

PRACTICE NOTE No 1. FOR THE MODEL “GENDER - BASED VIOLENCE CASES COURT” (“GBV COURT”)

THE PURPOSE OF THE GBV COURT

1. The purpose of the GBV Court is to enable cases which concern gender-based violence offences¹ to be prioritized and conducted in a gender- sensitive manner. The GBV Court applies to the victims of gender-based violence; these victims would include women, children, and other vulnerable witnesses² including persons who may regard themselves as having a different gender identity³. The purpose of GBV Court also recognises the fact that the victims of gender – based violence are mainly women (and girl children) and they often do not report violence against them for fear of retribution, humiliation, shame, social stigma and loss of honour. In addition victims are also fearful of coming to the court to give evidence because the court processes are intimidating and they feel re-victimised. The GBV Court and the Practice Note are a response to allow them to give their best evidence and minimise the trauma.

PURPOSE OF THE PRACTICE NOTE

2. The purpose of this Practice Note is to enable the “Guidelines to be Followed in Cases of gender-based violence (GBV)” No. 22325 dated 17 October 2017 (“the Guidelines), to be implemented in practice with clarity and consistency.
3. At the same time the Practice Note is to be applied flexibly if particular situations require some modification in order to maintain the purpose and principles of the Guidelines.
4. The Practice Note will also apply to the treatment of other witnesses giving evidence in such cases, either for the prosecution or defense, and it includes the accused, with modifications as the situation may require. It is important for all witnesses in the court to have the best conditions be able to give their best evidence.

OUTSIDE THE COURT ROOM

5. On reaching the Court to precinct, the victim is to be met by a “Female Support Officer”⁴, who will escort the victim to a protected place so as to avoid contact with the accused or their family or friends as well as the general public.
6. The Female Support officer is to settle victim, but is not to talk about any of the details of the case.
7. The Female Support Officer is to bring the victim either to the “e- court room” or to the court as required, and remain with the victim while the victim gives evidence.
8. The victim may be accompanied or spoken to by their private counsel or prosecutor as required.

¹ Gender based violence (GBV) is an act of violence that results in or is likely to result in physical, sexual, psychological or economic harm or suffering. It includes threats of such acts, coercion or arbitrary deprivations of liberty whether occurring public or in private and it includes domestic violence. The violence is primarily committed on the victim by reason of their sex or gender. Examples of gender based violence include offences under the ss PCC such as 332, 336, 337, 337A1 – F1, 359-369, 376, 376 (2), 302, 336 and 496A.

² Vulnerable witnesses would include also persons with mental or other disabilities.

³ Persons who identify as being lesbian, gay, bisexual, transsexual or intersex (LGBTI)

⁴ A “Female Support Officer” is an employee of the court which is designated to fulfil this role.

9. The prosecutor or counsel for the victim, should speak with the victim and find out whether the victim wishes to give evidence from the “e- court room”, or in the courtroom with a screen, or in the court room without a screen. This may also be confirmed by the Female Support Officer.

THE SET UP OF THE COURT ROOM

10. Adjustments are to be made to the courtroom to improve the comfort for persons in the court which include, making adjustments to the witness box and the accused box so that the witnesses and the accused are able to sit and have water and tissues available to them during the trial process.
11. The lawyers, both prosecution and defence, are to be seated at a separate bar table during the trial process. Lawyers are to remain seated during the trial process unless they are speaking or are questioning the witnesses, in which case the counsel may either sit or stand.
12. If the victim gives evidence in the court room, it is required that the victim be allowed to enter the court room in the absence of the accused and be seated in the witness box behind a screen. When the accused returns to the court room, the accused should not be visible to the victim.
13. The victim will then give evidence with a screen which prevents the victim from seeing the accused and also the accused from seeing the victim, unless identification of the perpetrator is required. If identification is required then the victim may move away from behind the screen to also be able to view accused person. The Female Support Officer should be seated near to where the victim is giving evidence.
14. If the victim so chooses, the victim may give evidence in court without the use a screen.
15. Further, other arrangements may be made by the Judge in the court room according to the needs of the victim and having regard to the particular circumstances.

SET UP AND USE OF THE e-COURT ROOM

16. Video facilities are to be made available in the trial court room to permit evidence to be given by the victim from the e - Court room outside the trial court and be seen and heard on a screen in the trial court. This is to enable the victim to give evidence without coming into the trial court.
17. The positioning of the video camera should allow the victim to see the trial courtroom and particularly the Judge and counsel, but not the accused person, unless it is necessary for the victim to identify the person whom the victim says was the perpetrator of the conduct alleged.
18. If identification is required then the camera may be repositioned so as to include a view of the accused person.
19. The view that persons in the trial court will have is of the victim only, who will be seated unless there is a need for the victim to stand or show any injuries or any body part or to show their height or size.
20. Persons present in the e-Court room will be the Female Support Officer and or any person such as an interpreter as required.
21. The Female Support Officer is to settle the victim in the room before commencement of their evidence.

22. If the victim is required to draw or identify certain objects then the Female Support Officer is to show this to the victim.
23. The Female Support Officer is also to inform the Judge if the victim indicates that they need a break because they are tired or need to take a break or becomes upset.

PROCESSES FOR THE TRIAL AND TAKING OF EVIDENCE

24. The Judge will usually list three cases on each day of hearing unless the circumstances suggest a different listing arrangement
25. The Judge at the commencement of the trial may acquaint counsel and the accused on matters related to the procedures to be followed in the Court.

PROCESS FOR TAKING OF THE EVIDENCE OF THE VICTIM AND THE WITNESSES

Settling the victim and witnesses

26. Before the victim gives evidence the Judge will introduce himself or herself to victim and explain who the other persons in the court room are.
27. Questions asked by the Judge would include the following:
 - a. asking whether the victim has any concerns about security for themselves or their family in relation to the case and may make orders as may be appropriate.
 - b. asking questions to settle the victim and to ensure that they are comfortable for the giving of the evidence, including whether they are comfortable with giving evidence, from the "e-court, or in the court with or without the screen as they choose;
 - c. explaining to the victim the importance of the victim telling the Judge if they do not understand the questions and that is not shameful to say they do not understand;
 - d. explaining to the victim that it is very important to know if the victim does not understand as the victim may give an unintended answer;
 - e. informing the victim that if they feel tired or need a break they should tell the Female Support Officer.
28. A similar overall procedure should also be followed by the Judge with other witnesses as well as the accused if this is appropriate, with modification as required.

Trial process

29. The trial is to proceed and be completed without any adjournment where possible. Adjournment is only be permitted by the Judge for good reason. In particular, the whole of the evidence of the victim, including examination, cross examination and re-examination, is as far as possible to be conducted on the same day.
30. The Judge is to ensure that all questions asked of the victim are to be done with gender sensitivity and in appropriate language having regard to the victim's age, educational level, cultural background, physical or mental disabilities as well as being asked in an appropriate manner and tone. (Qanun-e-Shadat, Order 1984 (QSO) Ss 146 and 148).
31. In addition the court may also limit questions asked of the victim where that is appropriate and it includes unnecessarily repetitive questions.
32. In accordance with the Guidelines, questions put in cross-examination on behalf of the accused should be given in writing to the Judge who should put them to the victim

or to a vulnerable witness in a language which is clear and not degrading. The Judge may give directions as to the manner in which this is to be undertaken.

PROTECTION ORDERS.

33. The Judge may at any time make orders to provide specific protection and arrangements in order to give security for the victim and or other relevant family or persons. Further the Judge may direct that the Police arrange for the victim to be given assistance from an appropriate agency to support the victim. These are referred in this Practice Note as “**appropriate protection orders**”.
34. When the Judge orders that a summons be issued to the victim or witnesses, the Judge may include a further direction endorsed or attached to the summons form which asks the victim or witness “Do you require any police protection for yourself or family prior to the trial”
35. The process server is to be directed to ask this question of the victim or witness.
36. If the victim indicates “yes” by a signature or mark, the process server is then to arrange that protection requested be provided by the relevant SHO.
37. The process server is then to report back to the court on the process which was followed and the protection which was arranged.

PROCEDURES WHEN THE VICTIM OR OTHER WITNESSES RESILE FROM PREVIOUS STATEMENTS

38. Having regard to the concerning number of cases involving non-compoundable offences in which on the date of trial, the victim resiles from earlier statements and further where other witnesses also resile from their statements, the Judge may adopt any of the following procedures or a combination of such procedures or another procedure which the Judge considers appropriate to address this issue.
 - a. **Procedure 1.** The Judge may clear the court of all persons (including the accused) leaving only the victim and a court reporter person or alternatively the Judge may bring the victim and a court reporter into chambers. The Judge may then ask questions of the victim as to why she has resiled and ascertain whether the victim has been exposed to any pressure and further whether there has been any compromise of the case through family pressure or agreement between the accused and the victims family. These questions and answers are to be recorded. The Judge may thereafter make appropriate orders as to the process of the case and this may include making appropriate protection orders.
 - b. **Procedure 2.** The Judge may adjourn the case until the following day or some other early suitable day, and make appropriate protection orders and arrangements to protect the victim and or other relevant family or persons. On the resumed day the Judge may undertake Procedure 1.
 - c. **Procedure 3.** The Judge may adjourn the case to another day. The Judge may direct that the Assistant Superintendent of Police/Sub-Divisional Police Officer of Concerned Area, look into the matter including whether the victim and/or other witnesses have been pressured into making a false statements

and provide a report on the actions before the court within 7 days, or such further extension as the Judge may order. The Judge may make appropriate protection orders.

- d. **Procedure 4.** The Judge may instead direct that the trial continue and that the victim and other witnesses be required to give evidence either on that day or another early day with appropriate protection orders. If this Procedure is directed by the Judge, then the following processes would apply:
- i. The victim and other witnesses who seek to resile are to be informed about the process which will take place in the court.
 - ii. If the victim is declared hostile, the cross examination of the victim by both the prosecutor and the defendant is not to be in writing in the manner indicated in the Guidelines.
 - iii. Particular care needs to be taken by the Judge to ensure that the victim is not subjected to undue pressure by the nature and manner of this procedure.
 - iv. After all of the relevant evidence in the case is called, the facts and the findings of the Judge will be assessed and based on the totality of the evidence.

PROCEDURES WHERE THE VICTIM DOES NOT ATTEND COURT

39. If the victim does not attend Court on the day set for hearing, the case may be adjourned to another date and a further summons may be issued for her attendance as provided in sections 87 and 88 Cr.P.C.
40. If a further summons is so issued, then the Judge should give directions on the manner in which the victim is to be brought to the court, so as to ensure this is undertaken sensitively.
41. If the victim cannot be found or again does not attend, the prosecution may still proceed with the trial if there appears to be sufficient evidence which can be called to prove the commission of the offence, even without the attendance of the victim, subject to the Judge deciding that the accused should be acquitted pursuant to S 265K Cr.P.C..

COURTS POWER TO ASK QUESTION, CALL WITNESSES ETC

42. In relation to the cases which come before the court, in particular in relation to cases where there is resiling or where the victim does not attend court, it is important for the court to appropriately utilise its powers given pursuant to Sections 540 Cr.P.C. and 161 Q.S.O
43. Pursuant to Section 540 Cr.P.C., the Judge is empowered to summon any person as a witness, or examine any person in attendance, although not summoned as a witness. The Judge may also recall and re-examine any person already examined, if the evidence of such a witness appears to be essential to the just decision of the case.
44. Pursuant to Article 161 Q.S.O In order to discover or to obtain proper proof of relevant facts, the Judge may ask any question the Judge pleases, in any form at any time, of any witness, or of the parties about any fact either relevant or irrelevant. In addition the Judge may order the production of any document or thing. Neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor,

without the leave of the court, to cross examine any witness upon any answer given in reply to any such question. This is subject to the proviso contained in that section 45. This would include processes of the prosecutor giving up the victim and witnesses and having them declared hostile and then opening the victim and witnesses for cross examination by the Prosecutor and Defence Counsel.