) Observations
- (iii) Plans
- (iv) Photographs
- (v) Maps
- (vi) Reports
- (vii) Items seized
- (viii) Other information

3. DOCUMENTS AND INFORMATION ATTACHED:

Number and type of documents attached	
Incident Report	PRADET, medical health center report
Complaint form	Statements
Risk assessment Forms	Seizure report
IDs of victim, suspect, witnesses, etc.	Other reports
Photos	Other information, documents
Plans	
Maps	
Diagrams	

4. CONCLUSION

Report from the Officer handling the case

Police Sergeant _____ ID _____

Annex U:

CHECKLIST FOR THE COLLECTION OF EVIDENCE

This can be used from the first point that the Public Prosecution Service (PPS) receives a report about a gender-based violent (GBV) crime to assist in the role of leading and delegating throughout an investigation (Criminal Procedure Code [CPC] Article 48) and to assess or review whether the police entity report is sufficient after the report has been provided to the PPS (CPC Article 234).

The purpose of evidence gathering is to ensure that all admissible evidence is collected to identify the victim of the crime, what crime was committed, where the crime was committed, and who committed the crime (CPC Article 225). The available evidence that can be used is outlined in CPC Articles 109–117.

Table A.U1: Types of Evidence for Gender-Based Violent Crime

		Yes	No	Action/ Comment
1	<p>Initial report of an offense if not by the victim (if by witness, first responding police officer, social worker, etc.)</p> <p>(a) Witness statement from the person who made the initial report:</p> <p>(i) include details of what they saw or heard or were told by someone else about an event</p> <p>(ii) include whether others were present at the event in particular children or other witnesses</p> <p>(iii) include any observations the witness made about the victim including a full description of the victim’s physical appearance, clothing,</p>			

continued on next page

Table A.U1: Types of Evidence for Gender-Based Violent Crime (continued)

		Yes	No	Action/ Comment
	<p>physical state, mental state, intoxication, what was said</p> <p>(iv) include any observations the witness made about the suspect including a full description of the suspect physical appearance, clothing and physical state, mental state, intoxication, what was said</p> <p>(b) is there a telephone recording of the initial report?</p> <p>(c) is there a video or photographs of the event?</p> <p>(d) other information?</p>			
2	<p>Information to be obtained from the victim</p> <p>(a) Victim Statement: Details about the crime is there a comprehensive narrative of events, surrounding circumstances including what started the event?</p> <p>(b) Description of defendant</p> <p>(i) What are their physical characteristics and any identifying features such as facial hair? Tattoos? personality and routines? mental health issues? alcohol or drug issues?</p> <p>(c) Have potential witnesses been identified, before, during, and after (and statements from them)?</p> <p>(d) What was the physical impact? e.g., pain, injuries etc.</p> <p>(e) Was the clothing worn ripped or soiled? Has it been photographed and seized?</p>			

continued on next page

Table A.U1: Types of Evidence for Gender-Based Violent Crime *(continued)*

		Yes	No	Action/ Comment
	<div><div>(f) What was the psychological impact? e.g., fear, shock, shaking</div><div>(g) What was the monetary loss suffered?</div><div>(h) Is there any relevant phone or electronic data?</div><div>(i) If it is an immediate complaint (particularly sexual) – has the victim changed clothes or bathed?</div></div>			
3	<div><div>Victim Statement: Prior Relationship with Suspect/Defendant (can include Law Against Domestic Violence [LADV] Articles 2 and 3 but not necessarily)</div><div><div>(a) Details of the prior relationship: when met, how met, when married (if relevant). Has there been earlier violence?<ul style="list-style-type: none">• physical?• threats?• sexual?• economic?• psychological?• coercive control?</div><div>(b) Is there a timeline of acts: first, last, and worst?</div><div>(c) Has there been any prior medical treatment for injuries?</div><div>(d) Has there been any prior engagement with referral network partners?</div><div>(e) Has there been any photographs of prior injuries?</div><div>(f) Are there any witnesses to prior crimes and are there follow-up statements?</div></div></div>			

continued on next page

Table A.U1: Types of Evidence for Gender-Based Violent Crime *(continued)*

		Yes	No	Action/ Comment
	(g) Were children present and have they been direct victims of violence? Is there a need to notify the Child Protection Officer? See pages 102–103 of this Handbook.			
4	Victim Contact and Communication (a) Has the victim been informed of her rights? e.g. are referral network supports available? (b) What arrangements have already made to referral network? (c) Risk Assessment completed and attached? (d) Outline of Initial security measures taken? (e) Have restrictive measures been discussed? Requested/Imposed? Is a review of them needed? (f) If the victim is a child, who is caring for them and does the Child Protection Officer need to be notified? (g) Have appropriate consents been obtained for medical/forensic evidence ?			
5	From Suspect/Defendant* (note the right to silence and specific rights and guidelines in questioning in the CPC Articles 60, 62–64, 117) (a) Any statements made freely by the defendant and after being warned they do not need to make a statement (CPC Article 117) (b) Presentation before the judge for the first judicial questioning (CPC Article 63), also see and consider Checklist on Restrictive and			

continued on next page

Table A.U1: Types of Evidence for Gender-Based Violent Crime (continued)

		Yes	No	Action/ Comment
	Protective Measures in GBV Cases, Part 2, Annex O)			
	(c) Further statement required to be taken by the PPS (or delegated to police - CPC Article 64)			
	(d) Observations of the defendant(s) to be recorded when the crime is recent:			
	(i) Demeanor?			
	(ii) Intoxication?			
	(iii) Clothing worn at the time of the crime? (torn, ripped, bodily fluids) – see Part I Search and Seizure, pages 141–144 of this Handbook.			
	(iv) Injuries?			
	(v) Photographs of Injuries?			
	(vi) Does the defendant have access to weapons?			
	(e) Search and Seizure of Items can occur at any time but is more relevant when crime is recent			
	(i) In <i>Flagrante Delicto</i> (CPC Article 56)			
	(ii) Authorized by judge (CPC Articles 168, 169, and 172, 172-A–F)			
	(iii) Can occur without judge, with consent (CPC Article 171)			
	(iv) If urgent, without judge order (CPC Article 172)			
	(f) Have the relevant items been seized?:			
	(i) Clothing?			
	(ii) Cell phone?			
	(iii) Weapon?			
	(g) Check to see if validation is required for any search or seizure (CPC Articles 56 and 172)			

continued on next page

Table A.U1: Types of Evidence for Gender-Based Violent Crime (continued)

		Yes	No	Action/ Comment
6	<p>Did the crime result in a physical injury?</p> <p>(a) Have photographs been taken? (over time and before and after medical intervention)</p> <p>(b) Has the suspect been photographed? (e.g., knuckles if injuries to knuckle consistent with striking)</p> <p>(c) Is there a medical report? (CPC Article 150)</p> <p>(d) If crime is recent (24–72 hours), sexual crime, has referral occurred to PRADET?</p> <p>(e) Have potential witnesses been identified that saw victim before without injury and after with? If so, have statements been taken?</p>			
7	<p>Scene of the Crime (primarily for crimes reported soon after commission) CPC Articles 56, 169–172</p> <p>(a) Has the scene location been secured and documented?</p> <p>(i) Is location in suco/aldeia?</p> <p>(ii) A map/diagram of the area?</p> <p>(iii) Have photographs been taken of the house/scene location?</p> <p>(iv) Have photographs of scene itself been taken? (signs of damage or fight, mess, blood, hair, broken items, shoe prints)</p> <p>(b) Has search scene and seizure occurred of relevant items? (<i>Flagrante Delicto</i> CPC Article 56; Judge authorized CPC Article 169; houses CPC Article 170; with consent CPC Article 171, and seizure CPC Article 171)</p>			

continued on next page

Table A.U1: Types of Evidence for Gender-Based Violent Crime *(continued)*

		Yes	No	Action/ Comment
	<div><div>(i) weapons, rope, clothing, poisons, shoes?</div><div>(ii) discarded items? (e.g., cigarette butts, condoms, hair pulled out, clothing ripped off, or jewelry) including checking rubbish bins and surrounding areas for disposed items</div><div>(iii) broken items?</div><div>(iv) electronic items, phones, tablets, computers?</div><div>(c) Has forensic evidence been collected?</div><div><div>(i) Fingerprints?</div><div>(ii) Palm prints?</div><div>(iii) Footprints?</div><div>(iv) DNA?</div><div>(v) Bodily fluids (including items that may have bodily fluids on them)?</div><div>(vi) Physical items, hair, broken glass, etc.?</div></div><div>(d) Check if search and seizure requires validation and if that validation has occurred (CPC Articles 56, 172[2]).</div></div>			
8	<div><div>Other Witness statements (reported crime and if prior relationship or prior acts)</div><div><div>(a) Children present (consider age) and had statements taken from them?</div><div>(b) Have neighbors been spoken to and statements taken? has a “door knock” occurred?</div><div>(c) Have friends and/or relatives provided statements?</div></div></div>			

continued on next page

Table A.U1: Types of Evidence for Gender-Based Violent Crime (continued)

		Yes	No	Action/ Comment
	(d) If the scene of the crime is a house – have other residents provided statements? (e) Other potential witnesses identified by victim or first responder/ complainant - have they provided statements?			
9	Electronic Evidence (after seized lawfully) (a) Can and has data been extracted from devices? (cell phone, tablet, computer) (b) If extraction cannot occur, view and take photographs of relevant evidence (c) Cell phone (i) Has there been any text communication such as SMS/ WhatsApp etc, messages? (ii) Have there been voice calls? View the call log and record time, date, and duration of calls (iii) Have there been any relevant social media posts? (iv) Location data on phone? Also consider if CPC Article 172-F might apply. (d) Is there any CCTV available? Has it been seized?			
10	Information about prior police involvement (a) Has there been previously reported offending (not proceeding to complaint/investigation/ indictment)?			

continued on next page

Table A.U1: Types of Evidence for Gender-Based Violent Crime *(continued)*

		Yes	No	Action/ Comment
	(b) Are there any prior findings of guilt/conviction?			
	(c) Are there any prior breaches of restrictive orders?			
	(d) Are there any prior breaches of any sentencing orders?			

* Care must always be taken when asking questions of a suspect or defendant to ensure that the principles of legality apply. There are many rights a suspect/defendant holds, that if breached, will mean the evidence cannot be used against them.

Annex V:

CHECKLIST FOR PREPARATION OF WRIT OF INDICTMENT

The writ of indictment sets out the offense(s) with which the defendant is charged before the court. Pursuant to Criminal Procedure Code (CPC) Article 48(2)(d), the Public Prosecution Service (PPS) is required to present the indictment and sustain it in court.

The writ of indictment should be prepared after the investigation has been completed (or is largely completed) and once the PPS has determined that there is sufficient evidence to charge the defendant. This is a last opportunity to check that all of the relevant and admissible evidence has been collected to support the charges.

The writ of indictment must include:

- CPC Article 236(1) that “sufficient evidence” has been collected that a crime has been committed and the perpetrator of the crime.¹
- CPC Article 236(3) that four essential requirements be provided in the writ of indictment, which if not complied with, makes the writ a nullity.²
- CPC Article 236(5) a list of the witnesses and other proof to be presented at the hearing.

These requirements are briefly identified in Annex V, Tables 1 and 2. They should be considered together with **Annex U – Checklist to Ensure All Evidence is Collected in Investigation**.

¹ Evidence is considered sufficient where a penalty or security measure can be reasonably imposed on the defendant in trial by virtue of the evidence (CPC Article 236[2])

² CPC Article 236(3) compulsory writ of indictment requirements are:

- (a) elements conducive to the identification of the defendant;
- (b) the account of the facts that constitute the crime or are of relevance to the determination of the penalty or security measure;
- (c) the indication of the applicable substantive provisions;
- (d) the date and signature.

Table A.V1: Sufficient Evidence about the Crime(s)

	Is Evidence Gathering Sufficient	Yes	No	Action/ Comments
1	Have all possible relevant offenses that are open on the evidence been considered?			
2	If more than one offense may relate to the same conduct, has Penal Code Article 42 been applied in respect of choice of charge?			
3	Are there circumstances of aggravation in respect of any of the offenses? If so, is there sufficient evidence gathered, or is more required?			
4	Is there more than one offense arising from the same incident? If so, is there sufficient evidence gathered, or is more required?			
5	Is the crime a crime of domestic violence? (Law of Domestic Violence [LADV] Article 35) If so, is there sufficient evidence gathered, or is more required?			
6	Was there an attempt to commit a crime? If so, on what basis is there sufficient evidence gathered, or is more required?			
7	Has an analysis been undertaken of whether there is evidence capable of proving each element of the offense(s) both the objective elements and the subjective elements? (Handbook Part D, Elements) What evidence supports the proof of each element? (Handbook, Annex U)			

Table A.V2: Sufficient Evidence about the Victim

	Is Evidence Gathering Sufficient	Yes	No	Action/ Comments
1	Has sufficient evidence been collected about the identification of the victim?			
2	Is there more than one victim and have they been identified?			
3	Is there sufficient evidence about the age, relationship of the victim(s) with the defendant, their medical or other condition of vulnerability or invalidity, disability, or other characteristics relevant to the offense(s)?			

Annex W:

CHECKLIST OF ACTIVITIES AND
REFERRALS FOR REFERRAL NETWORK
SERVICES

Checklist of Activities and Referrals for
Referral Network Services

This checklist form can be used to guide Referral Network services when assisting victims during the investigation and judicial process. It is recommended that it be placed on the front of the Referral Network service file for quick reference.

Activity	Complete?	Signature	Date
Complete: - Opening Case form - Agreement letter from the victim to [] to assist in the judicial process. ^a - Permission to obtain information - Permission to obtain medical examination results	<div><div></div><div></div><div></div><div></div></div>		<div>____ / ____ / 20____</div>
Refer to : • PPS • SVPS Police • Pradet • Uma Mahon • MSSl • SSEI • Other	<div><div></div><div></div><div></div><div></div><div></div><div></div><div></div></div>		<div>__ / ____ / 20____</div>
Accompany the client to a medical examination (if applicable)	<div><div></div></div>		<div>____ / ____ / 20____</div>

continued on next page

Checklist of Activities and Referrals for Referral Network Services *(continued)*

Activity	Complete?	Signature	Date
Accompany the client to the SVPS/PPS/PCIC? to file a complaint	<input type="checkbox"/>		___ / ___ / 20___
Public Prosecution Service (if applicable)	<input type="checkbox"/>		___ / ___ / 20___
Accompany the client to the PPS office to attend the expert examination	<input type="checkbox"/>		___ / ___ / 20___
Social assistance provided (if applicable)	<input type="checkbox"/>		___ / ___ / 20___
Prepare a request for a custody warrant for victims who are minors. (if applicable)	<input type="checkbox"/>		___ / ___ / 20___
Prepare a request for preventive measures (if applicable)	<input type="checkbox"/>		___ / ___ / 20___
Verify the information provided in the writ of indictment issued by the PPS (if applicable) before it is submitted to court?	<input type="checkbox"/>		___ / ___ / 20___
Inform the client of the hearing date	<input type="checkbox"/>		___ / ___ / 20___
Accompany the client for the trial	<input type="checkbox"/>		___ / ___ / 20___
Follow-up on the results of the trial (if applicable)	<input type="checkbox"/>		___ / ___ / 20___
Complete the closure form	<input type="checkbox"/>		___ / ___ / 20___
Prepare the closure letter to the client	<input type="checkbox"/>		___ / ___ / 20___
Archive the hard-copy file	<input type="checkbox"/>		___ / ___ / 20___

MSSI = Ministry of Social Solidarity and Inclusion, PCIC = Criminal Investigation Police, PPS = Public Prosecution Service, SSEI = Secretary of the State for Equality and Inclusion, SVPS = Support for Vulnerable

^a Insert the Referral Network service.

Annex X:

LIST OF REFERRAL NETWORK SERVICES

CONTACT LIST OF SERVICE PROVIDERS WORKING TO RESPOND TO VICTIMS
OF GENDER-BASED VIOLENCE IN TIMOR-LESTE

No.	Support	Name of the Referral Networks	Contact Details (Respective Region)		
			DILI (Dili, Aileu, Liquiça, Ermera)	BAUCAU (Baucau, Lautem, Viqueque and Manatuto)	COVALIMA (Manufahi, Bobonaro, Covalima and Ainaro)
1	Cell phone app to connect victims of gender-based violence with support provided by referral networks and government entities.	"Hamahon" website and application	https://hamahon.tl/#/login		
EMERGENCIES					
2	Emergency Ambulance Service	Ambulance	110	-	-

3	Emergency response	Emergency Unit of National Police (PNTL)	3311380	–	–	–
4	Register the case, and protect the victims, who are women and children, including vulnerable people.	PNTL/SVPS	National 78186551 Dili 75957617 Aileu 77902472 Ermera 7669 9276 Liquiça 75959357; 77265681	Baucau 77127186 Lautem 77261849 Manatuto 77490516 Viqueque 77710848	Ainaro 75455768 Bobonaro 75954866 Covalima 75955646 Manufahi 75960356	Oé-cusse 75960966
MEDICAL TREATMENT AND “FATIN HAKMATEK”						
5	Temporary safe space for victims to stay (up to 3 nights). Provide counseling, medical forensic examinations, as well as emergency and non-emergency treatment.	Psychosocial Recovery and Development in East Timor (PRADET)	Dili 77254597	Baucau 75872257; 77364809; 77357099	Bobonaro 78023594 78088591 Covalima 77144225 7800 0907	Oé-cusse 76965105 78009861 75483788

6	Provide medical treatment to the victim who is injured as a consequence of violence.	Guido Valadares National Hospital (HNGV)	Dili 331 0541 331 1008	-	-	-
7	Provide mental health assistance to victims of violence.	Mental Health Care	All municipality 12123			
LEGAL ADVICE AND ASSISTANCE						
8	Provide legal counseling, accompany the victim throughout the process of the case, and take action to defend the victim's interests.	Legal aid for women and children (ALFeLa)	Dili 77432116 77724394 7774 1000 77348424 77432128	Baucau 77432113 77432132 Baucau – Lautem 78258675	Covalima 77706956 77031868 77432140	Oé-cusse 77432128 77069388
9	Monitoring the judicial system, providing legal counseling, accompanying the victim throughout the process of the case, and taking action to defend the victim's interests.	Judicial System Monitoring Program (JSMP)	Dili - Liquiça – Ermera - Aileu 77379369	Viqueque 78459908	Bobonaro 77972644	
10	Public institutions funded by the state provide legal support to those without the economic means to pay for a lawyer.	Public Defenders Office	-	-	-	-

SHELTERS – “UMA MAHON”						
11	Provide a safehouse for women and their children, psychosocial support, counseling, and reintegration of the victim into the community.	Communication Forum for Timorese women - (Fokupers)	Dili 78472597 78472598 3321534 77324771 77969826	Lautem 77474055; 7686 9419	Covalima 75935011; 78036085 Bobonaro 77456213; 76572953	
12	Long-term shelter for women.	Uma Paz	–	Viqueque 77532424; 76098765 Baucau 77095270; 78024904	Manufahi 76371335 77231944	Oé-cusse 76007693 77557320
13	Long-term stay shelter	Uma Mahon Salele	–	–	Covalima 7718 0029 7537 2549 7798 1391	–
14	Provide shelters	Forum Peduli Wanita	–	7600 7693	–	–

SHELTERS FOR CHILDREN						
15	Offers emergency care and accommodation to unaccompanied minors and assists with their rehabilitation and integration back into the community.	Casa Vida	-	7735 2345	-	-
16	Long-term shelter for victims who are minors	Fokupers	78472598	-	-	-
SOCIAL ASSISTANCE TO VICTIMS – GOVERNMENT ENTITIES						
17	Provides assistance to victims of domestic violence, sexual violence, and any other forms of violence against women and girls.	Ministry of Social Solidarity and Inclusion (MSSI)	Aileu 78676494 Dili 77316975 Ermera 77817214 Liquiça 78186632	Baucau 77327456 Lautem 77324669 Manatuto 78474852 Viqueque 78047358	Bobonaro 77431723 76664227 Covalima 77269604 Ainaro 78059865 Manufahi 77614542	Oé-cusse 77320593 76109934

18	Provides assistance to victims of domestic violence, sexual violence, and any other forms of violence against children.	MSSI – Child Protection Officer (CPO)	<p>Dili 77316975/ 77050962</p> <p>Aileu 77050970</p> <p>Ermera 77425550 77817214</p> <p>Liquiça 78599635</p>	<p>Baucau 77050950</p> <p>Lautem 77781901</p> <p>Manatuto 77996931 77355191</p> <p>Viqueque 77238446 - 75376174</p>	<p>Ainaro 78477563</p> <p>Bobonaro 77335267 – 77050966 – 76287710</p> <p>Covalima 77050872 – 78602816</p> <p>Manufahi 78598628 – 77764823</p>	Oé-cusse 77833418
19	Provides assistance to victims of domestic violence, sexual violence, and any other forms of violence against adults.	MSSI – Focal point of the prevention of gender-based violence	<p>Dili 76558693</p> <p>Aileu 78459547</p> <p>Ermera 78469894</p> <p>Liquiça 78474853</p>	<p>Baucau 78474870</p> <p>Lautem 77109298</p> <p>Viqueque 77238446</p> <p>Manatuto 77474852</p>	<p>Manufahi 78474865</p> <p>Ainaro 78424052</p> <p>Bobonaro 78474869</p> <p>Covalima 78474867</p>	Oé-cusse 76378068
20	Lead the implementation of the National Action Plan on Gender-Based Violence and refer cases to referral networks.	Secretary of State for Equality and Inclusion – SSEI	<p>Nasional 7732 6620 7728 9504</p>	–	–	–

ASSISTANCE FOR PEOPLE WITH DISABILITY AND LGBTQ+ COMMUNITY						
21	Timor-Leste disability association assists people with disabilities, particularly children with disabilities.	Timor Leste Disability Association - ADTL	7755 7355	-	-	-
22	A national organization funded by DFAT aims to provide different supports for people with disabilities, which include counseling, referrals to relevant services, and support for the accessibility of victims.	Ra'es Hadomi Timoroan - RHTO	7732 9907	-	-	-
23	Assist those who have difficulties seeing with their eyes and provide training on "braille" as well as "white cane."	East Timor Blind Union - ETBU	7785 5248	-	-	-
24	Assist those who have difficulties seeing with their eyes; provide training on "Braille" as well as "White Cane".	Halibur Defisiensiia Tilun no Matan - HDMTL	7783 6579 7733 8176	-	-	-

25	Provide education in sign language to people with disabilities in hearing (ears).	Agape	7724 2039	–	–	–
26	Provide physiotherapy treatment and equipment, such as wheelchairs and canes.	Centro Nacional Rehabilitasaun – CNR	3310373	–	–	–

This image shows a full page of blank, lined paper. It features approximately 20 evenly spaced horizontal grey lines across its entire width, providing a guide for handwriting or typing. The paper itself is a clean, off-white color.

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6 ADB Avenue, Mandaluyong City

1550 Metro Manila, Philippines

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