



Ibero-American Model Protocol for the Investigation of Sexual Violence Cases

2024

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Gender Specialized Network
Ibero-American Association of Public Prosecutors



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REG . AIAMP .

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ABBREVIATIONS

AIAMP | Ibero-American Association of Public Prosecutors
CEDAW | Convention on the Elimination of All Forms of Discrimination against Women

CEDAW Committee | Committee on the Elimination of Discrimination against Women

ECHR | European Convention on Human Rights
ECtHR | European Court of Human Rights

IACHR | Inter-American Commission on Human Rights

IACtHR | Inter-American Court of Human Rights

LGBTIQ+ | Lesbian, Gay, Bisexual, Trans, Intersex, Queer (and others)

MESECVI | Follow-up Mechanism to the Belém do Pará Convention

REG | Gender Specialized Network of the Ibero-American Association of Public Prosecutors

REMPM | Specialized Meeting of Mercosur Public Prosecutors

UFEM | Specialized Prosecutorial Unit on Violence Against Women of the Public Prosecutor's Office of Argentina

UN | United Nations

FOREWORD

This document originated from a decision by the Gender Specialized Network (REG) of the Ibero-American Association of Public Prosecutors (AIAMP) to develop a **regional** instrument for the investigation and litigation of sexual violence cases in Ibero-America. As such, it serves as a starting point for each prosecutorial body (Public Ministries and Prosecutor General's Offices, hereinafter collectively referred to as "Public Ministries" or "PM") to adopt or adapt the proposals set forth herein according to their needs, mandates, institutional capacities, existing legal frameworks, and available human and budgetary resources.

Its development responds to recommendations made by international human rights bodies regarding the need to establish concrete protocols and rules for the investigation of gender-based violence crimes, particularly sexual violence, that incorporate key human rights standards in this area.¹ The Santiago Guidelines on the Protection of Victims and Witnesses, developed by the AIAMP², were also taken into consideration.

It is primarily intended for prosecutors in Ibero-America who are involved in the investigation and litigation of sexual violence cases, with the aim of strengthening their performance in accordance with international guidelines on due diligence.

Its guidelines may also support the work of other agencies involved in the criminal process, including those who receive reports (such as health or education systems), judicial police, victim and witness protection units, forensic institutions, and the judiciary.

This document consists of a first section titled "Regional Guide for the Investigation and Litigation of Sexual Violence Cases," which was formally approved within the AIAMP. This initial component is based on a definition of sexual violence centered on the absence of consent. It also outlines guiding principles derived from the State's obligation to exercise heightened due diligence, emphasizing a strong commitment to ensuring investigations that are both effective and respectful of the rights of victims.

1. Follow-up Mechanism to the Belém do Pará Convention (MESECVI), Eighteenth Meeting of the Committee of Experts, General Recommendation No. 3 of the Committee of Experts of MESECVI: *The Concept of Consent in Cases of Sexual Violence Against Women on the Basis of Gender* <https://www.oas.org/en/mesecvi/docs/RG%20Consentimiento.pdf> In a similar vein, see: IACtHR, Case of González et al. ("Cotton Field") v. Mexico, Preliminary Objection, Merits, Reparation and Costs. Judgment of November 16, 2009, Case of Espinoza Gonzales v. Peru; Preliminary Objections, Merits, Reparation and Costs. Judgment of November 20, 2014, para. 322; Case of Lopez Soto et al. v. Venezuela, Merits, Reparations and Costs. Judgment of September 26, 2018, paras. 226 and 332; Case of V.R.P., V.P.C. et al. v. Nicaragua; Preliminary Objections, Merits, Reparations and Costs. Judgment of March 8, 2018, para. 381; and Case of Vicky Hernández et al. v. Honduras, Merits, Reparations and Costs. Judgment of March 26, 2021, para. 176; among others.

2. Available at: <https://www.aiamp.info/index.php/informes-y-guias/2020-2-2-2-2/guias-de-santiago-sobre-proteccion-de-victimas-y-testigos-actualizacion-octubre-2020>

The instrument was completed with a second part containing concrete investigation and litigation guidelines directed at prosecutorial teams to ensure timely, diligent, thorough, and respectful action regarding victims' rights. The development of these chapters involved systematizing the experiences of Public Ministries in handling cases, with the goal of producing guidelines that can be incorporated by national bodies.

It was developed with the support of the EUROsociAL+ Program and UN Women, which have supported the work of the Gender Specialized Network (REG) since its inception and throughout its various lines of action. Contributions were also received from scholars at Washington University; expert Patsilí Toledo; and other international experts and litigators from the Latin American Network of Strategic Gender Litigation (RELEG) and the organization Equality Now, who, through successive meetings, contributed to the document to ensure a gender and intersectional perspective. In particular, the document was prepared through coordinated and essential work with international specialist Françoise Roth, who participated in the project at various stages thanks to the support of UN Women and Justice Rapid Response (JRR).

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REGIONAL GUIDE FOR THE INVESTIGATION AND LITIGATION OF SEXUAL VIOLENCE CASES

1. INTRODUCTION

1.1. Objectives of the document

The objective of this instrument is **to define minimum guidelines to ensure that criminal proceedings in cases of sexual violence are carried out in accordance with applicable international standards**, so that each Public Prosecutor's Office in the region can have a model to replicate and expand upon, using internal tools tailored to their institutional and legal realities, as well as to the specific characteristics of criminal phenomena in their respective countries.

Its specific objectives are:

- To ensure the timely and effective investigation and prosecution of sexual violence crimes, so that proceedings comply with applicable international human rights standards.
- To provide technical and legal tools for incorporating gender and intersectional approaches, as well as a victim-centered perspective, into casework.
- To help overcome gender-based biases and stereotypes in the handling of sexual violence crimes.
- To ensure the protection of the rights of victims, their families, and witnesses throughout the investigation and any subsequent criminal proceedings.

1.2. Scope and application of the document. Approaches.

This document adopts a broad conceptualization of sexual violence, with the aim of encompassing the factual and legal realities of the various countries where it is intended to be applied.

To that end, the following premises regarding sexual violence will be assumed:

- **It consists of any act with a sexual connotation that violates a person's sexual autonomy and freedom that is, committed without their valid and free consent.**

The concept of consent is one of the constitutive elements of sexual violence and establishes specific guidelines for the investigation and litigation of cases.

- It encompasses **different types of manifestations and forms of commission**—including behaviors that do not involve penetration or any physical contact—and can occur in various

contexts and types of relationships between the victim and the perpetrator.

- In this regard, sexual violence in the following situations cannot be excluded from analysis: “relationships under coercion within marriage, with partners, and during dating; sexual assaults or rapes by acquaintances or strangers; systematic rapes occurring in armed conflicts; sexual harassment; sexual favors demanded in exchange for employment, access to education, food, and/or humanitarian aid; sexual abuse of minors; forced prostitution; human trafficking; early or child marriages; and violent acts against women’s sexual integrity, such as genital mutilation and forced virginity tests.”³
- It includes actions committed in any setting, both private (e.g., intimate relationships, family, casual acquaintances, workplace) and public (e.g., educational institutions, mental health facilities or detention centers, armed conflicts).
- Perpetration may be attributed not only to the direct offenders but also to other levels of authorship and participation, including cases of sexual violence committed by State agents and organized power structures (e.g., organized crime networks).
- It is a contextual crime, in the sense that each case is framed within its own setting or history of violence and, at the same time, is an expression of widespread and systematic gender-based violence. Understanding the different settings and contexts in which sexual violence occurs allows for insight into the relationship between the victim and the perpetrator, as well as the motives and circumstances surrounding these crimes.

It may constitute:

- An ordinary crime, committed by one or more individuals within the national territory.
- An ordinary crime with transnational characteristics, for example, when it is committed by transnational organized crime groups or when it has implications in several countries, such as in the context of human mobility.
- A violation of human rights, especially when it is carried out by State agents, or with their acquiescence or knowledge.
- An international crime, when it is committed in situations of international or internal armed conflict (war crime); in the context of a widespread or systematic attack against a civilian

3. MESECVI, General Recommendation (No. 3), previously cited, p. 12.

population (crime against humanity); or as an act of genocide (some national criminal codes provide for specific crimes when they fall within some of these contexts).

Regarding its scope and area of application, it is clarified that this document contains guidelines for cases of sexual violence committed against any person (women or men of any age; people of diverse sexual orientations, gender identities, and expressions). However, given the high prevalence of women and LGBTIQ+ individuals and recognizing that sexual violence is a manifestation of gender-based violence, particular emphasis will be placed on these cases—without excluding other victims. The document does not include specific guidelines for the investigation of sexual violence against girls, boys, or adolescents, as such cases involve particular complexities beyond its scope. Nevertheless, its general guidelines may serve as a foundation for addressing these situations.

The Protocol adopts several approaches: (1) **a human rights-based approach**, as its guidelines are grounded in the norms, principles, and standards of international human rights law; 2) **a gender and intersectionality approach**, recognizing that sexual violence is a form of gender-based violence and taking into account other patterns of discrimination that increase the risk and impact of sexual violence; and 3) **a victim-centered approach**⁴ viewing victims as central participants in the criminal justice process and vested with rights.

4. The Protocol will use the term “victim” from the perspective of criminal proceedings and adopts the international definition of the term as set forth in United Nations General Assembly Resolution 40/34 of November 29, 1985, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: “persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power. [...] The term “victims” also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.” Nevertheless, it is important to acknowledge that individuals who have experienced sexual assault may feel more comfortable with, or self-identify using, terms such as “survivors” or “individuals who have reported the incident”.

2. UNDERSTANDING SEXUAL VIOLENCE

2.1. Sexual violence as gender-based violence

Gender-based violence can be defined as violence directed against individuals because of their sexual orientations,⁵ gender identities⁶ or gender expressions,⁷ or for not conforming to socially constructed gender roles, stereotypes, or attributes. It can be carried out by action or omission, both in private and public spheres. It disproportionately affects women and LGBTIQ+ individuals, causing death, physical, sexual, or psychological harm or suffering. The term is used to emphasize the structural power imbalances based on gender that primarily place women and LGBTIQ+ people at risk of multiple forms of violence.⁸

Sexual violence is one of the most paradigmatic forms of gender-based violence. It is directed especially against women and LGBTIQ+ individuals and operates, in structural terms, as a mechanism of domination, control, and humiliation. It must be analyzed from the perspective of unequal power relations, as it constitutes an expression of a construction of sexuality based on male power and the subjugation and objectification of the feminine or what is represented as feminine.⁹

Understanding sexual violence as a manifestation of gender-based violence, it is important to consider that:

- The sexual gratification or satisfaction of the perpetrator is not always the motivation for the sexual act; rather, it may be focused on the expression of power and domination over the victims.¹⁰
- In certain contexts, deeply rooted gender social norms make it difficult for victims to disclose that they have been sexually assaulted. The obstacles faced by cisgender women and men,

5. This refers to each person's capacity to feel deep emotional, romantic, and sexual attraction to individuals of a different gender, the same gender, or more than one gender. See: Inter-American Commission on Human Rights (IACHR), Rapporteurship on the Rights of LGBTI Persons, "Basic Concepts," available at: Basic Concepts related to LGBTI persons – IACHR (oas.org)

6. It is the internal and individual experience of gender as deeply felt by each person, which may or may not correspond with the gender assigned at birth. This includes the personal experience of the body and other expressions of gender, such as clothing, manner of speaking, and behavior. See: Inter-American Court of Human Rights, Advisory Opinion 24/17 (OC-24/17), and Inter-American Commission on Human Rights (IACHR), Basic Concepts related to LGBTI persons – IACHR (oas.org)

7. This generally refers to the outward expression of a person's gender, which may include speech patterns, mannerisms, style of dress, personal behavior, social behavior or interaction, bodily modifications, names, or personal references, among other aspects. A person's gender expression may or may not align with their self-perceived gender identity. See: IACHR, Basic Concepts related to LGBTI persons – IACHR (oas.org)

8. This definition is based on a reformulation of the one provided by the Belém do Pará Convention. While sexual orientation and gender identity are not explicitly included in the Convention, the IACHR considers the Convention to be a "living instrument" and maintains that, in referring to the State's obligation to give special consideration to factors of vulnerability, such factors "necessarily include sexual orientation and gender identity". See: IACHR, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II.rev.2, Doc. 36, November 12, 2015, para. 52; available at: <https://www.oas.org/en/iachr/reports/pdfs/violenceigbtipersons.pdf>.

9. Refer to: *Protocol for the Investigation and Litigation of Sexual Violence Cases*, developed by the Specialized Prosecutorial Unit on Violence Against Women (UFEM) of the Public Prosecutor's Office of the Argentine Nation, 2023, p. 14; available at: https://www.mpf.gob.ar/ufem/files/2023/04/UFEM-Protocolo_de_investigacion_y_litigio_de_casos_de_violencia_sexual.pdf.

10. Etienne G. Krug, Linda L. Dahlberg, James A. Mercy, Anthony B. Zwi, and Rafael Lozano, *World Report on Violence and Health*, World Health Organization, Geneva, 2002, p. 149; available at: <https://www.who.int/publications/i/item/9241545615>

The absence of consent may result from the victim's lack of willingness, their inability to provide free and voluntary consent, or the use of force, violence, threats, coercion, or the exploitation of a coercive environment (see below).

This definition makes it possible to focus on two fundamental elements. On one hand, the identification of **behaviors that carry a sexual connotation**; on the other, the **absence of consent** as the factor that transforms a sexual act into an act of violence. Prosecutors must carry out a comprehensive analysis of both elements and the context in which they occur, as these are dynamic concepts that should also take into account the experiences of the victims.

2.3. Determining whether conduct is sexual

Conduct has a sexual connotation when, taken in context, it is perceived by the victim, the perpetrator, and/or their respective communities as a sexual act.¹³ To determine whether conduct is sexual, the prosecution team must consider the circumstances and context of the incident, including the victim's perception.

Sexual conduct constitutes an act of **sexual violence** when it is carried out **without the consent** of at least one of the individuals involved.

In other words, conceptually, the only element that transforms conduct with a sexual connotation into an act of sexual violence is the absence of consent, regardless of the motives or intentions behind the perpetrator's actions (such as sexual gratification, revenge, retaliation, abuse of power, control, or humiliation of the victim).

2.3.1) Characteristics

An act constituting sexual violence:

- May involve a **single act or multiple or intermittent acts**.
- Includes sexual acts committed **against one or more persons**.
- May be carried out **by one or more individuals**, or be ordered or facilitated by a group, a state entity, or another organization.
- **The duration** of the act is not a requirement to characterize the conduct, and its occurrence

13. *The Hague Principles on Sexual Violence*, 2019, General Principles 1.

cannot be dismissed due to its brevity or minimal duration.

- Includes actions aimed at forcing a person to commit a sexual act:
 - against themselves (on their own body),
 - against a third party (or an animal), or on a corpse,
 - or to be the recipient of sexual acts performed by a third party.

It also includes acts of penetration, touching, or rubbing (even over clothing), as well as acts without physical contact between the perpetrator and the victim (see the following chapter).

2.3.2) Forms of sexual violence

Sexual violence, in addition to involving physical invasion of the human body, may include acts that do not involve penetration or even any physical contact.¹⁴ Conduct can affect a person's sexual autonomy and freedom even in the absence of physical contact or without leaving marks on the victim's body.

Generally, body parts considered sexual include: the buttocks, anus, breasts, testicles, penis, vagina, and vulva (including the clitoris). However, depending on the sociocultural context, other body parts may also be considered sexual, such as the lower back, ears, hair, lips, mouth, nape, and legs. Below are various manifestations of sexual violence based on a non-exhaustive list.¹⁵

a. Sexual violence involving bodily contact

The most paradigmatic case of sexual violence involving bodily contact is rape.¹⁶ For the purposes of this document, it is understood that:

14. IACtHR, *Miguel Castro Castro Prison v. Peru*, previously cited, para. 306; *Rosendo Cantú et al. v. Mexico*, previously cited, para. 109; *Fernández Ortega et al. v. Mexico*, previously cited, para. 119. See also: International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Karadžić*, Case No. ICTY-IT-95-5/18-T, Trial Judgment, March 24, 2016, para. 513; International Criminal Tribunal for Rwanda (ICTR), *Prosecutor v. Akayesu*, Judgment, Case No. ICTR-96-4-T, September 2, 1998, para. 598.

15. List adapted from: UFEM, *Protocol for the Investigation and Litigation of Sexual Violence Cases*, previously cited, p. 17.

16. The Special Rapporteur on Violence against Women, its Causes and Consequences has emphasized that “[r]ape constitutes a violation of a range of human rights, including the right to bodily integrity, the right to autonomy and sexual autonomy, the right to privacy, the right to the highest attainable standard of physical and mental health, the right of women to equality before the law, and the right not to suffer violence, discrimination, torture, or other cruel or inhuman treatment.” Special Rapporteur on Violence against Women, its Causes and Consequences, *Dubravka Šimonović*, Report: *Rape as a Severe, Systematic, and Widespread Violation of Human Rights, a Crime, and a Form of Gender-Based Violence against Women and Girls, and its Prevention*, April 19, 2021, *AI HRC/47/26*, para. 20, available at: <https://docs.un.org/en/A/HRC/47/26>

17. IACtHR, *Women Victims of Sexual Torture in Atenco v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2018, para. 182.

Rape involves bodily penetration, however slight, either using a sexual organ or into a sexual organ, without the victim's consent.¹⁷ It therefore includes any act of:

- **Vaginal or anal penetration** (including the labia majora or minora of the vulva) carried out without the victim's consent, using the penis, other parts of the body (e.g., fingers, mouth), or objects.
- Penetration of other parts of the body (e.g., the mouth or ears) **with the penis**, without the victim's consent.

Rape does not necessarily involve contact between the aggressor and the victim. It can occur when the victim is forced to perform acts of penetration on themselves or on another person.

In addition to rape, other **cases of sexual violence involving physical contact** should also be considered:

- Sexual slavery¹⁸
- Female genital mutilation
- Forced prostitution or sexual exploitation
- The removal or non-use of a condom without the other person's consent during a consensual sexual act
- Touching, fondling, masturbation, or groping of the genitals, buttocks, anus, or breasts¹⁹ (even over clothing)
- Forcing someone to adopt positions during a sexual act that they consider degrading
- Inspecting a person's genitals (internal and external), anus, breasts, or buttocks without a medical purpose
- Humiliating or degrading body searches²⁰

17. IACtHR, *Women Victims of Sexual Torture in Atenco v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2018, para. 182.

18. IACtHR, *Lopez Soto et al. v. Venezuela*, previously cited, para. 176.

19. IACtHR, *J. v. Peru*, Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013, paras. 358–360.

20. Vaginal examinations conducted in a complete absence of regulation, performed by police (or prison) personnel rather than health professionals, and carried out as a first measure rather than as a last resort, constitute sexual violence and, due to their effects, may amount to torture (IACtHR, *Miguel Castro Castro Prison v. Peru*, previously cited, paras. 98, 306, 309, 312).

- Injuring, attacking, or physically assaulting someone during a sexual act using objects or weapons, whether vaginally, anally, or orally
- Actions in which a person forces another to perform sexual acts against their will, either on themselves or on a third person.
- *Sextortion*: when individuals in positions of authority, in either public or private settings, seek to obtain sex in exchange for something they have the power to grant. This is a form of corruption in which sex becomes the currency, and women are the primary victims in such cases.²¹

b. Sexual violence that does not involve physical contact

Sexual violence does **not necessarily require physical contact between the victim and the aggressor**. Therefore, the following behaviors with sexual connotations can also constitute sexual violence:

- Forced nudity.²²
- The sharing or production of images, videos, or audio recordings of a person in a state of nudity or partial nudity, or engaging in sexual acts (whether coerced or consensual), including communication via the internet or social media.
- **Sexual harassment**, involving inappropriate sexual behavior that may be perceived as offensive, humiliating, or intimidating, depending on the circumstances (such as sending sexually explicit messages, using phones or other devices to invade someone’s privacy, or making statements and gestures with sexual connotations).
- **Obscene gestures and language; sexist insults with sexual connotations; sexual propositions; and explicit or implicit sexual language or innuendos.**
- **Exposing a person to nudity, especially the naked sexual parts of the body, or to sexual acts**, including being made to see or hear such acts through images, descriptions, videos, or audio recordings.

21. This definition of “sextortion” was coined by the International Association of Women Judges; see: International Association of Women Judges, 2012, Toolkit: Naming, Shaming, and Ending Sextortion. A definition on this topic has also been provided by the Ibero-American Network of Prosecutors against Corruption of the Ibero-American Association of Public Prosecutors (AIAMP) in the Recommendation on the Typification of the Practice of “Sextortion,” adopted at the XXIX General Assembly of the AIAMP. Similarly, see Solano Lopez, A.L. (2019), Women and Corruption: Strategies to Address the Differentiated Impacts of Corruption in Latin America. Gender and Corruption Issues in Latin America; Elden, A., Calvo, D., Bjarnegard, E., Lundgren, S., and Jonsson, S. (2020), Sextortion: Corruption and Gender-Based Violence, available at https://eba.se/app/uploads/2020/11/Sextortion_webb.pdf Roteta

22. IACtHR, Miguel Castro Castro Prison v. Peru, previously cited, para. 308.

3. CONSENT

3.1. Sexual autonomy or freedom

A behavior should be considered sexual violence if it affects the victim's sexual autonomy or freedom.

Determining the legally protected interests is critically important for conceptualizing sexual violence and for identifying the required legal elements under the relevant legislation. The concepts of **sexual autonomy and freedom** emphasize the **lack of consent** as a defining element.

By contrast, the older paradigm that explained sexual violence as a violation of “honor” or “virtue”, and required the victim to demonstrate resistance, was used “as a mechanism to exempt the accused from criminal responsibility in cases of sexual violence, as well as to stigmatize the victim.”²³

Sexual autonomy or freedom is the concrete ability of a person to exercise their sexuality without conditions or restrictions. This includes:

- engaging in sexual activities according to their own will and preferences, without external influence;
- freely choosing when, how, and with whom to have sexual or intimate relations;
- withholding consent to sexual relations;
- enjoying normal sexual development free from interference.

Traditionally, penal systems required that sexual conduct involve **physical force** to characterize certain sexual offenses, particularly rape. However, perpetrators do not necessarily rely on physical force to commit sexual violence. The power imbalance between the perpetrator and the victim, threats, or other forms of coercion can be sufficient to overpower the victim.

Moreover, to prove the crime, that is, to demonstrate the lack of consent, it was often required that the victim **physically resist the attack**. Experience has shown that requiring physical resistance is unrealistic, as victims often do not respond physically, for example, when they are at a physical disadvantage, when the perpetrator holds a position of authority, when there is a coercive context, in cases of surprise or intimidation, or when the victim is under the influence of alcohol, drugs, or other psychoactive substances, or unconscious. Furthermore, as will be explained later, the traumatic impact of the criminal act generally conditions the victim's lack of physical reaction.

23. Mesecvi, General Recommendation No. 3, previously cited, p. 5.

Therefore, it is not necessary to prove the use of force or the victim's resistance²⁴ once the coercive or abusive character of the act and the context in which it occurred have been demonstrated,²⁵ for example, when the victim has been subjected to abuse, violence, coercion, deceit, detention, psychological oppression, or intimidation that contributes to their subjugation or acquiescence; or if the victim has been subjected to a threat (explicit or implicit).²⁶

3.2. The concept and characteristics of consent

Consent is a free, voluntary, and current decision to engage in a sexual act or practice with one or more individuals, agreed upon within a context of sexual autonomy and freedom.²⁷ It must be assessed considering the specific circumstances of the case.²⁸

The absence of consent, due to its violation of the victim's sexual autonomy and freedom, **constitutes a fundamental element of sexual violence offenses**. It establishes the legal boundary between a lawful act and abusive conduct and distinguishes freely exercised sexuality from an act of violence.²⁹

Consent must encompass **all acts and aspects** of the sexual activity. It must be present from the **beginning and for the entirety of the act** and may be revoked at any time.³⁰

24. ECtHR, *M.C. v. Bulgaria*, Application No. 39272/98, December 2003: "When physical evidence is used as the mechanism to indicate the existence or non-existence of sexual violence, it opens the possibility of leaving acts of violence unpunished and endangering the victim," paras. 85, 127, 138, 159, and 163.

25. International Criminal Court (ICC), Rule 70 of the Rules of Procedure and Evidence, available at <https://www.icc-cpi.int/sites/default/files/2024-09/RulesProcedureEvidenceEng-2024.pdf>; Special Rapporteur on Violence Against Women, Report on Rape as a Serious, Systematic, and Widespread Violation of Human Rights, para. 33, A/HRC/47/26, April 19, 2021; and the General Recommendation No. 3 of the MESECVI Committee of Experts, previously cited. Regarding coercive context in sexual violence cases, the following judgments and rulings are recommended for consideration: IACTHR, *Angulo Losada v. Bolivia*, Preliminary Exceptions, Merits, and Reparations, Judgment of November 18, 2022, paras. 148–149. ECtHR, *M.C. v. Bulgaria*, previously cited, where the Court stated it was "convinced that any rigid approach to prosecuting sexual offenses, such as requiring evidence of physical resistance in all circumstances, risks leaving certain types of rape unpunished and thereby endangering effective protection of sexual autonomy. According to standards in this area, positive obligations of member States under Articles 3 and 8 of the Convention require the criminalization and effective prosecution of any non-consensual sexual act, even in the absence of physical resistance by the victim" (para. 166). In the *Gacumbitsi* case (2006) before the International Criminal Tribunal for Rwanda (ICTR), the Appeals Chamber held that "the Prosecution may prove lack of consent beyond reasonable doubt by demonstrating the existence of coercive circumstances under which meaningful consent is impossible" (ICTR, *Prosecutor v. Gacumbitsi*, Case No. ICTR-2001-64-A, July 7, 2006, para. 153). In the *Kunarac* case before the International Criminal Tribunal for the former Yugoslavia (ICTY), the Appeals Chamber expressed that detention centers where victims were held constituted "circumstances of coercion so severe as to preclude any possibility of consent" (ICTY, *Prosecutor v. Dragoljub Kunarac, Radomir Kovac, and Zoran Vukovic*, Cases No. IT-96-23-A and IT-96-23/1-A, June 12, 2002). In the *Vertido v. Philippines* case, the CEDAW Committee indicated that victims should not be required to have physically resisted to lend credibility to rape allegations (CEDAW Committee, Communication No. 18/2008, *K.T. Vertido v. Philippines*).

26. Special Rapporteur on Violence against Women, previously cited report.

27. See the Minutes of the Fourth Plenary Meeting of the REG–AIAMP, 2022, previously cited, and UFEM, Protocol for the Investigation and Litigation of Sexual Violence Cases, previously cited, p. 20. It is also recommended to refer to the definition of consent included in the most recent report of the Special Rapporteur on Violence against Women, its causes and consequences, in which she recommends that the States Parties "explicitly include the lack of consent as a central element in their definition of rape. The use or threat of force constitutes clear evidence of lack of consent, but force is not a constitutive element of rape. States should specify that consent must be given voluntarily, as the result of the person's free will, considering the surrounding contextual circumstances" (A/HRC/47/26, April 19, 2021, para. 85(a)), available at: <https://docs.un.org/en/a/76/132>. See also: European Court of Human Rights, *M.C. v. Bulgaria*, previously cited, paras. 163 and 166.

28. Special Rapporteur on Violence against Women, previously cited report. See also: European Court of Human Rights, *M.C. v. Bulgaria*, previously cited, paras. 163 and 166.

29. MESECVI, General Recommendation No. 3, previously cited, pages 5 and 6.

30. IACTHR considers it essential that legislation on sexual violence offenses establish that consent cannot be inferred but must always be given explicitly, freely, and prior to the act, and that consent can be withdrawn. See: IACTHR, *Angulo Losada v. Bolivia*, previously cited, para. 149; and the MESECVI Expert Committee, General Recommendation No. 3, previously cited. Cases where a person removes a condom without the other person's acquiescence may be mentioned (if deemed useful).

In some cases, there may be **differentiated consent**, where a sexual act with certain characteristics is initially accepted, but during its course, disagreement arises regarding a specific activity, its manner, or its continuation. In such cases, consent is lacking, and sexual violence occurs.³¹

Giving consent to engage in a specific sexual act, “for example, vaginal sex,” **does not imply consent to any other act or under any conditions** (for example, anal sex). Marriage, cohabitation, or a common-law relationship (whether recognized by the State or not), as well as dating or other prior or concurrent sexual-affective relationships, do not imply ongoing or tacit consent to sexual acts.

3.3. Elements of consent

To fully consent to the sexual act, the victim must meet the following criteria:

- **Capacity to consent** - being of legal age and able to understand whether they wish to participate in the sexual activity at that moment.
- **Freedom to consent** - being able to make the decision freely and without any form of constraint.
- **Willingness to consent** - voluntarily, genuinely, and unequivocally agreeing to the act of their own choice.³²

The prosecution of sexual violence requires a **context-sensitive assessment of the conduct** to determine, on a case-by-case basis, whether the victim freely consented to the sexual act. This assessment must avoid any interpretation of the presence or absence of consent based on gender stereotypes.³³ Furthermore, from a gender and intersectional perspective, the wide range of responses that victims exhibit to sexual violence must be recognized, and these responses should not be based on assumptions about “typical” or “normal” behavior in such situations.

In some cases, the victim may have given apparent consent, while the circumstances and context of the incident show that they were coerced into doing so. This rules out the possibility that the sexual

31. See Minutes of the Fourth Plenary Meeting of the REG–AIAMP (2022) and UFEM. Protocol for the Investigation and Litigation of Sexual Violence Cases, previously cited, p. 20.

32. A classic example of freedom without willingness is the following: if A (a capable person) voluntarily agrees to go to B's apartment but refuses to engage in sexual relations with B, A has the capacity and the freedom, but not the willingness, to engage in the sexual act.

33. See: Special Rapporteur on Violence against Women, Report on rape as a grave, systematic and widespread human rights violation, para. 73, A/HRC/47/26, April 19, 2021; and General Recommendation No. 3 of the MESECVI Committee of Experts, previously cited.

act was carried out with valid and free consent, thus turning it into a case of sexual violence.³⁴ The existence of such circumstances vitiates consent de facto. Therefore, in these situations, it is not necessary to prove the victim's lack of consent, as it is presumed. **This approach shifts the focus away from the victim, their actions, and behaviors, and instead centers on the conduct of the perpetrator and the context.**

The victim lacks the capacity to consent when:

- **The victim is not of legal age to consent, according to the laws of each country.** All countries in the region establish a minimum age below which consent can never be considered valid under any circumstances. Beyond that age, sexual acts may also be criminalized when they occur within an age range defined by each legal system, in cases where it can be presumed that the victim's sexual immaturity was exploited (due to the perpetrator's being of legal age, their position of authority over the victim, or another equivalent circumstance).³⁵
- **There are temporary or permanent physical or mental disabilities that nullify or limit the capacity to consent to sexual activity** (such as communication difficulties, mental disorders, cognitive and/or emotional impairments, etc.). In these cases, it must be determined on a case-by-case basis whether the disability was significant enough to prevent the making or expression of a decision regarding the sexual activity. The lack of capacity to consent may not be inferred solely from the existence of such a condition,

in accordance with human rights standards regarding persons with disabilities.³⁶

- **There is a temporary or permanent restriction on the person's ability to consent due to unconsciousness or physical limitation resulting from:**

34. ECtHR, *M.C. v. Bulgaria*, previously cited, para. 181; International Criminal Court, Rule 70 of the Rules of Procedure and Evidence. In the *Gacumbitsi* case (2006) before the International Criminal Tribunal for Rwanda, the Appeals Chamber stated: "The Prosecution may prove lack of consent beyond reasonable doubt by demonstrating the existence of coercive circumstances under which meaningful consent is not possible" (see ICTR, *Prosecutor v. Gacumbitsi*, Case No. ICTR-2001-64-A, July 7, 2006, para. 153). In the *Kunarac* case before the International Criminal Tribunal for the former Yugoslavia, the Appeals Chamber found that the detention centers where the victims were held constituted "circumstances of coercion negating any possibility of consent" (see ICTY, *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, Case Nos. IT-96-23-A and IT-96-23/1-A, June 12, 2002). See also: MESECVI, Declaration on Violence against Women, Girls and Adolescents and their Sexual and Reproductive Rights, September 19, 2014, p. 5.

35. According to a report prepared by UNICEF: "The minimum age of sexual consent is the age at which a person is considered capable of consenting to sexual activity. (...) The goal is to protect adolescents from abuse and from the consequences that may arise from not being fully aware at the time of initiating early sexual activity." (...) "The minimum age of sexual consent in Latin America and the Caribbean ranges from 12 to 18 years old. The average age is 15, and the median is 16. Three countries in the region have set the age of sexual consent below 14 years old: Argentina, Costa Rica, and Uruguay." UNICEF, *Minimum Legal Ages and the Realization of Adolescents' Rights: A review of the situation in Latin America and the Caribbean*, 2016 pp.23 and following, available at: <https://www.unicef.org/lac/media/40681/file/Legal-minimun-ages.pdf>

36. United Nations (UN), Convention on the Rights of Persons with Disabilities and its Optional Protocol, adopted by General Assembly resolution of December 13, 2006 (Law No. 26.378, 2008); and Committee on the Rights of Persons with Disabilities, General Comment No. 3 on Women and Girls with Disabilities, CRPD/C/GC/3, November 25, 2016.

- » **the forced administration or deceptive provision of** narcotic substances or alcohol, with the intention of reducing the person’s ability to resist sexual assault;
- » **the voluntary consumption of narcotic substances or alcohol.** In these cases, the presence of consent must be evaluated in relation to the person’s actual capacity for self-determination regarding the sexual act, and not based on their willingness to consume narcotics or alcohol. This evaluation must be conducted on a case-by-case basis, considering the circumstances and conditions of the victims. Consent may cease to exist even at low levels of intoxication and before the person becomes unconscious. Arguments that seek to hold the person responsible for exposing themselves to sexual assault following the ingestion of such substances must be rejected;
- » **states of sleep, fainting, unconsciousness, or a physical limitation preventing resistance.**

The victim lacks the freedom to consent when:

- **force is used** (this may involve a victim being restrained, beaten, injured, or subjected to other means that reduce or eliminate their capacity to resist);
- **coercion³⁷ or threat (express or implied)³⁸** against the victim or persons close to them. This may include threats to cause harm, disclose confidential information (such as the victim’s sexual orientation, HIV status, immigration status, or to publicly share intimate images on social media or other media outlets), or damage the victim’s reputation in a way that could substantially affect their private or professional life, among many other possibilities;
- **the exploitation of the coercive context** in which the sexual act is committed (for

example, during armed conflicts, repressive contexts, situations of detention, confinement or imprisonment, involvement of multiple perpetrators, among others);

- **there exists a relationship of dependency, authority, or power that compels the victim to engage in the act out of fear of its consequences.**³⁹ This is evident, for example, in hierarchical employment relationships; in educational or religious institutions; in caregiving roles; when the perpetrator has custody of the victim (such as in cases of probation supervision); when the perpetrator, by virtue of their position of authority (public or private), can control the exercise of a right or request by the victim (known as *sextortion*); or when the victim was

37. International Criminal Court (ICC), Rule 70 of the Rules of Procedure and Evidence. Available at: <https://www.icc-cpi.int/sites/default/files/2024-09/RulesProcedureEvidenceEng-2024.pdf>

38. Special Rapporteur on Violence against Women, previously cited report.

39. MESECVI, General Recommendation No. 3, previously cited, p. 32.

subjected to *grooming* (that is, when an emotional bond is established with a minor to abuse them);

- **there is exploitation of any other circumstance or vulnerability factor that prevented the affected person from freely consenting to the sexual act** (for example, a victim who is homeless, a migrant, engaged in stigmatized work, etc.).

The victim lacks the will to consent in situations such as the following:

- The perpetrator obtained the victim's consent **through deception**.
- **The sexual act performed was not in accordance with the victim's will** (for example, vaginal sex but not anal sex; or sex involving aggressive acts, "rough sex").
- **The victim's consent was given prior to the sexual act and not contemporaneously** (having previously had sexual relations with the accused cannot be presumed to imply consent for any subsequent sexual act).
- **Certain conditions for the sexual act were not respected** (for example, the use of a condom).
- **The victim withdraws consent and the perpetrator continues the act** (for example, person (A) may not commit rape against person (B) at the initial moment of penetration; but if at any point (B) withdraws consent, it will constitute rape if (A) does not desist).

The assertion that coercive circumstances exist which may constitute an act of sexual violence requires a contextual assessment, which involves identifying and reconstructing the conditions, "above all, relational conditions between the victim and the perpetrator" — under which the victim did not, or could not, consent to the sexual act; even when the acts that form the coercive context are not contemporaneous, or when no threats or coercion are present at the time the sexual violence is committed. In such cases, it is essential to establish the existence of an unequal power dynamic or authority, or conditions of dependency between the perpetrator and the victim.

Consent cannot be inferred from:

- **No words or behavior from the victim can be taken as consent if force, threat, coercion, or a coercive environment has impaired their ability to consent freely.⁴⁰**

- **Silence or lack of resistance from the victim. It is common for people to remain silent and/or not resist during sexual assaults for various reasons, including but not limited to:**

- a. the fear of retaliation (for example, against their children other family members);
- b. the desire to protect loved ones (for example, preventing their children from hearing or becoming victims themselves);
- c. the fact that the perpetrator had weapons or other items that could endanger the victim's life or physical safety;
- d. the victim was caught off guard or too confused to show resistance, which often occurs in cases of violence committed by someone known to them; in such cases, the victim may feel confused, surprised, and betrayed by the aggressor's behavior, and may choose not to resist so that the ordeal ends as quickly as possible;
- e. the circumstances of the incident cause the victim to feel helpless, inhibiting their ability to respond assertively;
- f. the aggressor has authority or power over the victim that inhibits their resistance, through psychological manipulation or other means.

40. International Criminal Court (ICC), Rule 70 of the Rules of Procedure and Evidence, previously cited.

Additional considerations must be made by prosecutors to prevent the presumption of consent based on stereotypes about the victim’s behavior in cases of sexual violence, including those related to the victim’s conduct before, during, or after the incident. Thus, valid consent cannot be inferred from:

- the victim’s voluntary consumption of drugs or alcohol;
- physiological reactions to the assault;⁴¹
- the past sexual behavior of a person or their past or present relationship with the alleged perpetrator or one or more third parties.⁴²

In summary, the investigation of these crimes requires a context-sensitive evaluation of the evidence to determine, on a case-by-case basis, whether the victim freely consented to the sexual act.

Such an evaluation must recognize the wide range of behavioral responses that victims may show in response to sexual violence and should not be based on assumptions about “typical” behavior before, during, or after the incident.

41. The physiological reactions of the victim during the sexual act should not be interpreted as a sign of consent or as an inference that the circumstances were not coercive.

42. See: IACtHR, *Véliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014, para. 209.

4. GUIDING PRINCIPLES FOR THE INVESTIGATION AND LITIGATION OF SEXUAL VIOLENCE CASES. THE DUTY OF HEIGHTENED DUE DILIGENCE

4.1. The obligation of heightened due diligence

The duty of due diligence that States have in the prevention, investigation, sanction, and reparation of human rights violations arises from the obligations they have undertaken under the principal international human rights law instruments. This standard has been applied by international bodies to assess whether a State has fulfilled its general duty of guarantee, even when the violations are attributable to private individuals. States may be held internationally responsible for private acts if they “fail to adopt measures with due diligence to prevent the violation of rights or to investigate and punish acts of violence and compensate the victims.”⁴³

Regarding **violence against women**, the **due diligence standard** has been incorporated into the United Nations Declaration on the Elimination of Violence against Women, the Beijing Platform for Action, the Belém do Pará Convention (Article 7, section b), and the Council of Europe’s Istanbul Convention on preventing and combating violence against women and domestic violence (Article 5).

In situations where structural discriminatory and violent contexts against women prevail, the **IACtHR** has established that international obligations impose a “**heightened responsibility**” on States.

From international jurisprudence,⁴⁴ it follows that:

- The duty to investigate constitutes a binding obligation of the State under international law and may not be disregarded or made subject to any domestic acts or legal provisions of any kind.
- The duty to investigate is an obligation of means, not of results.⁴⁵
- This obligation must be undertaken by the State as a legal duty in its own right, not as a mere formality destined from the outset to be ineffective, nor as a simple procedural handling of private interests that depends on the initiative of the victims or their families, or on the private contribution of evidence.⁴⁶

43. This was established by the CEDAW Committee in its 1992 report, para. 19; CEDAW Committee, December 16, 2010, para. 5.

44. See UFEM, *Dossier of Jurisprudence and Doctrine N° 8: Violencia Sexual (Case Law and Legal Doctrine Dossier No. 8: Sexual Violence) (Update)*, 2022, available at: https://www.mpf.gob.ar/ufem/files/2023/03/Dossier_UFEM_N8-Violencia-Sexual.pdf; and *Case Law and Legal Doctrine Dossier No. 2: Heightened Due Diligence in the Investigation of Gender-Based Crimes*, 2017, available at: https://www.mpf.gob.ar/ufem/files/2017/08/Ufem_Dossier-2.pdf.

45. IACtHR., *Case of Fernández Ortega et al. v. Mexico*, previously cited, para. 191.

46. *Ibid.*, para. 191.

- Once the State authorities become aware of the incident, they must initiate, *ex officio* and without delay, a serious, impartial, and effective investigation. This investigation must employ all available legal means and be aimed at establishing the truth.⁴⁷
- Victims of human rights violations and their families have the right to be heard and to participate actively throughout the investigation process and judicial proceedings.⁴⁸

4.2. The integration of a gender and intersectionality perspectives

In building a sexual violence case, prosecutorial teams must incorporate a gender perspective⁴⁹ and an intersectional perspective⁵⁰ from the outset and throughout the investigation, as part of the obligations arising from the duty of heightened due diligence.

A gender perspective makes it possible to examine the characteristics, dynamics, and forms in which gender-based violence is expressed, enabling a contextualized analysis of the facts that includes a comprehensive examination of their environment.⁵¹ It allows for:

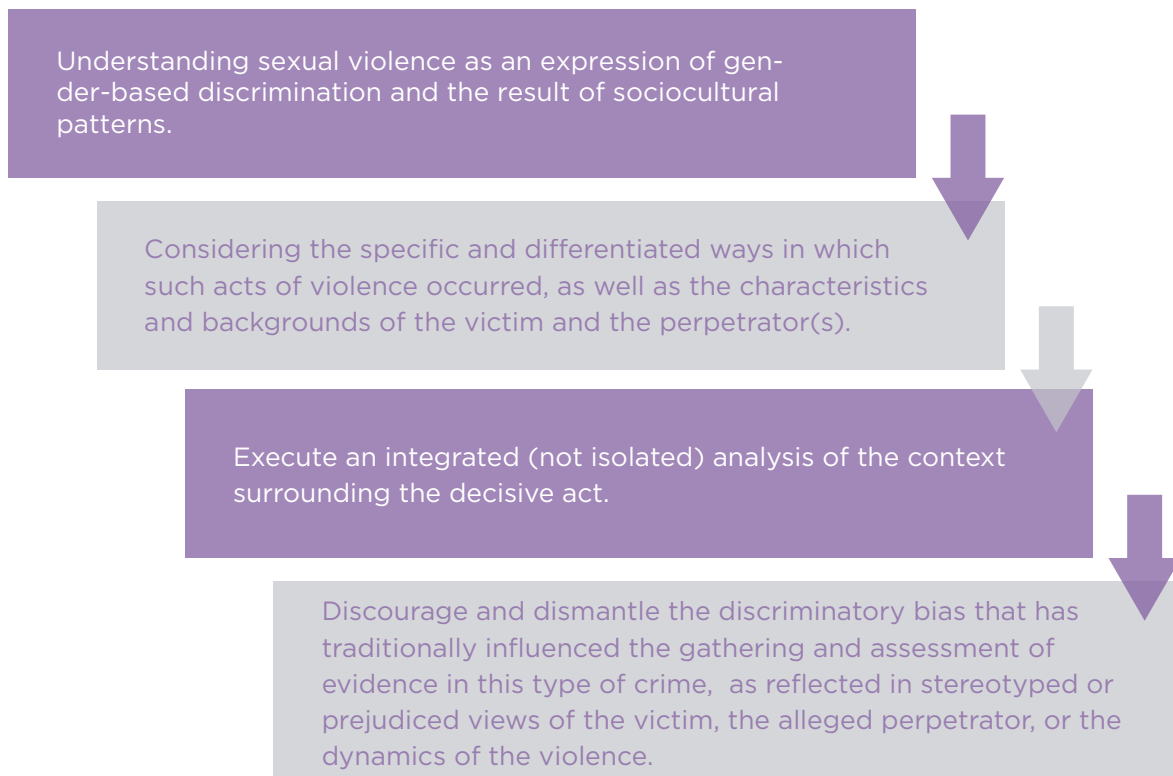
47. Ibid., para.191.

48. IACtHR, Case of Veliz Franco et al. v. Guatemala, previously cited, para. 251.

49. A gender perspective is a way of observing and interpreting reality that makes it possible to understand how the differences in roles, functions, and attributes assigned by a given society to femininity and masculinity (and the subordination of some over others) influence social and institutional behaviors. It also allows for the questioning and denaturalization of the web of power relations and oppressions underlying the sex-gender binary, particularly the inequality and resulting specific forms of discrimination and violence against cisgender women and LGBTIQ+ individuals. For further discussion on the concept of gender, its origins, and the gender perspective, see: Facio, Alda and Fries, Lorena, "Feminism, Gender and Patriarchy", in *Academia*, Year 3, No. 6, 2005, pp. 259–294; Lamas, Marta, *The Cultural Construction of Sexual Difference*, Mexico City, PUEG, 1996; Scott, Joan, "Gender: A Useful Category for Historical Analysis," in James S. Amelang and Mary Nash (eds.), *History and Gender: Women in Modern and Contemporary Europe*, Edicions Alfons el Magnànim, 1990; among others.

50. Under this analysis, it is understood that different forms of discrimination (economic, ethnic, cultural, age-related, etc.) interact with multiple and complex factors of exclusion, which must be considered during the criminal process and weighed as a determining factor in assessing the severity of the acts. See: UN Women/UN Human Rights, *Latin American Model Protocol for the Investigation of Violent Deaths of Women Because of Gender — Femicide/Feminicide*, p. 43, paras. 120 et seq.; available at: <https://iac.unwomen.org/sites/default/files/Field%20Office%20Americas/Documentos/Publicaciones/LatinAmericanProtocolForInvestigationOfFemicide.pdf>

51. Di Corleto, Julieta, and Piqué, María, "Guidelines for the Collection and Assessment of Evidence from a Gender Perspective," in *Gender and Criminal Law: Tribute to Prof. Wolfgang Schone*, Instituto Pacífico, Lima, 2017, p. 425.



The intersectionality approach makes it possible to understand that there are factors that may increase the level of vulnerability to sexual violence crimes (such as age, sexual orientation, gender identity, poverty, social roles, disabilities, belonging to Indigenous communities, migration status or conditions of human mobility, affiliation with political, religious, or national groups, stigmatized forms of work, etc.).⁵² The incorporation of these approaches allows for:

- Understanding that sexual violence crimes can affect victims in diverse ways.
- Employing strategies to prioritize and properly investigate sexual violence, and to appropriately classify the criminal conduct.
- Producing evidence and upholding a contextual evaluation of the evidence that considers the importance of strengthening the victim's testimony by highlighting factors that may have influenced their inability to give valid consent.
- Adopting the necessary measures to prevent the aggravation of victims' vulnerabilities or

52. According to the previously mentioned Santiago Guidelines, "persons who, due to their personal characteristics or other concurrent factors, face special difficulties in addressing the consequences of the crime or in fully exercising their rights before the justice system, shall be considered to be in special conditions of vulnerability," p.22.

to avoid these factors becoming genuine obstacles due to discrimination and/or exclusion, which could affect their participation in the investigation or trial.

4.3. Independence, impartiality, official duty, timeliness, seriousness, and thoroughness of the investigation

The State's duty of due diligence entails a series of obligations that, in investigations of sexual violence cases, acquire particular significance for the justice system. Among these are the following:

4.3.1) The obligation of independence

The involvement of members of the armed forces or security forces (such as police officers, military police, the army, penitentiary services, among others) in sexual violence crimes may call into question the independence of the justice system. Therefore, it is crucial to ensure that the criminal process proceeds without any restrictions or undue influence, both in judicial actions⁵³ and in the investigation.

This requires, first and foremost, the exclusion of military justice involvement since, as has been established, “the sexual violation of a person by military personnel is in no case related to military discipline or mission and must be excluded from the jurisdiction of the military courts.”⁵⁴

Additionally, prosecutors must consider the possibility that the perpetrators themselves may take actions to contaminate or alter evidence. In this regard, the duty of due diligence requires excluding from the investigation any bodies that may have been involved in the events, at the earliest opportunity when indications of their participation arise. If the acts were committed by members of a security force, that force must be removed from the investigation, and another agency designated to carry it out.

4.3.2) The obligation of impartiality

In cases of sexual violence, the duty of impartiality implies, among other general considerations, the requirement that judicial proceedings must not be influenced by prejudices or stereotypical notions about female and male sexuality.⁵⁵ The IACtHR emphasizes that the use of stereotypes by judicial

53. UN, “Basic Principles on the Independence of the Judiciary”, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan from August 26 to September 6, 1985, and endorsed by the General Assembly in resolutions 40/32 of November 29, 1985, and 40/146 of December 13, 1985. Available at <https://www.ohchr.org/es/instruments-mechanisms/instruments/basic-principles-independence-judiciary>. See also UN, “Guidelines on the Role of Prosecutors” Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba, from August 27 to September 7, 1990, UN Doc. A/CONF.144/28/Rev.1, p. 189 (1990), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/guidelines-role-prosecutors>

54. IACtHR emphasized the incompatibility of the American Convention with the intervention of military jurisdiction in cases involving human rights violations, specifically in cases of sexual violence. It noted that such incompatibility does not only concern the act of trial by a court but fundamentally the investigation itself, since the investigation constitutes the initiation and the necessary basis for the subsequent involvement of an incompetent tribunal. IACtHR, *Fernández Ortega and Others v. Mexico*, previously cited, para. 177

55. CEDAW Committee, *Karen Tayag Vertido v. Philippines*.

authorities in their rulings may constitute an indication of a lack of impartiality.⁵⁶

Many judicial investigations into sexual violence are often influenced by preexisting prejudices related to sexuality and discrimination against women and LGBTIQ+ individuals. These biases can lead to disbelief in the accounts of those affected by such crimes, denial of the occurrence or criminal character of the reported acts, or even justification of the conduct. In all areas of the law, **discriminatory stereotypes**⁵⁷ undermine the impartiality and integrity of the justice system, which in turn can result in a denial of justice, including the **revictimization** of individuals who have already suffered violence.⁵⁸

Misguided perceptions, false beliefs, and biases about the victim, the circumstances surrounding sexual violence, and the perpetrator often prevent prosecutors from recognizing the existence and seriousness of these crimes and from carrying out an effective and efficient investigation capable of proving their essential elements. Below are some of the effects of applying **gender-based or other discriminatory stereotypes** in the administration of justice:

- Holding the victim responsible for the acts (based on their clothing, occupation, sexual behavior, etc.)⁵⁹ or justifying the actions of the perpetrator.
- Subjecting the victim or individuals acting as witnesses to revictimizing treatment.
- Assuming that no sexual violence occurred because of an intimate relationship or kinship with the perpetrator.⁶⁰
- Justifying the refusal to accept the report, its dismissal, or the interruption of the investigation by alleging that the victim is lying, has mental health issues, or making other similar claims.
- Hindering or distorting the proper collection of evidence and conducting a partial or incomplete investigation.
- Assessing the credibility of an individual (victim, perpetrator, or witness) based on preconceived notions about how they should have acted before, during, or after the sexual assault (such as lack of physical resistance, delayed reporting, among others)⁶¹, or based on certain characteristics of the victim (e.g., their sexual orientation, gender identity, ethnic

56. IACtHR, *Azul Rojas Marín and Another v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment of March 12, 2020, para. 196.

57. The assignment of stereotypes is the process of attributing characteristics or roles to a person based on their perceived membership in a particular group, to the detriment of their individual abilities, traits, and circumstances. In the case of women, socially devalued roles exacerbate a climate of impunity regarding violations of their rights (see Rebecca J. and Cusak, Simone, *Gender Stereotypes: Transnational Legal Perspectives*, University of Pennsylvania Press, 2009, Introduction).

58. CEDAW Committee, *General Recommendation No. 33 on Women's Access to Justice*, CEDAW/C/GC/33, August 3, 2015, para. 26.

59. IACtHR, *Veliz Franco and Others v. Guatemala*, previously cited, para. 202.

60. ACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.LV/II. Doc. 68, 2007, available at: <https://www.cidh.org/women/Access07/chap1.htm>. See also IACtHR, *Angulo Losada v. Bolivia*, previously cited, paras. 164-165.

61. CEDAW Committee, *Karen Tayag Vertido v. Philippines*, previously cited, para. 8.5.

background, way of life, stigmatized occupations, etc.).

- Justifying or pathologizing the actions of men by referring to the sexuality of the victim or the perpetrator.⁶²

Duty of the prosecutor in charge of the investigation to prevent the use of stereotypes:

The use of gender stereotypes by officials and authorities within the justice system during judicial proceedings violates the State's obligation to adopt a gender perspective in investigations and criminal processes.⁶³ The prosecutorial team must be able to recognize these stereotypes and address them when they arise (for example, during the investigation, presentation of evidence, or trial). In particular, they must:

- Ensure that the report is received without interference from discriminatory stereotypes.
- Prevent the use of the victim's personal attributes, history, or background to question the occurrence of the reported sexual violence.
- Prevent interrogations of victims and witnesses that are influenced by gender stereotypes.
- Reject the use of measures or evidentiary procedures, such as expert assessments, that are based on stereotypes (for example, those intended to prove psychological incapacity, dishonesty, or a tendency to fabricate, etc.).
- Ensure the proper collection of relevant evidence free from gender-based and other discriminatory stereotypes.
- Ensure that the dismissal of the report or the interruption of the investigation is not influenced by such stereotypes.
- Direct investigative resources toward establishing the facts reported, rather than on assessing the credibility of the victim.

62. The CEDAW Committee, in the cited case *Karen Tayag Vertido v. Philippines*, para. 8.6, stated with respect to male sexuality that: "There are other false ideas in the Tribunal's decision, which contains several references to stereotypes about male and female sexuality that support the credibility of the alleged perpetrator more than that of the victim. In this regard, the Committee is concerned by the magistrate's conclusion that it is unbelievable that a man in his sixties could reach ejaculation while the author was resisting the sexual assault. Other factors considered in the ruling, such as the weight given to the fact that the author and the accused knew each other, also constitute examples of falsehoods and gender prejudices."

63. IACTHR, *Angulo Losada v. Bolivia*, previously cited, para. 163.

4.3.3) The obligation to investigate ex officio

Although this obligation must be understood in accordance with the exercise of criminal prosecution applicable in each State (in some, crimes involving sexual violence are subject to private prosecution, while in others they are subject to public prosecution), it is important to identify a series of obligations that prosecutors have when investigating sexual violence:

- » In especially serious cases (for example, when the victim is under 18 years of age or is in a particularly vulnerable situation; when there are multiple victims; in cases involving complex issues; etc.), prosecutorial actions must intensify efforts based on international commitments or local laws for the protection of victims.
- » The source of the report can never be an obstacle to initiating the investigation.
- » Even when the victim decides not to initiate legal action (in countries where legislation allows this), measures must be taken to preserve the evidence until the process is resumed. In such cases, it is important to ensure that the victim makes this decision freely, fully aware of their rights, the timelines of the proceedings, and the options available in the investigation, and that their decision is not made under coercion or threat.

4.3.4) The obligation to initiate an investigation in a timely manner

In cases of sexual violence, this means that the investigation must:

- » Be initiated immediately to ensure the collection and preservation of evidence that may be crucial for determining accountability.
- » Be proactive, meaning that it must be assumed by the State as its own legal obligation, not merely as a formality destined to be ineffective from the outset.⁶⁴
- » Be conducted within a reasonable timeframe, as evident inactivity in the investigation of such crimes may constitute a violation of the principle of due diligence and may lead the victim to withdraw from participating in the process.

64. Center for Justice and International Law (CEJIL), *Due Diligence in the Investigation of Serious Human Rights Violations*, Buenos Aires, Argentina, CEJIL, 2010, p. 24, available at: <https://www.corteidh.or.cr/tablas/r25129.pdf>

Delays also have detrimental effects on the evidence itself, especially on the testimonies of the victim and witnesses, as their accounts may be affected over time.

4.3.5) The obligation to conduct a serious and thorough investigation

The IACtHR considers that the protection of the fundamental rights enshrined in the American Convention requires investigations to be thorough, that is, conducted using all available legal means and aimed at determining the truth and pursuing, apprehending, prosecuting, and eventually punishing all those directly and indirectly responsible for the acts.⁶⁵

Due diligence in the investigation of a sexual violence crime involves, among other things, gathering evidence thoroughly, seriously, and impartially, with special emphasis on the context in which the events occurred. This inquiry into the contextual aspects will allow for a broad range of evidence to be considered, strengthen the evidentiary framework, and reinforce the account of the complainant.⁶⁶

4.3.6) Comprehensive investigation and broad scope of evidence

The broad scope of evidence applied to cases of sexual violence

The principle of broad or free evaluation of evidence implies that the parties have the possibility to introduce into the proceedings any lawful evidence that is relevant to support their claim.

In cases of sexual violence, this principle encourages the collection and analysis of evidence through a gender- and intersectionality-informed approach, taking into account the specific ways in which these acts occur. In this regard, in many of the contexts previously mentioned, it is common for the crime to be committed in private spaces with no direct witnesses other than the victim.⁶⁷

The investigation may require the search, identification, and documentation of evidence and means of proof (such as forensic medical evidence, criminalistics, testimonial evidence, documentary evidence, expert reports, etc.) to verify the existence of the crime. Given the complexity of certain cases, it is necessary to consider the context and scenarios, circumstances, modus operandi (methods of executing the crime), possible manifestations of violence prior to, during, and after the incident, investigations into threats of violence, characteristics of both the victim and the perpetrator, testimonies from the victim's close environment or from individuals who had contact with the victim and/or their account close in time to the events, as well as statements from police personnel, etc.

65. CEJIL, *Due Diligence in the Investigation of Serious Human Rights Violations*, previously cited, p. 32.

66. See, among other, ECtHR, *M.C. v. Bulgaria*, previously cited; and IACHR *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, December 2011, para. 97.

67. On the scope of evidence in these and other gender-based crimes, see: Julieta Di Corleto, "Equality and Difference in the Evaluation of Evidence: Evidentiary Standards in Cases of Gender-Based Violence", in Julieta Di Corleto (ed.), *Gender and Criminal Justice*, Didot Publishing, Buenos Aires, 2017.

While in cases of sexual violence the victim's testimony constitutes fundamental evidence, since many of these crimes lack direct proof⁶⁸, the reconstruction of what occurred based on indirect testimonies and other evidence contributes to fulfilling the duty of due diligence. This does not imply flexibility in evidentiary standards; rather, it promotes expanding and diversifying the search for evidentiary elements to strengthen the investigation of the crime beyond the victim's statement. Therefore, the prosecution should not invoke evidentiary difficulties to dismiss cases but should instead take all necessary measures to conduct a thorough investigation that includes a comprehensive evaluation of all available evidence.

Not all sexual violence crimes are proven in the same way. The possibility of relying on evidence beyond the victim's testimony (or even without their account) increases the likelihood of success, reduces the risk of retaliation by the accused, and prevents placing the entire burden of proof on the victim. On many occasions, due to the consequences of these crimes, victims may be unwilling to testify or, having testified, may choose to withdraw from the process to avoid further contact with an event that caused them severe psychological harm.

The design of the investigation through a methodological plan with a gender and intersectional approach will guide the investigation and evidence collection and subsequently support the prosecution's case in the oral trial. The traditional questions of who, to whom, when, where, and how that guide the construction of any case theory must be framed with a gender perspective to develop factual, evidentiary, and legal frameworks that highlight the characteristic elements of these crimes.

4.4. Rights of the victim

Public Prosecutors' Offices have a special duty to provide support, assistance, and protection to individuals who have suffered sexual violence, in accordance with the relevant international standards.⁶⁹ This includes, in particular, the need for prosecutorial actions to adopt a gender- and intersectional-based approach, recognizing the victim as a rights holder.

This entails implementing a comprehensive system of care and procedural treatment based on a multidisciplinary mechanism for assessment and support, which enables the early identification of victims' needs, establishes the foundation for communication with the prosecution, and prevents secondary victimization or re-victimization.⁷⁰

Applying an approach that considers the provisions and rights related to the victim in cases of sexual violence specifically entails:

68. Rosendo Cantú and Others v. Mexico, previously cited, para. 89; Fernández Ortega and Others v. Mexico, previously cited, para. 100.

69. See, in particular, AIAMP, Santiago Guidelines, previously cited.

70. AIAMP, Santiago Guidelines, previously cited, p. 5.

- 1) **Understanding the impacts, reactions, and differential needs** that victims of sexual violence may have in response to traumatic events.
- 2) **Acting with sensitivity and professionalism toward victims**, as well as respecting their dignity, diversity, and individual identity traits.
- 3) **Ensuring that victims have access to the appropriate channels and resources of comprehensive care**, including timely medical, health, and psychological attention according to their specific needs (always with their informed consent). In applicable cases, **urgent transfer** to a healthcare facility should be arranged for the administration of comprehensive and preventive medical treatment and/or for the collection and preservation of forensic evidence.
- 4) **Providing appropriate protection to the victim** throughout the criminal proceedings, based on their needs and the characteristics of the crime. The phenomenon of gender-based violence presents a set of circumstances that require not only the effective investigation of the offense already committed, but also the prevention of further attacks against the victim or those close to them. For this reason, in urgent or high-risk cases, security measures must be implemented to guarantee the protection of the victim's physical and psychological integrity, as well as that of those close to them, before, during, and after the proceedings. These measures should be reviewed periodically, as the levels and types of risk may change throughout the judicial process.⁷¹
- 5) **Considering the potential re-victimizing effect** of the criminal process and adopting measures to reduce it:
 - a. Optimize the investigative process to minimize the need for the victim to repeat their testimony, fully aware that doing so may cause additional difficulties when restating their account.
 - b. Prevent contact between the victim and the perpetrator during criminal proceedings.⁷²
 - c. Be aware of the possible reactions the victim may have in response to the trauma.
 - d. Ensure that the victim's participation in the process takes place under the most suitable environmental and psychological conditions, promoting, when necessary and possible, that they are assisted or accompanied by professionals.⁷³ When resources are available

71. See: UFEM, *Protocol for the Investigation and Litigation of Sexual Violence Cases*, previously cited, p. 105; and Santiago Guidelines, previously cited, art. 18 "Right to Security" and art. 28, 3.d.

72. Santiago Guidelines, previously cited, art. 18, 2.b.

73. Santiago Guidelines, previously cited, art. 28, 3.b.

and the victim needs and requests it, offer the possibility of psychological therapy for their well-being and to strengthen their statements.

6) **Keep victims informed.**⁷⁴ The victim's right to information includes being informed of their status as a rights-holder in the criminal process. Specifically, this entails being informed, at a minimum, of:

- a. Their status as a victim, the rights and duties that this entails, and how to exercise them.
- b. The scope of their involvement and participation in the process.
- c. Their right to access justice by filing a report and the procedural status this entails.
- d. Their right to operate within a framework of security and the protection measures that can be adopted if the relevant circumstances apply.
- e. The framework of care and support to which they may have access, if the conditions are met.
- f. Their right to effective reparation for the harm caused and the ways to pursue it.
- g. The role of the Public Prosecutor's Office in the process, and its function in ensuring the enforcement of victims' rights, as well as any role that may correspond to other actors or institutions for these purposes.
- h. Their right to the protection of their personal data and how to enforce that right.

Likewise, the Public Prosecutor's Office will ensure that all decisions affecting the care, procedural treatment, and protection of the victim, as well as the execution of custodial sentences, are properly notified to it—especially those that grant the release of the perpetrator and may therefore pose a risk to the victim.⁷⁵

74. Santiago Guidelines, previously cited, art. 16.

75. Santiago Guidelines, previously cited, art. 28, 3.f.

- 7) **Ensure that victims can effectively participate in criminal proceedings.**⁷⁶ This includes, at a minimum:
- a. The right to be heard and to participate in the investigation phase, providing evidence and reporting on the consequences of the crime, in a manner respectful of their dignity and privacy.
 - b. Throughout all procedural phases, victims have the right to be informed about the progress of the proceedings, access their case file, as well as judicial information and rulings, and, in general, everything related to the protection of their safety and interests.
 - c. They have the right to be heard before judicial decisions that may affect their rights are made, among others.
- 8) **Protect the privacy of victims** and prevent the disclosure of any information that could lead to their identification.
- 9) **Promote the right to comprehensive reparation.**⁷⁷ The duty to repair victims of human rights violations has been recognized in various instruments and statements from international organizations. While these are principles of international human rights law, their criteria can be useful in domestic judicial processes.

Regarding women who have experienced sexual violence, there are legal provisions that establish the State's duty to ensure the necessary judicial and administrative mechanisms, and to provide access to fair and effective compensation, reparation for harm, or other forms of redress (arts. 4.d of the Declaration on the Elimination of Violence against Women and 7.g of the Belém do Pará Convention). These mechanisms of compensation include not only restitution and monetary compensation, but also other forms of redress such as measures of satisfaction and guarantees of non-repetition.

Reparation measures must be evaluated by the courts based on the specific needs of each case and the situation of individuals affected by incidents of sexual violence. Regional human rights

76. Santiago Guidelines, previously cited, art. 17.

77. See UFEM, *Protocol for the Investigation and Litigation of Sexual Violence Cases*, previously cited, pp. 106–109.

courts—particularly the IACtHR⁷⁸—have developed a transformative approach to adequately address human rights violations, especially when responding to high levels of violence rooted in structural discrimination.⁷⁹

The right to full reparation includes, among other things, the following:

- a. Access to justice** and the development of a judicial investigation within a reasonable time frame, in a manner that respects the victim's rights to be heard and to a serious and impartial investigation.
- b. The implementation of differentiated measures** that address the specific harms caused by sexual violence to affected individuals, contributing to the reconstruction of their life projects from both psychosocial and economic perspectives.
- c. Measures within public institutions and the justice system** to ensure the protection of the victim, safeguarding their integrity, dignity, and identity, and preventing secondary victimization.
- d. The guarantee of enjoyment of the basic rights** of the person who has experienced sexual violence, as well as their family members, including access to treatment for the prevention of sexually transmitted infections, care for physical and emotional trauma, and special protection measures to ensure their safety, privacy, and confidentiality.

78. See IACtHR, *Campo Algodonero v. Mexico, Velásquez Paiz et al. v. Guatemala, and Véliz Franco et al. v. Guatemala*, among others. In the *Campo Algodonero* case, the IACtHR made significant progress on this issue by adopting the concept of reparations with a gender perspective and a transformative approach (paras. 450–451). As part of the reparations ordered, the Court mandated specific measures to ensure access to justice for the victims' families. Specifically, it ordered a criminal investigation aimed at identifying and prosecuting those responsible for the disappearances, to be carried out from a gender-based perspective (para. 455). The decision also established reparation measures that go beyond financial compensation. Under the concept of guarantees of non-repetition, the IACtHR ordered the standardization of all protocols, manuals, forensic services, and justice administration tools used in the investigation of disappearances, sexual violence, and homicides, in accordance with the Istanbul Protocol. It also mandated the implementation of programs for the search and location of missing women, the creation of databases containing personal and genetic information, and the training of judicial officials in gender sensitive approaches.

79. Full reparation, as defined by the IACtHR may include restitution, compensation, rehabilitation, measures of satisfaction, and guarantees of non-repetition.

02

**GUIDELINES FOR THE INVESTIGATION
AND LITIGATION OF SEXUAL
VIOLENCE CASES**

5. GUIDELINES FOR DEFINING THE INVESTIGATION PLAN

5.1. What is the investigation plan?

The investigation program or plan is a methodological tool that allows one to “organize and explain the investigation to identify and secure the cognitive means, material evidence, and physical proof necessary to demonstrate, beyond a reasonable doubt, the occurrence of a criminal act.”⁸⁰ It serves as a tool to plan the investigative and litigation work of prosecutorial teams, as well as the investigative measures that must be assigned to other agencies or requested from the judicial authority, efficiently, while ensuring a gender perspective throughout the entire process. Furthermore, the investigation plan should be modified or updated based on progress made during the investigation.⁸¹

Some key concepts for defining the investigation plan or program were already developed in the earlier chapters:

80. UN, *Model Protocol on Femicide/Feminicide*, previously cited, pp. 58–59.

81. It is important to consider the feasibility of establishing a deadline for the preparation of the investigation plan, counted from the moment the incident becomes known, to ensure that the investigation is conducted promptly and properly from the initial proceedings.

1. Sexual violence is an act with a sexual connotation that is committed without the free, voluntary and current consent of the victim

2. Sexual violence constitutes a form of gender-based violence and discrimination and must be investigated as such.

3. Anyone can be a victim of sexual violence, regardless of their gender, sexual orientation, age, physical appearance, profession or other factors.

4. Sexual violence can occur anywhere, including in the victim's own home, the workplace, school, a detention center,

8. The absence of physical resistance by the victim may be due to various factors and should not be interpreted as an indication of consent.

7. Many cases of sexual violence are committed by people known to the victim, including family members, partners, and trusted individuals.

6. Sexual violence does not necessarily involve sexual gratification on the part of the perpetrator.

5. Sexual violence can occur even without physical contact between the victim and the perpetrator.

9. Sexual violence, including rape does not necessarily cause physical injuries. The absence of physical marks does not mean that sexual violence did not occur.

10. In cases of sexual violence, forensic evidence is often limited or nonexistent, especially after the first 72 hours.

11. Sexual violence often has short-term, medium-term, or long-term effects on the physical, psychological, and/or social health of victims.

12. The investigation of sexual violence cases must be approached broadly (principle of freedom of evidence), considering the context in which the incident occurred, and not be limited solely to the victim's testimony.

15. Cases of sexual violence may be linked to other crimes (e.g., femicide/feminicide, domestic violence, illicit trafficking) and may involve the actions of multiple individuals working together.

14. Inaccuracies in the account should not be interpreted as an indication of a lack of credibility.

13. delayed report should not be interpreted as an indication of a lack of credibility.

5.2. Objectives of the investigation plan

The primary objective of the investigation plan is to demonstrate the three components of the case theory: factual, legal, and evidentiary.

5.2.1) The factual component

This dimension of the investigation plan seeks to establish the factual basis of the case to determine the act subject to prosecution. In **Chapter 4.3.6**, it was established that designing the investigation through a methodological plan with a gender and intersectional approach will guide the investigation and evidence production and subsequently inform the indictment that the prosecution will present at trial. The traditional questions of who, to whom, when, where, and how—which guide the construction of any case theory—must be formulated with a gender and intersectional perspective to achieve litigation that highlights the characteristic elements of these crimes.⁸²

To this end, the investigation should aim to gather as much factual information as possible regarding the following circumstances:

- **Perpetrator (Who?)** Among other factors, it is useful to include:
 - the number of perpetrators or individuals involved in the incident;
 - age, gender identity, family and employment status, etc.;
 - the existence and nature of any relationship with the victim (family, social, work, intimate/sexual, hierarchical—actual or symbolic—exploitation of vulnerability or discrimination, dependency, etc.);
 - current or previous membership in the armed or security forces;
 - status as a current or former public official;
 - whether they belong or have belonged to a criminal or organized crime group;
 - any prior history of gender-based violence against the same or other victims;
 - behavior before and after the act of sexual violence;
 - presence of any discriminatory element in the conduct toward the victim.

- **Victim (Who?)** Information should be gathered about the victim, including:
 - age, personal, family, employment, and health status, etc.;
 - intersectionality variables (sexual orientation, gender identity, gender expression, and/or non-normative sexual characteristics; age; ethnicity; disability, poverty, rural

82. UFEM. Sexual Violence Protocol, previously cited, pp. 49–50.

residence, membership in Indigenous communities, situations of special vulnerability, etc.)

This information must never be used to hold the victim responsible for what happened, nor to attribute the sexual assault to aspects related to their private or sexual life, behavior, clothing, lifestyle, or similar factors.

- **Circumstances and manner of the commission of the crime (How?)**
 - description of the perpetrator’s behavior (if there was physical contact; if objects or body parts were used, and with which part of the victim’s body; if penetration occurred, what was used, and through which route—anal, vaginal, oral, etc.);
 - any verbal or gestural resistance expressed by the victim;
 - the use of force, physical violence, threats, exploitation of a coercive situation, or abuse of a power relationship;
 - situations created or exploited by the perpetrator that allowed them to commit the assault without resorting to explicit violence or intimidation;
 - methods used to diminish or override the victim’s consent, subdue them, or undermine their autonomy;
 - exploitation of the victim’s inability to react to the attack (level of consciousness, chemical submission, etc.);
 - any discriminatory component in the acts against the victim;
 - use of electronic or digital means before, during, or after the sexual violence involving communications between the victim and the perpetrator (text messages, calls, etc.).

- **Timing of the criminal act (When?)** Gathering information about the background of the crime is crucial to understanding not only the context of the violence (including prior incidents) but also the development of the crime itself and the events that followed. In this regard, the following should be considered:
 - the moment or time frame when the acts of sexual violence occurred, including their start and end points;
 - whether the violence was recurring or extended over a period of time;
 - the regularity of the acts and whether they took place within an ongoing or occasional relationship;
 - the specific circumstances or moment in which the incident occurred;
 - any previous or subsequent incidents of other forms of gender-based violence.
 - Place where the criminal act occurred (Where?)
 - specify if the act took place in a public or private space, an institutional setting (e.g., health center, workplace, educational institution, church, etc.), a virtual environment,

- or another type of location;
- indicate if the location was familiar or unfamiliar to the victim;
- describe the conditions of the setting (indoors or outdoors; weather and lighting; nighttime or daytime; urban or isolated area; presence of security cameras, etc.).

The development of the investigation plan must be based on a factual hypothesis that is as complete as possible, since this will determine the design of a broader investigation that includes the timely and thorough securing and collection of necessary evidence. The investigative strategy outlined in the methodological program may begin with the formulation of several criminal hypotheses regarding the commission of the sexual violence, which must be either confirmed or ruled out as evidence is progressively gathered.⁸³

In cases of sexual violence, the factual hypothesis must record all events that may have legal implications.

To do so, it is important to gather, as precisely as possible, information about the circumstances in which the act was perpetrated and the manner in which it was carried out (such as the use of force, physical violence, threats, exploitation of a coercive situation, or abuse of a power relationship, etc.), provided this does not lead to the revictimization of the person who suffered the crime. This should be done with consideration for the specific characteristics of the testimonies of victims of this type of crime (as will be discussed in **Chapter 7**).

The proper and timely formulation of this dimension through complete factual propositions is essential for defining the legal and evidentiary components, and for constructing a criminal charge. In turn, the factual hypothesis must include contextual elements and intersectional variables present in the incident. To achieve this, precise and relational information must be incorporated regarding some of these aspects, allowing for an understanding of the victim, the perpetrator(s), and any available information about the relationship between them; the circumstances that enabled or facilitated the acts; the elements or objects used; among others.⁸⁴

5.2.2) The legal component

The second aspect to consider when formulating the investigation plan is related to the legal qualification of the facts. This component allows for the development of a hypothesis regarding the legal framework of the events under investigation within the possible criminal laws applicable to the case, to demonstrate that the conduct attributed may constitute a crime.

Interpretations of legislation on sexual violence should not be influenced by gender stereotypes or

83. Office of the Attorney General of Colombia, *Protocol for the Investigation of Sexual Violence: Guide of Best Practices and Guidelines for the Criminal Investigation and Prosecution of Sexual Violence Crimes*, June 2018, p. 23.

84. Office of the Attorney General of Colombia, *Protocol for the Investigation of Sexual Violence*, previously cited, p. 28.

myths about male and female sexuality.

This component of the case theory requires evaluating the following elements:

- the basic criminal offense,
- any aggravating circumstances that may apply,
- other criminal offenses that could be considered in conjunction with the primary legal classification,
- the criminal liability and mode of participation of the perpetrator(s), as well as the identification of the degree of involvement of any other individuals.⁸⁵

Additionally, the legal dimension requires prosecutors to ensure that all aspects related to the determination of criminal elements are addressed, including objective and subjective elements of the offense, unlawfulness, culpability, and any grounds for excluding criminal liability.

In cases involving specific or special offenses, or those that require a particular condition in the victim, the investigation plan must also take that element into account.

In the area of sexual violence offenses, standards established by the universal and Inter-American human rights systems require that the elements of the legal definition be interpreted with a focus on the absence of consent, as this is essential to ensuring that women who are victims of such crimes have access to justice. This interpretation does not require proof of physical resistance or an explicit refusal by the victim⁸⁶ (see **Chapter 3.2**).

In particular, it is important to consider whether there is a power imbalance between the perpetrator and the victim in the case, such as may occur in institutional, workplace, or educational settings, or through economic deprivation, among others, when evaluating consent⁸⁷ and factors such as “(a) the use of force or the threat of force; (b) coercion or fear of violence or its consequences; (c) intimidation; (d) detention and/or deprivation of liberty; (e) psychological oppression; (f) abuse of power; (g) the victim’s inability to understand the dynamics of sexual violence.”⁸⁸

In this regard, when formulating the legal strategy, prosecutors must consider that **consent cannot be**

85. When assessing the degree of perpetration and criminal participation, it is important to consider that crimes of sexual violence are not offenses that require personal commission by the perpetrator (i.e., they are not limited to the person who directly carries out the act). Therefore, others whose roles and contributions were decisive in the commission of the offense may also be held criminally responsible.

86. IACtHR, *Angulo Losada v. Bolivia*, previously cited, paras. 145 et seq.

87. *Ibid.*, para. 146, citing the MESECVI Expert Committee, General Recommendation No. 3, previously cited, p. 10.

88. *Ibid.*, para. 147.

inferred⁸⁹ “(i) when force, the threat of force, coercion, or the exploitation of a coercive environment has diminished the victim’s ability to give voluntary and free consent; (ii) when the victim is unable to give free consent; (iii) when consent is inferred from the victim’s silence or lack of resistance to the sexual violence; and (iv) when there is a power imbalance that compels the victim to submit to the act out of fear of its consequences, taking advantage of a coercive environment.” Instead, **consent must be “given expressly, freely, and in advance of the act, and it must be revocable.”**⁹⁰

Application of aggravating and additional circumstances

Regarding the application of aggravating and additional circumstances, the prosecution team must consider the grounds for aggravation, as well as any factors that may increase or decrease criminal liability, ensuring that they are reflected in the sentence or properly considered, in accordance with the applicable legislation in each country:⁹¹

- the severity and the scope of the offence;
- prior incidents of violence by the perpetrator and disobedience of judicial restraining orders or orders prohibiting contact;
- the characteristics, circumstances, and development of the alleged act (for example, the use or threat of using a weapon, the presence of a minor, the involvement of multiple individuals, the dissemination of the act via social media);
- the victim’s particular vulnerabilities (such as pregnancy, age, immigration status, illness, confinement, etc.);
- the conditions of the perpetrator(s) (for example, abuse of authority);
- the premeditation of the offense;
- the motive behind the act (for example, as a form of retaliation, repression, silencing, or “correction” based on sexual orientation or gender identity);
- the consequences of the sexual violence, and the impact of the offense on the victim and their family or their community.

89. For a detailed explanation, see Chapter 3.3 on “Elements of Consent.”

90. IACTHR, *Angulo Losada v. Bolivia*, previously cited, paras. 148 and 149.

91. Depending on the legislation of each country, the prosecution team may request the application of accessory or additional penalties alongside imprisonment. For example, some countries provide for: supervised release to be served after imprisonment; deprivation of parental authority, guardianship, curatorship, custody, or foster care rights; or disqualification from holding public employment or office.

The use of estupro

On the other hand, the use of mitigating legal factors such as “*estupro*” must be approached with extreme caution, as it may conceal a case of rape due to an improper interpretation of the element of “consent.”⁹² According to different legal systems, this criminal offense penalizes sexual intercourse⁹³ obtained through some form of deceit, seduction, exploitation of a minor anomaly or even temporary disturbance of the victim, a relationship of dependence or employment, the victim’s extreme vulnerability, sexual inexperience or ignorance, or the abuse of a position of superiority, trust, hierarchy, or authority. These terms are often undefined in the law, and the penalties imposed are usually significantly lower than those for rape, resulting in inadequate protection for adolescents⁹⁴, a situation that is incompatible with the Belém do Pará Convention and the Convention on the Rights of the Child.

In a case of this type, the application of the criminal offense should address the following:

- 1) The determination of the protected legal interest harmed by the criminal conduct—that is, sexual freedom, integrity, autonomy, and/or development—over other interests such as moral integrity, honor, or decency, which tend to obscure the gravity, violence, and impact of the conduct;
- 2) The examination of the elements of consent, particularly whether the victim was free to give consent outside a coercive environment or an unequal power or authority relationship with the perpetrator (see **Chapter 3**).

Sexual violence as torture

According to consistent jurisprudence from international and regional human rights protection bodies, gender-based violence, particularly sexual violence, can constitute torture or cruel, inhuman, or

92. The United Nations Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, has called for “the provisions relating to estupro (a form of statutory rape involving deception or abuse of authority) [be] abolished”, April 19, 2021, previously cited report, para. 85(d). The offense of estupro exists in several countries to penalize sexual relations between adults and adolescents who are above the legal age of consent but still minors. Generally, the age range is between 14 and 18 years (Andorra, Bolivia, Brazil, Chile, Ecuador, Honduras, Panama, Peru, and Portugal), with some exceptions: in Argentina, it is 13 to 16 years; in El Salvador and Mexico, 15 to 18 years; in Spain, 16 to 18 years; in Guatemala, 12 to 14 years; and in Nicaragua and Paraguay, 14 to 16 years.

93. For the purposes of this document, the term should be understood as synonymous with penetration. The phrase “sexual intercourse” is used because it appears in the penal codes of several AIAMP countries.

94. The Special Rapporteur on violence against women warned that “the existence of a lesser offense for adolescents contributes to the impunity of perpetrators, as data indicate that rapists tend to be charged with the lesser offense rather than rape, if they are prosecuted at all,” *idem*, para. 84. See, in general, the Inter-American Court of Human Rights cases *Angulo vs. Bolivia* (previously cited) and *Guzmán Albarracín v. Ecuador*, IACtHR (Merits, Reparations, and Costs, Judgment of June 24, 2020, available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_405_ing.pdf

degrading treatment under certain circumstances.⁹⁵ According to the CEDAW Committee, violations of health or sexual and reproductive rights (such as forced sterilization, forced abortion, etc.) may also fall within this category.⁹⁶

Within this framework, even when the facts do not meet the specific legal definition, applying its conceptual framework can be a valuable tool for addressing complex investigations where the repetition of acts, victim characteristics, or number of perpetrators justify adopting a more comprehensive perspective of the case.

5.2.3) The evidentiary component

The third dimension of the investigation plan refers to the evidentiary aspect of the case, which involves identifying the necessary evidence to support the established factual and legal theory.

In most cases, in addition to the victim's statement, there are other direct, indirect, circumstantial, or contextual pieces of evidence that help establish what happened.



95. See in particular CEDAW General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19, CEDAW/GC/35, 2017, para. 16; IACTHR, Case of Women Victims of Sexual Torture in Atenco v. Mexico, previously cited, para. 193; Case of Espinoza González v. Peru, previously cited, para. 195; Case of Rodríguez Vera and others (Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations and Costs, Judgment of November 14, 2014; Case of Miguel Castro Castro Prison v. Peru. Preliminary Objection, Merits, Reparations and Costs, Judgment of November 25, 2006, paras. 311 and 312; Committee Against Torture, A. v. Bosnia and Herzegovina, CAT/C/67/D/854/2017 (September 11, 2019); European Court of Human Rights, Case of Aydın v. Turkey, Application No. 23178/94, Judgment of September 25, 1997.

96. Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19, CEDAW/GC/35 (2017), paras. 16 and 18.

It is also necessary to assess the appropriate timing for presenting the evidence, whether during the preliminary investigation (including as pretrial evidence) or during the oral trial. In addition, special care must be taken to ensure proper preservation when dealing with evidence that may deteriorate or be lost (e.g., biological evidence from the perpetrator(s) on the victim's body or clothing; digital information; evidence from the crime scene; etc.).

The IACtHR has been emphatic about the requirements of criminal investigations into sexual violence, particularly regarding the victim's statement and the need to ensure access to legal, medical, health, and psychological assistance (see Chapters 6, 7, and 8 for more detail). With respect to the development of the investigation, specific State obligations have been established, including the immediate performance of comprehensive medical and psychological examinations by qualified and trained personnel; proper documentation and coordination of investigative actions; and the diligent handling of evidence. These obligations include the collection of sufficient samples, conducting tests to determine possible authorship of the act, securing other forms of evidence such as the victim's clothing, the prompt investigation of the crime scene, and maintaining a proper chain of custody.⁹⁷

a. comprehensive approach to the investigation and the principle of non-revictimization

The duty of due diligence in the investigation of a sexual violence crime involves, among other things, the obligation to carry out a comprehensive investigation, incorporating into the process all lawful evidence that is pertinent and relevant (principle of broad evidentiary scope), that has probative value, and that causes the least possible harm to the victim.⁹⁸ The evidence must be gathered efficiently, thoroughly, and in a timely, serious, and impartial manner. Similarly, the investigative strategy must consider potential arguments raised by the defense and pursue investigative actions that allow those arguments to be effectively countered.

The investigation must avoid actions that delay the process and/or cause harm to the victims. It must acknowledge their rights, the principle of non-revictimization, and the reparative purpose of the criminal process for the victim. It is essential to remember that the burden of evidence collection must never fall on the victim of sexual violence. For this reason, careful consideration must be given to the necessity, appropriateness, and relevance of each investigative act that requires the victim's participation.⁹⁹

The modality of the reported sexual violence (whether it involves penetration or not; involves physical contact or not; occurs through digital means; constitutes sexual exploitation; etc.), as well as whether it is accompanied by other forms of gender-based violence, can influence the strategy for determining what type of evidence can be presented and which cannot—or, where applicable, what type of evidence

97. See, among others, IACtHR, *Case of Women Victims of Sexual Torture in Atenco v. Mexico*, previously cited, para. 272.

98. For example, the victim's prior or subsequent sexual behavior is not relevant.

99. Office of the Attorney General of Colombia, *Protocol for the Investigation of Sexual Violence*, previously cited, p. 56.

may be used instead (see **Chapter 8.6**).

The physical and emotional state of the affected person, as well as other conditions or states that could affect their immediate or delayed availability and participation in the investigation, must be considered when defining the investigation plan. If possible, psychological support should be provided, and special measures, guarantees, and reasonable adjustments¹⁰⁰ must be ensured throughout the judicial process.

b. The time elapsed between the commission of the crime and its awareness by the competent authorities

The design of this aspect of the investigation plan must also include consideration of other characteristics that the case may present, which warrant special actions and strategies from the beginning of the investigation. In some cases, this may be relevant, for example, in selecting appropriate evidence measures and ensuring the collection and safeguarding of gathered evidence (biological, digital, etc.).

Among these characteristics, the prosecution must verify the time elapsed between the commission of the crime and its awareness by the competent authorities.

In general terms, three types of cases can be distinguished based on the timing of the report,¹⁰¹ whose particularities must be considered when designing the evidentiary dimension of the investigation plan.

Urgent cases	Recent cases	Long-standing cases
Sexual violence incidents reported to police, prosecutorial, or judicial authorities within the first 72 hours after they occurred.	Sexual violence incidents reported between 72 hours and 7 days after the crime occurred.	Incidents reported after their occurrence (weeks, months or years later).

100. These are the necessary and appropriate modifications and adaptations that do not impose a disproportionate or undue burden, when required in a particular case, to ensure that persons with disabilities enjoy or exercise all human rights and fundamental freedoms on an equal basis with others. UN. Convention on the Rights of Persons with Disabilities, previously cited, Art. 2. Definitions.

101. UFEM. *Protocol on Sexual Violence*, previously cited.

Many pieces of evidence, especially biological evidence, may deteriorate or be lost over time. This requires a prompt evaluation by the prosecution team to distinguish between necessary and timely evidence-gathering measures and those that can no longer be performed due to technical reasons or because they would subject the victim to a purely re-victimizing procedure. Additionally, in urgent or recent cases, the execution of certain evidence-gathering measures, particularly medical forensic examinations, should be arranged so that the victim, who will likely also receive medical care, is not subjected to repeated medical examinations.

5.3. Analysis of the contexts of sexual violence

As with all crimes involving gender-based violence, the design of the investigation plan in cases of sexual violence requires the development of a case theory with a gender and intersectional approach to establish the factual, evidentiary, and legal frameworks that highlight the characteristic elements of these criminal phenomena.

To achieve this goal, the investigation plan must use contextual analysis as an essential methodological tool¹⁰² to deepen and address the questions of who, to whom, when, where, and how. Contexts are spaces or environments that foster situations of sexual violence, facilitate them, or in which, due to various factors, they occur regularly. Understanding these contexts allows for considering the reprehensible behaviors as expressions of structural violence and analyzing the possible absence of valid consent, discarding notions that justify them as “deviations,” “pathologies,” or exceptional acts.

Contextual investigation is a particularly useful tool when the report is made long after the incident occurred or when biological or violence-related evidence is not available. It helps reveal coercive circumstances, environments of pressure or manipulation, power asymmetries, or roles of obedience used to commit a sexual act, even when force or violence is not involved. It is also valuable for strengthening, completing, or corroborating the victim’s testimony, especially when faced with two conflicting versions of what happened (e.g., the victim’s version vs. the perpetrator’s version) or when there is limited additional direct evidence.¹⁰³ Additionally, it provides the investigative team with the necessary tools to properly guide victim care, protection, participation in criminal proceedings, and access to appropriate reparations.

The interpretation of the different contexts must also include an **intersectional analysis** that allows for incorporating how various forms of discrimination (based on gender, economic status, ethnicity, culture, age, migration status or human mobility, engagement in stigmatized forms of work, among others) interact with multiple and complex factors of exclusion (see Chapter 4.2).

102. The contexts developed below are an adaptation of the contents in the UFEM *Sexual Violence Protocol*, previously cited, pp. 32-48.

103. ECtHR, judgment in *M.C. v. Bulgaria*, Application No. 39272/98, para. 177.

The description of contexts cannot be considered exhaustive and must be supplemented by considering the specific conditions of the victims. For example, LGBTIQ+ individuals who are deprived of their liberty face higher risks of sexual violence, acts of violence, and discrimination at the hands of prison, police, or security personnel, as well as other detainees.¹⁰⁴ Transgender women and travesti¹⁰⁵s in particular, are exposed to specific forms of violence, sexual abuse, sexual exploitation, discriminatory and humiliating practices, harassment, assaults, more severe physical mistreatment, and degrading treatment during personal searches, among other abuses.¹⁰⁶

In the case of girls, adolescents, and women with disabilities, they may face specific forms of rights restrictions, such as the denial of legal capacity, the coercive imposition of treatments, and forced institutionalization. In these situations, women report, among other things, being forcibly undressed by male staff against their will or being administered psychiatric medication without consent, medication that may impair their ability to recall an incident of violence. Additionally, being in a controlled environment severely limits their access to reporting channels.¹⁰⁷

Finally, it should be clarified that the contexts described, as conceptual tools for investigation, do not necessarily align with the criminal offenses defined in the region's legal frameworks, nor do they intend to cover all possible forms and modalities in which sexual violence may occur.

In this regard, and in a non-exhaustive manner, some contexts in which acts of sexual violence are commonly committed are identified below:

Intrafamilial context: When there is a blood or affinity relationship (legal or de facto) between the victim and the perpetrator, sexual violence often takes place within a dynamic that is chronic and repeated, and may occur during childhood, adolescence, or adulthood.

People affected by sexual crimes in this context often remain silent out of fear, guilt, helplessness, or shame; from fear of not being heard or believed; due to family values or dynamics; or because they feel they are protecting their mother or younger sisters, among other reasons. They often feel complicit, powerless, humiliated, and stigmatized. The environment can also contribute to normalizing

104. IACHR, *Violence Against LGBTI Persons*, previously cited, para. 148. On the right of individuals not to be subjected to torture or to cruel, inhuman, or degrading punishment or treatment on grounds related to sexual orientation or gender identity; International Commission of Jurists (ICJ), *The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*, March 2007, Principle 10: The right of everyone to be free from torture and cruel, inhuman, and degrading treatment or punishment.

105. Translator's Note: We decided to use the term "travesti" and make a distinction between this and "trans people" as it is used in Latin America and encompasses other nuances. Paraphrasing *travesti* Argentine writer Camila Sosa Villada, the word carries a different history of struggle —with patriarchy, medical regimes, the church, the police. Often used pejoratively, the recuperation of the term "*travesti*" is contested. "For Villada, insisting on it is a way of turning aside at least one of two layers of colonial imposition; there's that of English onto Latin American culture, before which there was that of Spanish colonizers on Indigenous gendered forms" (In LIBER, Volume 1, Issue 2, May/June 2022, Blood and Lipstick: Bad Girls, by Camila Sosa Villada, available in: <https://www.liberreview.com/issue-1-2-blood-and-lipstick/>).

106. UFEM, *Protocol for the Investigation and Litigation of Sexual Violence Cases*, previously cited, p. 39.

107. MESECVI Committee of Experts. General Recommendation No. 4, *Gender-Based Violence Against Girls and Women with Disabilities*, 2022, p. 7, para. 14, available at: <https://www.oas.org/es/mesecvi/docs/General-Recommendation-Violence-Disabilities.pdf>

the violence, preventing the victim from recognizing it as such.

In the case of victims with disabilities, this limitation is often exploited by the perpetrator, making it essential to highlight this circumstance, their role as caregiver, and the absence of others who could assist the victim.

The report of the crime may be delayed due to various strategies used by the perpetrator, such as threats or psychological and/or physical violence against the victim, aimed at manipulating trust and dependency through the exercise of their role and a relationship of control, which is further exacerbated when the abuse is against children and adolescents.

Context of trust-based relationships or social circles: Sexual violence also occurs between individuals who share a pre-existing relationship of trust, such as a friendship, neighborhood connection, or participation in shared spaces. These may include cultural, social, and educational settings¹⁰⁸, including artistic, athletic, professional, or vocational training at various levels, as well as political, union, sports, and religious environments (such as churches, temples, and other places of worship).

These relationships are marked by a certain closeness to the perpetrator, which facilitates the commission of one or more acts of sexual violence. Within these dynamics, special attention should be given to the relationship with a leader, role model, idol, or influencer, who is often attributed with exceptional authority and social legitimacy.

The leader builds an asymmetrical relationship based on symbolic power over their followers, which generates admiration, idealization, and a desire to please or satisfy them. In doing so, they create submission through manipulation, taking advantage of age or social inequalities, situations of vulnerability, or the individual's need to belong to a specific group or community. Reporting the abuse may be delayed, as doing so often means breaking ties with the group perceived as a source of belonging and exposing humiliating behaviors experienced by its members.

Context of intimate, romantic, or casual relationships: Sexual violence within marital, dating, or other intimate relationships may occur as part of a cycle involving various forms of prior or concurrent violence (physical, psychological, verbal, or economic), which may or may not have been previously identified or reported. The violence, sexual or otherwise, may not initially be recognized as such by

the affected person, as it may have been normalized.

It also includes intimate relationships between people who do not have a prior bond but engage in an

108. In the case of *Guzmán Albarracín and Others v. Ecuador*, the IACtHR ruled on sexual violence committed against a girl in an educational context. IACtHR, *Guzmán Albarracín and Others v. Ecuador*, previously cited.

agreed-upon situation of intimacy, within which sexual violence may occur.

Moreover, in this context, there are multiple factors, such as fear of repercussions, economic or emotional dependence, family or community pressures, protection of children, and the absence or inaccessibility of support networks or institutions, that can delay or prevent the reporting of sexual violence.

The investigation of these incidents also reveals a series of obstacles, both evidentiary (since they often occur in private settings) and related to stereotypes within the justice system, as they are frequently normalized or even dismissed because they occur within intimate or romantic relationships.

Digital environment: Gender-based violence in digital environments occurs through acts that are committed, instigated, or aggravated, in whole or in part, by the use of information and communication technologies (ICT), including mobile phones, the Internet, social media platforms, digital pornography networks, email, GPS, geolocation data, or any other means of data transmission.

Sexual violence in digital environments can include various acts, such as the creation, publication, or unauthorized dissemination of images, videos, and/or recordings of a person with sexual content without their consent (the victim may have consented to their creation but not to their distribution beyond the intimate relationship), also known as “doxing”; being forced to receive such content (e.g., unsolicited pornography); sexual extortion (used to threaten, condition access to benefits or services, or exploit sexually); harassment; stalking; threats of rape; sexual objectification (through the use of sexual photographs or explicit descriptions of a person’s body and sexual organs); and the live streaming of sexual assaults and rape via social media, any digital or virtual medium, or chat services.¹⁰⁹

The use of artificial intelligence platforms enables the generation, manipulation, and dissemination of sexual material, acts that may constitute sexual violence (for example, using a person’s image to make them appear naked or engaged in a sexual interaction). This includes the creation of texts, messages, audio recordings, or videos. Perpetrators often use the dark web to produce this content, ensuring greater anonymity.

This violence can begin online and continue in non-digital environments (or vice versa). It can be perpetrated by an individual or a group of individuals, who may or may not know the victim. It often

109. For a glossary of terms related to gender-based violence in digital environments, see for example: OAS, *Online gender-based violence against women and girls : Practical self-protection handbook: digital security tools and response strategies*, OAS/Ser.D/XXV.25, 2021, available at: <https://www.oas.org/en/sms/cicte/docs/Guide-basic-concepts-Online-gender-based-violence-against-women-and-girls.pdf> ; UN Women/OAS MESECVI, *Cyberviolence and Cyberharassment Against Women and Girls within the Framework of the Belém do Pará Convention*, Spotlight Initiative, 2022, available at: <https://lac.unwomen.org/es/digital-library/publications/2022/04/ciberviolencia-y-ciberacoso-contra-las-mujeres-y-ninas-en-el-marco-de-la-convencion-belem-do-para>; European Institute for Gender Equality, *Cyber Violence against Women and Girls: Key Terms and Concepts, 20 October 2022*, available online: https://eige.europa.eu/publications-resources/publications/cyber-violence-against-women-and-girls-key-terms-and-concepts?language_content_entity=en

causes psychological, social, and financial harm, as well as long-term physical health damage to the victims.

Workplace context: In the workplace, various acts of sexual violence can occur, with the most common being sexual harassment or abuse. Sexual harassment has been identified as a violation of the fundamental rights of workers and constitutes a workplace health and safety issue, as well as an unacceptable labor situation.¹¹⁰

Sexual harassment can manifest through behaviors or comments with sexual connotations that are not consented to by the person receiving them. It can occur through demands for sexual services, where the acceptance or rejection of such demands determines a favorable or detrimental situation for the harassed person (blackmail). It can also take the form of a hostile work environment, which includes obscene jokes, lewd looks, inappropriate comments (e.g., about a woman's clothing or physical appearance), inappropriate proposals, pornography displays, etc.

All these behaviors create an intimidating, adverse, or humiliating work environment. Hierarchical relationships (not only due to job position but also other factors, such as working in highly masculinized spaces) facilitate such situations and cause the person to believe that refusing or reporting the harassment could lead to problems at work, affect their hiring, promotion, or even job stability. However, sexual violence in the workplace can occur regardless of hierarchical position. It can happen between peers and may even be perpetrated by individuals in lower-ranking roles.

It also includes informal labor relations that may involve situations of exploitation or domestic servitude, shaped by conditions of intersectionality such as ethnicity, age, among others.

Medical/healthcare context: Sexual violence in this context takes place within an unequal power relationship between healthcare personnel (including mental health professionals) and individuals who use the healthcare system. This occurs within a medical model characterized by the application of technologies, procedures, and medications based on specialized knowledge or "authorized" expertise that is often unintelligible to those upon whom it is practiced. These professional practices are grounded in the authority of scientific knowledge, reinforcing in the collective imagination the dependency of those in need of care, and negatively impacting individuals' autonomy regarding their health.¹¹¹

It is this authorized knowledge, together with the abuse of the authority granted to healthcare personnel, such as doctors or nurses, that creates the conditions for sexual violence to occur through deception,

110. CEDAW, *General Recommendation No. 19*, available at: In June 2019, the International Labour Organization (ILO) adopted the *Convention on Violence and Harassment* (No. 190) and the accompanying Recommendation (No. 206), available at: https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEX_PUB:12100:0::NO::P12100_INSTRUMENT_ID:3999810#-:text=This%20Convention%20protects%20workers%20and,employment%20has%20been%20terminated%2C%20volunteers%2C

111. Velázquez, S. *Everyday Violence, Gender-Based Violence: Listening, Understanding, Helping*. Buenos Aires: Paidós; 2003.

manipulation, or taking advantage of the patient's lack of understanding about the procedures being carried out. In this context, abusive practices may occur, such as improper, irregular, and invasive examinations that are not aligned with the reason for the medical consultation; sexual abuse while the patient is unconscious due to the administration of anesthesia or medication; unjustified exposure of the patient's naked body; suggestive comments about the body; inappropriate physical contact (such as brushing, groping, or caressing); excessive interest in the patient's sexual life; and offensive, inappropriate, or humiliating sexual jokes and comments, among others.

These situations can generate fear, discomfort, confusion, a sense of vulnerability, and even a delayed recognition of what was experienced, leading to a state of shock and/or distress some time after the incident occurred. It is common for the affected person to experience paralysis or a lack of reaction due to not knowing whether the medical intervention performed by the perpetrator was appropriate.

Other therapies or "non-traditional" forms of medicine are also included, such as massages or other practices performed on the body.

Mental health institutional context: Individuals hospitalized in mental health institutions (public or private) are particularly vulnerable to situations of sexual violence due to the difficulty of reporting, the disbelief of their testimony, and the opaque nature of their confinement conditions.

The detection and investigation of incidents may be hindered by the absence of protection mechanisms for victims and witnesses, the lack of oversight over facilities and treatments, the discrediting of the individual's testimony due to their mental health condition, and the difficulties in reconstructing events based on the accounts of victims and witnesses with psychological impairments, among other factors.

Context of deprivation of liberty and detention: Individuals deprived of their liberty may be exposed to various forms of sexual violence, exacerbated by their condition of confinement, whether during legal, illegal, or arbitrary detentions. Such situations can occur in any state facility designated for the incarceration of individuals (including penitentiary units, police stations, security force facilities, juvenile detention centers, etc.) or even during transfers. The use of sexual violence by law enforcement during the repression of social protests has also been reported in several countries across the region.

Sexual violence against those visiting their detained relatives is also included, especially violence committed during searches upon entry to penitentiary centers; as well as violence that children and adolescents may suffer in residential homes, shelters, or refuge centers.¹¹²

The exacerbated power of custody personnel over detained individuals and/or the lack of supervision and protection of these individuals from potential aggressors (including other detainees), compounded

by limited possibilities for defense or escape from dangerous situations, as well as difficulties in reporting, create conditions conducive to the occurrence of these acts. While sexual violence may be used as a form of torture during interrogations or as punishment, it should not be exclusively subsumed under this category.

Context of organized or complex crime: Within “organized criminal groups” (for example, those linked to trafficking and sexual exploitation, drug trafficking, or extortion), episodes of sexual violence may be detected, either facilitating the development of illicit activities or arising from internal power dynamics among their members. Sexual violence can also proliferate in illegal economies or markets with lower levels of organization.

Criminal groups organize themselves through the distribution of roles and hierarchical distinctions among their members. This structure can give rise to practices aimed at the subjugation of certain “subordinate” individuals, which may involve victims being subjected to degrading and/or punitive actions ranging from monetary withholding or fines to the use of physical or sexual violence. Sexual violence can also be part of initiation rites or means of advancement within the hierarchical ranks of criminal groups.

The violence can vary in intensity, systematization, and complexity, sometimes exacerbated by access to weapons.

In general, sexual violence in this context functions as an exercise of domination that leverages socially established gender norms to express, demonstrate, or exert superiority —whether by the perpetrator individually or by the group to which they belong, over the victim, the population, or an enemy group. The presence of witnesses (family members, neighbors, etc.) may be linked to the aggressors’ objectives, such as humiliating members of enemy groups, enforcing social control, or making an example.

A complex criminal structure generally involves the commission of multiple offenses.

Understanding the connections between acts of sexual violence and other forms of violence used by such structures allows for an accurate characterization of the dynamics and patterns involved in the execution of these crimes.

Context of international crimes: crimes against humanity, genocide, war crimes.¹¹³ Sexual violence

113. For further information on prosecutorial tools in these cases, see: *Specialized Meeting of Public Prosecutor's Offices of Mercosur (REMPM), Guidelines for Public Prosecutor's Offices on the Criminal Investigation of Cases of Sexual Violence Committed in the Context of International Crimes, in Particular Crimes Against Humanity*, 2015, available at: <https://www.mpf.gob.ar/lesa/files/2021/10/Gu%C3%ADa-Violencia-sexual.pdf> See also: ICC, *Rules of Procedure and Evidence*, Rules 70 and 71, previously cited.

crimes have been documented worldwide throughout various historical periods.¹¹⁴ This reflects that the objectification, torture, and sexual instrumentalization of the bodies of detained or persecuted individuals is a frequent practice that intensifies and takes on particular characteristics and severity when committed in the context of international crimes.¹¹⁵

Sexual violence must be recognized and made visible as such, paying attention to its specific nature.¹¹⁶ Furthermore, it has been acknowledged that sexual violence can also constitute torture.¹¹⁷

Sexual violence can constitute acts identified as international crimes, meaning they are sanctioned as such under international law. According to these norms, depending on the context in which it occurs, sexual violence may constitute:

- **Crimes against humanity**, when committed as part of a widespread or systematic attack against the civilian population;
- **War crimes**, when they occur in the context of, or are associated with, an armed conflict (whether international or non-international in character);
- **Acts of genocide**, when they are part of a plan to annihilate a particular group of people.

The Rome Statute of the International Criminal Court recognizes sexual violence as a component of crimes against humanity, war crimes, or genocide (Articles 6, 7, and 8). Articles 7 and 8 specifically refer to acts of rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence of comparable gravity.

Additionally, testimonies reveal practices such as forced nudity, humiliating positions and treatment, various forms of sexual abuse, forced abortions, specific forms of torture inflicted on sexual organs (which may result in the loss of reproductive capacity), violations of privacy during the fulfillment of physiological needs and hygiene practices, and other similar acts.

114. For further discussion on sexual and gender-based violence in International Humanitarian Law, International Criminal Law, and International Human Rights Law, see: Sellers, Patricia V., *Prosecutions of Sexual Violence in Conflict: The Importance of Human Rights as a Tool of Interpretation*, 2007; Fusca, Daiana, *Justice and Gender: Sexual Violence as Crimes Against Humanity* (Master's thesis), National University of Lanús, Buenos Aires, Argentina, 2022, pp. 72 ff. Available at: http://www.repositoriojmr.unla.edu.ar/download/Tesis/MDDHH/Fusca_D_Justicia_2021.pdf

115. For further information on prosecutorial tools in these cases, see: Specialized Meeting of Public Prosecutor's Offices of Mercosur (REMPM), *Guidelines for Public Prosecutor's Offices on the Criminal Investigation of Cases of Sexual Violence Committed in the Context of International Crimes, in Particular Crimes Against Humanity*, previously cited. See also: International Criminal Court, Rules of Procedure and Evidence, Rules 70 and 71, previously cited.

116. IACtHR, *Massacre of Las Dos Erres v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 24, 2009. In that case, the Court found that although the State had conducted certain investigations related to the massacre, they were neither complete nor thorough, as they addressed only violations of the right to life and not other acts of violence specifically committed against the women in the population, such as sexual violence. The failure to acknowledge sexual violence constitutes a breach of the State's heightened duty of due diligence, which requires a comprehensive and exhaustive investigation of the facts.

117. See cases: ICTR, *Prosecutor v. Akayesu*, previously cited. In the same vein, the International Criminal Tribunal for the former Yugoslavia (ICTY) issued convictions for rape as a form of torture in the cases of *Prosecutor v. Delali et al.*, Case No. IT-96-21 (1998), and *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-T (1998). The IACtHR affirmed in the case of *Miguel Castro Castro Prison v. Peru* (previously cited) that "the acts of sexual violence to which a female detainee was subjected, under the guise of a so-called digital vaginal 'inspection' (...) constituted sexual violence which, due to its effects, amounts to torture." On this subject, see also the Istanbul Protocol (previously cited), and the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2017), published by the Office of the United Nations High Commissioner for Human Rights (OHCHR), available at: <https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf>

In such contexts, violence against girls and women, as well as LGBTIQ+ individuals, may be part of power dynamics aimed at gaining or consolidating control and territorial dominance. It may also serve as a means of coercion, retaliation, or undermining the enemy's resistance.

Context of human mobility: At various stages of the migration process, women and LGBTIQ+ individuals often face additional situations of violence and discrimination specifically based on their gender, which include, among others, a higher risk of being victims of different forms of sexual violence, such as harassment, rape, and human trafficking for purposes of sexual exploitation.

This situation has a differentiated and, in many cases, exacerbated impact on victims of forced displacement or irregular migrants. Their irregular or precarious status increases their exposure to human rights violations by both authorities and private individuals. Added to this is their reluctance to report these abuses for fear of being detained or even expelled and returned to their country of origin.

The progressive tightening of migration policies worldwide has impacted the human rights situation of people in contexts of human mobility. The proliferation of measures such as the externalization of migration control, the securitization of borders, and the criminalization of irregular migrants, among others, affects the exercise of rights by the migrant population.¹¹⁸

Context of indigenous communities: Indigenous women and girls face multiple forms of violence, often rendered invisible or even normalized through the false narrative that frames violent acts—such as sexual abuse—as part of ancestral cultural customs. The dangerous invocation of “culture”¹¹⁹ to explain and justify sexual violence—committed both by men within the community and by outsiders—perpetuates sexist practices without social or judicial sanction, violating the fundamental rights of Indigenous women and girls.

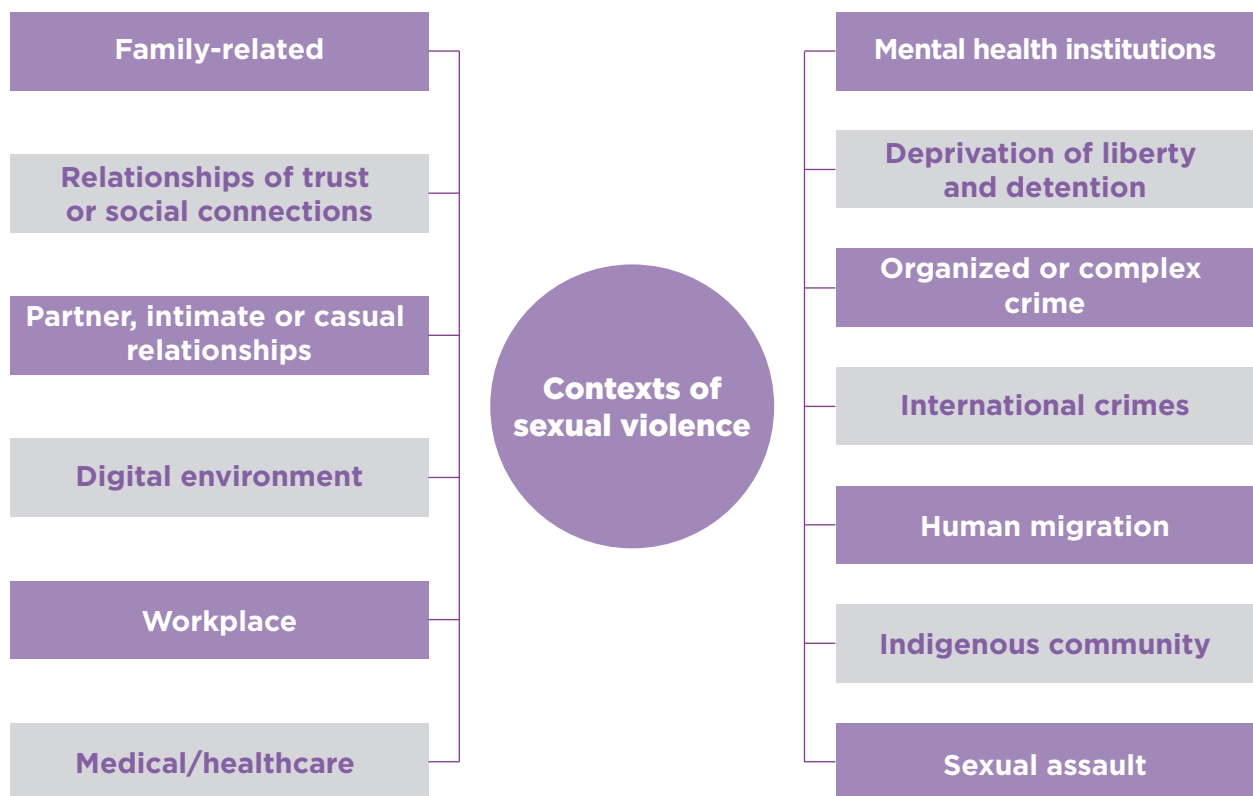
Given this reality, it must be acknowledged that many women from Indigenous communities remain silent out of fear of community rejection, as they are often blamed for the incident.¹²⁰ Likewise, Indigenous women face greater obstacles to accessing justice due to linguistic, geographic, economic, and institutional barriers, among others, circumstances that require a differentiated approach from the prosecutorial team.

118. In this context, various international bodies, particularly the IACHR, have expressed concern regarding the serious situation faced by migrant women in Latin America, who have been recognized as a particularly at-risk group. Accordingly, the Commission urges States to adopt administrative and judicial measures aimed at ensuring the effective protection of this population, duly incorporating human rights and gender perspectives. For further reference, see, among others: IACHR, Human Mobility and Protection Obligations: Towards a Subregional Perspective, 2023, Chapter IV C, available at https://www.oas.org/es/cidh/informes/pdfs/2023/Informe_Movilidad_Humana.pdf; “Human Mobility: Inter-American Standards (2015), Chapters I A and B, available at: <https://www.oas.org/en/iachr/reports/pdfs/humanmobility.pdf> and CEDAW, General Recommendation No. 38 (2020) on *Trafficking in Women and Girls in the Context of Global Migration*, available at: <https://docs.un.org/en/CEDAW/C/GC/38>

119. In these cases, culture is often conceived as essential and therefore unchangeable, “as a coherent system of ideas, meanings, and values shared by the entire group, a conception that has been and continues to be criticized within anthropology. A cultural essentialism that leaves no room for internal dissent and serves the interests of those who hold power within the communities.” Tarducci Mónica, “Abuses, Lies, and Video: Regarding the Wichi Girl,” *Bulletin of Anthropology and Education*, vol. 4, no. 5, University of Buenos Aires, Faculty of Philosophy and Letters, Institute of Anthropological Sciences, Social Anthropology Section, 2013.

120. IACHR, Report No. 53/01, Case 11.565 Ana, Beatriz, and Cecilia González Pérez. Mexico, 2001, para. 95, available at: <https://cidh.oas.org/annualrep/99eng/Admissible/Mexico11565.htm>

Sexual assault (perpetrator(s) unknown to the victim): It includes sexual violence that occurs in public spaces (public thoroughfares) where the victim and the perpetrator have no prior relationship. In such cases, the perpetrator takes advantage of the victim's surprise and inability to defend themselves or call for help. Investigations in these cases tend to be more complex due to the unknown identity of the offender. In this context, incidents with similar characteristics may occur repeatedly over time in specific locations, which can help guide the investigation toward identifying a serial offender.



6. INVESTIGATION OF SEXUAL VIOLENCE CASES: EVIDENCE-GATHERING MEASURES AND VICTIM-RELATED PROVISIONS

6.1. First steps based on knowledge of the facts

From the moment the criminal offense becomes known, the investigative team must collect and preserve all available evidence. Since in these cases the victim's participation is essential to establishing and proving the facts, the prosecution team must be guided by principles of action that safeguard the rights of individuals who have experienced sexual violence (see **Chapter 4.4**).

In addition to a direct report from the victim, the prosecution may become aware of the act through other sources, such as healthcare institutions, police, child protection agencies, educational institutions, or other official entities. Information may also come from the media, family members, or anonymous sources, Indigenous authorities, civil society organizations, and others.

In such cases, it is necessary for the judicial police or investigative team to:

- verify that the information received is complete;
- analyze the information to identify any reported offenses and determine whether to open a criminal investigation or refer the case to an existing investigation;
- establish contact with the professionals or individuals who have intervened or made the report to avoid repeated interviews that could re-traumatize the victim;
- make efforts to identify the victim;
- maintain communication with the relevant authority or agency to obtain additional information about the case.¹²¹

The initial actions are essential both for ensuring comprehensive care for the victim and for collecting information that will be used throughout the investigation. Therefore, in addition to developing the methodological investigation plan (see **Chapter 5**), it is recommended that the following be assessed during these early steps:

- comprehensive medical care;
- protection measures;

121. Office of the Attorney General of Colombia, *Protocol for the Investigation of Sexual Violence*, previously cited, p. 39 et seq.

- whether the victim is in a condition to provide a statement, and, if so, the taking of that statement;
- the relevance of implementing urgent evidentiary measures, to:
 - ensure the preservation of evidence or carry out investigative actions that cannot be delayed;
 - rule out unnecessary measures (due to the passage of time, to avoid re-traumatization, etc.) and replace them with more appropriate alternatives.

The implementation of these initial medical, protective¹²² and investigative measures depends largely on the time elapsed between the commission of the crime and its reporting to the competent authorities, as well as on the type of violence involved and the condition of the victim (see Chapter 5.2). In consideration of these factors, the measures may be classified as follows:

Urgent cases: incidents brought to the attention of police or judicial authorities within the first 72 hours after their commission.	Recent cases: incidents reported between 72 hours and 7 days after the offense was committed.	Long-standing cases: incidents reported a significant time after their occurrence (months or even years later).
<p>Immediate medical and preventive care for the victim</p> <p>Forensic medical examination Collection and preservation of genetic evidence or trace material.</p> <p>Risk assessment and implementation of protection mechanisms</p> <p>Victim's statement</p> <p>Other necessary evidentiary measures</p>	<p>Medical and preventive care for the victim</p> <p>Assessment of the presence of genetic evidence or trace material to be collected and the appropriateness of a forensic medical examination</p> <p>Risk assessment and implementation of protection measures</p> <p>Victim's statement</p> <p>Other necessary evidentiary measures</p>	<p>Assessment of the necessary medical and healthcare services</p> <p>Victim's statement</p> <p>Other necessary evidentiary measures</p>

122. Protection measures must be evaluated according to the context in which the incident occurred. For example, in a workplace or educational setting, the alleged perpetrator should be removed from their place of work or study to prevent further contact with the victim. In cases involving the family environment or intimate partner relationships, the alleged perpetrator should be excluded from the shared residence, provided that implementing this measure does not pose an additional risk to the victim (for example, if notifying the perpetrator of the measure would alert them to the existence of an investigation against them and could enable them to evade justice).

If the victim reports an incident of sexual violence within 72 hours of its occurrence, they must be informed about the importance of preserving evidence from the assault. Therefore:

- * If there was physical contact with the alleged perpetrator, the victim should avoid washing their body (including genital, anal, oral, and dental hygiene);
- * Clothing worn at the time of the assault should be preserved in paper bags or envelopes (not plastic);
- * The victim should not alter or delete any digital or documentary information that may be relevant to the investigation.

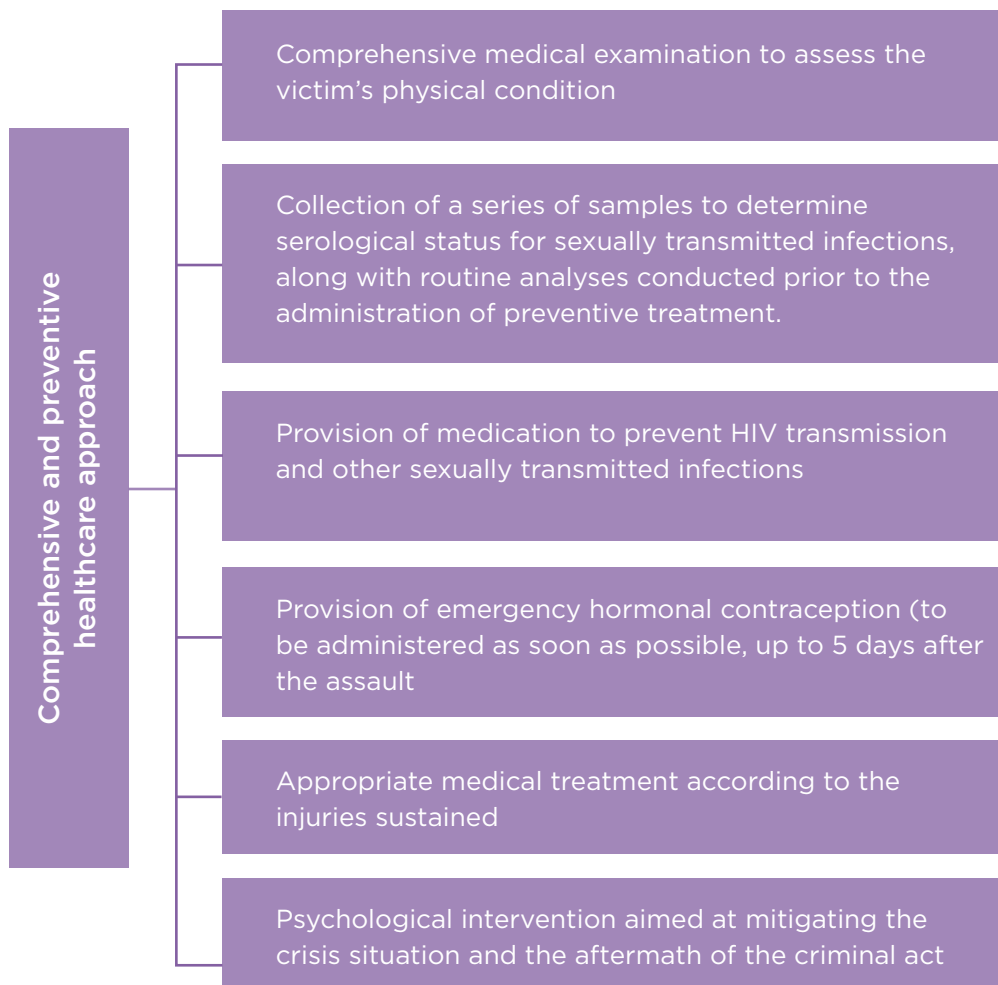
6.1.1) Comprehensive medical care

The care guidelines set out in this section must be interpreted in accordance with the protocols and directives issued by the health authorities of each jurisdiction, where applicable. Upon notification of an incident of sexual violence, it must be ensured that the victim receives comprehensive and preventive medical care from qualified and trained personnel,¹²³ in accordance with the type of case.

Urgent cases involving sexual penetration and/or physical injuries

The victim must be immediately transported to a hospital or health center to receive medical care, which shall include:

123. See IACTHR, Fernández Ortega Case. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010, para. 194.



Recent cases

After the first 72 hours following the occurrence of the sexual violence incident, the victim's care in the healthcare system may be scheduled in advance, unless the victim has bodily and/or genital injuries that still require urgent treatment.

Long-term cases

In cases reported long after the incident, referral to the healthcare sector may also be appropriate for the treatment of sexually transmitted infections or other consequences of the violent acts that require medical care and/or psychological or psychiatric treatment.

In all cases, it is essential that medical personnel thoroughly document all findings, as the medical record holds legal value and the information contained therein may be presented as evidence during trial. It is especially important that the initial care be accompanied by comprehensive and detailed

medical records that can serve as supporting evidence should a report be filed.

The Pan American Health Organization has stated on this matter that, “In some settings, for example, emergency care services, the priority is to provide as much care as possible during the first contact in case the woman does not return. Follow-up support should be offered, and safe and accessible means for follow-up consultations should be negotiated.”¹²⁴

Medical intervention must carefully balance the victim's medical and psychological care needs with the collection of information and evidence for criminal investigation, while avoiding actions that may lead to re-victimization by the various disciplines involved (clinical and forensic medicine). In countries where it is permitted, if the victim is pregnant as a result of the assault, the medical team must inform them of their right to access a safe voluntary termination of pregnancy.

6.1.2) Forensic medical examination

In cases of sexual violence, the investigative team must ensure an appropriate physical and psychological examination of the victim, as well as the collection, preservation, and analysis of physical or biological traces that may be found on the victim's body or clothing. If this is not possible (for example, if the victim is not in a condition to undergo the examination), forensic medical personnel may focus on priority tests (such as collecting urine or semen samples). **The forensic medical examination should be conducted concurrently with the provision of medical care to the victim.** This approach helps avoid repeated examinations and/or waiting times for the victim. The examination must be performed following best practices and utilizing the latest available technology.

The forensic medical assessment must be carried out by specialized personnel trained in gender issues and prepared for this type of case, to avoid compromising the quality of the evidence, unnecessary repetition of examinations, or the performance of invasive or inappropriate procedures. By its very nature, this examination is often intrusive, time-consuming, and traumatic for the victim. In cases involving women with disabilities, all interactions with forensic medical personnel or medical centers must ensure the presence of specialized staff to facilitate appropriate communication. Those involved must ensure that the examination does not become a re-traumatizing experience.

Therefore, before subjecting the victim to a forensic medical assessment, the prosecutorial team must consider the following points.

124. Pan American Health Organization (PAHO), *Summary: Response to Intimate Partner Violence and Sexual Violence against Women*. WHO Guidelines for Clinical Practice and Policy. Washington, DC: PAHO, 2014, p. 6. Available at: <https://iris.who.int/server/api/core/bitstreams/7685869e-cd94-4a24-acaa-4245f89482b7/content>

- **The forensic medical assessment of the victim can be important but is only useful in certain circumstances and does not constitute the sole source of evidence in cases of sexual violence offenses.**¹²⁵ Together with medical personnel, the necessity and relevance of such an examination must be evaluated for investigative purposes in each case, according to its characteristics (type of assault, time elapsed between the incident and the report, etc.).

When the sexual violence is not recent, or it is certain that the assault involved no physical contact, an assessment should be made to determine if there are samples to collect or injuries to document. In such cases, the value of a genito-anal physical examination is limited or nonexistent, and when this is the case, the examination should not be performed. Depending on the type of assault, the forensic medical analysis may reveal other useful information, such as the long-term effects of the violence (e.g., fistulas), scars, and other marks.

- **The forensic medical assessment can only be conducted with the free and informed consent of the victim** (or their representatives, if the victim is unable to provide consent). The victim must be given a detailed, clear explanation in an understandable language about every aspect of the examination or treatment to be performed. Refusal to consent to the examinations cannot be used to discredit the victim's testimony or to impede the investigation of the incident.¹²⁶

In cases of intoxication (chemical or alcoholic) that prevent the victim from giving consent, the possibility of waiting until the victim can provide consent and participate in the examination should be evaluated, while balancing the need to preserve evidence. It is important that, prior to the examination, forensic medical personnel ensure the victim receives complete information about the process, their participation, and the details of the procedure to prevent feelings of fear or distress. The information provided should include:

- › the purpose and process of the intervention;
- › how their involvement will support the process;
- › the individuals who will be present during the intervention;
- › an estimate of how long the participation will last; and

125. Office of the Attorney General of Colombia, *Protocol for the Investigation of Sexual Violence*, cited above, para. 170.

126. The IACtHR has established that “the request to conduct a gynecological examination must be thoroughly justified, and if it is not warranted or lacks the informed consent of the victim, the examination must be omitted, which under no circumstances should be used as an excuse to discredit the victim and/or prevent an investigation.” IACtHR, *Case of Angulo Losada v. Bolivia*, cited above, para. 107. See also: *Case of Espinoza Gonzáles v. Peru*, cited above, para. 256, and *Case of V.R.P., V.P.C. et al. v. Nicaragua*, cited above, para. 169. See also: World Health Organization (WHO), *Guidelines for Medico-Legal Care for Victims of Sexual Violence*, 2003, pp. 18, 43, and 58. Available at: <https://apps.who.int/iris/bitstream/handle/10665/42788/924154628X.pdf?sequence=1&isAllowed=y>.

» the location where it will take place.

- **The information requested from the victim by medical personnel is not considered testimonial;** therefore, questions must be limited to gathering the data necessary to guide the medical examination and accurately interpret the findings. Medical personnel should have prior information from the investigation to avoid requiring the victim to unnecessarily repeat information already provided during another proceeding or to another authority.
- The authorities involved may document any spontaneous comments, behaviors, or symptoms expressed by the victim regarding their physical or emotional health and include them in the medical report.

They must collect information regarding:

- The timing of the events, to establish the date and assess its consistency with the injury findings, and to decide whether collecting biological samples is necessary.
- The type of abuse suffered, which helps correlate possible physical findings and identify the types of samples to collect, including whether there was sexual intercourse, vaginal, anal, and/or oral penetration, or insertion of objects via vaginal or anal routes, as well as any injuries, touching, or other acts.
- The possible use or administration of drugs or alcohol, to determine the victim's state of consciousness and the need to request blood or urine samples.¹²⁷
- The date of menarche, the date of last menstruation, and the use of condoms by the alleged perpetrator, which helps assess biological maturity and the risk of pregnancy.¹²⁸
- In the case of a positive diagnosis of a sexually transmitted infection, it should be evaluated whether it can be attributed to the sexual assault.

For the purposes of the investigation, it is recommended that the **forensic medical report include:**¹²⁹

- The identity of the person who performed the examination, as well as the date, time, and

127. It is possible to collect hair samples between 4 and 6 weeks after the incident if blood or urine samples are not available. Dawnay, N., & Sheppard, K., *From crime scene to courtroom: A review of the current bioanalytical evidence workflows used in rape and sexual assault investigations in the United Kingdom. Science & Justice*, 63(2), 2023, pp. 206–228, available at <https://pubmed.ncbi.nlm.nih.gov/36870701/> and United Nations Office on Drugs and Crime (UNODC), *Guidelines for the forensic analysis of substances facilitating sexual assault and other criminal acts*, 2013, available at: https://www.unodc.org/documents/scientific/forensic_analysis_of_drugs_facilitating_sexual_assault_and_other_criminal_acts.pdf

128. If a pregnancy resulting from the sexual assault is confirmed, it is recommended to collect genetic material as forensic evidence.

129. Based on the WHO and UNODC publication, *Strengthening the medico-legal response to sexual violence*, World Health Organization, 2015, available at: https://iris.who.int/bitstream/handle/10665/197498/WHO_RHR_15.24_eng.pdf?sequence=1&isAllowed=y

location.

- Any limitations encountered during the examination.
- Description of the examinations performed (and those pending).
- Positive findings from the medical history and/or relevant background information (contextualization).
- Documentation of the victim's general condition based on a physical and psychological examination, including:
 - › the victim's level of consciousness and emotional state at the time of the examination; a full-body assessment documenting the presence or absence of injuries and, if present, whether they are recent or old; possible defensive marks from the attack (such as on the forearms or wrists); bruises, scratches, signs of strangulation, and other methods used to subdue the victim.
 - › a thorough skin examination to identify cutaneous injuries that may have resulted from the assault (bruises, lacerations, and petechiae from sucking or biting)¹³⁰, as well as wounds from other long-standing physical or sexual violence.
 - › the documentation of recent or old genitoanal, paragenital, and extragenital injuries that are suggestive of or consistent with sexual violence.¹³¹
 - › symptoms that may result from a recent assault, such as bleeding, vaginal or anal discharge, localized pain, bruises, or sores.
 - › persistent symptoms following a non-recent assault, including frequent urination, incontinence or painful urination (dysuria), menstrual irregularities, subsequent history of pregnancies, miscarriages, or vaginal bleeding, difficulties with sexual activity (including pain and bleeding), constipation or urinary incontinence, flatulence or fecal incontinence, and lower abdominal pain. Patients may also report vomiting, gagging, and nausea when recalling oral rape.¹³²
 - › presence of signs and symptoms consistent with alcohol or central nervous system

130. Office of the High Commissioner for Human Rights (OHCHR), *Istanbul Protocol*, previously cited, para. 463.

131. It is recommended not to begin the physical examination with the genital area. OHCHR, *Ibid.*

132. OHCHR, *Istanbul Protocol*, previously cited, para. 460.

depressant intoxication (confusion, disorientation in time and space, lack of coordination, speech disturbances, etc.).

If possible, photographic documentation of positive findings should be made. This documentation must be done with the prior consent of the victim and with proper protection of their identity, to avoid exposing any elements that could link the person to the images.¹³³

If no injuries (cutaneous, genitoanal, paragenital, extragenital, etc.) are evident at the time of the examination, it is important that the report explains that this may be due to the pathophysiology of the injury sustained and the individual characteristics of the person.

The forensic professional must accurately represent the bodies of trans and intersex individuals whose anatomy does not correspond to traditional male or female diagrams.¹³⁴

The role of forensic personnel focuses on the physical examination, documentation of possible injuries, and the collection of samples to preserve physical or biological traces. Therefore, the physical assessment section of the **forensic medical report must avoid:**

- Ruling out the occurrence of the event based on:
 - › the absence of physical injuries. Some injuries may heal spontaneously or disappear without leaving visible traces. Additionally, there are cases of sexual abuse, including with penetration, that do not necessarily result in injuries, as the person may not have resisted for various reasons.
 - › the absence of biological traces;¹³⁵
- Determining whether the act was consensual or not based solely on medico-legal evidence;
- Ordering and/or using genito-anal examinations of the victim to assess aspects of their sexual history that are unrelated to the incident under investigation, such as the tone or elasticity of the vagina or anus, or the likelihood or frequency of penetration. Similarly, “virginity tests” should be avoided, as the hymen is not a reliable indicator for determining whether penetration has occurred. Therefore, the absence of injury does not rule out penetration.

133. Anderson, M., & Claes, E., *Best practices in support for victims of sexual and gender-based violence*, p.45 (2022). Available at: <https://sexualviolencejustice.eu/wp-content/uploads/2022/01/Defining-good-practices.pdf>

134. OACNUDH, *Minnesota Protocol on the Investigation of Potentially Unlawful Deaths*, previously cited, p. 61.

135. IACtHR, *Espinoza González v. Peru*, previously cited, para.329.

6.1.3) Sample collection and evidence preservation

The selection of biological samples to be collected will be made based on the information provided by the reporting person regarding the incident, according to the judgment of the forensic medical expert or

the prosecutor's office, depending on the initial hypothesis. Proper collection, identification, preservation, transportation, and traceability of the samples are essential for them to be considered valid evidence in the legal process.

The purpose of collecting biological samples (semen, saliva, blood, etc.) is to obtain a DNA profile different from that of the victim, based on the analysis results of vaginal, oral, and/or ano-perianal swabs and other procedures (collection of hair or samples from under the nails, etc.), in order to compare it with the profile obtained from the alleged perpetrator, if identified, or with genetic databases in countries where such databases exist.

The clothing worn by the victim at the time of the incident may also contain elements or fluids from the alleged perpetrator (hair, stains, etc.) in varying amounts or concentrations, as well as alterations that may provide clues about how the incident occurred (holes, tears, rips, splatters, etc.). Therefore, such clothing must be properly preserved, isolated, and stored in individual paper bags (not plastic), duly labeled for identification within the chain of custody. If the underwear has a dressing or pad attached, everything should be placed in the same bag without removing the dressing.

In these cases, the purpose of the analyses is to establish the involvement of the alleged perpetrator in relation to the victim, that is, by identifying the perpetrator's DNA in biological samples found on the victim's body, belongings or at the locations where the reported violence occurred.

Biological evidence on the victim's body

Type of samples and procedure	Purpose of the samples, collection of:
Biological samples on the body of the assaulted individual : swabbing of presumed biological fluids.	Potential biological traces such as blood, semen, saliva , etc. present on the victim's body that may be detected and collected from superficial or external sites.
Oral samples : swabbing of the buccal mucosa.	Traces of semen on the palate, under the tongue, buccal mucosa/gums, and interdental recesses (especially on their posterior side).
Samples taken from the vagina, vulva and perianal region : this procedure should be carried out both in women who retain their natal genitalia and in trans women with a neovagina resulting from genital modification surgery as part of their gender affirmation process.	Traces of semen and other biological evidence from the perpetrator.
Samples taken from the balano-preputial sulcus, glans, and shaft of the penis : this procedure should be carried out if the victim of sexual assault is a male or a trans person with male genitalia.	Traces of semen and other biological evidence from the perpetrator.
Samples from bite marks: it is useful when collected immediately or very soon after the sexual assault.	Traces of saliva or epithelial cells from the perpetrator.
Samples of subungual material : in cases where there was struggle or defense by the assaulted person.	Biological traces attributable the perpetrator.
Samples of hairs suspected to be from the perpetrator on the victim's body; combing of pubic hair .	These should be analyzed to determine whether they belong to the perpetrator, and their origin must always be clearly indicated.
Products of abortion .	In cases of pregnancy termination resulting from rape, this material is useful for identifying the DNA of the perpetrator.

If the victim reports or shows signs of alcohol intoxication or chemical submission, blood, urine, or saliva samples should be collected for toxicological analysis to detect the presence of alcohol, drugs, or medications. These toxicological tests involve the detection, identification, and quantification of these substances, as well as the interpretation of the results.

It is important that the technical staff provide clarifications in the results when tests could not be performed due to a lack of reagents or, in cases where multiple substances are found, when the dosages of the substances in the samples could not be determined, which does not imply their absence. It is also considered good practice to reserve part of the sample for a potential retest in a more advanced laboratory.

The viability of biological material is variable.¹³⁶ It is affected by time, activities (such as washing), and contamination from other sources. Therefore, samples should be collected as soon as possible. It is advisable to do so even if the victim has not yet decided whether to report the incident, always with their consent.

The maximum agreed-upon time interval (the time between the assault and sample collection) for routine sample collection is:

- Mouth: 24 hours
- Blood (toxicology) samples of 2 × 5 ml: up to 48 hours in tubes containing sodium fluoride and potassium oxalate¹³⁷
- Anus: 72 hours
- Skin, including bite marks: 96 hours
- Vagina: up to 5-9 days, depending on available technology¹³⁸
- Urine (toxicology) 50 ml: up to 5 days¹³⁹
- **Foreign material on objects (e.g., condom/clothing): no time limit¹⁴⁰**

136. The IACtHR has indicated that the time limits for performing a gynecological examination (typically estimated to be within 72 hours after the event) “should be considered as a guideline, rather than a strict policy,” as “evidence may be found well after the sexual violence act, particularly with the advancement of forensic investigation technology,” IACtHR, Case Espinoza Gonzáles vs. Peru, previously cited, para. 256.

137. Dawnay, N., & Sheppard, K., 2023, previously cited, Costa YRS, Lavorato SN, Baldin JJCMC. *Violence against women and drug-facilitated sexual assault (DFSA): A review of the main drugs*. *J Forensic Leg Med*, 2020, available at: <https://pubmed.ncbi.nlm.nih.gov/32658767/>.

138. SWGDAM, *Scientific Working Group on DNA Analysis Methods: Recommendations for the Efficient DNA Processing of Sexual Assault Evidence Kits in a Laboratory*, 2016, available at: https://www.swgdam.org/_files/ugd/4344b0_4daf2bb5512b4e2582f895c4a133a0ed.pdf

139. Dawnay, N., & Sheppard, K. (2023), previously cited.

140. Dawnay, N., & Sheppard, K. (2023), previously cited.

Preservation of the Chain of Custody

The chain of custody is the security and control procedure used for the identification, preservation, securing, and safeguarding of material evidence, from its discovery to its evaluation by the individuals responsible for the forensic analysis, with responsibility assigned to each person involved in the process.

Its goal is to ensure that the object or substance presented in court as evidence is the same one collected as evidence related to the commission of a potential crime, meaning it has not been altered beyond its natural deterioration or the necessary actions for its evaluation.¹⁴¹ From the beginning to the end of the forensic-police process, it is essential to be able to demonstrate each step taken to ensure the traceability and continuity of the evidence from the crime scene to the courtroom.¹⁴²

In this regard, the IACtHR has stated that in “a criminal investigation for sexual violence, it is necessary to document and coordinate the investigative acts and manage the evidence diligently, taking sufficient samples, conducting studies to determine the potential perpetrator, securing other evidence such as the victim’s clothing, immediately investigating the crime scene, and ensuring the proper chain of custody.”¹⁴³

Therefore, the prosecutorial team must ensure full compliance with the applicable rules governing the preservation of the chain of custody, to guarantee its authenticity and integrity, in accordance with protocols and internal regulations.

6.2. Understanding forensic medical evidence in cases of sexual violence

Several factors may prevent the existence of a forensic medical examination, including, but not limited to, inaccessibility or lack of forensic services; the victim’s lack of consent to undergo testing; or the fact that the events were reported too late, when biological traces of the incident can no longer be present. The absence of forensic evidence does not prevent the continuation of the investigation.

When a forensic medical examination is available, it is important to know how to interpret the findings it provides when evaluating the available evidence.

141. UFEM. *Protocol for Investigating and Litigating Sexual Violence Cases*, previously cited, p. 49 and its references.

142. UNODC. *The Crime Scene and Material Evidence: Raising Awareness of Non-Forensic Personnel About Its Importance*, New York, 2009. Available at: https://www.unodc.org/documents/scientific/Crime_scene_awareness__Ebook.pdf

143. IACtHR, Velásquez Paiz and Others v. Guatemala Case, previously cited, para. 147.

<p>The absence of physical injuries:</p>	<ul style="list-style-type: none"> • This occurs in many cases of sexual assault, especially when the victim is subjected to certain forms of coercion. Other types of evidence may still establish that a sexual assault took place. • It is possible that the perpetrator did not use physical violence and/or that the victim did not resist due to a coercive context. Neither scenario negates the occurrence of sexual assault. • Cases of non-penetrative sexual abuse without the use of force to overpower the victim. • The violence did not involve physical contact between the victim and the perpetrator (e.g., cases where the victim was forced to perform sexual acts on themselves or on another person, or cases of online sexual violence). • The examination was conducted too late to detect physical injuries.
<p>The absence of semen (in cases of rape)</p>	<p>It does not mean that rape or sexual abuse did not occur. For example, cases in which:</p> <ul style="list-style-type: none"> • The perpetrator used a condom, ejaculated elsewhere or beforehand, or did not ejaculate; • The perpetrator used objects or fingers for penetration; • A significant amount of time elapsed between the assault and the examination, or the evidence was improperly collected; and • The victim bathed after the assault.

The lack of scientific validity of virginity and hymenal integrity tests

So-called “virginity tests” are sometimes conducted to assess whether a rape occurred. In doing so, women are subjected to invasive and potentially painful procedures through various methods (such as a vaginal exam or the “two-finger test”)¹⁴⁴, primarily aimed at verifying the condition of the hymen, determining whether the victim is a virgin, and thereby concluding whether sexual violence took place. These types of exams have no scientific value or clinical indication and are medically unnecessary and

144. The “two-finger test” involves the insertion of two fingers into the vagina to assess its size and elasticity. *Civil Society Declaration on Sexual Violence*, 2019, p. 28. Available at: <https://4genderjustice.org/wp-content/uploads/2019/09/Civil-Society-Declaration-on-Sexual-Violence.pdf>

unreliable: the appearance of the hymen is not a reliable indicator of sexual activity, as the hymen can be dilatable (stretchable or elastic); and there is no examination that can prove a history of vaginal intercourse. This practice is discriminatory, has adverse health consequences for the victim both in the short and long term, and violates victims' rights, including their right to bodily integrity and the highest attainable standard of health.¹⁴⁵

145. WHO, OHCHR, UN Women, *Eliminating Virginity Testing: An Interagency Statement*, 2018, p.5, available at: <https://iris.who.int/bitstream/handle/10665/275451/WHO-RHR-18.15-eng.pdf?ua=1>

7. THE VICTIM'S TESTIMONY

7.1. Guidelines for developing the victim's testimony

According to the institutional structure of each Public Prosecutor's Office, the procedures for hearing the victim may vary. In some countries, prosecutors or courts are responsible for receiving the victim's report and thereby engage with the case from the outset to gather urgent information. In others, the prosecutorial team may establish contact with the victim at a later stage.

For this reason, the in-depth interview with the victim may not occur at the same time as the initial filing of the report. The purpose of this interview is to deepen the description of the criminal act and gather elements necessary for the investigation, such as defining the scope of the incident, collecting evidence, identifying potential witnesses or perpetrators, and corroborating information. Additionally, due to the different procedural systems across the region, the victim's testimony may or may not be formally recorded and is often repeated during trial hearings.

In all cases, it is the responsibility of the prosecutorial team to ensure that **the rights of victims are upheld** and to develop their investigative plan accordingly. While in some instances **the victim may be the only witness to the crime, this does not mean that their testimony is the only available evidence.** Regardless of the quality or existence of the victim's statement, it is the duty of the prosecutorial team to build contextual evidence to reduce reliance on a single account, particularly one that may not be sustained throughout all stages of the criminal process.

Some key operational guidelines include:

7.1.1) Before the testimony

a. Summons to the hearing:

If the victim does not appear voluntarily, the possibility of making the summons by phone should be assessed to understand the individual's current situation. Care should be taken to avoid leaving messages that could be seen or heard by the aggressor. Before issuing any summons, it is necessary to determine whether the individual is in a psychological and emotional condition to testify or if they require psychological support beforehand. During this initial contact, it is important to inform the person being summoned about the testimonial process—what it involves, what will be expected of them, and to suggest that, to the extent possible, they organize the information that will be requested by the justice system.

b. Conditions for conducting the hearing:

It must be ensured that the victim can give their testimony in a suitable, comfortable, and secure environment that provides privacy and fosters trust, with specialized personnel present. Interruptions and the presence of individuals unrelated to the hearing should be avoided.

Sexual violence cases may involve acts that affect the victim's sense of modesty or sensitivity. It is recommended to create a space of trust for the victim, which includes allowing them to choose the gender of the person receiving the report and respecting their culture, religion, gender identity, and other relevant factors. Additionally, it is advisable to permit the presence of a trusted person (after verifying that this relationship will not hinder the testimony) if the victim requests it, and to provide, if necessary, a professional from the victim support team and a trained interpreter or translator, with the victim's consent. In cases involving victims with disabilities, specialists should be available to prevent re-victimization and to help gather information from their testimony that will aid the investigation.

If the organization has a victim assistance or accompaniment unit, it is recommended that the person testifying have access to specialized support personnel before, during, and after the testimony.

Prior to the testimony, the advisability of recording the testimonial statement through **video recording or similar methods** (such as a Gesell chamber, closed-circuit television, Google Meet, Zoom, etc.) should be evaluated based on the specifics of the case and the victim, as well as the procedural rules governing the presentation of evidence (advance evidence). Although preserving this evidence can prevent the repetition of the testimony and the resulting re-victimization, it is recommended to first assess whether the victim is able to provide their account using this method, and whether it is necessary for the questioning to be conducted by a professional specialized in this type of testimony.

Contact between the victim and the defendant at the time of testimony can increase the risk of further attacks, as well as heighten the victim's fear and anxiety. It may also impact their ability to freely recount the events. To prevent such situations, prosecutors should avoid summoning the victim and the accused on the same day. In the case of trial hearings, the victim should be consulted beforehand regarding their wish to testify outside the presence of the defendant. If so, the prosecution may request that the court take appropriate measures, as permitted under the applicable procedural code, such as having the defendant remain in a separate room while represented by their defense attorney, using video feed, allowing remote testimony, or installing a screen or partition.

Efforts should also be made to prevent contact or interaction between individuals attending on behalf of the defendant and those accompanying the victim, by ensuring they are seated separately.

c. Assessing the necessity of holding a hearing:

Multiple interviews with the victim should be avoided to prevent or reduce re-victimization.¹⁴⁶ When assessing the need to hold a hearing, it must be considered that the victim may not have fully processed or come to terms with the traumatic experience, which will affect their ability to testify. The act of recalling sexual violence cannot be forced, as it depends on what the victim is able to remember. Traumatic experiences can have a silencing effect. The process of recalling the memory will vary from person to person.

The potential risk faced by the person making the report, their age, the emotions they experience, the number of times they have been summoned to court, the attentive listening of the person receiving the testimony, and the impact of trauma can all affect their account. Furthermore, the more times a person has had to testify about their psychological suffering, the greater the risk of losing details or becoming confused about the experience.¹⁴⁷ These factors that affect the testimony can be avoided, provided the process is handled appropriately to prevent re-victimization and to address the survivor's specific needs.

In such cases, the prosecution must respect the victim's decision not to participate in the investigation and criminal process. However, this decision does not justify halting the investigation, since, as emphasized in section 4.3.6, the standard of due diligence requires the prosecution team to conduct a thorough investigation of the reported facts and seek other evidence, as outlined in section 5.2.3.

7.1.2) During the testimony

Receiving the victim's testimony requires attentive and respectful listening that acknowledges and affirms the credibility of what is shared, as it involves recalling a traumatic event. Whenever possible, the victim should be allowed to choose the gender of the person assisting them.

The type of initial approach can significantly influence the victim's decision to participate in the criminal process.

For these reasons, the following guidelines are suggested:

- The prosecutor must explain how the proceeding will take place and allow the victim to ask any questions they may have.

146. IACtHR, Case of Fernández Ortega et al. v. Mexico, previously cited, para. 196; Case of J. v. Peru, previously cited, para. 351.

147. IACtHR, Case of Espinoza González v. Peru, previously cited, para. 150.

- Clearly and simply explain the purpose of the proceeding or procedural action. Efforts should be made to adapt the language used according to the person's age, level of maturity, educational background, intellectual capacity, or sociocultural context. Those receiving the testimony should introduce themselves to facilitate communication.
- While it is advisable to conduct the interview in a single session, if it extends over many hours, or if the victim expresses physical or emotional fatigue or wishes to stop, it is recommended, **with their consent**, to suspend the session and schedule a follow-up appointment. In subsequent interviews, previously covered topics or information already disclosed in other settings (e.g., medical) should not be revisited.
- The testimony must be collected by properly trained personnel and recorded in a detailed and comprehensive manner to avoid the need for repeat interviews.¹⁴⁸
- Allowing the person to tell their story in their own words before asking questions is essential to avoid interruptions and ensure the testimony is captured completely and accurately.
- The gender identity of the person giving testimony must be respected, in accordance with each country's regulations regarding the recognition of this right.
- In the case of persons with disabilities, the presence of specialized personnel appropriate to the type of disability must be ensured.
- For Indigenous or foreign persons, the presence of an interpreter or translator must be guaranteed.
- During the testimony, the prosecutor's role should focus on clarifying the criminal acts and their circumstances to build the case.
- Victims' accounts often include broader aspects not directly related to the crime, which may still provide useful contextual information to support the factual hypothesis.
- If elements related to time are imprecise in the testimony, it is important to identify clues about the circumstances of the event that can later be verified.
- It is not the victim's responsibility to locate witnesses.
- Irrelevant, abusive, or stereotyped questioning must be avoided to safeguard the victim's

148. IACtHR, Case of Angulo Losada v. Bolivia, previously cited, para. 116.

privacy and protect them from re-victimization,¹⁴⁹ as well as to prevent the introduction of inconsistent information that could be used by the defense to undermine the victim's credibility in court. If the defense poses re-victimizing questions or questions unrelated to the procedural purpose, objections should be raised, and the questions should be challenged for rephrasing or removal.¹⁵⁰

- Value judgments or personal opinions about the events must be avoided.

Regarding the **purpose of the interrogation**, it is necessary to gather sufficient information on various aspects related both to the incident the victim experienced and to other circumstances that the prosecution must address.

Therefore, at the **time of receiving** the report, information should be collected to:

- a. Detail the specifics of what occurred (location, date, and time, circumstances of the incident, etc.);
- b. Identify the crime scene and potential evidence, witnesses, and suspects;
- c. Establish the identity of the alleged perpetrators;
- d. Assess the need for a medical-forensic examination;
- e. Determine the victim's needs for comprehensive care and protection.

The absence of documentation verifying the identity of the person making the report should not be a barrier to taking their statement. It can be supplemented by a sworn declaration, identity verification at later stages of the case, or through witnesses.

In countries where criminal prosecution requires the victim to initiate the process, the scope and implications of this decision must be clearly explained, and the victim should be specifically asked whether they wish to proceed.

When the victim is called for an in-depth interview, the key aspects to be identified during **the testimony** are those that inform and guide the development of the investigation plan.

149. In the case *Angulo Losada v. Bolivia*, previously cited, the IACtHR identified revictimizing questions posed by the prosecution that may have placed the young woman "in a position of feeling guilty for the sexual violence she suffered," paras. 116 and 117.

150. See also ICC, *Rules of Procedure and Evidence*, Rules 70 and 71, previously cited.

As seen in Chapter 6, the questions should be aimed at determining:¹⁵¹

a. Victim (Who?)

- Age, gender identity, personal, family, and work situation, health, disability, etc.
- If the victim is from an Indigenous community, include the name of the community or Indigenous people to which they belong and the language they speak.
- Other intersectionality variables.

b. Perpetrator (Who?)

- Number of perpetrators or individuals who participated in the incident.
- Age, gender identity, family and employment situation, etc.
- Whether there is a relationship with the victim and what type (family; social; work; sexual-affective; or a hierarchical relationship involving power, authority, or dependency; etc.).

c. Circumstances and the modalities of the commission of the crime (How?)¹⁵²

- **Description of the perpetrator's behavior**, including whether physical contact occurred, the part(s) of the body involved, any objects or body parts used, and whether penetration took place (anal, vaginal, oral, etc.).
- If the victim expressed a negative verbal or nonverbal response.
- If force, physical violence, threats, coercion, or abuse of a position of power occurred.
- If any methods were used to nullify or limit the victim's capacity to give consent.
- Whether the victim sustained injuries as a result of the assault and if they sought care at a medical facility.

151. See also the Office of the Attorney General of Colombia, *Protocol for the Investigation of Sexual Violence*, previously cited, p. 17.

152. In cases involving the testimonies of victims of sexual violence perpetrated in the context of crimes against humanity, it is recommended to ask specifically about the possible commission of sexual offenses, without assuming that victims of sexual violence do not wish to share their stories. It is also advised to inquire about the possible commission of such crimes with both men and women, and to avoid making assumptions about who the victims of sexual violence are or who may wish to recount their experiences. See: REMPM, *Guidelines for Public Prosecutors in the Criminal Investigation of Cases of Sexual Violence Perpetrated in the Context of International Crimes, in Particular Crimes Against Humanity*, art. 6, sections e and f, previously cited.

- Whether the incident involved any discriminatory element related to the victim's gender identity or sexual orientation, ethnic background, occupation, etc.
- Whether there are potential connections between the incident and social or political circumstances.
- Whether there were prior incidents of sexual violence or other gender-based violence and whether these escalated over time.
- Whether the incident caused emotional harm and whether the victim is currently receiving or has previously undergone psychological or psychiatric treatment.
- Whether the victim reports having received medical, psychological, or spiritual assistance, they should be asked whether they wish to waive professional or confessional confidentiality.

When asking questions about the incident, it is recommended to avoid euphemisms and complex or ambiguous terms that could lead to inaccurate responses from the victim. In this regard, while avoiding revictimization, questions should be specific and aimed at obtaining as precise a description of the incident as possible, particularly with respect to the elements of the relevant criminal offenses.

d. Timing of the criminal act (When?)

- When or since when the sexual violence occurred.
- Whether the incidents were periodic or prolonged over time.
- Whether the acts occurred regularly or within the context of an occasional relationship.
- The specific circumstances or moment of the incident.
- Any other relevant temporal factors, such as season, holidays, or significant dates.

e. Location of the criminal act (Where?)

- Whether the location was public, private, institutional, virtual, or another type of space.

- Whether the location was familiar or unfamiliar to the victim. If unfamiliar, gather additional details such as furniture, decorations, sounds, or smells.
- **The conditions of the location** (single or multiple spaces; indoors or outdoors; locked or otherwise restricted; lighting; time of day; urban or remote setting; etc.).

f. Other information the victim may provide:

- For example, whether the incident occurred in a community setting or within an Indigenous community, and whether Indigenous authorities or other individuals were aware of what happened.
- Identification of other witnesses (friends, healthcare professionals such as doctors, psychologists, or psychiatrists, coworkers, family members, etc.).
- Any knowledge the victim may have of other cases involving the same perpetrator and the identities of the alleged victims.
- Information about the healthcare facilities where the victim received care, along with any medical records or other relevant documentation, such as employment records.
- Screenshots of WhatsApp or social media conversations related to the reported incident.
- If the exact location of the incident cannot be determined, it is recommended that the prosecutor's office use geolocation tools (such as Google Maps) *with the victim's cooperation*.
- If other crimes occurred in connection with the reported incident (for example, kidnapping, theft, or offenses related to domestic violence, among others).

7.1.3) Following the testimony

As the interview concludes, the interviewer should clearly explain the next steps in the investigation and legal process, addressing any questions or concerns the victim may have. This includes letting them know if their participation might be required again, and if so, the reasons for a possible follow-up.

In addition, secure communication channels should be established with the victim to enable follow-up **and provide updates on the progress of the case**, and to provide them with all means of contacting the prosecutor's office and the relevant support offices.

7.1.4) General restrictions on public disclosure¹⁵³

Although trial hearings are generally held publicly, some procedural systems allow exceptions to limit the victim's exposure. Such measures may include holding sessions behind closed doors or anonymizing the victim's identity in filings and rulings (e.g., using initials), among other safeguards. It is essential to consult with the victim and obtain their consent before proceeding under these conditions.

In cases attracting significant media attention, it is particularly important to handle any information or images released to the media with care, and to inform the victim in advance. The victim's privacy and dignity must be protected, ensuring that news coverage does not result in further victimization or reinforce gender stereotypes. Any disclosure of case information or the victim's identity must be agreed upon in advance with the victim.

With respect to children and adolescents, no data, information, or images that could identify them, directly or indirectly, should be exposed, disseminated, or published through any media or platform without the consent of both the minors and their parents, legal guardians, or responsible parties.

These guidelines should also apply to written procedural documents and investigation records. In particular, the prosecutor's office must safeguard personal data and any information that could identify victims in all filings, and should request that the court take the same precautions when publishing judgments on official or jurisprudence-related websites. It should be recognized that case-related information linked to a victim's identity can perpetuate their association with the incident, potentially becoming an additional long-term consequence of the crime they have suffered.

7.2. Characteristics of victim testimony in cases of sexual violence

In cases of sexual violence, the victim's testimony usually serves as the main direct evidence of the commission of the act. However, in many instances—due to the very consequences of this type of crime—the victim may prefer not to testify, may be unable to do so, may provide a delayed statement, or may decide to withdraw from the proceedings or retract the report in order to avoid continued exposure to the event that caused harm (see **Chapter 3.3.6**).

The marks of the traumatic experience may also affect the act of testifying. This becomes evident when the accounts contain disorganized information, inconsistencies, inaccuracies, memory gaps, cathartic outbursts without evident processing, testimonies that appear emotionally disconnected, contradictions, or reactions and statements that seem unexpected or do not conform to patterns observed in other previously processed cases.

153. This section is based on the UFEM *Sexual Violence Protocol*, cited above, pp. 112–113.

The victim's account may involve processes such as minimization, denial, disclosure, and retraction. These characteristics should be understood as indicators of trauma rather than as reasons to question the veracity of the victim's statements. Accordingly, the prosecutorial approach should take these features into account when conducting questioning, and later, when evaluating the testimony or considering challenges, without undermining credibility or reliability based on gender stereotypes or misconceptions about how such events are—or should be—recounted.

Therefore, when hearing the testimony of a victim of sexual violence, it is essential to keep in mind that:

- **Not all individuals respond in the same way to sexual violence.** Both the assault itself and the process of reporting may have a devastating impact on the victim, their family and social environment, and the broader community.
- **A disruptive event does not necessarily manifest as a traumatic experience,** and this may depend on multiple factors such as the nature of the incident, personality structure, responses from the environment, or the availability of psychological support, among others. In such cases, the person may have been able to integrate the emotional experience associated with the event, facilitating its psychological processing. In short, **the absence of post-traumatic symptoms does not mean that the event did not occur.**
- In some cases, **the victim may show resistance to identifying themselves as a victim,** as they review and judge their own actions, believing they were insufficient to prevent the violence, or because they have normalized what occurred.
- **The effects of the trauma experienced may lead to a variety of reactions** when the person relives the events.¹⁵⁴ Some individuals may feel anger, while others may experience a strange sense of calm in which their distress seems to dissolve. They may exhibit partial emotional numbing or a loss of physical sensations. Acts of sexual violence can have a profound impact on a person's perceptual system, affecting both memory and self-esteem.
- **Many victims do not report the assault to the authorities, or do so only after a significant delay, for a variety of reasons.** These may include difficulties accessing the justice system,

154. In the judgment of the Case Angulo Losada v. Bolivia, expert Mesa Peluffo stated: "Regarding the psychological impact of revictimization by the State, as Judith Herman notes, trauma is the affliction of the powerless. In trauma, the victim feels helpless in the face of an overwhelming force. Traumatic events, such as rape, shatter the normal protective systems that provide individuals with a sense of control, connection, and meaning, resulting in what we call post-traumatic stress disorder. A person in this state of helplessness experiences a combination of anxiety and feelings of danger, remains in a constant state of alert, has intrusive memories and nightmares related to the trauma, avoids any stimulus that reminds them of the traumatic events, and may experience guilt, fear, and anger. They may have difficulties relating to others, and their life plans can be disrupted. The impact of revictimization on sexual violence victims—particularly girls and adolescents—is often devastating. Girls and adolescents deserve special protection in judicial processes, as the actions of justice system personnel can exacerbate the trauma they have suffered as a result of the violence. Therefore, it is essential to have special protocols for investigation and intervention and to avoid actions that may be revictimizing." IACtHR, Case Angulo Losada v. Bolivia, previously cited, note 208.

inadequate attention or treatment when attempting to report the crime, prejudiced attitudes from the person receiving the report, fear of re-victimization or of having their credibility questioned, fear of the perpetrator, threats or intimidation directed at themselves or others, and the normalization of violence, among other factors.

- **There is no typical victim of sexual violence:** individuals of all ages, ethnicities, sexual orientations, genders, religions, professions, and physical characteristics can be victims of sexual violence.
- **There is no typical perpetrator of sexual violence:** anyone can commit a sexual violence offense.
- **There is no typical response to sexual violence:** the traumatic nature of the crime produces a wide range of reactions from the victim, both during and after the assault.

7.2.1) Considerations regarding inconsistencies in the account

In some cases, individuals who experience sexual violence may use vague or non-specific terms in their statements or may not provide detailed descriptions of what occurred. This can be due to factors such as age, developmental stage, cultural taboos surrounding sexuality, or other cultural reasons. Such limitations do not imply that the reported events did not occur or that they do not constitute acts of sexual violence, and therefore they must be investigated accordingly.¹⁵⁵

Similarly, victims of sexual violence may sometimes be unable to precisely specify the times, locations, or specific actions involved in the abusive event. This can be due to the repetition of the abuse over time (as in cases of domestic or intimate partner violence), the multiplicity of abusive acts, the traumatic consequences experienced by the victim, or other factors. In such cases, the prosecution must consider how the traumatic event may affect the victim's account in order to uphold the validity of testimony that may present these characteristic features. It is also the prosecution's responsibility to define the scope of the investigation based on the information available.

The prosecution must recognize that the trauma experienced can affect the victim's memory and the coherence of their statement. It should be recognized that memory functions differently when a person has been exposed to a traumatic event than it does in a safe situation.

The following is a non-exhaustive description of various factors that may influence the account of the assaulted person.¹⁵⁶

155. IACtHR, *Case Espinoza Gonzáles v. Peru*, previously cited, para. 194.

156. UFEM, *Sexual Violence Protocol*, previously cited, p. 65.

Factores internos, signos y síntomas postraumáticos
Fear
Heightened alertness, as if the danger could return at any moment (the individual startles easily and reacts with irritability)
Insomnia
Flashbacks (involuntary recollection of the traumatic memory)
Phobias and recurrent nightmares
Distress
Dissociative reaction (recounts the account without showing emotion)
Inhibition, shame, modesty
Belief that it is better to “forget” and distance oneself from the sexual violence
Tension
Sense of helplessness
Emotional numbness (loss of certain sensations, state of detachment, profound passivity that may affect the pursuit of the case)
Impaired memory
Fear that their account will be doubted, or of being stigmatized
Normalization of the violence

Factores externos
Lack of confidence in the justice system
Lack of information and/or difficulties accessing the justice system
Absence of support networks
Impact on social, family, and work life
Long time elapsed between the incident and the testimonial statement
Coercion, threats, or fear of the perpetrator
Economic dependence
Repetition of the events
Unsuitable interview settings
Inappropriate, stereotypical, or revictimizing questions
Passage of time

In general, a victim of a traumatic event may experience:

- difficulties recalling important details of what occurred and/or the sequence of events, due to incomplete processing and integration of the experienced trauma;
- memory lapses, fragmented recollections, memory gaps, and disorganized information;
- inaccurate recollections in different instances where the event was recounted;
- clear memories of the sensations experienced, but not of the chronological sequence of the events.

It is essential that the prosecutor understands these aspects and takes them into account, recognizing that a victim may recall details that do not seem central to the investigation—such as an external sound or a decorative element—while struggling to remember other information, such as what the perpetrator said, whether other people were present, what happened during the assault, or the sequence of events.

This does not diminish the reliability of the information or the credibility of the testimony. Such details can still be useful to the investigation, for example, to demonstrate that the person experienced trauma or to establish their presence in a specific location.

7.2.2) Considerations regarding delayed disclosure

To understand why some victims of sexual violence delay reporting the assault, and the factors that may lead them to break their silence at a given moment, it is necessary to consider the multiple factors that may have influenced their decision, such as:¹⁵⁷

- the characteristics of the crime;
- the context of the assault and the relationship with the perpetrator;
- threats made by the perpetrator against the victim or their close circle;
- the victim's vulnerability and resilience factors (including, for example, their age);
- the social, community, and/or family normalization of sexual violence, and the lack of understanding by the victim and/or their environment of the act as sexual assault;

157. UFEM, *Sexual Violence Protocol*, previously cited, pp. 65 et seq.

- lack of credibility or support from the victim’s family or social circle;
- feelings of guilt experienced by the victim, which cause significant psychological distress and hinder the processing of the traumatic event;
- the dismissal or minimization of the victim’s experience by the person to whom they disclose it;
- difficulties in accessing the justice system, the lack of available safety options for the victim, and the absence of support from their environment.

7.2.3) Considerations regarding the retraction of the account or refusal to testify

For various reasons, individuals affected by situations of sexual violence may retract their statements at different stages of the investigation, refuse to testify again, or choose not to pursue criminal action (in those countries where such a legal requirement exists). These situations should not be interpreted as grounds to discredit their account.

Although these are distinct situations, there may be several common factors influencing such decisions for example:¹⁵⁸

- In cases involving intimate or romantic relationships, the retraction may be influenced by the dynamics of the “cycle of violence,” the victim’s economic or emotional dependence on the perpetrator, feelings of being overwhelmed within the relationship, or the perceived need to “put the events behind them.”
- Experiencing coercive or threatening behavior by the perpetrator against the victim, their children, and/or their emotional support network, as well as fear of being subjected to further violence. In such cases, protective measures should be made available, and any new incidents of violence that require investigation should be documented.
- In situations of particular vulnerability (such as sexual exploitation, involvement in drug-related activities, or migration status), the threat of being charged with a crime, irregular immigration status and/or lack of documentation, as well as limited or nonexistent personal support networks and social isolation, among other factors, may influence the decision.

In cases where the victim withdraws or changes their initial statement, the prosecution team must analyze the context in which this change occurs, particularly when it appears contrary to the victim’s initial interests. It is essential to avoid biased judgments that could lead to the conclusion that

158. UFEM, *Sexual Violence Protocol*, previously cited, p. 67.

the retraction implies the original report was false. This assessment must incorporate a **gender and intersectional perspective**, allowing for a comprehensive understanding of the situation and balancing this with the need to respect the victim's autonomy (where permitted by procedural law). In addition, it must be ensured that the decision was made freely, without any form of pressure or coercion, and that the victim's safety is guaranteed. It is recommended that the victim be contacted again to assess their level of risk and to review protection and support strategies.

The prosecution team must coordinate with departments and/or agencies that have specialized interdisciplinary teams in this area to assess the situation of a victim who retracts their statement or does not wish to proceed with the criminal process. This assessment must respect and align with the victim's own pace, to avoid reaching an inaccurate contextual diagnosis. In some cases, the intervention of professionals may include referral to mental health services, to allow the affected person to process and work through the traumatic experience, even if this entails a necessary delay in the judicial proceedings.

The victim's retraction should not automatically result in the termination of the investigation.

At the same time, the potential for **secondary victimization** must be assessed, as it may arise from disregarding the victim's wishes if the criminal prosecution continues.

7.3. Special guidelines for the collection of testimony

The following are aspects to be considered during the giving of testimony and/or throughout the criminal proceedings.

In cases where the testimony is given by a **person who speaks only an Indigenous or foreign language not understood by the prosecution**, they have the right to the **permanent presence of a translator or interpreter**¹⁵⁹ who is highly proficient in the language used by the victim, who can provide information on the judicial proceedings, and facilitates their interaction with the authorities.

For individuals with intellectual disabilities, interviews should be **short, pressure-free, and consist of brief, direct questions**, allowing sufficient time for responses. The hearing may be **paused if necessary**. Efforts should be made to ensure that the individual receives **support and accompaniment from professionals in psychology, social work, communication, special education, and disability services**.¹⁶⁰

159. See: AIAMP, Santiago Guidelines, cited above.

160. In accordance with the Convention on the Rights of Persons with Disabilities, the States Parties must ensure that "persons with disabilities have access to justice on an equal basis with others, including through procedural accommodations appropriate to their age, to facilitate the effective performance of their functions as direct or indirect participants, including giving testimony as witnesses, in all judicial proceedings, including investigative and other preliminary stages" (Art. 13).

In the case of older adults, individuals with physical or mental disabilities, or pregnant persons, arrangements should be made to facilitate their travel to the judicial venue if circumstances and physical conditions require it. If necessary, the judicial officer should be made available to travel to the person's location. Efforts should also be made to maximize the use of technological means for giving testimony.¹⁶¹

If the person has a hearing disability, the use of **sign language**, as well as other augmentative and alternative modes, means, and formats of communication, must be ensured in all proceedings related to the case, according to the type of disability. In the case of visual impairment, and if requested by the victim, the **Braille system** should be provided.

In the testimony of minors or individuals in situations of special vulnerability, **audiovisual recordings** may also be used as a tool to prevent revictimization, preserve the victim's psychological and mental integrity, and safeguard evidence.

In the case of **LGBTIQ+ individuals**, their testimony must consider the specific characteristics of the reported violence, the context in which it occurred, and the structural discrimination experienced due to sexual orientation, gender identity, gender expression, or non-normative sexual characteristics and diverse bodies. Respectful and dignified treatment must be ensured, avoiding situations that could lead to re-victimization, such as the use of derogatory language regarding gender identity or making discriminatory assumptions when receiving and investigating complaints.¹⁶²

When sexual violence occurs against individuals in **detention or confinement**, judicial authorities are responsible for ensuring their rights and guarantees through the proper and prompt collection and preservation of all evidence that may substantiate the events.¹⁶³ Reporting may become more complex when the perpetrators are staff members of the facility. For this reason, the prosecution must ensure that the victim's testimony is taken in an environment free from pressure and that their safety is protected.

When reporting members of a security force, evidence preservation and protective measures must be carried out by a law enforcement body separate from that to which the perpetrators belong. If the individual is in detention, they must be **urgently transferred to the judicial venue** with personal protection measures appropriate to the situation to prevent any pressure to retract their statement. Whenever

161. See, among others: XIV Ibero-American Judicial Summit, Brasília Rules on Access to Justice for Persons in Situations of Vulnerability, and AIAMP, Santiago Guidelines, cited above.

162. LGBTIQ+ individuals often face barriers in accessing the justice system, which may include lack of adequate attention and treatment when attempting to report crimes; non-recognition of their gender identity; prejudicial attitudes by those receiving the complaint; stereotypical assumptions about the motivations of crimes based on the sexual orientation, gender identity, or gender expression of the victim; fear of further victimization or retaliation; discriminatory attitudes by judicial officials; risk that their credibility may be questioned; among others. All these factors can create inhibitory effects on reporting. See: IACHR, Violence against LGBTI, cited above, para. 160.

163. IACtHR, Case of Espinoza González v. Peru, previously cited, para. 151.

possible, handcuffs should be removed during testimony, and all necessary measures should be taken to ensure that the victim and witnesses give their statements **without the presence of agents from any security force**.

Additionally, the necessary measures must be ensured so that the victim or witness is accommodated, whenever possible, in a facility separate from that in which the events under investigation occurred and that is not under the authority of the same officials as the original facility. In all cases, efforts should be made to avoid transferring the detained person to a location where distance would prevent or hinder contact with their family.

7.4. Evaluation of the victim's psychological or psychiatric reports

Objectives of evaluating psychological or psychiatric reports

Psychological or psychiatric reports of the victim can serve as useful evidentiary tools to demonstrate **the psychological injuries and sequelae caused by acts of sexual violence**. In this way, such reports can indirectly substantiate the facts under investigation. However, these types of expert evaluations are not necessary in all investigations; their use should be assessed on a case-by-case basis, as their purpose is strictly evidentiary.¹⁶⁴

In this regard, they can:

- contribute to the understanding of the victim's behavior before, during, and after the incident, and allow for the attribution of aggravating circumstances or the identification of additional criminal offenses (for example, torture or severely degrading abuse);
- determine the presence of trauma-related indicators associated with sexual victimization, predominant defense mechanisms, and emotional, cognitive, and/or behavioral sequelae (e.g., sexual trauma);
- incorporate a psychosocial approach for a comprehensive evaluation of the victim, also considering their social, community, and occupational interactions. Attention should be given to the victim's specific characteristics, such as age and the context of violence they may have experienced from an early age, allowing for a more complete understanding of the impact.

Psychological evaluations of victims **should be aimed solely at demonstrating the violence inflicted upon them and the extent of the harm caused by the incident**, although it is possible that some

164. Office of the Attorney General of Colombia. *Checklist for the Investigation and Prosecution of Sexual Violence. Module 3: Collection of Evidence in Cases of Sexual Violence*, Bogotá, Colombia, 2017, p. 25.

individuals may not exhibit psychological sequelae despite having experienced sexual violence.

The engagement of professionals in forensic psychology or psychiatry requires the prosecutorial team to conduct a prior evaluation of their specialized training, both at the clinical level and in the specific subject matter, verifiable through the certifications required in each country. It is important to demonstrate to the court that the professional possesses up-to-date knowledge and has developed experience in the clinical-care field, thereby ensuring competence in the required area.¹⁶⁵

The psychological or psychiatric report is NOT intended to:

- » **Assess the plausibility, truthfulness, or credibility of the account.** The concepts of plausibility and credibility do not correspond to the truth regarding the events that actually occurred. For this reason, such assessments should not be proposed (and the prosecution should object if they are requested) in expert evaluations aimed at determining whether the victim or their statements are deceitful, plausible, truthful, or credible. Forensic psychology does not have scientific tools to establish whether an account is truthful, deceitful, plausible, or credible.¹⁶⁶

On the other hand, **fabulatory behavior** is a purely pathological phenomenon in which an individual has difficulty distinguishing between fantasy and reality. Clinical pathology should never be confused with a malicious intention to lie. Difficulty in distinguishing between fantasy and reality should be considered a **structural vulnerability factor** that exacerbates the situation of the affected person. The fact that an individual suffers from a pathology does not mean that they cannot be a victim of sexual violence.

- » **Assess the credibility of individuals with some form of intellectual disability:** The ability of these individuals to provide useful information for the case should be evaluated in the context of the evidence presented. It should not be assumed that the disability prevents or limits their capacity to understand, remember, or communicate the experienced situation.
- » **Dismiss the incident:** The psychological assessment should be aimed at verifying the objective sequelae of the violence suffered. However, empirical experience has shown that not every person who is a victim of sexual violence develops trauma or sequelae

165. Marquevich, M. *Argentine Forensic Psychology Manual* / Mariano Marquevich; contributions by Silvia Castelao. 1st compendium edition. Autonomous City of Buenos Aires, 2021.

166. "Let's be clear: there is no technique, device, or technology capable of determining with complete accuracy whether someone is lying. Any professional who suggests otherwise is a fraud, and likely knows it or at least suspects it. (...) The field of deception detection is not a science; it is a pseudoscience that thrives primarily due to ignorance within the criminal justice community (and society at large)." Turvey, B., & Coronado, A. *The Psychology of Lying, False Accusations, and Criminal Investigation*. Mexico: Forensic Press, 2019.

consistent with psychological harm or post-traumatic stress.¹⁶⁷

- **Investigate the victim's sexual or social conduct or assess their personality or other aspects of their private life.**

Conditions for conducting the expert evaluation

Since it is a procedure that requires the victim's renewed participation, it should **only be carried out with their consent**, after they have been provided with clear information about the methodology for the procedure, who requested it, and the reasons for it, **and only when it is strictly necessary** according to the case theory and the rest of the collected evidence. Whenever possible, professionals should have as much information as possible about the case and the victim (details of the events under investigation, clinical information, etc.).

In most cases, the **forensic psychological** evaluation will consist of a forensic psychological interview and the administration of graphic and projective techniques to assess the consequences of the violence experienced. The **psychiatric** evaluation will be based on an interview aimed at assessing the person's mental state. The administration of techniques (psychometric and projective tests) falls exclusively within the field of psychology. In cases involving victims with disabilities, the forensic psychological evaluation and the psychiatric assessment must be carried out by experts specialized in disability issues and using instruments appropriate to the victim's specific disabilities.

In some cases, a psychological evaluation may be useful and sufficient for the investigation. Therefore, the relevance of also conducting a psychiatric assessment should be evaluated in each case, since a second examination could result in revictimization.¹⁶⁸ It is important to establish a correlation between symptoms, facts, and theoretical foundations to draw conclusions without the need for an excessive number of psychometric tests.

Symptoms consistent with post-traumatic stress disorder, which also fall within the field of psychology, are often assessed when the affected person presents an underlying psychopathological condition, a disability, or when it is necessary to evaluate imminent risk to themselves or to others. If such symptoms are identified, they must not be considered as indications to undermine the credibility of the testimony, but rather as elements that provide information about the person's structural vulnerability.

167. *Pensamiento Penal Journal* (ISSN 1853-4554), November 2023, No. 490, p. 5, www.pensamientopenal.com.ar.

168. UFEM, *Sexual Violence Protocol*, cited above, p. 73.

Evaluation of the state of mental faculties. Tendency toward confabulation or a confabulating personality.

Confabulation is a purely pathological phenomenon in which the person being evaluated is unable to distinguish between fantasy and reality. This should not be confused with a malicious intent to lie. Concepts such as simulation, confabulation, truthfulness, and mendacity should not be interpreted as synonyms.

The evaluation of the person's mental faculties aims to rule out the presence of any underlying psychopathological condition that could alter their sense of reality. The fact that a person shows a tendency toward confabulation does not mean that they have lied about the factual events.

Psychological and/or psychiatric expert evaluations lack the technical or methodological tools to determine whether the person being examined is lying. There are no scientific instruments in the field of mental health capable of establishing whether an event exists or not. Therefore, psychological instruments designed to assess the concept of confabulation—erroneously understood as mendacity—should not be applied.¹⁶⁹

Requesting this type of examination in a generalized and predominant manner for women victims of gender-based violence constitutes a discriminatory practice based on gender stereotypes.¹⁷⁰ The premise underlying this measure stems from the false notion that women are deceitful and tend to exaggerate or distort events. This practice is not applied in other types of cases in which the victim's testimony is essential to understanding what occurred (for example, street thefts in which only the victim is able to identify the aggressor).

For these reasons, prosecutors' offices should oppose the routine use of such expert examinations if there is no clinical condition that warrants them. Expert examinations should only be aimed at documenting the consequences of the criminal act.

7.5. Prohibition on presenting the victim's prior sexual history

The prosecution team must not inquire into the victim's prior sexual history or behavior, as these are not relevant to the investigation.¹⁷¹ Likewise, they should object to the use of such evidence by the defense, as it is irrelevant and distortive to the determination of what occurred.

169. See: Martínez Soares de Lima, P. "How to Justify the Nullity of Certain Common 'Points of Expertise' in Psychological Evaluations" *Revista Pensamiento Penal* (ISSN 1853-4554), November 2023, No. 490, p. 9.

170. IACtHR, *Caso Espinoza González v. Peru*, *Espinoza González v. Peru*, previously cited, paras. 279–280; *Veliz Franco and others v. Guatemala* previously cited, para. 213

171. The Istanbul Convention establishes that "evidence relating to the victim's sexual history and conduct shall be permitted only when it is relevant and necessary" (Art. 54), such as in cases where genetic material is obtained that may correspond to the victim's consensual sexual relations with another person.

The introduction of this evidence is sometimes used by the defense to question the victim's respectability and credibility. Based on stereotypes, it seeks to portray the victim as promiscuous or immoral, to hold them responsible for what occurred, or to cast doubt on their accusations. This tactic aims to shift responsibility for the perpetrator's behavior onto the victim.¹⁷²

For example, it is used to argue that a victim who has previously consented to sexual activity is more likely to have consented to the act in question. The victim's prior behavior fails to recognize that consent for each sexual act must be given autonomously for that specific act, regardless of which previous acts were consensual. Therefore, it is not useful for the investigation and contributes to re-victimization. Victims of sexual violence who engage in sex work are particularly vulnerable to this type of inappropriate attack.

Meta-expert report or counter-report on psychological-psychiatric expert evaluations

Expert reports, both psychological and psychiatric, generally require specialized expertise in the field. They are technical and scientific documents whose purpose is to provide information and empirical arguments regarding the procedure carried out, ensuring that it is complete, clear, and—above all—understandable to anyone who is not familiar with the specific science practiced by the expert who prepared it.¹⁷³

Preparing forensic psychological and/or psychiatric reports that lack scientific rigor and theoretical grounding, that demonstrate improper use of methodology, or that fail to include information addressing the specific characteristics of the phenomenon of sexual violence, among other issues, can lead to misinterpretations and erroneous conclusions. This not only risks contributing to the secondary victimization of the person being evaluated, but also means that such reports fail to fulfill their essential function of providing specialized professional guidance.¹⁷⁴

For this reason, in some countries it is common practice to use a “meta-expert report” or “counter-report,” whose purpose is to objectify, specify, and evaluate the relevance of the methodological data, the use of up-to-date bibliographic resources, and the theoretical framework applied in reaching the conclusions of the evaluated material.¹⁷⁵

This assessment seeks to determine the degree of consistency between the data obtained from the psychiatric and/or psychological analysis conducted on the examined person and the concepts found

172. UNODC, *Handbook on Effective Prosecution Responses to Violence against Women and Girls*, New York, 2014, available at: https://www.unodc.org/documents/justice-and-prison-reform/Handbook_on_effective_prosecution_responses_to_violence_against_women_and_girls.pdf, p. 101.

173. Salamea Carpio, D. “Meta-Expert Evidence in Judicial Proceedings.” In *Revista Pares – Social Sciences*, Vol. 1, No. 2. National University of Mar del Plata, Argentina, 2021, p. 18.

174. Asensi Pérez, L. F., & Díez Jorro, M. “Forensic Psychological Evaluations in Gender-Based Violence Cases: Common Errors and Proposals for Improvement.” University of Alicante. *Revista Psicológica*, No. 111, 2016, p. 104. Retrieved from: <https://doi.org/10.14635/IPSIC.2016.111.8>

175. Horcajo-Gil, P. J., & Dujo, V. “Forensic Psychological Counter-Report: Conceptualization and a Practical Case in a Custody Dispute.” In *Revista Psicopatología Clínica, Legal y Forense*, Vol. 20, pp. 53–71. Madrid, 2020, p. 58.

in the scientific and/or technical literature on mental health in relation to the hypothesis under evaluation.

The meta-expert report or counter-report is intended to evaluate the validity of the conclusions of the examined report, after analyzing its methodology and scientific basis. This practice does not aim to, nor does it involve, assessing the personality or other characteristics of the victim, the accused, or the professionals involved, since no individual is being evaluated.¹⁷⁶

176. Huerta Castro, S., & Maffioletti Celedón, F. (2009). "On the Value of So-Called Meta-Expert Reports on Forensic Psychological Evaluations of Victims." Specialized Unit on Sexual and Violent Crimes, *Revista jurídica del Ministerio Público* N°41, p. 116. Retrieved from: <http://icev.cl/wp-content/uploads/2011/11/Acerca-del-valor-de-los-llamados-Metaperitajes.pdf>.

8. OTHER EVIDENTIARY MEANS

In cases of sexual violence, the prosecution team must assess the indications, physical evidence, and any other information obtained from the report, and determine which evidentiary means will be necessary to prove that the incident occurred.

The requirement to produce evidence in addition to the victim's statement aims to strengthen the prosecution and provide context for the testimony, but it does not imply "corroborating" the statement, a concept implicitly based on the stereotype of women as liars, fabricators, or exaggerators of events.¹⁷⁷

8.1. Investigative actions regarding the perpetrator(s)

Different investigative actions may be carried out to collect material evidence concerning the perpetrator, provide information about that person's connection to the incident and the victim, gather background information, support other indications, or guide further investigative procedures.

The initial actions should focus on identifying the alleged perpetrator and preserving the evidence.

8.1.1) Identification of the perpetrator(s)

If the perpetrator has not yet been identified, the following investigative actions, among others, may be carried out:

- 1) **Identification of public or private cameras** in the area where the assault occurred that may have captured the perpetrator's face, clothing, or any distinguishing feature. This measure may also provide information about the incident itself, the timing of the offense, and the perpetrator's escape route.
- 2) **Collection of samples** (fingerprints, biological traces, DNA profiles) that do not belong to the victim, found on the victim or at the scene of the incident. The genetic profile obtained must be compared with existing genetic databases or with samples from suspected individuals.
- 3) **Obtaining a description of the perpetrator** or details of any distinguishing characteristics based on interviews with the victim (avoiding re-victimizing or traumatic questioning) or with other witnesses. The preparation of a **composite sketch** (identikit) may also be carried out.

Serial offenders

177. Raquel Asensio et al. *Gender Discrimination in Judicial Decisions: Criminal Justice and Gender-Based Violence*. Office of the Public Defender, Buenos Aires, 2010, p. 122.

The identification of common behavioral patterns across different incidents can be useful to an investigation in determining the possible presence of **serial offenders**, that is, one or more individuals involved in multiple acts of sexual violence. To that end, it is recommended to review similar cases reported to public agencies such as law enforcement, judicial, or health institutions (taking into account factors such as the location of the incident, the modus operandi, or the method of approach), or to use criminal intelligence information available within the prosecutorial institution itself to identify such patterns and direct investigative efforts toward those individuals, locations, and related contexts.

In this context, the **development of geographic profiles of serial offenders** is particularly relevant. This involves mapping the geographic locations of the incidents together with the different components of the crime (such as the place where the victim was approached or attacked and where the crime was committed) in order to identify areas where it is most likely that the offender operates, such as their place of residence, workplace, recreational areas, or locations that offer easy access to potential victims.

8.1.2) Inspection, body search, and collection of biological samples

If the perpetrator has been identified and the assault is recent, urgent measures should be taken, with the necessary authorizations, to examine the possible perpetrator's body to identify and preserve physical evidence of the crime. Such evidence aims to determine the perpetrator's involvement in the incident and its dynamics (for example, the use of force by the perpetrator and/or defensive actions by the victim), and to establish relational links with the victim, the crime scene, and other relevant elements.

Evidence on the perpetrator's body and belongings¹⁷⁸

Examinations y samples	Objective
Collection of fingerprints	Identification of the perpetrator and determination of their presence at the crime scene through comparison of fingerprints obtained with public records and those collected at the scene.
<p>Complete physical examination to document any external injuries present on the perpetrator's body (such as bruises, scratches, bite marks, contusions, lacerations, abrasions, injuries to the genital area, etc.)</p> <p>This includes a full report detailing the type of injury, its location, and other relevant information.</p>	Documentation of any external injuries on the perpetrator's body that may have resulted from the assault and/or defensive actions by the victim.
<p>Seizure and collection of samples from the perpetrator's clothing and personal belongings.</p> <p>Photographing the perpetrator and any evidence recovered</p>	<p>Search for objects, fingerprints, or biological traces.</p> <p>Collection and preservation of clothing worn at the time of the assault. It must be carefully examined for stains, biological samples (from the perpetrator or another person, such as the victim), or other elements that could link the individual to the crime or the location where it occurred (such as traces of soil, vegetation, paint, fibers, etc.).</p> <p>Submission of all findings for forensic analysis to relate them to other evidence collected from the victim, the crime scene, and related sources.</p>
Blood or urine tests	Determination of alcohol levels and the presence of drugs.

178. Table adapted from Du Mont, J., and White, D., *The uses and impacts of medico-legal evidence in sexual assault cases: a global review*, World Health Organization, 2007, p. 10; and UFEM, *Sexual Violence Protocol*, cited above.

<p>Collection of fluid samples and other biological material (blood, semen, saliva, hair, etc.) for the purpose of identifying the perpetrator's DNA profile.</p>	<p>To determine the involvement of the alleged perpetrator in the incident (e.g., traces of the perpetrator on the victim's body, traces of the victim on the perpetrator's body, or at the scene of the incident, etc.).</p> <p>This includes performing various sample collection procedures such as oral, penile, and anal swabs, when applicable, or subungual samples (nail scrapings) to search for biological material such as semen, hair (head and pubic), saliva, blood, or other bodily fluids.</p> <p>If a mark compatible with a bite is observed, efforts should be made to identify saliva samples in those areas, specifying the location from which the material was collected.</p> <p>If the alleged perpetrator was apprehended in flagrante delicto or immediately after the incident, it is recommended to collect samples from the balano-preputial sulcus and penile shaft for DNA analysis of epithelial cells from the assaulted person.</p> <p>The results should be compared with samples obtained from the victim and/or with other available genetic records (for example, those found at the scene of the incident).</p>
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Other urgent measures regarding the alleged perpetrator:

- **Seizure of the cell phone, personal computer, and any other electronic devices that store data**, whose contents should be carefully analyzed to look for evidence of the perpetrator's relationship with the victim, as well as their behavior before and after the incident;
- **Examination and, where necessary, interception of the defendant's telephone communications**, as well as those of close relatives or individuals with whom the defendant may attempt to make contact;

- **Seeking a search warrant** for the alleged perpetrator's residence, workplace, or other frequented locations to locate items connected to the incident;
- Requesting police and criminal record reports.

8.1.3) Fugitive perpetrators

The failure to appear or flight of the accused person is particularly serious in cases involving gender-based violence. This situation not only hinders the progress of the judicial process but may also pose a risk to the physical and psychological integrity of the victim, as it leaves open the possibility of further harm or repeated acts of violence.

The defiance or flight of the accused does not terminate the criminal proceedings and does not extinguish the obligation to investigate the facts with enhanced due diligence, nor does it relieve the duty to adopt protective measures for the victim. Therefore, prosecutors must oppose the dismissal or suspension of the case and actively propose investigative measures to locate the perpetrator, both at the national level and through international agencies.

Some measures aimed at locating the alleged perpetrator include:¹⁷⁹

- Requesting personal data from the information systems of various authorities (in particular, information on residential and work addresses), including public security agencies;
- **Analyzing the perpetrator's social media profiles** (if necessary, requesting assistance from the institution's specialized IT unit);
- Requesting information from the immigration authority regarding the individual's entries and exits from the country;
- Verifying whether the person is detained under the authority of any judicial body;
- Requesting reports on outstanding arrest warrants, searches for whereabouts, or any other judicial actions concerning the alleged perpetrator.

Based on the information collected, the prosecutor's office must conduct investigative actions at locations known to be frequented by the accused.

179. National Public Prosecutor's Office of Chile, *Manual for the Investigation of Cases of Physical and Psychological Violence Based on Gender*, 2019. Available at: <https://eurosocial.eu/wp-content/uploads/2020/03/document7.pdf>

8.2. Testimonial statements (other than the victim)

If the sexual violence occurred in settings or under circumstances that make the presence of direct witnesses unlikely, the prosecutor's office must identify individuals whose testimony may nonetheless provide relevant information regarding the following:



In this regard, it will be important to consider the testimony of:

- Individuals who reported the incident;
- Individuals who witnessed or heard the incident;
- Individuals who had contact with the victim or the perpetrator before or after the incident
- Individuals who can provide information about the circumstances leading up to the incident (e.g., regarding the relationship between the victim and the perpetrator);
- Individuals who can provide evidence about the victim's condition after the incident (those with whom the victim has spoken or interacted);
- Individuals who can provide information about the perpetrator's background (including possible prior victims);
- Police officers or security personnel who had immediate contact with the victim following the incident (they can report on the victim's physical and emotional state as well as the surrounding circumstances);

- Medical or mental health personnel who provided emergency care to the victim;
- Personnel from mobile victim assistance units;
- Health professionals who have provided regular care to the victim (psychologists, psychiatrists, primary care physicians, etc.), with prior authorization to waive professional confidentiality;
- Family members, friends, romantic partners, coworkers, school staff, or other individuals close to or within the victim’s environment.

When interviewing witnesses, especially if they are family members of the victim, it is essential to protect the victim’s privacy by avoiding references to aspects of the crimes under investigation or to the victim’s personal life that could compromise their intimacy.

Testimony from individuals close to the victim

The testimony of those who did not witness the incident directly but have information about it through a direct witness can be considered as evidence and may also provide insight into their own impressions of the direct witness (for example, the victim’s emotional state). The same applies to individuals in the victim’s close circle—such as family members, friends, and health professionals—who can provide information about the circumstances of the incident or its impact on the victim. Many people close to the victim can also speak to symptoms and behavioral changes, fears, and effects on the victim’s health.

8.3. Inspection of the scene of the incident

Some cases of sexual violence require investigation of the crime scene and adjacent areas (related locations, escape routes, etc.)¹⁸⁰ In these areas, there may be evidence of the offense and/or biological or other traces that must be collected immediately to prevent their loss or degradation over time, or due to concealment efforts, particularly in “urgent” and “recent” cases (with either a surviving or non-surviving victim). Additionally, the scene may provide information about coercive circumstances or violence (e.g., damage to property, missing items, letters, photographs, bank documents, etc.).

Efforts should be made to visit the scene and ensure that law enforcement and forensic teams preserve the discovery site and/or crime scene, and that they properly document, secure, and collect physical evidence, to guarantee that it is not lost, altered, or contaminated.

180. It is also possible to conduct inspections at locations other than the scene of the incident, for example, to reconstruct spatial and temporal trajectories, identify sources of information, locate potential witnesses, document contextual elements, or recover material evidence at sites indicated by the victim or witnesses.

The most common methods for documenting the scene of the incident include:

- Narrative descriptions in the procedural report;
- Photography;
- Video recording;
- Mapping of the physical space and the evidence found.

If the perpetrator is present at the scene, a record must be made of their location within the space, the position in which they were found, their emotional state, a description of their clothing and any items in their possession, as well as any other circumstances that help describe the situation.

The inspection of the scene of the incident or other areas may provide:¹⁸¹

Scene of the incident	Additional evidence and sources
<ul style="list-style-type: none">. Elements that help confirm the occurrence of the incident. Elements that help establish connections between the perpetrator and the scene. Information to identify potential witnesses. Evidence to support the victim's account. Information to clarify the circumstances of the incident. Elements to determine circumstances of coercion or prior violence	<ul style="list-style-type: none">. Identify other sources of information and potential witnesses. Evidence to support the contextual analysis of the incident. Elements supporting the victim's and/or witnesses' accounts. Elements to reconstruct the incident's spatial and temporal trajectory

181. Office of the Attorney General of Colombia, *Checklist for the Investigation and Prosecution of Sexual Violence. Module 3: Collection of Evidence in Cases of Sexual Violence*, Bogotá, Colombia, 2017, p. 35.

Biological traces can also be found at the crime scene. These may be useful for identifying DNA and comparing it with the known genetic information of the victim and the alleged perpetrator, helping to establish their presence at the scene and the possible dynamics of the event.

Depending on where the incident took place, it is necessary to assess the collection and preservation of evidence that may indicate sexual violence, for example:¹⁸²

Type of evidence / trace	Method of preservation
Sanitary towels, pads, absorbent paper, toilet paper, sexual “toys,” etc.	Store in paper bags or envelopes, properly sealed and labeled.
Used condoms, full or empty	Store items in paper bags or envelopes, properly sealed and labeled. If the item contains liquid, tie the open end to prevent leakage and place it inside a plastic container or zip-top bag, also properly sealed and labeled. Refrigerate if possible. If only a small amount of liquid is present, collect it using a swab and allow it to air-dry.
Clothing (e.g., used underwear or other garments).	Keep in dry paper bags or envelopes, properly sealed and labeled.
White clothing (bedding, towels, etc.), ropes, or other garments that may have been used to restrain the victim.	Store in dry paper bags or envelopes, properly sealed and labeled.
Dry or wet stains on portable items (cigarette butts, knives, coins, keys, stones, branches, papers, etc.).	Collect a sample using a sterile swab (moistened or dry, as appropriate) and store it in paper or cardboard containers.
Hair	Collect each hair using tweezers (disposable or thoroughly cleaned) and store it in a paper bag.

182. The following table was taken from the *UFEM Sexual Violence Protocol*, previously cited.

Stains on non-transportable absorbent surfaces (mattresses, sofas, carpets, etc.)	Cut out the portion containing the stain using sterile instruments and place it in a properly sealed and labeled paper bag. If the stain is extensive, take photographic documentation and cut out a representative portion. Also cut out an unstained sample of the same material to serve as a control.
Non-absorbent surfaces (glass, metal, floor, wall, vehicle, etc.)	Collect with a sterile swab moistened with distilled water (allow to dry before storing) or scrape with a scalpel and store in a paper bag.
Cups or beverage containers that may contain substances used to subdue the victim's will	Store in paper or cardboard bags, properly labeled.
Photographic or video material — computers, laptops, tablets, cell phones, USB drives, CDs, DVDs, hard drives, servers, etc.	Package in special Faraday-type bags or other signal-blocking materials to prevent data transmission. Properly label all items.
Blister packs, pills, or boxes of medication that may have been administered to the victim	Place in paper or cardboard bags, properly labeled.

8.3.1) On-site inspection and reconstruction of the events

The prosecution team must assess the relevance and necessity of this measure, as the victim's participation in the procedure may be re-victimizing and have a traumatic impact, particularly when the victim is a child or adolescent.¹⁸³ For this reason, their consent and an evaluation of their emotional state are required before proceeding.

It is recommended that the inspection be conducted based on the facts already described by the victim, to avoid their direct participation.¹⁸⁴ If their presence is deemed indispensable, efforts should be made to minimize the repetition of information already provided to the authorities.

183. IACtHR, Case of V.R.P., V.P.C., and others v. Nicaragua, *supra*, para. 185 et seq.

184. *Ibid.*, para. 191.

8.4. Documentary and digital evidence

8.4.1) Records

Different types of records can serve as evidence or provide useful leads for an investigation. They are particularly important for corroborating accounts, establishing prior episodes of violence (psychological or physical, threats, etc.), or other circumstances of coercion. This includes records from public or private health or security organizations. Among these are:

- **Information from the healthcare facilities the victim has attended or is currently attending, including** medical records, clinical histories, and other documentation of their care;
- records of calls to victim support hotlines;
- audio records of calls to emergency lines;
- audio records of calls to public or private emergency services;
- police incident reports;
- recordings from the body cameras of police officers who responded to the scene;
- records of police reports.

In addition, the initial clinical assessment, diagnosis, medical history, collection of samples, and documents related to the initial care in sexual and reproductive health, as well as in physical and mental health, if they document the consequences or the sequelae of sexual violence, constitute potential evidence that must be properly collected and verified during the investigation.¹⁸⁵

If the alleged perpetrator has received medical attention after the incident, that information may also be relevant to the investigation.

8.4.2) Electronic or digital information

Computing or digital devices may be used in the commission of an act (e.g., cyberharassment or child pornography) or may contain information about it (e.g., recordings of events, geolocation data, or evidence of prior contact with the victim). Evidence collection typically involves the collection,

185. Office of the Attorney General of Colombia, *Protocol for the Investigation of Sexual Violence*, previously cited, p. 39.

preservation, and analysis of communication data from devices belonging to the suspect, the victim, and, in some cases, third parties.

This type of evidence is generally considered documentary evidence, documented through reports prepared by the person who extracted and analyzed the information—and is preserved as physical evidence. “Electronic or digital information” refers to any information or data with evidentiary value that is stored on, received by, or transmitted through an electronic device.

They can be found on different devices:



On personal devices

Computers, tablets, phones, internal or external storage devices (USB drives, CDs, memory cards, etc.), smartwatches, audio or video recorders, and similar devices. This information may take the form of texts, images, videos, databases, histories or logs, conversations, voice messages, locations, or any other useful information stored by applications or programs.



On a public digital platform or from open sources

News reports, public records, academic papers, videos posted online, social media pages of the victim, the alleged perpetrator, or groups to which they belong or are affiliated, discussions, and similar sources. This material can be useful for understanding context, establishing behavioral patterns, or even reconstructing the circumstances surrounding the act (especially if the act under investigation was filmed or photographed and uploaded to social media).

Its evidentiary value may be challenged, particularly due to uncertainties regarding authenticity. Therefore, these sources must always be verified, which may involve taking a statement from the person who produced them.



On a private digital platform

Internet user activity logs, mobile phone company records, email accounts, cloud storage services for files or data, hotel records, bank records, and similar sources.

Online activity, including browsing on the internet, social media, or other electronic platforms may provide relevant information to determine, among other things:

- . the occurrence of the events
- . the possible perpetrators
- . the type of relationship between the victim and the aggressor
- . the aggressor's behavior before and after the incident
- . dynamics associated with pimping, pornography, prostitution, organized crime, sexual harassment, threats, extortion, etc.

Electronic devices contain various types of data, including highly sensitive material such as medical records, banking information, and private photographs. It is of vital importance that the victim's personal information be handled in a manner that balances their right to privacy with the interests of justice. Decisions to obtain and review material from a digital device must be made with great caution.

The decision to examine the contents of a victim's, suspect's, witness's, or any other person's device should be guided by a reasonable line of investigation and justified by the specific circumstances of the case. Such examinations should not be conducted routinely. For instance, in cases involving sexual offenses committed unexpectedly by strangers, or in older incidents where it is unlikely that the victim's or suspect's device contains relevant information, authorities should carefully assess whether the examination will meaningfully contribute to the investigation or merely cause unnecessary delays.

Each case must be considered individually. The prosecutorial team should balance the investigative value of a digital examination against the victim's or witness's right to privacy and the protection of their personal data. The victim must give their consent and be informed of the procedures, including the type of information to be collected and analyzed, how the data will be accessed, and how the resulting information or data will be used.

The examination of the content must be limited to material that is relevant.

To supplement the evidence obtained from the analysis of electronic or digital information, it is recommended to:

- Request from mobile phone companies that they:
 - provide the ownership information of phone lines and/or lines associated with the investigated person and their family, work, or criminal environment;
 - prepare a report on communications for the requested line(s), including data traffic and incoming and outgoing text messages, specifying the relevant time period to establish the individual's environment or potential use of other lines.
- Request from companies managing virtual platforms that they:
 - provide access to relevant information (including user registration data used to activate the account and any IP addresses used) stored in email accounts, social media accounts, or similar platforms;
 - preserve accounts or posts on social media.

Collection and preservation of digital evidence

Electronic or digital evidence is inherently fragile and can be altered, damaged, or destroyed through improper handling or examination. Therefore, special precautions must be taken to **document, collect, preserve, and examine** every step of the process involving digital evidence, clearly specifying the measures and actions carried out, with the **preservation of the chain of custody** as the central focus.

Digital evidence is governed by the same principles as other documentary evidence and must remain unaltered from the moment it is received by the investigative team until it is presented before a court.¹⁸⁶

Operating systems and other programs frequently modify or add content to electronic storage. This can occur automatically, without the user necessarily being aware that the data has been altered. Therefore, whenever possible, a **full image of the target device** should be created. Partial or selective copying of files may be considered as an alternative under certain circumstances—for example, when the volume of data makes a full copy impractical. However, the investigative team must ensure that **all relevant evidence is preserved**.

The Budapest Convention on Cybercrime¹⁸⁷, a treaty ratified by many countries in Latin America, serves as a key reference for the prevention and investigation of crimes, particularly regarding international cooperation.

8.4.3) Surveillance cameras

Records from surveillance cameras or domes installed in public areas or private locations (buildings, businesses, banks, etc.) may be relevant if the violent incident occurred in a public space or to trace the movements of the individuals involved before or after the event.

If a police force was involved in the case, it is possible that part of the incident or its immediate consequences

186. *Guide for the Collection, Preservation, and Handling of Digital Evidence*, approved within the framework of the XVII REMPM, held in Buenos Aires on November 18–20, 2014, available at: [PGN-0756-2016-001.pdf \(fiscales.gob.ar\)](https://www.fiscales.gob.ar). Association of Chief Police Officers of England, Wales and Northern Ireland, *Good practice Guide for Computer-Based Electronic Evidence*, <https://www.datainvestigations.co.uk/files/ACPO%20Guidelines%20Computer%20Evidence%20v4.pdf>, ps. 4 y 6. This manual provides useful guidelines for handling digital evidence.

187. Council of Europe, *Convention on Cybercrime*, Budapest, adopted on November 23, 2001, entered into force on July 1, 2004. For more information about the Convention: <https://www.coe.int/en/web/cybercrime/the-budapest-convention>. The Spanish version can be consulted at: https://www.oas.org/juridico/english/cyb_pry_convenio.pdf

were captured by cameras installed in police vehicles. Prosecutors' offices should request these recordings from the police force involved.

8.5. Expert reports or witnesses

In addition to the psychological or psychiatric evaluation of the victim, aimed at assessing the harm caused by the sexual assault, depending on applicable procedural law, the prosecutorial team may resort to other types of expert reports or expert witnesses to support the case.

8.5.1) Expert reports to explain the dynamics of sexual violence

The use of expert reports or witnesses is extremely valuable in helping the court understand the dynamics of gender-based and sexual violence, as well as their implications for the specific case.

In countries where it is permitted, the prosecutorial team may call on specific expert reports, particularly to assist the court in understanding certain aspects of the case or to enable an impartial assessment of the evidence free from gender bias. These testimonies are useful for challenging preconceived notions or stereotypes the court may hold regarding sexual violence, allowing for an appropriate evaluation of the evidentiary elements and a review of the facts without interference from biases, especially those based on gender.¹⁸⁸

The expert report may address, for example:

- the common behavior of victims and the effects of violence on them, helping to explain actions that may not align with the expectations of the court or jury;
- manifestations of gender-based violence that are less conventional and therefore more likely to go unnoticed by judicial actors;
- in cases with absent victims, reasons why the victim may be hostile or reluctant to participate;
- factors that contribute to victims frequently recanting their statements;
- reasons that lead many victims to delay reporting the incident and recounting the events.

It is essential that expert reports be conducted with a gender perspective. Without such a perspective, the testimony of anthropological experts in cases of sexual violence within an Indigenous community

188. UNODC, *Handbook on effective prosecution responses to violence against women and girls*, cited above, pp. 111–112.

could be misinterpreted to justify unlawful acts as part of so-called “ancestral cultural practices.” In contrast, a gender perspective allows experts to focus their analysis on gender inequalities within the community and on the suffering and oppression caused by the normalization of violence and its justifications in women’s lives.

It is also important to involve professionals who can help explain the intersectional factors that may have influenced the dynamics of the events (for example, cognitive level and lack of capacity to give consent) or the victim’s account (for example, unfamiliarity with specific terms such as “masturbation”).

8.6. Investigative actions concerning victims who did not survive

If the victim is a woman or a person with a female gender identity or gender expression who has died, it is important that, from the outset of the investigation, the possibility that the case constitutes femicide (or feminicide) be considered, in accordance with the guidelines set out in the *Latin American Model Protocol for the Investigation of Gender-Related Killings of Women (Femicide/Feminicide)* or its nationally adapted version.

The investigative team should pay particular attention to any elements indicating the presence of sexual violence, to determine its characteristics and identify motives associated with gender and/or other discriminatory factors against the victim. The team should also request that, during the autopsy, it be established whether the body shows signs of sexual violence (whether recent or past). In addition, particular attention shall be given to:

- the condition and location of the clothing, or its total or partial absence;
- the presence of biological traces from the alleged perpetrator on different parts of the body, on the victim’s clothing, or at the crime scene;
- the existence of fractures or breaks in the bones of the legs, pelvis, face, or other parts of the body;
- the presence of gags or bindings on the hands or feet that may have been used to restrain the victim;
- the position and placement of the body (e.g., legs spread apart);
- the mutilation of body parts with sexual significance (such as breasts, nipples, sexual organs, buttocks, or thighs). It is important to consider the sexual meaning of such mutilations in the context of sociocultural norms of the victim and/or the presumed perpetrator;

- evidence indicating the characteristics of the violence used (e.g., penetration with a penis, objects, etc.) and the level of violence;
- the existence of writings or marks left on the victim's body or at the crime scene;
- pregnancy (particularly in cases of abduction, disappearance, or human trafficking):

In cases involving the discovery of mass graves, the identification of bodies showing any of the signs described above may indicate the use of sexual violence as part of the violence employed in the context of large-scale group actions (such as armed conflicts, organized or complex criminal activity, or human trafficking).¹⁸⁹

8.7. Context-based evidentiary measures

As noted in **Chapter 5.3**, contextual analysis is an essential methodological tool for exploring and addressing the questions of who, to whom, when, where, and how that inform the theory of the case. For this reason, it is important to identify the specific evidentiary measures that are most appropriate for establishing the particular characteristics that define each context.

Within this framework, an intersectional analysis is crucial for making strategic decisions when producing and evaluating evidence (**Chapter 4.2**). Indeed, the various forms of discrimination experienced by individuals, based on gender, economic status, ethnicity, culture, age, migratory status or human mobility, stigmatized work, among others, interact with multiple and complex exclusionary factors that must be considered as determining elements when assessing the severity of events. While the examples provided do not cover all possible vulnerability situations in specific contexts, the strength of the intersectional approach lies precisely in its ability to adapt evidentiary measures to the concrete circumstances of each case.

189. Attorney General of Colombia, Protocol for the Investigation of Sexual Violence, cited above, p. 63.

Context	Aspects to consider	Evidentiary measures
Intrafamiliar	<ul style="list-style-type: none"> Affinity or kinship ties between the victim and the presumed perpetrator (father, grandfather, uncles, siblings, cousins, etc.) 	<p>Testimonial evidence</p> <ul style="list-style-type: none"> Family members, friends, or companions of the victim
	<ul style="list-style-type: none"> Dinámica coercitiva de amenazas y violencia psicológica y/o física de la persona agresora a la víctima 	<ul style="list-style-type: none"> Neighbors, building staff, or security personnel
	<ul style="list-style-type: none"> Posible regularidad de la violencia sexual (en ocasiones sostenida por meses o años) 	<ul style="list-style-type: none"> Healthcare professionals who have regularly attended the victim (psychologists, psychiatrists, primary care physicians, etc.)
	<ul style="list-style-type: none"> Condiciones aprovechadas por la persona agresora para la realización de la conducta (horario laboral de otro familiar responsable, situaciones de vulnerabilidad, aislamiento, etc.) 	<ul style="list-style-type: none"> Employers, employees, or coworkers of the victim or the presumed perpetrator
	<ul style="list-style-type: none"> Lack of reporting / Delayed reporting: <ul style="list-style-type: none"> Individuals who experience sexual violence in intrafamilial settings often remain silent due to fear, guilt, helplessness, shame, or age-related immaturity. Acts of sexual violence may occur with the complicity or acquiescence of people in the victim's environment, who in some cases are also part of the perpetrator's systems of control and violence. It is recommended to assess protective measures based on the affected person's family situation and surrounding environment. 	<ul style="list-style-type: none"> Staff of educational institutions or other facilities attended by the victim or their children
		<ul style="list-style-type: none"> Police personnel who intervened in the incident (can provide information on the victim's condition after the act, their emotional state, spontaneous statements made by the victim, and, if applicable, by the presumed perpetrator)
		<ul style="list-style-type: none"> Staff of victim support offices who have prepared medical or risk reports
		<p>Documental/digital evidence</p>
		<ul style="list-style-type: none"> Socio-environmental reports or home interviews
		<ul style="list-style-type: none"> Police incident reports involving the presumed perpetrator
		<ul style="list-style-type: none"> Reports from victim support offices/violence assistance reports
		<ul style="list-style-type: none"> Intimate documentary records (e.g., personal diaries)
		<ul style="list-style-type: none"> Reports from educational institutions that may document behaviors indicative of abusive acts
		<ul style="list-style-type: none"> Medical history or clinical records
	<ul style="list-style-type: none"> Criminal and/or civil court records 	
<ul style="list-style-type: none"> Documentation establishing parentage or other familial relationships 		
<ul style="list-style-type: none"> Records of calls to police, emergency medical services, and victim assistance hotlines 		
<ul style="list-style-type: none"> Digital content (emails, text messages, videos, etc.) from data storage devices belonging to the victim or the presumed perpetrator 		
<ul style="list-style-type: none"> Reports from electronic devices designed for the protection of victims of violence 		
<ul style="list-style-type: none"> Sketch of the incident scene 		

Intimate (marital, partner, sexual, affective or occasional)	<ul style="list-style-type: none"> • Level of trust inherent in the relationship that allows or facilitates the act 	Testimonial evidence
	<ul style="list-style-type: none"> • Presence of a cycle of violence (prior or concurrent; physical, psychological, verbal, economic) 	Same as above
	<ul style="list-style-type: none"> • Physical or psychological sequelae resulting from sustained sexual violence 	Documentary/digital evidence
	<ul style="list-style-type: none"> • Presence of previous instances of violence (which may or may not have been reported by the affected person) 	Same as above
	<ul style="list-style-type: none"> • Normalization of sexual violence, which is very frequently observed in this context. It is also often dismissed by the victim herself/himself and subsequently by the justice system 	
Victim's social setting (friendship, neighborhood, or participation in communal spaces such as cultural, social, educational, political, labor union, sports, religious or other community settings)	<ul style="list-style-type: none"> • Familiarity or trust with the presumed perpetrator, which facilitates the commission of sexual violence 	Testimonial evidence
		In addition to the individuals mentioned in the previous points, the following may also be included:
	<ul style="list-style-type: none"> • Relationship with a leader, role model, idol, or authority (formal or informal) to whom exceptional virtues or powers are attributed 	<ul style="list-style-type: none"> • Testimonies from colleagues, administrators, teachers, or other key figures who shared the relevant environment with the affected person
	<ul style="list-style-type: none"> • Submission through manipulative mechanisms, exploiting age or social inequalities, situations of vulnerability, or the need to belong to a specific collective or group 	<ul style="list-style-type: none"> • Testimonies indicating the existence of other possible victims in the institution or shared space (sometimes, when a complaint becomes public, other victims decide to come forward)
		Documentary/digital evidence
		<ul style="list-style-type: none"> • Employment and disciplinary records of the presumed perpetrator
		<ul style="list-style-type: none"> • Administrative summaries or reports from the institution's Gender Department, if applicable (e.g., club, union, university, etc.)
		<ul style="list-style-type: none"> • Complaints or references on social media regarding the presumed perpetrator and similar incidents
		<ul style="list-style-type: none"> • Digital content (emails, text messages, videos, etc.) from data storage devices belonging to the victim or the presumed perpetrator
		<ul style="list-style-type: none"> • Sketch or diagram of the incident scene

Workplace	<ul style="list-style-type: none"> Asymmetric hierarchical power relationship between the presumed perpetrator and the victim. The perpetrator’s behavior is usually clearly intentional, based on prior selection of the victim. 	<p>Testimonial evidence</p> <p>In addition to the individuals mentioned in the previous points, the following may also be included:</p> <ul style="list-style-type: none"> Testimonies from the victim’s coworkers (the functional or hierarchical relationship between the witnesses and the presumed perpetrator, as well as any possible constraints affecting their ability to testify freely, should be considered). Oversight bodies and/or labor unions. <p>These testimonies may help identify possible recurring patterns of violence or systematic behaviors within specific workplace settings and support the unification of the investigation.</p>
	<ul style="list-style-type: none"> Previous episodes of harassment, workplace or sexual misconduct, or other forms of violence (intimidation, threats, blackmail, humiliation, etc.) against the victim or other individuals in the same work environment. 	<p>Documentary/digital evidence</p> <ul style="list-style-type: none"> Records of prior complaints filed with the Human Resources department. Disciplinary records, administrative summaries, dismissals, or suspensions concerning either the presumed perpetrator or the victim (these may sometimes be used as punishment or retaliation for filing a complaint, or to prevent one). Personnel file of the presumed perpetrator. Complaints filed against the presumed perpetrator with professional associations, labor unions, or organizations to which they belong. Digital content (emails, text messages, videos, etc.) from data storage devices belonging to the victim or the presumed perpetrator. Diagram or sketch of the institution and the scene of the incident.
Healthcare setting	<ul style="list-style-type: none"> Abuse of authority by healthcare personnel (physicians or nurses). 	<p>Testimonial evidence</p> <p>In addition to the individuals mentioned in the previous points, the following may also provide testimony:</p> <ul style="list-style-type: none"> Testimonies from other patients. Testimonies from healthcare and/or administrative personnel who share the same workspace as the alleged offender.
	<ul style="list-style-type: none"> Incidents of sexual violence involving deception, manipulation, or taking advantage of the victim’s lack of knowledge about the procedures being performed. 	<p>Documentary/digital evidence</p> <ul style="list-style-type: none"> Records of prior judicial or administrative complaints against the alleged offender (criminal, civil, professional association complaints, social media reports, etc.). Attendance logs of healthcare personnel / duty rosters to verify the spatial and temporal circumstances of the incident and identify potential witnesses. Record of the victim’s medical consultation or clinical history documenting the care in which the incident under investigation occurred. Request for a report/opinion from the forensic team on medical practice standards to determine whether the reported procedure was appropriate. Digital content (emails, text messages, videos, etc.) from data storage devices belonging to both the victim and the alleged offender. Sketches/floor plans of the institution and the incident location.

<p>Deprivation of liberty and detention</p>	<ul style="list-style-type: none"> • Transgender women and travestis are exposed to specific forms of violence, including discriminatory and humiliating practices, harassment, assaults, more severe physical abuse, and degrading treatment during procedures such as personal searches. 	<ul style="list-style-type: none"> • Roster of the institution’s health personnel who may have had contact with the complainant (dates of interest).
		<ul style="list-style-type: none"> • Certification of any prior complaints and/or ongoing investigations in the courts or prosecutor’s offices with jurisdiction over the penitentiary complex in question.
		<p>In other detention facilities</p>
		<ul style="list-style-type: none"> • Verify the existence of logs or registers according to the type of facility (detention center, police station, municipal lockup, or outpost). Where applicable, the internal audit departments of the corresponding security force may be consulted.
		<p>Other measures</p>
		<ul style="list-style-type: none"> • Judicial authorities must safeguard victims’ rights by promptly and properly obtaining and preserving all evidence that may corroborate what happened.
		<ul style="list-style-type: none"> • Victims should be transferred to a healthcare facility for urgent care and evidence collection related to the crime within the first few hours following the incident.

Deprivation of liberty and detention	<ul style="list-style-type: none"> • The perpetrators are often public officials, who hold an increased degree of power and control over the bodies of the victims. 	Testimonial evidence
	<ul style="list-style-type: none"> • In places of deprivation of liberty managed by State agents, the responsibility of the State and its agents may arise through action (if the act is committed directly or indirectly by them with their acquiescence or authorization), omission (failure to guarantee or prevent), and/or by failing to provide an adequate response to an act committed by a private individual (generally another detainee). Therefore, the investigation should focus on: 1) examining the acts of sexual violence themselves; and; 2) determining the responsibility of those within the institution placed in a position of duty to protect. 	<p>In addition to the individuals mentioned in the previous sections, the following may also be included:</p> <ul style="list-style-type: none"> • Other detainees, who are often present in shared spaces during or immediately after the attack takes place.
	<ul style="list-style-type: none"> • Incidents of sexual violence may take place during arrest, within police detention cells or prison units, or while being transferred. 	<ul style="list-style-type: none"> • Testimony from individuals familiar with the institution, such as attorneys or public defenders, staff from oversight bodies (for example, the Ombudsman's Office), or representatives of organizations working within the place of deprivation of liberty. • Health personnel who provided care to the victim. • Staff responsible for the custody of the victim or the alleged offender (with the necessary precautions in these cases, given the potential influence or constraints on their testimony).
	<ul style="list-style-type: none"> • They may also consist of body searches carried out in a humiliating or degrading manner. 	
		Documentary/digital evidence
		<ul style="list-style-type: none"> • Security camera footage. • Medical or nursing logs (dates of interest). • Digital content (emails, text messages, videos, etc.) from data storage devices belonging to either the victim or the alleged perpetrator (if available). • Reports or records from external organizations, such as oversight bodies (e.g., the Ombudsman's Office), non-governmental organizations, or associations. • Floor plans of the institution.
		In penitentiary complexes
		<ul style="list-style-type: none"> • Visitor logs, module and ward search team logs, ward incident logs, entry and exit records, and administrative proceedings related to the victim. • Roster of penitentiary staff assigned to each ward and module, as well as the entire Control and Records Division (including personal information and personnel file numbers). Once identified as suspects or witnesses: personnel files of the relevant staff and any administrative investigations or disciplinary proceedings against them. • List of detainees in the area where the victim was located (module, ward, cell, etc.) on the dates of interest.

Human mobility context	<ul style="list-style-type: none"> • People in situations of mobility face numerous barriers to reporting sexual abuse. Victims may fear coming forward because of their insecure immigration status.¹⁹⁰ The perpetrator may also exploit this vulnerability to prevent the victim from reporting the criminal behavior to the authorities. 	<p>Testimonial evidence</p> <p>Regarding the victim:</p> <p>Facilitate their statement through digital mechanisms.</p> <p>Assess the need for international legal assistance.</p> <ul style="list-style-type: none"> • Interview victims of similar incidents.
	<ul style="list-style-type: none"> •Some victims may have entered the country through a forced marriage or human trafficking networks. In such cases, they often remain isolated from other people and from social services, feeling unable to leave their situation out of fear of receiving no support or due to a lack of knowledge about available services. 	<ul style="list-style-type: none"> • Individuals involved in the other cases.
	<ul style="list-style-type: none"> • Algunos solicitantes de asilo y refugiados pueden haber sido víctimas de abusos en los países de los que escaparon o en países que atravesaron; también estarán sufriendo experiencias relacionadas con ese abuso, como problemas de salud mental. Esa situación requiere a menudo de la cooperación de equipos de investigación de varios países. 	<ul style="list-style-type: none"> • Governmental and non-governmental organizations supporting migrants.
	<ul style="list-style-type: none"> •Some asylum seekers and refugees may have been victims of abuse in the countries they fled from or in those they passed through. They may still be experiencing the effects of that abuse, such as mental health challenges. These situations often require cooperation among investigative teams from multiple countries. 	<p>Documentary evidence</p>
	<ul style="list-style-type: none"> • The victim's migration situation or status must not interfere with the exercise of the due diligence required in the investigation. 	<ul style="list-style-type: none"> • Consultation of police, judicial, and forensic/medical databases. • Consultation of press archives and open-source information. • Reports from relevant liaison or governmental authorities.
	<p>It is advisable to implement urgent measures and expedite the collection of evidence, as both victims and perpetrators may leave the country where the crime occurred.</p>	

Organized or complex crime	<ul style="list-style-type: none"> Given the scale of these organizations and their internal dynamics, sexual violence crimes may go unnoticed or be considered insignificant compared to the primary offense, even by the victims themselves. For this reason, investigations must explicitly include charges of sexual violence, including when committed in connivance with offenses related to organized crime, and must also consider the motives and purposes behind the abuses (such as threats, intimidating messages, settling of scores, disciplining members of the organization, reinforcing internal roles, or establishing functional hierarchy among perpetrators, etc.). It is essential that investigative teams include personnel specialized in gender-related issues. 	Testimonial evidence
	<ul style="list-style-type: none"> Repeated sexual violence (by one or multiple individuals) is common in these contexts. When the goal is to punish and humiliate the victim or their environment, the violence often occurs in public spaces or in the presence of witnesses. 	<p>In addition to the individuals mentioned above, the following may also be included:</p> <ul style="list-style-type: none"> Other members of the organization Other victims Former members of the group Individuals or entities that were involved in the case Police personnel who can provide information about the events, the location where they occurred, the condition of the victims, and related details.
	<ul style="list-style-type: none"> A challenge inherent in this context is locating victims and witnesses who are willing to be interviewed and to testify. Victims often do not report abuses suffered at the hands of members of the criminal group due to fear of further abuse, threats, or violence (against themselves or their families). Therefore, special protection measures and support for victims and witnesses are crucial to ensure their continued participation throughout the judicial process. 	<ul style="list-style-type: none"> Experts who work with or study the group, its organizational dynamics, and networks (this may include, prosecutors, victim advocates, academics and other researchers, attorneys representing other victims, members of civil society organizations, etc.).
		Documentary/digital evidence
		<ul style="list-style-type: none"> Records of inspections by public agencies.
		<ul style="list-style-type: none"> Elements from criminal and intelligence investigations, such as wiretaps, digital content (emails, text messages, videos, etc.) from data storage devices, and/or possible involvement of INTERPOL or NCMEC.
		<ul style="list-style-type: none"> Information arising from previous criminal cases involving the same defendants or locations.
		<ul style="list-style-type: none"> Immigration records and operational immigration data.
		<ul style="list-style-type: none"> Seizure of passports, personal documents, etc.
		<ul style="list-style-type: none"> Sketches of the location.
<ul style="list-style-type: none"> In cases of trafficking for labor or sexual exploitation: documentary evidence reflecting the exploitation activity. 		

Mental health institutions	<ul style="list-style-type: none"> Sexual violence in mental health institutions requires special procedures for reporting, investigation, and judicial proceedings, as these settings are controlled by authority and influenced by the power dynamics of the doctor-patient relationship. 	Testimonial evidence
	<ul style="list-style-type: none"> It is recommended to consider requesting or ordering additional protective measures appropriate to the situation of the affected person and any witnesses. 	<p>In addition to the individuals mentioned in the previous sections, the following may also provide testimony:</p> <ul style="list-style-type: none"> Healthcare staff and other patients.
	<ul style="list-style-type: none"> Sexual violence in this context may have been carried out with the connivance, knowledge, acquiescence, or cover-up by multiple individuals. It is essential to investigate all persons who are directly or indirectly responsible for the criminal act. The investigation should focus on: 1) examining the acts of sexual violence themselves; and 2) determining the responsibility of those placed in a position of duty to protect within the institution. 	Documentary/digital evidence
	<ul style="list-style-type: none"> Absence of mechanisms to protect victims and witnesses, and lack of oversight of the facilities and treatments. 	<ul style="list-style-type: none"> Medical records or the patient's clinical history, to determine, among other aspects, whether there were instances of medication abuse or lack of oversight regarding the practices carried out.
	<ul style="list-style-type: none"> The affected person's diagnosis, as well as any possible inconsistencies or unclear descriptions, should not be considered, by themselves, as grounds to discredit their account. 	<ul style="list-style-type: none"> Roster of institutional staff, indicating their duties and schedules, as well as a list of admitted persons, specifying their housing assignments.
		<ul style="list-style-type: none"> Attendance record of healthcare and administrative staff.
		<ul style="list-style-type: none"> Floor plans and sketches of the institution.
		<ul style="list-style-type: none"> Medical and nursing logbooks from the relevant sectors to establish spatial and temporal circumstances or other pertinent elements.
		<ul style="list-style-type: none"> Report prepared by a specialist psychiatrist to analyze relevant records and determine compliance with applicable regulations, guidelines, and best practices.
		<ul style="list-style-type: none"> Documentation of notification of involuntary admission, if applicable, as well as any other records, files, or resolutions relevant to the investigation concerning the mental health institution, the individuals under investigation, or the victim.
	<ul style="list-style-type: none"> Handwriting expert report on the clinical history and medical logbook entries, if verification of alterations or additions is required. 	

Digital environment	<ul style="list-style-type: none"> • Digital environments offer perpetrators anonymity, enabling crimes to be committed from any location using a wide array of technologies and platforms, with rapid dissemination and lasting presence of digital content. 	Testimonial evidence
		<ul style="list-style-type: none"> • Persons who received the shared images.
		<ul style="list-style-type: none"> • Persons able to provide accounts of prior extortion carried out by the perpetrator.
		Documentary evidence
		<ul style="list-style-type: none"> • Documentation of information obtained from account preservation, which may include downloaded materials, screenshots, forensic extractions, images, and videos sent by the perpetrator.
		<ul style="list-style-type: none"> • Examine previous cases or complaints with similar circumstances and characteristics that occurred before or concurrently with the reported incidents.
	<ul style="list-style-type: none"> • Investigations of online violence may require the cooperation of multiple countries. 	<ul style="list-style-type: none"> • Issue formal requests to companies providing internet services, software, and other technologies (e.g., Google, Microsoft) to identify the perpetrator's profile, including associated email addresses.
		Digital evidence
		<ul style="list-style-type: none"> • Review of social media platforms (Facebook, Instagram, Twitter, etc.) to gather information relevant to the case.
		<ul style="list-style-type: none"> • Seizure of the perpetrator's devices, including computers, phones, and storage media.
	<ul style="list-style-type: none"> • Examination, freezing, and preservation of relevant accounts or profiles of interest. 	
	<ul style="list-style-type: none"> • Download photos or other materials sent by the perpetrator to identify investigative data, including camera brand, model, and serial number, capture date and time, and the computer and software used. 	

Sexual assault (perpetrator(s) unknown to the victim)	<ul style="list-style-type: none"> • It can occur across multiple settings, most prominently in public spaces, whether urban, rural, or open fields. 	<ul style="list-style-type: none"> • Search and comparison in fingerprint identification systems, and in biometric or biological information.
	<ul style="list-style-type: none"> •The perpetrator often takes advantage of the element of surprise and the victim's inability to defend themselves or call for help. 	<ul style="list-style-type: none"> • Request information from sexual offender genetic databases or compare with relevant databases (in countries that maintain such records, e.g., CODIS). • Interview the victim regarding perceived physical features of the perpetrator (distinctive marks on the body or face, or even scent) and their clothing. • Creation of a composite sketch or identikit.
	<ul style="list-style-type: none"> • Offenses committed against an unknown individual may exhibit extreme cruelty and physical violence. 	<ul style="list-style-type: none"> • Identify and describe the perpetrator's modus operandi or behavior, including use of specific violent methods, weapons, particular threats, or drugs/narcotics. • Georeferenced incidents, including locations of assaults, attacks and crime scenes. • Identify and describe crime scene locations, such as residences, workplaces, recreational areas, public spaces, vacant lots, rural areas, or locations easily accessible to victims.
	<ul style="list-style-type: none"> • Conducting criminal analysis is crucial to identify cases potentially connected to the same serial offender or criminal organization. The analysis should draw on all available quantitative and qualitative data and may include charts, tables, transcripts, narratives, or other materials to enhance understanding of the phenomenon. 	<ul style="list-style-type: none"> • Determine the temporal aspects of incidents, including date, time, week, or month. • Develop victim profiles, including demographic and characterization data (age, sex, physical features, nationality, number of victims), with particular attention to special vulnerabilities. • Develop perpetrator profiles, including demographic and characterization data (age, sex, physical features, nationality, number of offenders). • Analyze criminal networks or gangs: connections among individuals or groups and their respective roles. • Identify vehicles associated with the crime and assess connections to other cases. • Identify weapons (bladed, firearms, etc.) used in the crime and assess links to other cases.

9. INSTITUTIONAL RECOMMENDATIONS

Institutional policies and plans of the **Public Ministries (PMs)** should ensure that prosecutors comply with international and national obligations to conduct criminal proceedings with a gender perspective while respecting the rights of individuals who have experienced sexual violence. Institutional actions should aim to:

- Encourage Public Prosecutors' Offices to understand the particularities of sexual violence and to consider the contextual factors surrounding the incidents;
- Guarantee the effective prosecution of criminal cases;
- Conduct investigations and prosecutions with a gender-sensitive and intersectional approach;
- Ensure that victims receive appropriate treatment that does not compound their primary victimization;
- Maintain effective coordination with other relevant and supporting justice entities (police officers, forensic experts, etc.);

To this end, the following institutional policies are recommended:

9.1. Establishment of specialized units

The creation of specialized prosecutorial units or gender-focused divisions contributes to the integration of gender and intersectional perspectives within the Public Ministries, as it ensures that cases are handled in accordance with international and regional standards, both in the investigation and litigation of cases and in the organization's internal policies.

In countries where specialized units or prosecutorial offices exist (focused on gender, violence against women, or femicide), they should participate in the investigation and prosecution of sexual violence cases, either independently or jointly, from the outset of the investigation. This requires that if another department becomes aware of a case first, it must immediately notify the specialized unit so that it can guide the investigation from the initial proceedings.

In cases where, due to the complexity of the acts, it is appropriate for them to continue being investigated by units handling complex crimes (such as organized crime), the investigation should be conducted jointly between the unit or office handling the case and the gender-focused unit, to avoid fragmenting the investigation. It is also recommended to establish institutional mechanisms for

coordination and information exchange between specialized units responsible for other offenses that may be connected to, or contextually related to, sexual violence, for example, human trafficking or other forms of organized crime.

In federal countries where permitted, it is recommended that when sexual violence occurs—or appears to occur—within a context of organized crime, jurisdiction for investigating or prosecuting the case should lie with the federal justice system, provided that federal authorities have the capacity to handle such crimes. Whenever possible, criminal prosecution should be conducted in close coordination with the state-level prosecutorial offices where the acts occurred, as well as with any federal gender-focused units, if they exist. Decisions regarding jurisdiction should not prevent or impede the implementation of urgent measures necessary to protect the victim and preserve evidence.

9.2. Internal and interagency coordination

Institutional measures should ensure **effective cooperation and coordination among the various departments** responsible for investigating and prosecuting gender-based crimes, particularly sexual violence. This coordination should also include the entities responsible for providing protective measures to victims and activating comprehensive care pathways.

It is recommended to establish coordination and communication mechanisms, such as interdisciplinary or transdisciplinary working groups, that ensure the monitoring of individual cases under investigation and the effective exchange of information. These working groups or mechanisms may include units from the judicial police and forensic services. Continuous communication between the prosecutor and the intervening law enforcement agencies from the initial proceedings is essential, while avoiding excessive bureaucratization of exchanges.

This exchange can take place, for example, through regular meetings to allow continuous, joint monitoring of the case, enabling the prosecutor to maintain or revise the criminal hypothesis and to order new investigative measures. It is crucial that the prosecutor share their criminal hypotheses with the forensic and medical examiner teams so that they can use this information to guide their work. This approach also helps prevent multiple interventions involving the victim when planning their testimony or conducting evidence-gathering measures (particularly psychophysical examinations), which could otherwise compound the victim's trauma if carried out in addition to interventions by other victim support and service mechanisms (health, education, law enforcement, etc.).

9.3. Interdisciplinary approach to the victim

During the judicial process, access should be ensured to care and support systems that address the physical, material, and psychological needs of victims. To this end, it is essential to have interdisciplinary teams of professionals, including psychologists, psychiatrists, social workers, translators, and

interpreters, who provide comprehensive support to the victim throughout the process, including during specific judicial proceedings that may intensify the victim’s emotional distress. Furthermore, interdisciplinary support can create the necessary conditions for the victim to participate fully in the criminal process. Similarly, the various professionals can serve as a liaison with the prosecutorial team, allowing the victim to report security risks, provide new evidence, and communicate other matters related to their participation in the investigation.

9.4. Use of prosecutorial protocols and guidelines

Prosecutors should guide their work using **the existing tools for investigating and prosecuting crimes related to gender-based violence**. Many Public Ministries, Prosecutor’s Offices, and Offices of the Attorney General in the region have developed instruments such as protocols, operational guidelines, manuals, and directives that provide prosecutors with specific guidance for investigating and prosecuting crimes of sexual violence and other forms of gender-based violence (femicide/feminicide, trafficking for sexual exploitation, domestic sexual violence, etc.), as well as crimes motivated by hatred or discrimination. These instruments complement international documents on the subject, such as the *Latin American Model Protocol for the Investigation of Gender-Related Killings of Women (Femicide/Feminicide)*, the *Santiago Guidelines on the Protection of Victims and Witnesses (AIAMP)*, and the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (“Istanbul Protocol”).

In any case involving a sexual violence offense, prosecutors from any office—specialized or not—are encouraged to use existing tools in a coordinated and complementary manner. Where necessary, existing protocols, operational guidelines, manuals, or directives should be supplemented, updated, and adapted using the elements set out in these recommendations, to more effectively guide the criminal prosecution of sexual violence cases.

9.5. Collection of criminal information

Gender-based violence should be **recorded and analyzed specifically, so it can then be incorporated into the criminal analyses conducted by PMs**. To produce reliable criminal data, information systems must be reviewed and adapted to include variables that can document gender-motivated crimes and characterize the specific patterns in which these types of violence occur.

The need to strengthen records and indicators on the various forms of gender-based violence—including sexual violence as one of its manifestations—is established in the mandates and guidelines for States found.

In international instruments such as CEDAW (the Convention on the Elimination of All Forms of Discrimination Against Women, 1979, paragraphs 52 and 53 “Data Collection and Analysis”) and its

Recommendations (notably, Recommendations 9 and 12 of 1989; and 19 of 1992); as well as in the Belém do Pará Convention (Article 8, subsection h), among other documents and regulations.

In addition, several countries within the AIAMP are part of the Gender Statistics Group of the Statistical Conference of the Americas of the Economic Commission for Latin America and the Caribbean (ECLAC), whose objective is “to promote the production, development, systematization, and consolidation of gender-related statistical information and indicators for the design, monitoring, and evaluation of public policies.”¹⁹⁰

Where possible, information systems should include variables capable of capturing the intersectionality of discrimination and the specific contexts in which such violence occurs. It is important that analytical units incorporate a gender perspective in their work and include personnel specialized in the subject matter. It is also recommended to have monitoring indicators that allow for the evaluation of prosecutors’ activity and performance in these cases. Finally, the statistical information produced by PMs regarding crimes related to gender-based violence should be public, transparent, and easily accessible.

9.6. Prosecutorial training and capacity-building programs

The dynamics associated with gender-based violence, and specifically sexual violence, should be included in **training programs** for prosecutors, their investigative and litigation teams, judicial police, and forensic doctors.¹⁹¹ A thorough understanding by justice professionals responsible for investigating and prosecuting sexual violence—including its dynamics and contexts—is essential for the effective direction of criminal proceedings.

To ensure greater engagement from the personnel being trained, methodologies, topics, schedules, and training formats should be designed to be innovative and engaging. It is also recommended to establish monitoring and accountability mechanisms to evaluate the impact of these training programs.

9.7. International cooperation

Prosecutors should be aware of and utilize the tools available for international cooperation in the investigation and prosecution of crimes related to gender-based violence. PMs have access to various cooperation treaties that include provisions for extradition, international legal assistance, and direct inter-institutional collaboration, and in many cases also have domestic legislation on the matter. It is particularly important to consider the cooperation mechanisms established under the United

190. See: <https://www.cepal.org/en/topics/gender-statistics>

191. The IACTHR has established the adoption and implementation of permanent and mandatory training and courses in several of its judgments regarding sexual-violence cases, among others: *Angulo Losada v. Bolivia* (para. 210); *Azul Rojas Marín et al. v. Peru* (para. 248); and *López Soto et al. v. Venezuela* (para. 338).

Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.¹⁹²

In this way, prosecutors should request and provide assistance under these instruments and domestic legislation to obtain information, documents, and evidence, carry out procedural acts, and facilitate the transfer of a person in custody to face trial or serve a sentence.

Given the challenges posed by crimes related to gender-based violence, which may be connected to transnational organized crime and/or require urgent access to or transmission of information critical to investigations, the use of cooperation mechanisms beyond formal channels (such as mutual legal assistance) has become a necessity, particularly direct cooperation between competent authorities.

Therefore, the use of inter-institutional cooperation between Public Ministries, as established in agreements among PMs in the region, is recommended. This includes the **Inter-Institutional Cooperation Agreement among Public Ministries and Prosecutors who are Members of AIAMP**¹⁹³ and the **Inter-Institutional Cooperation Agreement among the Public Ministries, Prosecutor's Offices, and Attorney General's Offices that are Members of the Specialized Meeting of Public Ministries of MERCOSUR (REMPM)**.¹⁹⁴ Such cooperation is channeled either through specialized networks of prosecutors addressing specific criminal phenomena or, more generally, through the Cooperation Units designated as points of contact under these Agreements.

In cases where crimes related to gender-based violence are connected to transnational organized crime, with links across more than one State, prosecutors should consider the establishment of a **Joint Investigation Team (JIT)**. This is a mechanism of international cooperation that, through a specific agreement concluded between competent authorities of two or more States, establishes a stable framework for cooperation and coordination over time to carry out investigations within the territory of one or more participating countries.¹⁹⁵

Likewise, when cases involve sexual violence committed in the context of international crimes or crimes against humanity in countries that are members of MERCOSUR, it is recommended that international legal cooperation take into account the guidelines set forth in the *Guidelines for Public*

192. UN, *United Nations Convention against Transnational Organized Crime*, 2004, and its *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, which complements the United Nations Convention against Transnational Organized Crime, available at: <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

193. See *Inter-Institutional Cooperation Agreement among Public Ministries and Prosecutors who are Members of AIAMP*, available at: <https://www.aiamp.info/index.php/redes-permanentes-docs/red-de-cooperacion-juridica-internacional/actualizacion-del-acuerdo-coop-interinstitucional-entre-los-ministerios-publicos-y-fiscales-miembros-de-la-aiamp>

194. *Inter-Institutional Cooperation Agreement among the Public Ministries, Prosecutor's Offices, and Attorney General's Offices* approved at the Specialized Meeting of Public Ministries of MERCOSUR, available at: <https://www.mpf.gov.ar/cooperacionjuridica/files/2022/03/Convenio-Cooperación-Interinstitucional-REMPM-PGN-0107-2021.pdf>

195. For more on this document, see *Joint Investigation Teams: Strategies for Coordinated Work to Investigate and Prosecute Organized Crime* (2020), prepared by the General Directorate of Regional and International Cooperation of the Public Prosecutor's Office (MPF) of Argentina, available at: <https://www.mpf.gov.ar/procunar/files/2020/03/Equipos-conjuntos-de-investigación-ECI-Estrategias-de-trabajo-articulado-para-investigar-y-perseguir-al-crimen-organizado.pdf>

Ministries on the Criminal Investigation of Cases of Sexual Violence Committed in the Context of International Crimes, in Particular Crimes against Humanity, which incorporate a gender perspective and an intersectional approach to ensure the broadest and most expeditious mutual legal assistance.¹⁹⁶

9.8. Institutional mechanisms to ensure occupational health (prevention of burnout syndrome)

Finally, to ensure the occupational well-being of personnel handling cases of sexual violence, it is recommended to establish institutional policies and mechanisms to prevent and address *burnout syndrome*, defined as the result of prolonged work-related stress that affects employees whose daily functions involve helping and supporting others.

This syndrome includes symptoms such as emotional exhaustion, depersonalization, and a reduced sense of personal accomplishment, and is often accompanied by physical, behavioral, and interpersonal difficulties. In addition to these individual aspects, *burnout* is also linked to workplace and organizational factors, such as the presence of stressors in the work environment.¹⁹⁷ Personnel within the justice system are particularly exposed to *burnout syndrome* due to their ongoing contact with situations involving rights violations, which must be addressed while meeting strict legal standards of time and procedure.¹⁹⁸

According to the results of the *Questionnaire on Institutional Policies to Prevent and Address Occupational Burnout Syndrome in the Public Ministries of MERCOSUR*¹⁹⁹, some of these institutions have inhouse support services, while others rely on outsourced services that assist the prosecutorial body. In some cases, a mixed system exists, combining an internal unit with external supervision for the team responsible for victim assistance. Furthermore, in nearly all countries, there is a lack of records regarding the occurrence of cases, professional interventions, and their outcomes, which represent a shared institutional challenge.

Within this framework, the conclusions of the cited report recommend that institutions maintain an operational policy that includes the assessment of conditions, factors, or situations that contribute to burnout. Examples include implementing online and anonymous workplace climate surveys; providing individual and group supervision sessions with specialists; organizing practicesharing and training workshops; and offering mechanisms for support and active listening. The policy should also provide

196. REMPM, *Guidelines for Public Ministries on the Criminal Investigation of Cases of Sexual Violence Committed in the Context of International Crimes, Particularly Crimes Against Humanity* (already cited).

197. Martínez, M., et al., cited by the Gender SubCommission (SCG) of the Specialized Meeting of Public Ministries of MERCOSUR (REMPM), 2021, *Questionnaire on Institutional Policies to Prevent and Address Burnout Syndrome in Public Ministries*, pp. 12, available at: <https://acortar.link/YZZT4†>

198. Burnout syndrome is considered one of the main mental health problems and often precedes many psychological disorders that result from poor control and lack of prevention. The World Health Organization (WHO), following the 11th revision of the *International Statistical Classification of Diseases and Related Health Problems* (ICD11), recognized burnout syndrome as a disease. Workrelated health disorders, such as burnout syndrome, are a significant cause of medical and psychological expenses, disability, staff turnover, and reduced productivity. WHO, 2020, *International Statistical Classification of Diseases and Related Health Problems*, 11th Revision (ICD11), approved in 2020, with an effective date of January 1, 2022.

199. SCG-REMPM, *Results of the Questionnaire on Institutional Policies to Prevent and Address Occupational Burnout Syndrome in the Public Ministries of MERCOSUR*, 2023, p. 6, available at: <https://acortar.link/H5ISDP>

resources for staff, such as information about burnout syndrome, its symptoms, implications, and ways to address it, as well as psychoeducational programs. Additionally, institutions should have mechanisms for managing cases, including care pathways, psychological interviews, followup or support for affected individuals, and access to multidisciplinary professional teams and specialists. Finally, and where applicable, the adoption of institutional protection policies such as staff rotation.²⁰⁰

200. Attorney General's Office of Ecuador (Fiscalía General del Estado Ecuatoriano), 2021, *National Protocol for Investigating Femicide and Other Violent Deaths of Women and Girls*, available at: <https://acortar.link/kPxKuT>.



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