

# COMPREHENSIVE USER FRIENDLY GUIDELINE FOR INVESTIGATION AND PROSECUTION OF SEXUAL VIOLENCE CASES IN ETHIOPIA

Prepared by Tesfa Care PLC

Submitted to EWLA

MARCH 28/ 2024

PUBLISHED IN MAY, 2025



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## MESSAGE FROM EWLA

The Ethiopian legal and policy frameworks have zero-tolerance policy against sexual violence. However, women have been victims of scourge of all forms of violence, of which sexual violence remains to be unabated. The fight against violence requires many supportive frameworks and helping tools.

EWLA is pleased to present to you this guideline on investigation and prosecution of Sexual Violence cases. We believe this is a first of its kind and an exceptional approach to address the issues of grievances in handling of SGBV cases in Ethiopia.

The objective of this guideline is to ensure effective coordination between stakeholders of the criminal justice system to optimize the use of user-friendly procedures in dealing with sexual violence. It is purely intended to provide guidelines on how the stakeholders will interact in the investigation and prosecution of sexual violence cases whether they are committed in conflict or normal-conflict settings.

It is my sincere hope that this guideline will serve as a great tool to investigators, prosecutors and judges in addressing sexual violence cases. One caveat, however, the guideline is not intended to provide complete information on every area of the procedure, nor tends to be a mandatory tool. It is not intended to replace training in any way, but to supplement the roles of stakeholders by serving as a convenient reference.

We would like to acknowledge the support of our donor in for the support extended in the preparation of this guideline.

**Lensa Biyena,**  
**Executive Directress of EWLA**

## LIST OF APPLICABLE LEGAL FRAMEWORKS

- FDRE Constitution 1995
- Criminal Code 2005
- Criminal Procedure Code 1961
- International Covenant on Civil and Political Rights (ICCPR)
- United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)
- The Convention on the Rights of the Child (CRC)
- Banjul Charter on Human and Peoples' Rights (African Charter)
- 1949 The Geneva Convention and its protocol

## GLOSSARY OF KEY TERMS

**Complainant:** a person who brings an allegation of sexual violence cases to the attention of the investigation or prosecution offices in accordance with established procedures.

**Perpetrator:** A person (or group of persons) who commits an act of sexual violence(s) or other type of crime or offence.

**Sexual Violence:** any sexual act, attempt to obtain a sexual act, unwanted sexual comments, or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of relationship to the victim, in any setting including but not limited to home and work.<sup>1</sup>

**Victims of Sexual Violence:** are individuals who have experienced any form of sexual violence, abuse, or harassment without their consent. It includes but is not limited to rape, molestation, unwanted touching, sexual coercion, and sexual harassment and suffer physical, emotional, and psychological harm because of the violence inflicted upon them.<sup>2</sup>

**Violence against women:** Any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life.<sup>3</sup>

**Witness:** A person who observed, or has direct knowledge of, evidence or information under investigation or prosecution.

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<sup>1</sup> World Health Organization, 2002. World report on violence and health. WHO: Geneva, P. 149.

<sup>2</sup> UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: resolution / adopted by the General Assembly, A/RES/40/34, 29 November 1985, art. 1.

<sup>3</sup> UN General Assembly, Declaration on the Elimination of Violence against Women, A/RES/48/104, UN General Assembly, 20 December 1993, art. 1.

## RATIONALE OF THE GUIDELINE

Effective partnership between police, prosecutors and judiciary is crucial in the effective investigation and prosecution of offences of sexual violence. The ability to conduct effective, timely and user friendly investigations and trial has been frustrated due to lack of helpful tools that facilitate teamwork and collaboration. The absence of such tools has created misunderstanding of mandates and mistrust between institutions. This has led to delay in access to justice for the victims of sexual violence.

Due to the above highlighted gaps and challenges it is desirous for all stakeholders to implement guideline to address the concerns to ensure a user friendly procedure for timely disposition of justice for Sexual violence cases.

This guideline is subject to all prevailing legislations and constitutional framework of Ethiopia.

## JOINT ROLES, CONSIDERATION, AND PRINCIPLES

1. All actors shall keep proper and accurate records of all cases under investigation and awaiting decision.
2. They shall keep proper records of cases according to their data collection systems and synchronize with common timelines.
3. The parties shall work towards an integrated system to enhance tracking of cases at every stage and decisions made by respective agencies.
4. Once a decision to charge has been made on SV, all subsequent mentions and hearings shall be documented in joint document to ensure consistency in tracking of cases in court.
5. All parties will keep confidential at the investigative stage any information shared by either party that is indicated to be confidential.
6. The parties shall ensure that any information shared with the media does not affect the outcome of the investigation or prosecution.
7. The parties shall have regular meetings with the respective communications offices and organize community engagement forums to improve relations between the communities and the authorities thus enhancing evidence gathering and community support to the authorities.
8. Use of technology must be adopted to the extent possible.

## KEY CONSIDERATIONS

- Sexual violence is one of the most offensive crimes committed in our society. Not only is it a threat to the community, but may also physically and psychologically affect the victim in many ways.
- The personal nature of this act makes it even more critical that responding officers and professionals possess the skills and sensitivity necessary to provide the victim with the support he/she needs.
- Law enforcement has a legal and moral obligation to thoroughly investigate reports of sexual violence and to determine whether a crime has in fact been committed. This investigation should be carried out in a professional and sensitive manner to protect the rights of the alleged victim & the suspected offender.
- The primary objective of the investigation and prosecution of sexual violence is the protection of the victim and the safeguarding of the public.
- Sexual violence cases a medical emergency as well as a crime. The cases must be processed as quickly as possible so that the victims can access all the needed services.
- A guideline is presented in a format that will allow the reader to follow a step-by-step process for conducting a sexual violence investigation and prosecutions.

# CHAPTER ONE

## Guidelines for Police in handling and investigating Sexual Violence cases

### 1. Responsibilities of Police Officer (Particularly responding officer)

- 1.1. Police Officers to be involved in sexual violence investigations should have specialized training in modern investigative procedures including the proper method for interviewing victims, witnesses, and suspects.
- 1.2. As far as possible, the investigation of crimes against women shall be conducted by a woman officer. Whenever necessary, an investigation team should be formed, consisting of experienced police personnel.
- 1.3. The skill and sensitivity of the officers handling the investigation may ease the victim's trauma and give him/her a sense of security and support. Due to the very personal nature of the offense, the responding officer must attempt to establish a rapport with the sexual violence victim so that complete and accurate information about the offense can be obtained.
- 1.4. Be careful not to stigmatize the victim.
- 1.5. Preserve evidence on the victim (i.e. not taking a shower, nothing to drink, not brushing teeth, or removing any clothes)
- 1.6. Secure and protect the crime scene.
- 1.7. Contact One-Stop Service Center Providers in the Area
- 1.8. Apprehend the offender if present.
- 1.9. Ask if there is anyone else the victim would like to contact.
- 1.10. Assess any special needs of the victim, such as restoring mobility or the need for an interpreter.
- 1.11. Document the identity of anyone whom the victim may have told about the violence, or who may have seen or heard anything before, during, or after the violence.
- 1.12. Explain the local investigation process, what to expect, and who will be involved.
- 1.13. Be factual about the case and avoid making predictions and making promises.
- 1.14. If the Report is Delayed:
  - 1.14.1. Determine when the incident happened.
  - 1.14.2. Document the reason for the delay but be aware that questions about the delay may cause the victim to feel blamed in some way.

### 2. Rules of thumb / Guidelines

- 2.1. While talking to the victim, the mental and emotional state should be observed carefully. Proper account of the incident should be recorded in the language of the victim as early as possible.

- 2.2. In sexual violence investigations, evidence and information about the crime is gathered primarily from three sources: the victim; the suspect; and the crime scene (including other witnesses).
- 2.3. Police Officers should thoroughly investigate all three sources, and any other available source of evidence or information.
- 2.4. In responding to sexual violence complaints, every effort must be made to relieve victim's possible feelings of shame and/or self-blame.
- 2.5. To enable victims to provide the clearest, most complete information about the crime, efforts must be made to ensure that all victims are treated professionally and with dignity.
- 2.6. Sexual violence is a crime that may be terrifying, humiliating, and life-threatening, regardless of who the victim is.
- 2.7. Police should note that injuries from acts of sexual violence are often not immediately apparent; some examples of this are post-traumatic stress disorder, internal injuries, sexually transmitted diseases, or unwanted pregnancy.
- 2.8. Investigators must take a professional, victim-centered approach to sex crimes and to investigate these crimes in a manner that restores the victim's dignity and sense of control while decreasing the victim's anxiety and increasing the understanding of the criminal justice system and process.
- 2.9. It is always important to note that, irrespective of the investigative results, responding officers and investigators have the power to help a person heal from sexual violence.

### **3. Clarity on nature sexual violence cases**

Sexual violence cases generally can be categorized into two types: a case in which the offender is known or a case in which the offender is unknown. In either case the key issues to uncover are the identity of the offender, the element of force, and the issue of consent.

#### **3.1. When the offender is known**

- 3.1.1. Because consent and/or use of force may become a key issue in cases in which the offender is known to the victim, evidence of force becomes a primary concern of the investigation.
- 3.1.2. A victim who knows the offender may or may not be able to identify the offender by full name, address, etc. For example, the victim may only know the offender by first name.
- 3.1.3. Identify and document the following information in order to determine if a photo line-up or other identification of the suspect is warranted:
  - 3.1.3.1. The level and nature of the relationship between the victim and the offender, including (1) how they have known each other (2) type of contact they have had, depth of relationship, etc.
  - 3.1.3.2. Detailed information concerning the violence.
  - 3.1.3.3. Any evidence of physical injuries visible on the victim's body

3.1.4. Conduct a thorough investigation regardless of whether the suspect is known or unknown. This will ensure that all possible information and evidence are gathered in every case.

### 3.2. When the Offender is not known

3.2.1. In these sexual violence cases, a primary issue of the investigation is identifying the offender. The investigation should focus on obtaining as much information as possible to pinpoint a suspect(s), including:

3.2.2. A detailed physical description of the offender including, clothing, tattoos, scars, facial features, identifying marks, and vehicle used (is applicable) may also be helpful.

3.2.3. Obtain as much information as possible about the offender's profile and compare to other offenders who have previously been arrested for a similar crime to determine whether a similar pattern exists.

3.2.4. Attempt to locate the offender, begin an area search, or issue a broadcast if necessary.

3.2.5. Inform the victim that it is in their best interest to have forensic evidence collected at either the designated hospital's emergency department/ OSC/. There the victim can be treated medically and given the appropriate prophylaxes (preventative treatment for possible exposure to sexually transmitted infection and pregnancy).

3.2.6. Evidence obtained during the investigation (e.g., from the victim's body or left at the crime scene) may be useful in attempts to identify a suspect through the DNA test)

## 4. Interviewing the Victim

4.1. The initial interview should be brief. At this stage, the objectives are to determine whether a crime is being reported and document the basic information needed to begin an investigation.

4.2. The inquiry should be limited to avoid, or at least minimize, repetitive questioning of the victim. Officers should address any special needs of the victim, such as communication or mobility, and consider cultural differences, cognitive ability, and other factors that may impact the victim's ability and willingness to provide details.

4.3. Throughout the interview process, it is important to ensure that the victim is involved in decision-making regarding when and where interviews are conducted.

4.4. Preliminary information shall be collected promptly if the victim is coherent and able.

4.5. Given the circumstances and purpose of an initial response, it may not be necessary to audio record the preliminary statement. Officers should take notes and explain to the victim the purpose of doing so.

4.6. Victims may react in a variety of ways. Allow One Stop Center/ MOJ assigned lawyer or relative to remain with the victim during the interview process.

4.7. Observe the internal police regulations and directives on interviewing.

4.8. The attitude and conduct of the interviewing officer are key to gaining the victim's trust and cooperation. The victim will assess the officer's demeanor and language for reaction. Approach the victim in a respectful, supportive manner. Remain objective and non-judgmental.

4.9. Allow the victim to provide an uninterrupted account/narrative, if possible, document this account.

4.10. Revisit the possibility of a support person for victims who initially declined the offer.

4.11. Explain the process and scope for the interview. Explain that this first interview is preliminary and that other professionals involved in the investigation, including forensic examiners, evidence technicians, and prosecutors may have additional questions.

4.12. Please note, the victim's ability to think clearly and to articulate what happened may be impeded by the violence. Persons who may be experiencing trauma will often recall and disclose information over some time.

4.12.1. Officers may not get a full statement during the initial contact with the victim, especially if aspects of the violence are unclear if the victim was embarrassed about aspects of the crime, and/or if alcohol or drugs were involved. If necessary, postpone the interview and make every effort to minimize the number of interviews. Slight changes in statements with multiple interviews are often misconstrued to suggest that a victim is lying. This should be avoided.

4.12.2. If a victim is unsure or unwilling to pursue a complaint, advise the victim of the right to make a formal statement at a later time and of the procedure for doing so.

4.13. Be patient and make necessary accommodations to address the victim's needs, including:

- Allow the victim to temporarily skip questions that are too upsetting to answer. Postpone them to be discussed later in the interview. (This may be different for each individual.)
- Breaks should be offered.
- Investigators should consider asking open-ended questions in an effort to elicit details that the victim may have forgotten.
- Let the victim know that it may be necessary to ask some questions in several different ways but that this does not mean that you do not believe her/him.
- Be sensitive to the nature of the information the victim is providing.
- Once the victim describes sex acts or parts of the body, use the victim's vocabulary to ask clarifying questions.
- It may be helpful to repeat the same words back to the victim immediately to "give permission" to continue using those words that the victim may feel uncomfortable using (e.g., "So he stuck his \*\*\* in your \*\*\*. Then what did he do?").
- Clarify terms as needed.

4.14. Make sure to elicit specific details of the violence necessary for the case, including details of the act which establish the elements required criminal laws:

- Information about the crime scene(s).
- Any information about the offender's identity or description.

- Any information about the point of entry to the crime scene, if the offender entered a dwelling, place of business, car, etc.
- Whether the offender brought anything to the crime scene, such as a cigarette, or took anything from the scene, such as the victim's purse/cloth/ phone.
- Whether the offender touched or moved anything.
- Whether the offender took any pictures or videos.
- Whether the offender showed any videos, magazines, pictures, books, or photos to the victim.
- Any objects used during the violence.
- Any threats made by the offender.
- Any use of force or weapons.
- Anyone the victim talked about the violence. Determine when and what she/he told them.
- Information about anyone who may have seen or heard anything before, during, or after the violence.

#### 4.15. Concluding the Interview

4.15.1. Inform the victim that the decision whether to arrest the suspect is a complex one that will be made by police in consultation with other agencies.

4.15.2. Inform the victim what to do if she/he is contacted directly or indirectly by the offender.

4.15.3. Provide information about future safety in case the offender returns and in cases of family violence.

4.15.4. Ask the victim to keep the police department informed of any developments related to the investigation, including if she/he remembers anything else about the violence or if the offender tries to contact her/him. Provide the victim with information on how to contact the investigating officer and provide the case number, and any additional information the victim may need.

4.15.5. Keep the victim as informed as possible about the case.

4.15.6. Ask the victim if she/he has any questions.

#### 4.16. Follow-up interview

This shall be conducted after the victim has been medically examined and treated, and personal needs have been met.

4.16.1. Barring exigent circumstances requiring identification of suspects, and whenever practical, the follow-up interview should be conducted after the victim has had the opportunity to have at least one, preferably two, full sleep cycles.

Research suggests that memory of a traumatic event may be facilitated when the person has had time to rest.

#### 4.17. Interview and Interrogation guidelines.

- Consider the use of audio/video technology (as applicable)
- Determine the functional level of the victim, witness, and suspect
- Determine the various relationships of all parties involved in the alleged offense
- Determine if there are additional victims, witnesses, and suspects
- Establish the existence of evidence
- Protect the confidentiality of all parties involved in the offense.
- Conduct all interviews/interrogations separately

- Avoid disclosure of case information to all parties involved in the alleged offense to prevent contamination
- Instruct all parties involved in the alleged offense to maintain confidentiality
- Possibility of parties involved in the offense to recant his/her account of the incident due to intimidation, guilt, or repercussion
- Use a very calm tone of voice
- Observe eye contact as is culturally appropriate;
- Do not express shock or disbelief; and
- Avoid using victim-blaming statements such as, “What did you think would happen?”, “What were you doing out alone?”, “What were you wearing?” or “You should have known better.”

## **5. When the Victim is a Child**

- 5.1. Maintain the principle of the best interest of the child as a guiding mantra.
- 5.2. Before beginning the interview, it is important to assess the child's verbal skill level and to use terms that are understandable to the child. This assessment can be accomplished by asking topical questions about family, school, television, and everyday events. After a degree of rapport has been established, the child can then be asked to describe what happened.
- 5.3. Begin the interview by asking open-ended questions, such as –why are you here today? or –how can I help?
- 5.4. Assure the child it is okay to respond to any questions with –I don't know.
- 5.5. Be patient, go at the child's pace, and don't interrupt his or her train of thought.
- 5.6. An assessment of the child's emotional state is a vital part of the interview process. This is an age-dependent interpretation based on factors such as how the child relates, his or her body posture, and the language used.
- 5.7. Ask open-ended questions to get information about the incident. Ask yes-no questions only for clarification of details.
- 5.8. Younger children tend to have a short span of attention. For these children, the interviewer should avoid long and open-ended questions and provide short rest periods at appropriate intervals during the interview. For example, "tell me about the violence" would be an open-ended question. Instead, it would be better to use a series of short questions calling for direct response such as, "did someone touch you in a way that made you uncomfortable?"
- 5.9. It may be necessary for the interviewer to follow the child's description with clarifying questions in order to learn exactly what happened. For instance, in situations where penetration did not occur but where there was other sexual contact (e.g., indecent violence) the child may not at first differentiate between oral and other stimulation. The interviewer should establish in a tactful manner the nature of sexual stimulation.
- 5.10. The interviewer should be supportive and sensitive through tone of voice, body expression, and observation of eye contact. The interviewer should also sit at eye level with the child so that the child is not intimidated, and so that the interviewer is perceived as genuinely interested.

5.11. The use of interview aids is extremely helpful. Drawings, pictures, and anatomically correct dolls are particularly effective. When using these aids, ask the child to name the different body parts (i.e., nose, fingers, knees, etc). Then, ask the child what she or he calls the intimate areas without correcting them. Make note of the terms used and what areas or body parts these terms represent.

5.12. It is absolutely vital that the child be believed at all times, especially in cases where the child's account is disputed by adults. The child's account should be taken at face value. Avoid making value judgments and demonstrating any shock or surprise.

5.13. It must be made very clear to the child, as often as needed throughout the interview, that the child was not at fault for what happened and that professionals are there to give help and protection.

5.14. Statements made by the child should be recorded accurately. The child should not be led in such a manner that he or she answers questions to "please" the interviewer.

5.15. Younger children do not often experience times and dates as adults do. In order to establish a timeframe in which the abuse occurred, it can help to discuss favorite events or activities. These could include asking about television shows, a vacation, and a trip to see a relative, or any important event like a birthday.

## **6. Crime Scene Evidence**

6.1. The crime scene is very important source of information used to build a case against the perpetrator. Evidence at the scene can be collected from the witnesses, the victim or the perpetrator. Evidence in form of physical objects can also be obtained from the scene.

6.2. The first 24 hours of any investigation is a critical window of opportunity. This is a window before the suspect has had a chance to hide evidence, threaten witnesses not to talk, make up an alibi, realize implications or reflect and think, disturb or alter crime scenes, or sleep.

6.3. Scientific Teams / Forensic Team must be summoned to lift fingers/footprints and other relevant items, including hair, blood, semen, body fluids, ornaments, etc. found at the spot.

6.4. The scene of the crime should be photographed from all angles.

6.5. As the 'Spot Map' of the place of occurrence is an important document, it must be drawn properly, indicating the distance between the items found at the spot. The position of witnesses, if any, must be shown.

6.6. The chain of exhibits and its integrity should be given paramount importance.

6.7. If teeth and bite marks have been detected, then the accused should be taken to a dental expert for relevant examination.

6.8. Conduct a detailed search for evidence based on an evaluation of the possible types of physical evidence which may be present.

6.9. There are certain categories of forensic evidence which are likely to be present in a sexual violence investigation (see below). However, it is extremely important to remember that anything can turn out to be important evidence in any given crime, even seemingly unrelated evidence or information. The following is a list of possible sources of evidence in sexual violence investigations but are not limited to:

- Saliva
- Body tissues and/or body parts
- Bedding
- Witnesses (saw/heard violence, saw/heard anything, lead to other witnesses)
- Descriptive photos and sketches
- Forensic evidence (hairs, fibers, soil, etc.)
- Victim's/Suspect's body fluids/tissues (semen, blood, vaginal fluids, etc.)
- Sanitary pads
- Latent fingerprints
- Items used in the violence (condom, burglary tools, etc.).
- Other items related to violence (clothing, bedding, facial/toilet tissues, items left by suspect/victim, etc.)

6.10. Notes on Evidence ( The role to be played by a police)

6.10.1. Many times little or no physical evidence is found to corroborate the victim's statement. Thus, the criminal justice system must rely on the skills of the police officers handling the investigation to provide the necessary information to successfully prosecute the offender. Often, it comes down to the victim's statement of what took place versus the offender's denial.

## 7. Referring to medical care

7.1. If the victim has not yet sought medical care, police must:

- Encourage the victim to seek medical care;
- Discuss the health and legal benefits of medical care; and
- Inform her/him that there are no costs associated with sexual violence care.
- Victims should be informed that charges may apply for medical treatment required beyond the forensic medical exam.

7.2. Explain the purpose of the medical forensic examination and its importance to the victim's health and wellness, and to the investigation. Provide the victim with general information about the procedure, and encourage the victim to seek further detail and guidance from the examiner.

7.3. Inform the victim that they cannot be charged for the cost of administering the forensic exam.

7.4. If the victim is willing to seek health care, police officers are obligated to escort her/him to the health facility. Before a forensic examination, the investigating officer shall brief the examining nurse or physician about the details of the sexual violence, as they are known at that time.

7.4.1. Ask the victim whether there is anyone who should be called to accompany him or her to the exam and facilitate contact.

7.4.2. With the victim's consent, notify a victim advocate when a forensic examination is to be conducted so that he or she can provide support.

7.4.3. Ensure that the victim is properly registered and receives immediate medical attention.

7.4.4. The police officer should wait outside of the room while the physical examination is being conducted.

7.4.5. Take statements from all attending healthcare providers.

7.4.6. After the examination, evidence collected during the medical forensic exam shall be turned over to the police. It is critical to ensure that the evidence has been properly sealed and labeled.

## **8. Witness Protection**

In all cases, care shall be taken that the victim and her/his family or any person whom she is a witness, is not threatened or tempted in any manner by the accused or any other person.

## **9. Pre-trial Preparation**

9.1. Once the date for the hearing of the case has been set, it is the duty of the investigating officer to prepare the victim of sexual violence for a court hearing. Although the victim must not be told what to say, the investigating officer must put the victim at ease by explaining what will be required from her/him.

9.2. Show the victim the courtroom. Explain who sits where and their purpose. If there is a victim (victim) friendly court, you explain how it operates.

9.3. Talk about what to wear, and general court –rules such as not talking in court when not requested to do so, laughing, using cell phones, etc.

9.4. Bring toys or other activities to occupy children's victims as they wait to be called to testify.

## **10. Police's role on Trial date**

10.1. On the date of the trial, the victim must be given his or her statement to read through again. This will help the victim to remember small details, which may become important, particularly under cross-examination.

10.2. The victim may see news reporters in the courtroom, which may upset her/him. Reassure the victim and/or his/her parents that, her/his particulars will not be published. Strict media ethics will be applied.

10.3. The victim will most likely not know responsibility in criminal matters. It is the responsibility of the investigating officer to explain the court proceedings and the possibility of delays to the victim, family, and witnesses. The victim must be encouraged to persist with the case despite any delays in the court proceedings.

## **11. Standard of Care in Handling of Media**

11.1. Sexual violence offenses attract wide media and public attention. While briefing media about sexual violence crimes, the identity of the victim should not be disclosed. Under no circumstances, should the victim be produced before the media. Authorized officers alone, should brief the media.

11.2. Any supervisory officer dealing directly or indirectly with the investigation of the case should not divulge any information relating to the investigation of the case/victim (including medical report of the victim etc.) to anyone, including the media.

# CHAPTER TWO

## Guideline for Prosecution of Sexual Violence Cases

### 12. General Considerations

- 12.1. Prosecutors need to treat all victims with respect and concern to avoid “secondary victimization” by the justice system.
- 12.2. Prosecutors should avoid making assumptions about what is in the best interests of the victim and should not view the victim as a passive player in the justice system.
- 12.3. Prosecutors need to appreciate the gendered nature of the crimes of sexual violence as well as victims’ participation in the criminal justice process.
- 12.4. Prosecutors must be able to assist and support traumatized victims and be able to make the appropriate referrals to other service providers.
- 12.5. Prosecutors need to establish effective collaboration with victim advocates and service agencies so that they can assist the victim in developing a safety plan.
- 12.6. Prosecutors should meet the victims early to develop a rapport and to provide information.
- 12.7. Prosecutors should be aware of any discriminatory legal provisions and how this might have an impact on the cooperation of the victim as well as on the victim's safety.
- 12.8. The prosecution office shall ensure that comprehensive protection measures are in place to provide safety, privacy, and dignity for victims and their families at all stages of the criminal justice process.
- 12.9. The Prosecutor shall ensure that all available evidence has been collected.

### 13. Assignment of Prosecutors

- 13.1. Whenever possible the same prosecutor should be assigned to a sexual violence case from pre-charging to sentencing.
- 13.2. The assigned Prosecutor should seek to work collaboratively with other experienced sexual violence prosecutors through both formal and informal staffing of cases and issues.

### 14. Staffing and Training for Prosecution Staff

- 14.1. To maximize victim satisfaction and comfort, as well as ensure successful prosecutions, specially trained prosecutors should be assigned to sexual violence cases.
- 14.2. To ensure victims' safety and trust in the justice system, female prosecutors shall be employed and integrated into the prosecution staff and whenever possible a special prosecution unit on sexual and gender-based violence should be established.
- 14.3. If the Prosecutor’s Office has in-house victim investigators, there should also be one victim investigator assigned to assist the prosecutor with the case.

14.4. Prosecutors must obtain training relating to the gendered nature of sexual violence; on the treatment of victims and offender dynamics so that they can better understand and assess the evidence in any given case.

14.5. The prosecutors who handle cases involving sexual violence cases shall educate themselves on issues surrounding trauma response, and the impact of trauma on memory and recall aiding with critical decision-making during the life of the case.

## **15. Prior Victims Consultation/Interview**

15.1. The prosecutor or the Prosecution team assigned to a sexual violence case shall meet with the victim before making any charging decision, or as soon as possible thereafter.

15.2. Prior victims' consultation/interview shall be intended to.

15.2.1. Assessing victim's needs,

15.2.2. Building rapport,

15.2.3. Ensuring the victim is advised of their rights,

15.2.4. Asking victims questions to fill in gaps where reports are incomplete or need clarification,

15.2.5. To provide information or referrals to support services or

15.2.6. Explaining the criminal justice system and how it works how victim statements will be used in the court process and that the defendant will get a copy of it.

15.3. Prior victims' consultation/interview shall be conducted in a neutral environment, where the victim feels safe and comfortable and should afford privacy.

15.4. In cases when there is a language barrier for the victim the prosecutor shall assign Interpreters who are independent and competent and who properly understand the victims' language.

15.5. Prosecutors shall always ask the victim about safety concerns and give sufficient space for victims to provide the required information.

15.6. If the victim requests any support to have relatives, friends, or other support persons present during the interview, the prosecutors shall allow for the presence of requested persons, unless the presence of that person could be considered harmful.

15.7. At any stage of a victim's interview the prosecutors shall be respectful, attentive, sympathetic, calm, and patient.

15.8. In cases of child victims of sexual violence, the prosecutor shall take into consideration to:-

- A. Avoid long sentences and use simple language (age-appropriate language) to understand the needs of child victims effectively and properly.
- B. Use leading questions and avoid double-meaning questions.
- C. Provide assurances that the victims will not get into any trouble for talking about this.
- D. Inform them that any statements taken from the victim will be confidential and used only on necessary conditions in the criminal justice process.
- E. Being patient and aware of the victim's facial expression and body language to ensure the victim is not confused or tired during the interview and providing sufficient space for victims to take a break.

## **16. Confidentiality of Victims Statement**

16.1. The prosecutors shall ensure the victims' right to object to the release of any personal records unless it is found necessary.

16.2. The prosecutor shall notify the victim when any attempt is made to obtain personal records of the victim.

16.3. When the victim consents to the release of personal information, or if a court order requires the release, efforts should be made to narrowly tailor the information provided to ensure only relevant portions of the records are returned to the court.

16.4. If the victim objects to the release of records, the Prosecutor should request the court to conduct an in-camera review of the records and determine which portions, if any, are relevant and should be released with a protective order in place to restrict or prohibit dissemination and copying of the records and requiring the return of the records upon conclusion of the case.

16.5. Where the media requests the personal records of victims or any other information related to the victim, the prosecutor shall request that the court order that the victim's name not be used, nor may they be photographed.

## **17. Victims and witness protection**

17.1. Prosecutors need to take appropriate measures to address the victim's fear of retaliation, further violence, or an escalation of violence. This could include.

- a. Seeking pretrial detention.
- b. Ensuring special courtroom measures and/or
- c. Any other necessary measures determined on a case-by-case basis.

17.2. The prosecutor shall conduct a thorough risk assessment of the witness to determine potential vulnerabilities and risks associated with testifying.

17.3. The prosecutor shall gather information about the witness's personal circumstances, including any history of threats, intimidation, or violence by the perpetrators.

17.4. The prosecutor shall build rapport with the witness to establish trust ensure open communication channels and clearly explain the legal process and the role of the witness in the proceedings, addressing any concerns related to the protections that will be given to the witnesses.

17.5. The prosecutor should give due attention to the importance of confidentiality and privacy throughout the investigation and trial process and inform the witnesses that sensitive information about the witness will be disclosed to authorized personnel only.

17.6. The prosecutor or the prosecution office shall develop a comprehensive safety plan tailored to the specific needs and circumstances of the witness that considers measures such as relocation, change of identity, or security arrangements if necessary.

17.7. The prosecutor shall advocate for appropriate legal remedies to safeguard the witness's rights and well-being before a court of law based on real risk assessment results.

17.8. The prosecutor shall advocate for accommodations in the courtroom to minimize stress and trauma for the witness, such as testifying via closed-circuit television or behind a screen.

17.9. The prosecutor shall regularly monitor the witness's safety and well-being throughout the legal process.

## **18. Bail Conditions**

### **18.1. Conducting Threat Assessment /Risk Analysis**

18.1.1. Prosecutors shall ensure that a systematic risk assessment has been done by the police or other agency, and if not, shall conduct it by themselves or refer the victim to have one done.

18.1.2. The prosecutor shall engage the victims in the discussion of the risks and dangers before conducting threat assessment results.

18.1.3. Prosecutors should also analyze the risk using all available information in addition to victims and make decisions based upon a totality of the circumstances.

18.1.4. Prosecution offices should set priorities and standards of risk assessment that give precedence to cases that demonstrate the greatest risk to victims and their families.

18.1.5. The prosecutor should notify the victim when the defendant is released and give the victim a copy of the order outlining the conditions of release and information as to who to contact if the defendant breaches any condition.

### **18.2. Standards of threat Assessment/Risk analysis**

The prosecution office shall set the standard of threat or risk assessment based on the following factors.

18.2.1. Prior victimization records or history and nature of past violence towards the victims

18.2.2. Perpetrators' obsessive/possessive behavior causes intimidation against victims if the victims need help.

18.2.3. Perpetrator's mental health history/records or past attempts to commit sexual violence against the victim.

18.2.4. Perpetrator threats to cause harm or kill victims or victim relatives.

18.2.5. The perpetrator possesses familiarity with firearms or weapons.

18.2.6. The status of the relationship between the perpetrator and the victim or victim families and

18.2.7. The degree of violence implicit in the charge.

## **19. Duty to Inform**

Prosecutors shall keep victims informed of the progress of their case to alleviate mistrust and fear in the system as well as ensure timeliness in the criminal proceedings.

## **20. Seeking Community support**

20.1. The prosecutors shall reach out to community-based organizations to assist the victim in accessing additional resources as well as to provide the victim with a more confidential source of support.

20.2. If the prosecutor appreciates that the victim might be economically dependent on the perpetrator, the prosecutor shall make referralsto community assistance, and provide information about shelters, social support, and job training.

20.3. The prosecutor shall coordinate extensively to ensure support services and make appropriate referrals to health, psychological, and employment assistance.

## **21. Charging Decision**

21.1. The prosecutor must assess the merits of a case relative to the elements of possible criminal offenses, the adequacy and quality of the evidence, and perhaps the likelihood of conviction.

21.2. The prosecutor shall review the existing laws relating to sexual violence cases and make sure that supportive evidence is available.

21.3. The prosecutor shall obtain all relevant background material, such as medical reports, the offender’s criminal history and evidence of other incidents are fulfilled.

21.4. Prosecutors shall assess the victim’s character, behavior, and credibility while assessing the available evidence.

21.5. Any decision on the filing of criminal charges, or the decision not to file, should be made as quickly as reasonably possible and should be reviewed with supervisory staff when appropriate.

21.6. Additional investigation may be required before making a final chargingdecision.

21.7. The prosecutor shall conduct a charge assessment related to the seriousness of the offense and the element of premeditation or persistence in suspect behavior to determine the level of crimes committed.

## **22. Victims’ Role and Participation in Charging Decision**

1.1. The prosecutor should keep the victim informed of any charging decisions made and/or whether more time is needed to make a charging decision due to a need for further investigation.

1.2. If charges are not filed and the perpetrator/s is/are released from custody, the prosecutor should notify the victim immediately to ensure the victim has ample opportunity to take any measures necessary to ensure victim safety (i.e. obtaining protective/ restraining orders, changing locks, relocation, etc.).

1.3. The prosecutor should consider the following factorsin deciding to charge when the victim does not consent to prosecution: -

1.3.1. When there is a clear indication that harm will come to the victim if the perpetrator is not prosecuted.

1.3.2. To ensure victims or victims family safety.

1.3.3. The seriousness of the offense and the harm caused to the victim.

## **23. Preparing Victimsfor Trial**

23.1. The prosecutor shall notify the victim as soon as the trial date is set and make an appointment to review the victim's testimony..

23.2. Explain the criminal justice process and the prosecutor's role and victim's role during the trial.

23.3. The prosecutor shall allow the victim to review their statements. This helps victims to refresh their memory and to identify any deficiencies and inconsistencies.

23.4. The prosecutor shall allow the victim if the victim does not understand the questions raised during the trial, the victim can ask for the question to be repeated.

23.5. The prosecutor shall also inform witnesses when to appear to testify and the procedures they need to follow during the trial.

## **24. Evidentiary Issues**

### **24.1. Testimony of the victims**

24.1.1. Prosecutors shall review the relevant criminal procedures as to whether the victim will be considered competent to be a child witness at the criminal trial.

24.1.2. Prosecutors need to object to any defense questions that are not developmentally appropriate or related to a victim's "bad" character (i.e. substance abuse) that does not directly relate to the incident being prosecuted.

24.1.3. In situations where the victim does not want to testify or it is considered too traumatic for the victim, the prosecutor shall request the court to consider the victim's interest and allow the prosecutor to submit the victim's out-of-court statements.

24.1.4. The prosecutor shall provide a space for the victim(s) to decide whether to appear in court or to submit evidence by alternative means, including drafting a sworn statement/affidavit, requesting that the prosecutor present relevant information on her behalf, and/or submitting taped testimony.

24.1.5. When appearing in court, give evidence in a manner that does not require the victim to confront the perpetrator, including using in-camera proceedings, witness protection boxes, closed circuit television and

### **24.2. Using Expert Witness**

1.2.1. Prosecutors should consider calling expert witnesses when such experts can raise issues that are beyond the understanding and experience of the average judge and that negatively impact their ability to impartially evaluate the evidence presented at trial.

1.2.2. The purpose of calling the expert witness shall be to deal with.

- a. Issues relating to popular myths regarding violence against women.
- b. Issues relating to the victim's perplexing behavior (i.e. behavior caused by post-traumatic stress disorder, dynamics of sexual violence)
- c. Issues relating to medical and forensic issues such as DNA evidence, criminalist work (serology, fingerprints), sexual violence nurse examiners, physicians, etc....

24.3. In cases of child victims an expert could provide professional explanations on the common features of grooming behavior by perpetrators and their effect on Children.

## **25. Trial Considerations**

25.1. The prosecutor shall give due consideration for expedited hearings and forecast how far protracted criminal proceedings impact victims; and increase the risk to the victim retaliation.

25.2. The prosecutors shall ensure that trials take place as soon as practicable unless delays are in the child's best interest.

25.3. The prosecutors shall ensure that the investigation of crimes involving child victims and witnesses should also be expedited and ensure the availability of procedures, laws or court rules that provide for this.

25.4. Prosecutors should be aware of strategies they can use to explain for judges about forms of sexual violence and overcome common misconceptions about the adverse effects of sexual violence.

## **26. Termination/withdrawal of Prosecution**

26.1. The prosecutor shall prioritize the safety, well-being, and needs of the victim throughout the decision-making process on the termination or withdrawal of prosecutions.

26.2. The prosecutor shall assess the strength of the evidence and the likelihood of obtaining a conviction in the absence of the victim's cooperation.

26.3. Consider factors such as the credibility of witnesses, the reliability of forensic evidence, and any legal obstacles to prosecution.

26.4. The prosecutor shall conduct a thorough risk assessment to evaluate the potential impact of terminating the prosecution on the safety and well-being of the victim. Consider factors such as the risk of retaliation from the perpetrator, the risk of re-traumatization for the victim, and the potential message sent to other survivors of sexual violence.

26.5. The prosecutor shall maintain transparency and accountability in the decision-making process by documenting the reasons for terminating or withdrawing the prosecution and ensuring that the decision is subject to review and oversight by appropriate authorities.

26.6. Ensure that the termination or withdrawal of prosecution does not result in a denial of justice or undermine the victim's rights.

26.7. Take steps to prevent re-victimization of the victim in the aftermath of terminating or withdrawing the prosecution. Implement measures to protect the victim from harassment, intimidation, or retaliation from the perpetrator or their associates.

## CHAPTER THREE

### Guidelines for Creating a Victim-Friendly Courtroom

#### 27. General Considerations

27.1. Use language that is respectful, non-judgmental, and non-blaming when referring to victims. Avoid using language that may re-traumatize or stigmatize them during trial.

27.2. Ensure privacy and confidentiality for victims during court proceedings to protect their safety and dignity, including limiting access to courtroom proceedings and protecting victims' personal information.

27.3. Allow victims to have a support person or advocate present with them during court proceedings to provide emotional support and assistance. 27.4. Provide clear and accessible information to victims about court procedures, their rights, and available support services. Use plain language and offer interpretation services if needed.

27.5. Minimize opportunities for revictimization by avoiding unnecessary questioning or repetitive re-telling of traumatic events.

27.6. Providing comprehensive training to all court personnel, including judges, lawyers, and supporting staff, in trauma-informed practices to understand the trauma on survivors' behavior and responses during the trial.

27.7. Creating a courtroom atmosphere that is sensitive to the needs of survivors, avoiding triggering behaviors during the trial stage.

27.8. Judges should not be influenced by personal assumptions, gender-based myths or stereotypes.

27.9. Interpreters should be trained in effective and gender-sensitive interpretation in criminal justice proceedings involving sexual violence cases.

#### 28. Staffing and Selection of Judges

28.1. Specialized training shall be given to judges on issues related to the treatment of sexual violence cases; dynamics of trauma-informed practices and treatments of sexual violence perpetrators.

28.2. A special bench or division within the court system to exclusively handle gender and sexual violence cases, comprising judges with specialized training and expertise in the subject shall be established.

28.3. The selection of judges for cases involving sexual violence should be based on:-

- a. Experience and expertise in handling sexual violence cases, either through previous judicial assignments, legal practice, or specialized training.
- b. A commitment to adopting a victim-centered approach in sexual violence cases, prioritizing the safety, well-being, and rights of victims and/or
- c. Demonstrate sensitivity, empathy, and respect towards victims, avoiding language or behavior that may re-traumatize or marginalize victims during proceedings.

28.4. Diverse representation among judges shall be taken into consideration, including gender diversity (selection of female judges).

## **29. Confidentiality Measures**

1.1. Measures should be designed to protect the identity of victims from the press and public through: -

- a. Removing or identifying information such as names and addresses from court public records or media.
- b. Using pseudonyms for the victim.
- c. Prohibiting disclosure of the identity of the victim or identifying the information to the third party
- d. Permitting victims to testify behind the scenes or through electronic or other special methods.
- e. Allowing in camera proceedings or closed sessions during all or part of the trial.
- f. Barring the media from the courtroom.
- g. Removing unnecessary persons from the courtroom while the victim is testifying.

## **30. Privacy measures**

30.1. Special evidentiary rules shall be designed to limit the question that can be posed to a victim during trial.

- a. Prohibiting questions about the victim's prior or subsequent sexual conduct.
- b. Prohibiting cross examination used as a means of intimidating or humiliating witnesses.

## **31. Victim support measures**

31.1. Procedures shall be developed to avoid victims' confrontation with the perpetrator which may cause re-traumatization for victims of sexual violence.

31.2. Measures shall be designed to ease victims' experience during the trial.

- a. Permitting victims to testify in a manner that allows her to avoid seeing the accused (i.e. closed-circuit TV or screens)
- b. Limiting the frequency, manner, and length of questioning
- c. Permitting a support person, such as a family member or friend, to attend the trial with the victim.
- d. A video-recorded interview with a vulnerable or intimidated witness before the trial may be admitted by the court as the witness's evidence-in-chief.
- e. Examination of the witness through an intermediary.
- f. Separate waiting areas

31.3. Explaining the courtroom Procedures before the victim testifies.

## **32. Guarding Victims against inappropriate behavior**

32.1. Judges should respond to aggressive/inappropriate/irrelevant questions, coercion, threats, insults or intimidation against the victim or any members of her family by having the perpetrators expelled from the courtroom or ordering any other necessary measures.

32.2. Judges shall play an active role during victims' testimony to ensure that they are not harassed by defense counsel.

### **33. Witness protection mechanisms**

Judges should create the necessary conditions to allow vulnerable witnesses to testify fully and safely.

### **34. Judgement and Sentencing**

34.1. Render judgments that are transparent, well-reasoned, and clearly articulated, explaining the rationale behind the decision-making process.

34.2. Judgments in sexual violence cases should reflect individualized assessments of the evidence and the context in which the crime occurred.

34.3. Judgments should guard against perceptions of judicial bias and arbitrariness, show transparency, and contribute to establishing appropriate sentences for victims of sexual violence that reflect the full gravity of the crimes.

34.4. Sanctions ordered in the judgments should be “effective, proportionate and dissuasive”.

34.5. Sentences in sexual violence cases should reflect the seriousness and extent of the offence and consider any previous incidences of violence; any aggravating factors; and the impact of the offence on the victim and any children.

34.6. Plea bargains should not be concluded by the prosecutor and confirmed by the court if the imposed penalty downgrades the seriousness of the crime.

34.7. Where a single sentence is imposed for the totality of a defendant’s conduct, rather than specific sentences imposed for each count on which he was found guilty, the judges shall ensure that the sentence to be sufficiently long to recognize the additional and full harm of the sexual violence.

### **35. Key Consideration on Appellate Procedures**

35.1. Appellate proceedings should be conducted with sensitivity to the survivor's needs and vulnerabilities.

35.2. The court shall provide the victims to actively involve in the appellate process, respecting their wishes, and ensuring that they have a voice in decisions that affect their case.

35.3. Consider providing support and resources to help the victims to navigate the appeals process.

35.4. Victims shall be informed about the status of the case, upcoming hearings, and any decisions made by the appellate court.

35.5. Respect the victim’s privacy and confidentiality rights throughout the appeals process.

35.6. Take measures to protect the victim’s identity and sensitive personal information from public disclosure, especially in cases where confidentiality is essential for their safety and well-being.

35.7. Consider the victims’ safety and security concerns when planning and conducting appellate proceedings.

35.8. Take appropriate measures to address any risks of retaliation, intimidation, or harassment that the victim may face because of their involvement in the appellate proceedings.

35.9. Ensure that victims have access to the resources and support they need to cope with the emotional, psychological, and practical challenges associated with the appeals process.

## CHAPTER FOUR

### Evidentiary Issues

#### 36. Key Considerations on Evidence Evaluation

- 36.1. Judges shall recognize the impact of trauma on victims of sexual violence and adopt a trauma-informed approach to evidence evaluation.
- 36.2. Judges shall prioritize the perspective and experiences of the victim when evaluating evidence.
- 36.3. Consider the victim's account of the events, their credibility, and any corroborating evidence that supports their testimony.
- 36.4. Seek corroborating evidence to support the victim's testimony, such as medical records, forensic evidence, witness statements, or documentary evidence.
- 36.5. Conduct thorough forensic examinations, including medical examinations and forensic testing, to collect evidence of sexual violence and identify potential perpetrators.
- 36.6. Ensure that forensic procedures are conducted in a sensitive and respectful manner that minimizes re-traumatization of the victim.
- 36.7. Consider expert testimony from professionals with specialized knowledge in areas such as forensic psychology, forensic nursing, or trauma-informed interviewing techniques.
- 36.8. Conduct thorough and respectful cross-examination of witnesses, including the victim and any other witnesses, to test the credibility and reliability of their testimony. Avoid engaging in tactics that may re-traumatize or intimidate the victim.
- 36.9. Assess whether the sexual activity in question was consensual or non-consensual, considering factors such as coercion, incapacity, and the ability to freely give consent.
- 36.10. Avoid stereotypes or biases that may unfairly discredit the victim's testimony or undermine their credibility.

#### 37. Hearsay and Reliability of Statements

- 37.1. Judges shall consider factors such as memory recall, emotional distress, and the potential for delayed reporting when assessing the reliability of statements and the admissibility of hearsay evidence.
- 37.2. Hearsay evidence or out-of-court statements shall be admitted as evidence in cases involving sexual violence if they meet specific criteria, including.
  - 37.2.1. Statements made for medical diagnosis or treatment concerning: -
    - a. Descriptions of the cause of the symptom, pain, or sensations or
    - b. The inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.
  - 37.2.2. Statements made by the victim during or immediately after the alleged sexual violence, when the victim is under stress or excitement.

37.2.3. Where the victim may be reluctant or unable to testify in court.

37.2.4. Prior victims' consistent statements, when victim's credibility is attacked by the defense, prior consistent statements made by the victim that are consistent with their testimony at trial and/or

37.2.5. When there is no corroborative evidence other than hearsay evidence or statements made by the victim and the statement is deemed crucial to the case

37.3. Look for corroborating evidence to support the statements made by the survivor.

37.4. Consider the use of expert testimony from professionals with expertise in trauma, psychology, or forensic interviewing techniques to ensure the reliability of statements made by survivors.

37.5. Conduct thorough cross-examination of witnesses, including the survivor and any individuals who may have heard or relayed hearsay statements and explore factors such as potential biases, inconsistencies in statements, and motivations for making or repeating certain statements.

37.6. Judge shall evaluate each out of court statement made by a victim to determine if it meets a hearsay exception, or is potentially "residual hearsay," and can be admitted at trial as evidence.

## **38. Key Considerations for the admitting of Hearsay Evidence**

38.1. Make sure that the hearsay evidence must be relevant to the issues in the case and it should be related to the alleged sexual violence and contribute to the understanding of the events or circumstances surrounding the incident.

38.2. The court should assess the trustworthiness and reliability of the hearsay statement. Factors such as the circumstances under which the statement was made, the declarant's relationship to the victim and their potential biases, consistency with other evidence, and corroborating evidence should be considered.

38.3. Hearsay evidence should only be admitted if it is necessary for a fair trial and if there are no other reasonable means of obtaining the evidence.

38.4. Corroborating evidence should be considered to support the hearsay statement's reliability. This could include physical evidence, witness testimony, medical records, or other documentation that supports or corroborates the hearsay statement.

38.5. When admitting hearsay evidence on sexual violence, courts must consider whether its admission would violate the defendant's right to confront and cross-examine the victim.

## **39. Use of Experts and Forensic evidence**

39.1. Experts with a background in trauma psychology or psychiatry shall be used to provide valuable insights into the impact of trauma and consequential effects on the victims.

39.2. To evaluate the credibility; mental health and any potential psychological conditions that may affect testimony or behavior of both the survivor and the perpetrator the court shall use psychologists or psychiatrists.

39.3. Expert witnesses should present their findings in an objective and unbiased manner, relying on scientific evidence and professional expertise. Their testimony should be relevant to the case and assist the court in reaching a fair decision.

39.4. The court shall ensure the perpetrator right to cross-examine expert witnesses to challenge their credibility, methodology, or conclusions about the sexual violence and victim health status.

39.5. Judges shall review expert reports submitted by forensic experts before trial to assess their compliance with legal requirements and ensure that they provide sufficient detail about the methods used and the conclusions reached.

## **40. Evidence of Prior Offence**

40.1. The court may consider prior sexual offenses may be admissible if they are relevant to the current case and if the accused has a history of similar sexual offenses, to establishing.

- a. A pattern of behavior or modus operandi.
- b. Proving motive, intent, identity,
- c. Absence of mistake, or a common plan or scheme.

40.2. Courts shall consider whether the probative value of admitting evidence of prior offenses outweighs the risk of unfairly prejudicing the court against the accused.

40.3. Courts shall apply a balancing test to determine the admissibility of prior offenses including.

- a. The similarity of the prior offenses to the current case,
- b. The recency of the prior offenses,
- c. The strength of the evidence linking the accused to the prior offenses, and
- d. The potential impact on the fairness of the trial.

# Contact Us



Ethiopian Women Lawyers' Association,  
Addis Ababa, Mexico, Kirkos Sub-city,  
Near Bulgaria Mikael Church| Ethiopia



**+251-11-550 8783**



**P.o.box: 13760**



**[info@ewla-et.org](mailto:info@ewla-et.org)**



**Call toll free**

**7711**



**For More Information:**

 [@women\\_ewla](https://twitter.com/women_ewla)

 [www.ewla-et.org](http://www.ewla-et.org)