

# National Referral Pathways Guidance Notes



## FOREWORD

The severity and high prevalence of violence against women and girls (VAWG) is one of the factors contributing to inequality between men, women, girls and boys in Malawi, as well as slow progress towards the attainment of sustainable development. The Government of Malawi's commitment to ending violence against women and girls (VAWG) is demonstrated through a strong legal and policy framework on VAWG, as well as implementation of several programmes on combating this vice. The Ministry of Gender, Community Development and Social Welfare, (the Ministry) is working alongside a number of partners and stakeholders from the community to national level on prevention of VAWG as well as putting up measures for an effective response mechanisms to address VAWG.

The Ministry has however taken note that in spite of all the efforts for addressing this vice, violence against women and girls remains a serious, prevalent and deeply entrenched problem in Malawi. Key among the challenges in mounting an effective response to VAWG is the lack of or limited coordination among the service providers and a lack of or limited accountability on the part of the service providers.

While women and girls face significant barriers to access justice and other services on VAWG issues, even if they are able to access the appropriate institutions, the quality of service they receive is often not always responsive to their particular needs i.e. not survivor centred. While the preference of many women who seek help beyond their families is to turn to customary and third sector justice mechanisms, these structures also face multiple challenges. Inadequate referral mechanisms, including limited linkages between health and social service providers and formal and informal or traditional mechanisms, are critical barriers to effective prevention and response of violence against women and girls. It is therefore imperative that these significant gaps are urgently addressed if we as a nation are to effectively combat the scourge of violence against women and girls.

My Ministry therefore greatly welcomes the work that has gone into the development of this Referral Pathways document and the Guidance Notes, as an intervention to improve coordination and provision of comprehensive services that are survivor-centered for VAWG survivors. The Referral Pathways outline in detail the referral mechanism for the informal justice sector (including TAs, CVSUs, WROs, marriage panels under MDFRA, CSOs and other ADR forums) and formal sector for government and quasi-government institutions handling VAWG (including Hospitals, OSCs, VSU, Social Welfare, Ministry of Gender, Department of Persons with Disabilities under the Ministry of Gender, Human Rights Commission, Ombudsman, Administrator General, as well as courts and legal service providers.

In this complex network of interconnected systems, these Referral Pathways outline what a survivor of GBV must expect to undergo at each state of the referral system from the informal and formal justice sector as well as quasi government departments. It also clearly outlines the complaints handling mechanism with information of stakeholder's clear mandates and what a survivor must expect at each of the duty bearers' levels including timelines and duration of service pegged to international best practices.

The Referral Pathways were formulated through an all-inclusive stakeholder driven process to ensure that all relevant players have adequate knowledge of the referral pathways and can easily refer clients and follow up or receive feedback. Although there may be challenges in the implementation of this, we can mitigate this by ensuring that all duty bearers and stakeholders have all the required information and skills on how the systems must work. This will ensure that VAWG services are survivor centered, and are more accessible, responsive and accountable.

I, therefore, appeal to all users of these Referral Pathways and all stakeholders involved in the fight against VAWG to fully support and align their efforts towards the implementation of these Referral Pathways. If everyone responds as required, then together we shall enhance VAWG prevention and response services and help survivors get justice for atrocities that are committed against them and ensure that perpetrators are held accountable and in the process check impunity.

I would like to thank the Department for International Development-UKaid through the Tithetse Nkhanza Programme for the financial and technical support in developing these. I am also grateful to UNFPA, UN Women and other development partners for their technical support to the Ministry. I am cognizant of the fact that during this time when our country, like other countries is grappling with the COVID19- pandemic, we have been working at Protection Cluster level to have Referral Pathways that speak to emergency response situations. Together, we can end gender-based violence and most especially, violence against women and children.

Patricia Annie Kaliati

**MINISTER OF GENDER COMMUNITY DEVELOPMENT AND SOCIAL WELFARE**

JULY 2020



## KEY TERMS

**“Child”**: a person under the age of 18 years

**“Child trafficking”**: according to section 15 of the Trafficking in Persons Act is the recruitment, transportation, transferring, harbouring, receiving or obtaining a child for the purposes of exploitation. Where a child has been trafficked, it is immaterial that any of the means used in trafficking adults (e.g. deceit, threats, coercion etc.) were not used and it is also immaterial that the child consented.

**“Damages”** are monetary awards owed to a winning party by the losing defendant in a civil case tried in a court of law. Civil damages can be compensatory, general, punitive, or any combination of these. “Compensation” or “compensatory damages” include payment ordered by the court for expenses such as medical bills, legal costs, loss of income, and costs associated with repairing or replacing damaged property incurred by a survivor. For example, a wife who is beaten by her husband and breaks an arm and is hospitalised for six days, thus losing her income can sue her husband in a civil court for damages for the medical bills incurred as a result of her injury and hospitalization over the injury, if she hired a lawyer to defend her in an employment court for the dismissal or loss of income, she can also sue her husband for the job or income loss and the legal fees. Receipts or other supporting documents are required as proof of for the court to make an award of this nature. “General damages” include payment for nonfinancial damages, such as pain and suffering. For the broken arm, the court will assess how much pain and suffering the survivor experienced and make an award of damages accordingly. “Punitive damages” include payment for losses caused by the gross negligence of a defendant. For the broken arm, if the husband pushed the wife away very forcefully just to get her out of the way not caring that there was a stair case behind her and she fell and broke her hand, as she tried to avoid falling over a child, she would in appropriate circumstances be entitled to punitive damages.

**“Defilement”**: according to section 138 of the Penal Code, is having carnal knowledge of (sexual intercourse with) any girl under the age of sixteen years.

**“Diversion”**: under section 2 of the Child Care, Protection and Justice Act means the referral of cases of child offenders away from formal court proceedings with or without conditions.

**“Domestic violence”**: according to section 2 of the Prevention of Domestic Violence Act, means any criminal offence arising out of physical, sexual, emotional or psychological, social, economic or financial abuse committed by a person against another person within a domestic relationship

**“Domestic relationship”**: according to section 2 of the Prevention of Domestic Violence Act, in relation to domestic violence, means the relationship between

persons who are family members and share a household residence or are dependent on each other socially or financially, and includes the relationship where–

- a. the applicant and the respondent are husband and wife;
- b. a person has a child in common with the respondent and that person is being subjected or is likely to be subjected to domestic violence by the respondent;
- c. one is a parent and the other is his or her child or dependant; and
- d. the applicant and the respondent are or have been in a visiting relationship for a period exceeding twelve months.

**“Gender-based violence”**: GBV encompasses a wide range of harmful actions where a person’s gender is the basis of the action, and mostly affects women and girls.

**“Harmful practice”**: according to section 3 of the Gender Equality Act, means a social, cultural or religious practice which, on account of sex, gender, or marital status, does or is likely to:

- a. undermine the dignity, health or liberty of any person;
- b. result in physical, sexual, emotional or psychological harm to any person.

**“Health Services/ health services provider”**: are structures/ professionals who provide health services, nurses, doctors, clinical officers, medical assistants, who have specific training in the field of health care delivery both Government and private facilities.

**“Intimate partner”**: a husband, wife, boyfriend, girlfriend, or lover. The term intimate partner violence covers violence perpetrated in marital and dating relationships.

**“One-Stop Centre”**: is a Centre where medical, legal, and social welfare agencies meet regularly to coordinate the specialized evaluation, treatment, protection, case review and ongoing advocacy for children and adult survivors of sexual and physical violence.

**“Physical abuse”**: means any act or omission which causes, or is intended to cause, physical injury.

**“Place of safety”**: means an appropriate place where a survivor in need of care and protection can be kept temporarily and includes a safety home or a foster home

**“Rape”**: according to section 132 of the penal Code, means having unlawful carnal knowledge (sexual intercourse with) of a woman or girl (aged 16 years and above), without her consent, or with her consent if the consent is obtained by force or means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or in case of a married woman, by impersonating her husband.

**“Referral pathway”** means a flexible mechanism that safely links survivors to supportive and competent services.

**“Service provider”**: any person or body of persons approved to provide assistance to survivors of gender-based violence against women and girls, and includes the police, community policing forums, faith-based organizations, government institutions, non-governmental, voluntary or charitable organizations.

**“Sexual abuse”**: includes sexual contact of any kind that is made by force or threat and the commission of, or an attempt to commit, any of the offences under

Chapter XV of the Penal Code (these include: rape, abduction, indecent assault on females, insulting modesty of a woman, indecent practices between females,

defilement of girls/idiots or imbeciles, procurement, male living off earnings of prostitution, woman aiding prostitution of another, procuring abortion, unnatural offences, indecent practices between males, incest by males, incest by females, intercourse with minors under one’s care etc.).

**“Sexual assault”**: a term covering a wide range of activities, including rape /forced sex, defilement, indecent assault and sexually obsessive behaviour.

**“Sexual exploitation”**: according to section 2 of the Trafficking in Persons Act, includes the participation of a person in all forms of commercial sexual activity such as prostitution, sexually explicit performance, forced prostitution, and forced participation in the production of pornography.

**“Sexual harassment”**: according to section 6 of the Gender

Equality Act, is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature in circumstances in which a reasonable person, having regard to all the circumstances would have anticipated that the other person would be offended, humiliated or intimidated.

**“Survivor”**: individual (e.g. woman, child, man, person with disabilities) who reports that they have experienced gender-based violence. The term “survivor” implies that the conclusion has already been reached – that this person was definitely abused even though a perpetrator has not been convicted for the abuse.

**“Survivor-centered approach”** means that all those who are engaged in violence against women programming prioritize the rights, needs, and wishes of the survivor.

**“Survivor-friendly or survivor-responsive adjudication”**: the “survivor” may not always be the one who sues, and courts should always be vigilant to identify VAWG survivors in all cases. For example, in a land dispute where a man sells a piece of family or clan land that was being used by two widowed sisters for their livelihood to two different businessmen and runs off with the money, the case comes to court because the two businessmen want the court to determine who is the rightful owner. The two women have been deprived of their economic livelihood and this is economic abuse, they are the survivors and if the court does not consider their plight by going beyond the case before it, only the rights of the two businessmen are protected. This illustration serves to show that the survivor of violence is not always “obvious” and the courts must always be on the lookout for such survivors in the cases before them so they can protect their interests even if it just means referring them to appropriate services to seek assistance.

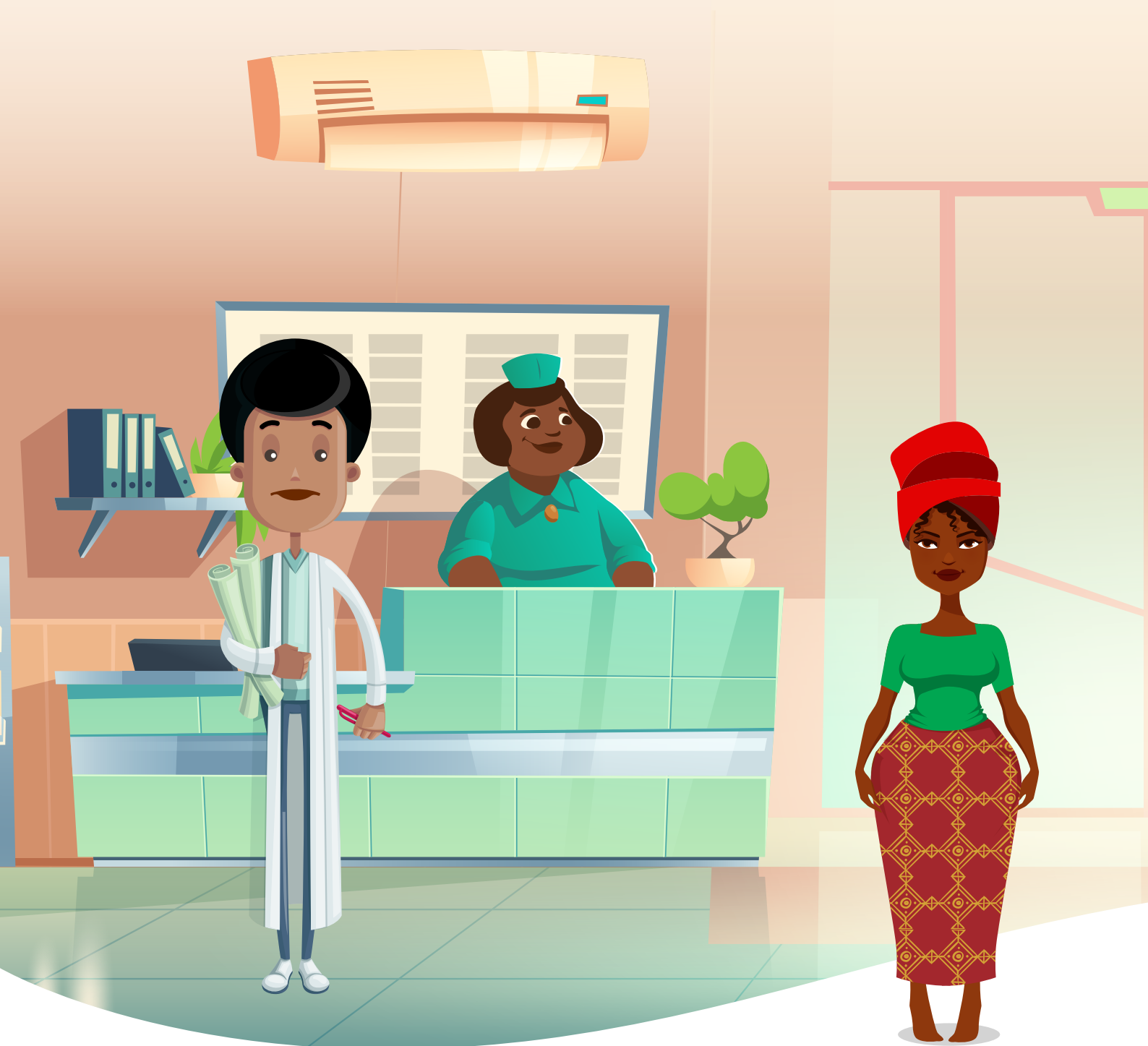


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*The staff at the hospital were understanding and compassionate.*

*They helped me understand what to expect along the referral pathway.*

”



# The Formal Justice Referral Pathways Mechanism

The formal justice system refers to the services provided in support of accessing justice for the survivor which can be either criminal or civil.

The “**criminal justice system**” is designed to provide justice and protection for every member of society through the conviction, punishment, and rehabilitation of the offender. The court process is initiated by the Prosecutor on behalf of the State and the survivor who is called the complainant, is a witness to the proceedings.

Steps in the “criminal justice process” include the investigation and arrest, pretrial activities (such as service of evidence to be used in the trial e.g. the medical report to the accused person, tracing and summoning witnesses), witness protection at all stages of the process, bail application and hearing, taking plea, plea bargaining, adjudication, compensation for damages or injury suffered by the survivor, sentencing, and corrections.

In cases involving child offenders, the Child care, protection and Justice Act allows for processes where once the child freely admits to committing certain offences, the child can be diverted away from the criminal justice system and the matter can be mediated or the child required to perform some condition that rehabilitates him or her and satisfies the survivor that reparation has been done for the harm suffered. Most offences that take the form of VAWG or result in VAWG cannot be diverted. In cases of VAWG, the criminal justice processes must be supported by the functions of other agents such as:

- health services which provide evidence during the trial as well as medical and psychosocial support for the survivor;
- social services which provide social support to the survivor including psychosocial counselling and vital information to the court for sentencing and provision of support services to the survivor for rehabilitation and reintegration through social inquiry or probation reports; etc.
- probation services (part of social services which provide court related functions) which provide essential information to assist the court in arriving at a proper sentence in the form of a pre-sentencing report under sections 260 and 321J of the Criminal Procedure and Evidence Code. This essential information provides evidence on behalf of the victim on the impact that the offence has had on him/her.

The “civil justice system” is designed to provide remedies for any party who sues or instigates an action. The “civil

justice system” allows individuals to achieve a fair solution when they have been injured or harmed due to another person’s negligence, recklessness, or malpractice. The civil justice system allows one to sue for money damages and obtain recovery for injuries. In other words, the civil justice system allows survivors to hold their perpetrators accountable for their actions. The civil case is commenced by the person who feels aggrieved/wronged and can sue in court:

- to get a protection, occupation or tenancy or other order, keeping an abusive family member away from the home as a result of domestic violence;
- to get a divorce and orders for property distribution;
- to annul a child marriage or any other marriage which was not officiated lawfully;
- to get maintenance (for a child or spouse) or to enforce an order of maintenance;
- to prove parentage of the child even if the woman who wants to prove that a certain man is the father of the child does not want to claim any maintenance;
- for the fair distribution of matrimonial property;
- for the return of property, that forms part of a deceased estate, that has been grabbed;
- for compensation for injuries suffered in consequence of physical, psychological, emotional or economic abuse;
- to claim compensation for lost wages/job loss/business during time when survivor was injured or had to attend court;
- to sue for unlawful dismissal in an employment court where the survivor has been fired for missing work because she had to attend court or she was in hospital;
- to claim legal fees for an action in an employment court for being unfairly dismissed because the survivor missed work on account of the violence she suffered;
- to obtain authority to distribute and benefit from a deceased estate (letters of administration or probate);
- to dispute the distribution of an estate by the Administrator General or the District Commissioner;
- to dispute a will (being left out of a will);
- to settle land disputes or claims;
- for any other remedy in view of damage or injury suffered.

(These are only examples and the list is not exhaustive).

Ordinarily in the civil justice system, only the person affected may sue, others are not allowed to start an action in court on behalf of the victim, however, there are exceptions provided by law allowing others to start an action/sue on behalf of the survivor. These exceptions are provided below:

Other people may sue on behalf of the survivor under the following laws:

(a) to get an order (occupation, tenancy, protection) under the Prevention of Domestic Violence Act and these people are:

- i. a husband or wife, as the case may be, being the person against whom domestic violence has been, or is likely to be, engaged in by the respondent;
- ii. a person who has a child in common with the respondent and that person is being subjected to or is likely to be subjected to domestic violence by the respondent;
- iii. a parent or guardian of the child or dependant, or a person with whom the child or dependant ordinarily or periodically resides, where domestic violence involves a child or dependant;
- iv. a dependant, where the dependant is not mentally disabled;
- v. a parent or sibling, by blood or marriage of the applicant or respondent, not being a member of the household;
- vi. a police officer;
- vii. an enforcement officer;
- viii. a service provider approved by the Minister by order published in the Gazette.

(b) to claim maintenance for a child and these people are:

- i. the child;
- ii. the parent of the child;
- iii. the guardian of the child;
- iv. relatives of the child;
- v. a social welfare officer;
- vi. a police officer;
- vii. a teacher;
- viii. a health officer; and
- ix. any other appropriate person.

The “civil justice process” is initiated by the person claiming (called the claimant) filing a claim in court after which the person defending (called the defendant) must respond within 14 days in the High Court. If the defendant does not respond within the given time, the claimant gets the damages or compensation they claimed (judgment). If the defendant does not respond, the case goes through a number of processes which can take about 60 days in the High Court before the matter goes to trial. Trial may take 3-2 days and judgment is to be delivered within 30 days. In the magistrates’ court there are no procedural rules outlining steps to be taken before trial with requisite time limits, so the disposal of the case depends on the schedule of the individual magistrate. On average a civil case in the magistrates court may be completed in a month and judgment should be delivered a month after the trial.



## VAWG Service Providers or Key Actors

*Referral Pathways Validation Workshop*

### PRINCIPLES AND GUIDELINES FOR SERVICE PROVIDERS OR KEY ACTORS

- First do no harm - in every action taken or every action intended in relation to a survivor, the guiding principle should be that no harm should be suffered by the survivor as a result of that action.
- Where a child is involved, any decision made by the service provider must be in the best interests of the child.
- No decision is to be made without the INFORMED CONSENT of the survivor, if the survivor is a child or a person with an intellectual disability seek consent from the parent/guardian/appropriate adult/

accompanier/probation officer/child protection worker etc. as appropriate.

- Conduct discussions in private settings with same - sex staff as the survivor (if that is what the survivor wants).
- Be a good and attentive listener and listen without making judgment. Do not laugh, show disrespect or disbelief.
- Be patient: don't press for information if the survivor doesn't want to share any more.
- Respect the survivor's boundaries and do not do or say anything that could be construed as inappropriate.
- Ask only relevant questions.
- Avoid the survivor having to repeat her story in multiple interviews.



- NEVER blame the survivor
- At all times, prioritise survivor safety and security
- No criminal case, however minor the injury or damage caused should be mediated unless the case is one which can be diverted under law and the perpetrator has accepted liability and the Police or the Court have agreed to diversion.
- By law, all incidents of defilement, rape, incest, sexual assault and sexual abuse of children are criminal offences and MUST therefore be reported to the Police, therefore, defilement, rape, incest, sexual assault and sexual abuse of children MUST never be mediated and should not end at community level or the Victim Support Unit.
- Police should encourage survivors and their families not to withdraw a case of defilement, rape, incest, sexual assault and sexual abuse from the criminal justice process. Such cases must be referred to the court and the parties can be treated as hostile witnesses if necessary, so the perpetrator is held accountable.
- Always observe the guiding principles of CONFIDENTIALITY, SAFETY, RESPECT AND DIGNITY.
- By law, rape and defilement, incest, sexual abuse or sexual assault TREATMENT CAN BE INITIATED BEFORE INFORMING OR REPORTING TO THE POLICE!

## COMMUNITIES

Traditional, religious, political and cultural leaders are very influential in the response to VAWG. Families of survivors as well as survivors themselves are more likely to first report incidents of VAWG to traditional leaders and community policing forums made up of prominent community members. Their role is to first identify the nature of the report. If it is a criminal matter (rape, defilement, assault, grievous bodily harm etc.), their role is to immediately refer the matter on to a service provider who is mandated to deal with such issues such as the health services or the police. They should never attempt to mediate such matters. These matters should be refereed within 24 hours and in a supportive and non-judgmental manner, maintaining the survivor's privacy and dignity at all times.

## HEALTH SERVICES/INCLUDING ONE STOP CENTRES

All survivors who are suspected victims of abuse should receive a medical evaluation by a health provider who has received training in the diagnosis and treatment of sexual abuse, physical abuse, and emotional abuse. Mental health services will be provided by healthcare workers who have received training in evidence-based, trauma-focused methods of counseling.

Health Services shall provide:

- Culturally competent care in a survivor-focused setting
- Forensic interviews of survivors
- Full medical history
- Obtain consent for examination

- Full physical examination
- Laboratory investigations
- Recording injuries and registration in health system and health passport
- Immediate medical stabilization/treatment of acute injury and pain
- Prevention of HIV transmission (HIV-PEP) within 72 hours
- Prevention of Hepatitis B transmission) (HBV-PEP) within 72 hours (where available)
- Prevention of pregnancy (emergency contraception- 72 hours)
- Sexually Transmitted Infection Prophylaxis
- Trauma therapy and ongoing psychosocial counseling
- Follow-up care
- Regular case review by the multi-disciplinary team
- Provision of medico-legal report
- Support for survivors appearing in court

The health services should refer the case to the Police within 24 hours of receiving the survivor.

## THE MINISTRY OF GENDER, CHILDREN, DISABILITIES, AND SOCIAL WELFARE

Social Welfare Assistants and Community Child Protection Workers serve multiple roles, including assessing families, planning for safety, implementing services, providing follow-up, and working with families to create long-term plans to ensure a safe, healthy future.

## SOCIAL WELFARE/ PROBATION SERVICES

- Interviewing role so as to gather information (assessment/facilitate disclosure)
- Therapeutic role (facilitating the healing)
- Empowerment role (teach safety skills)
- Protection role (safety of the survivor)
- Monitoring role (monitoring and follow up)
- Advocacy role (informing and counseling)
- Facilitate collaboration (link up with other stakeholders such as the Police, hospital and the Court as well as NGOs in providing shelter or accommodation for the survivor)
- Prepare a Court Social Report
- Providing psychosocial support such as counseling to the victim and the family
- If the victim is a child or person with mental disabilities, the social workers is expected to attend meeting and interviews where other stakeholders are engaging the victim
- Provide safe environment for the victim including requesting for a protection order, placement in safety homes
- Conducting followings ups on the victim and the case

## VICTIM SUPPORT UNITS (VSU)

Their role includes:

- Psychosocial/ play therapy
- Risk and safety assessment–done by VSU & Probation officer

- Liaise with social welfare on provision of shelter
- If it is a child, child protection officer and probation officer should always be present

These services should be provided within 24 hours and the matter referred to other service providers within the Police.

## CRIMINAL INVESTIGATIONS DEPARTMENT (CID)

Their role includes:

- Investigation and arrest of alleged perpetrator
- Safety, security and protection of survivors and witnesses
- Witness tracing
- Compiling Apprehension Reports

These services should be provided within **48 hours** and the matter referred to other service providers within the Police.

## PROSECUTION

- Pretrial activities
- Docket preparation
- Facilitating disclosures
- Obtaining court dates
- Liaising with probation officers for social inquiry reports
- Witness tracing in collaboration with CID
- Serving disclosures to the accused
- Ensuring that the Apprehension Report is brought before a Magistrate
- These services should be provided within **14 days** and the matter referred to court for trial.

A Docket shall include the following:

- Investigation Diary
- Ordinary Statement
- Police Reports
- Caution Statement
- Evidence of Arrest
- Exhibits
- Other Correspondences

## JUDICIARY

Their role includes:

- Opening case file within 24 hours
- Set date for case and notify all parties–2 days
- Hearing case within 14 days - no unnecessary adjournments
- Provide survivor friendly courtroom throughout the trial
- Referral in case of trauma to a survivor as soon as need arises
- Recommend legal aid in cases where the complainant is vulnerable, of insufficient means and needs assistance navigating the legal procedures.
- Assessing and analyzing evidence

- Delivering judgment - ancillary orders such as compensation to the survivor, psychosocial support and counseling, social and economic support to the survivor can be ordered by the Court.
- Adjudication: (Judgment (within 30 days of date of last hearing). Judgment should include ancillary orders such as compensation for damages or injury suffered by the survivor, sentencing, operating the court in a survivor friendly manner so that they are not publicly humiliated or shamed for what happened to them).
- Enforcement of judgment at instigation of survivor or representatives.
- Any person who is not satisfied with the judgment of the court or the way the process was handled can appeal to a higher court e.g. from magistrates court to High Court to Supreme Court.
- The courts also have internal oversight functions under sections 360 and 361 of the Criminal Procedure and Evidence Code which empower any Resident Magistrate or any Judge of the High Court to call for and examine any record of criminal proceedings before a lower court to satisfy itself that those proceedings were conducted lawfully and correctly. If they were not, the resident magistrate is empowered to send the court record to the High Court and the High Court can having been satisfied on review that there was an irregularity or illegality or impropriety can quash the original decision and make an alternative decision or send the matter back to the lower court to rehear the matter.

## CORRECTIONS: PRISONS/REFORMATORY CENTRES

Correction and rehabilitation services for the convicted offender straight after conviction. Sometimes for the sake of closure, some survivors want to see the perpetrator in prison and express themselves if they did not do so in court. Prison staff can hold rehabilitation programs that permit survivor/convict confrontation.

## NON-GOVERNMENTAL ORGANIZATION'S

- Social workers, mental health nurses, paralegals, victim support unit staff and partner NGO's may all provide psychological counseling as long as they have received training and supervision in an evidence-based, trauma-focused method.
- NGOs may also provide other services as part of the One Stop Centre in order to meet the specific needs of the community.
- NGOs may also provide shelter or places of safety for survivors to be accommodated before, during and after trial.
- NGOs may also provide reintegration and rehabilitation services for survivors which may include services aimed at providing the survivor economic autonomy.
- NGOs may also provide restorative justice services between convict and survivor to assist the survivor to move on and the offender to appreciate the damage caused by them.

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*I was not sure that I would be helped  
by the police but I was supported.*

*Now I am heading to court.*

”





# The Informal Justice Sector Referral Pathways Mechanism (IJS)

Informal justice system is often referred to traditional or non-state justice system. The non-state actor are individuals or service providers that the community trusts to resolve their differences, those with influence in the community, those whose roles are prescribed by culture or religion or those that have established themselves in the community and have gained people's trust and respect. The Tithetse Nkhanza formative research<sup>1</sup> and others have attested to the fact that women prefer the use of informal justice sector for most of the family disputes ranging from property, money use, economic violence or deprivation, child maintenance, extra marital affairs, excessive drinking among others.

According to the UN Joint study on informal justice systems,<sup>2</sup> it is estimated that in many developing countries, around %80 of cases are resolved through the informal justice system. Empirical research<sup>3</sup> has shown that many people prefer the informal justice system because it provides easier access to justice and security to people who otherwise have no access to formal system. The IJS is also an alternative in communities where the formal system is lacking or is failing to fulfill its obligations. The system is easily accessible to poor people and its decisions are more acceptable to the communities. Apart from that the IJS is simple, comprehensible and speedy.

## KEY ACTORS

There are various stakeholders in the informal justice system. These include:

- Traditional leaders, religious leaders, political leaders, cultural leaders, Village tribunals, accompaniers, CVSUs, CBOs including WROs, marriage counsellors and advocates and CSOs handling cases of VAWG.
- The role of key actors is largely negotiations and mediations into civil matters, providing psychosocial support including counselling to the survivors and family, accompanying and referring the survivor to other service providers.
- There is usually no prescribed timeframe in handling the civil cases for most stakeholders, but those stakeholders are encouraged to work on the cases with speed.
- These stakeholders should be guided by the principles of respect, dignity, privacy and confidentiality when handling such cases.
- If the case involves a child, woman with intellectual disability, a survivor who is deaf or dumb, the key actors should engage the services of family members, social workers or health personnel to assist the survivor to communicate.

- In some instances, the case can be resolved at the first referral point. If this is not the case, the case can be referred to other levels of authority such as from Village Headman to Group Village Headman to the Traditional Authority.

## LINK BETWEEN THE INFORMAL AND FORMAL JUSTICE SYSTEM IN CIVIL MATTERS

If the informal justice players fail to resolve the issue, the case can be referred to institutions or government departments that are mandated by government to handle such cases or provide alternative dispute resolutions. Mostly these institutions would use the legal regulations or human rights-based approach. This is the first referral level of contact of the cases in the informal justice system with the formal justice system.

The case can be referred to the following institutions and government departments:

### THE MALAWI HUMAN RIGHTS COMMISSION

The Malawi Human Rights Commission (the Commission) is an independent national human rights institution (NHRI) established by the Constitution of the Republic of Malawi under sections 129 with the primary function of "protection and investigation of violations of the rights accorded by the Constitution or any other law"

The Malawi Human Rights Commission performs various functions including:

- Providing human rights information to the Government and the people of Malawi
- Conduct investigations
- Carry Alternative dispute resolutions such as mediations
- Carry out strategic litigation
- Advise on available options to the survivors and referral
- Carry out oversight functions in public delivery of services
- Conclusion of cases takes at least **three months (90 days)**

### MINISTRY OF GENDER, CHILDREN, DISABILITY AND SOCIAL WELFARE: (SOCIAL WELFARE AND GENDER DEPARTMENTS)

(see notes on the formal sector)

## LEGAL AID BUREAU

The Legal Aid Bureau is established under section 3 of the Legal Aid Act to provide legal services such as mediation, legal representation and sets out options to survivors who cannot afford private lawyers. It is one of the social services governments provides to its citizens such as health, education, food and water. It is the only such institution in Malawi.

## THE POLICE VICTIM SUPPORT UNIT

Victim support and child protection is a critical component of the community policing initiatives of the Malawi Police Service. VSUs were established in 2001 with the aim of protecting, promoting and upholding the rights of survivors of various forms of criminal and civil activities, especially those of vulnerable women and children. They serve as private interview units for cases of sexual abuse, rape etc. and other offences which require privacy and confidentiality. They offer:

- Counselling
- First aid
- Give advice
- Referrals cases to other institutions within **5 days**.

## THE ADMINISTRATOR GENERAL

This is a Public office whose function is to administer deceased estates. Every District Commissioner is agent of the Administrator General. The Administrator General can:

- take into custody property where it is not known that deceased has left a widow or any relative who can administer.
- apply for letters of administration
- Any person may appoint the Administrator General to be executor of his/her will

- Administrator General must gazette intention to apply for letters at least 14 days before making application
- Rightful person may apply to court any time to revoke letters of administration from the Administrator General
- Administrator General keeps accounts of all estates administered by him
- High Court may appoint a suitable adult person to receive the share of a minor and Administrator General shall pay the share to that minor
- Any unclaimed balance with Administrator General must be published in Gazette and paid after 2 years to consolidated fund or use it to offset cost of distribution of the estate
- Administrator General mediates where the beneficiaries are not in agreement over distribution of a deceased estate and refers matter to court where mediation fails.

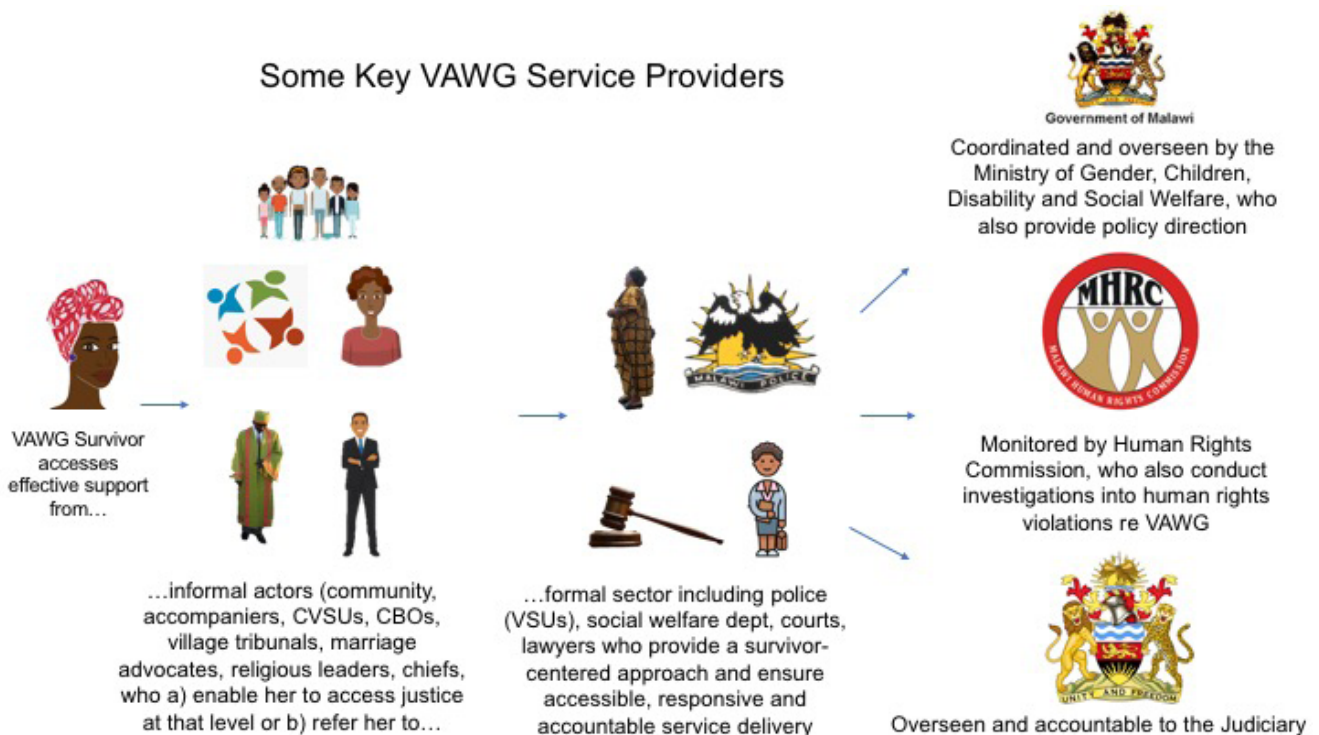
## THE COURTS

(see notes on the formal sector)

## THE OFFICE OF THE OMBUDSMAN

The Office of the Ombudsman is a Public body established under the Malawi Constitution section 123 to investigate any and all cases where it is alleged that a person has suffered injustices and it does not appear that there is any remedy reasonably available by way of appeal from court or where there is no other practicable remedy. It is an oversight body to which survivors may complain if the public bodies that serve them, e.g. the Police, the hospitals, the court or social services do not perform their duties efficiently, effectively and timeously.

### Some Key VAWG Service Providers



“

*The judge allowed me to give my testimony in private.*

*This made it easier for me to present my story and complaint.*

”



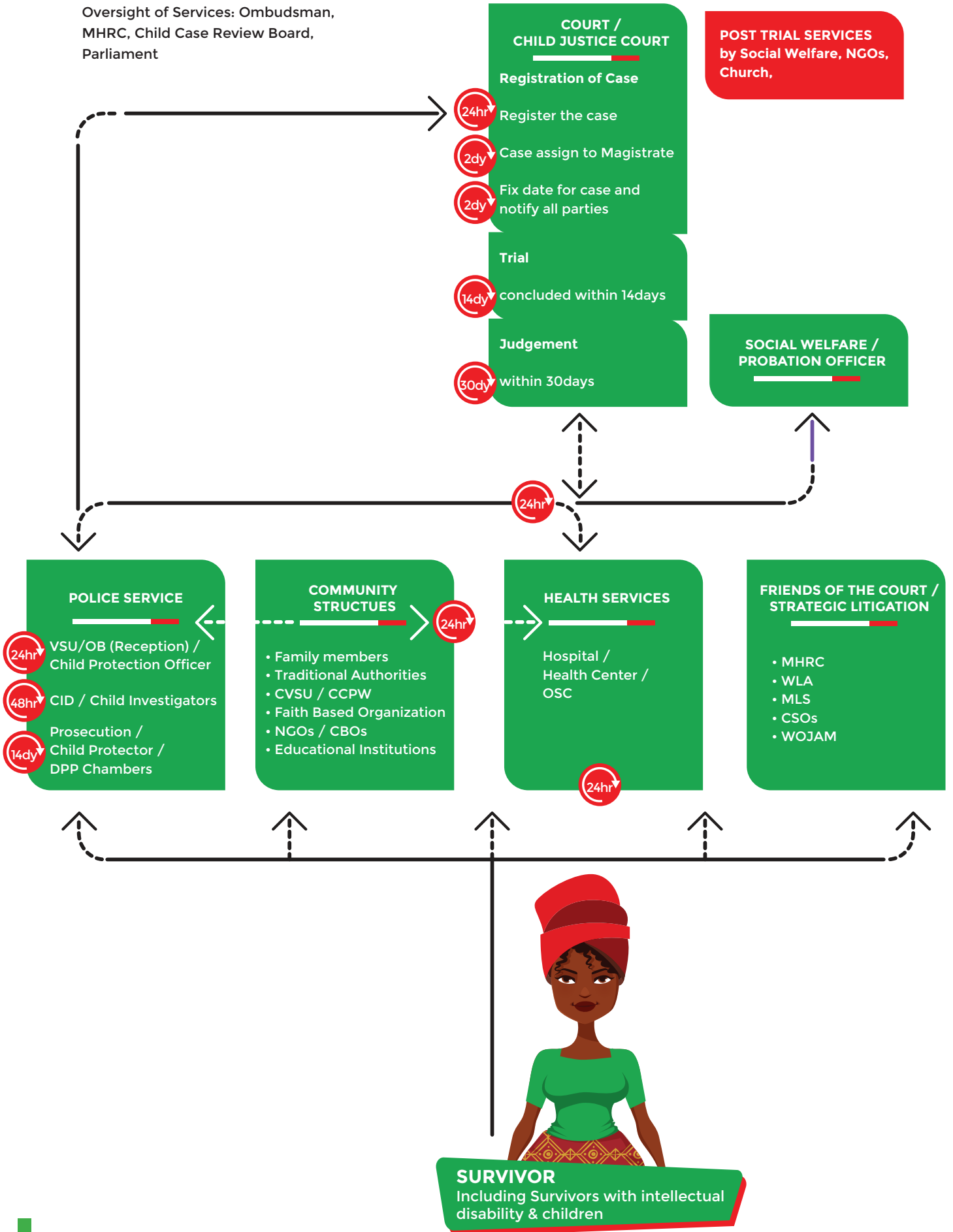


Annex 1 - The Referral Designs

**VAWG REFERRAL PATHWAYS FOR CRIMINAL MATTERS**

Sexual violence / IP / physical violence in formal and informal justice structures

Oversight of Services: Ombudsman, MHRC, Child Case Review Board, Parliament



“

*Ever since my daughter's case started the community has been supportive.*

”



## VAWG REFERRAL PATHWAYS FOR CRIMINAL MATTERS

Sexual violence / IP / physical violence in formal and informal justice structures

### POLICE SERVICE

#### CID/Child Investigators

- Record Statement
- Gather and consolidate evidence
- Preserve evidence for success of court action
- Discuss case with prosecutor
- Link with health and social welfare on findings
- Arrest suspect

#### VSU/OB (Reception)/Child Protection Officer

- Ensure immediate safety of the survivor
- Avoid victim blame
- Risk and safety assessment - done by VSU
- Counseling
- First aid provision
- Giving advice
- Conduct interviews in private
- In case of child - child protection officer be in-charge

#### Prosecution/Child Prosecutor/DPP Chambers

Police prosecutor if it's a child, Child Prosecutor will lead the prosecution

- Prosecute the case
- Linking the survivor with experts e.g. sign language, interpreters
- Liaise with court on safety of survivors
- Provide feedback on progress of case
- Providing pre-trial counseling for survivor
- Liaise with accompanier and other advocates

### COMMUNITY STRUCTURES

- Family members
- Traditional Authorities
- CVSU/CCPW
- Faith Based Organization
- NGOs/CBOs
- Educational Institutions

#### Responsibilities

- Ensure safety of the survivor
- Survivor reports incident
- Ensure immediate safety of the survivor
- Avoid victim blame
- In case of child or survivor with disability actively recognize sign of abuse in child survivors and survivors with disabilities
- Referral of case to the other service providers

### COURT/CHILD JUSTICE COURT REGISTRATION OF CASE

- Register the case - within 24hrs
- Case assign to Magistrate - 2 days
- Fix date for case and notify all parties - 2 days

#### Trial

concluded within 14 days

- Hear the matter
- If it's a child, court held in camera (if it's a child, the Child Justice Court always sits in camera)
- No unnecessary adjournment on such cases

#### Judgment

within 30 days

- Ancillary orders such as compensation to the survivor, psychosocial support and counseling, social and economic support to the survivor
- Enforcement in collaboration with survivor or representative

### POST TRIAL SERVICES

by Social Welfare, NGOs, Church

- Counseling
- Shelter and safety homes
- Reintegration into community, school, work

### SOCIAL WELFARE/PROBATION

#### OFFICER

- Assessment of the survivor / victim
- Psychosocial support including pre-trial counseling for the survivor should be confidential
- Accompanying victims to their service providers
- Linking victims with experts i.e. interpreters and sign language
- Referral to appropriate service provider
- Prepare court social inquiry report
- Presenting the report in courts

Social welfare is also supposed to provide services to their other stakeholders services as

- Shelter
- Safety home

Depending on Risk Assessment of the survivor, all the stakeholders may refer the survivors to these services if the survivor's home is not safe.

Immediate provision of dignity kit or care package i.e. sanitary pads, lotion, toothpaste, underwear is also a must.

### HEALTH SERVICE

#### Responsibilities

- Immediate medical stabilization / treatment of acute injury and pain
- If it's a child, Child Protection Officer and Probation Officer should always be present - OSC
- Psychosocial / play therapy - OSC
- Prevention of HIV transmission (HIV-PEP) - 72hrs
- Prevention of Hepatitis B Virus transmission (HBV-PEP)
- Prevention of pregnancy (emergency contraception) - 72hrs
- Tetanus vaccination
- Sexually Transmitted Infection prophylaxis
- Mental health assessment and treatment / psychiatric
- Medico-legal Reporting
- Testifying in court
- Case registration
- Endorsement in health passport
- Support for physical rehabilitation



“

*We have come for mediation & counselling on marital issues. We were referred here by our local CVSU.*

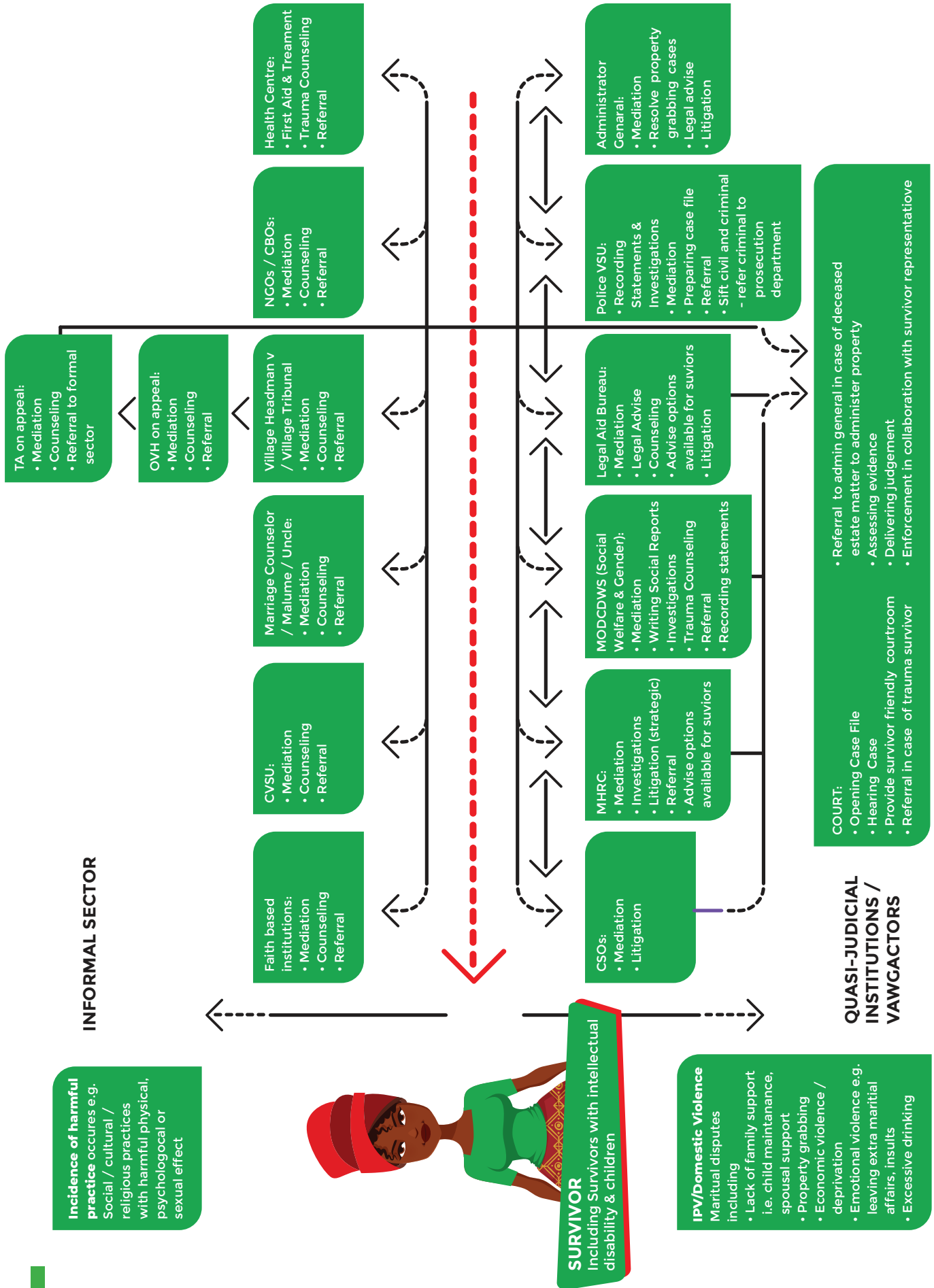
*We are hopeful that we will be helped.*

”



Annex 2 - Referral Pathway for civil VAWG (IPV / Economic Violence)

REFERRAL PATHWAY FOR CIVIL VAWG (IPV/ECONOMIC VIOLENCE) FOR INFORMAL JUSTICE SECTOR TO INFORMAL SECTOR



“

*I was afraid to report to the police  
but I have been supported.*

*They also prepared me on what to expect along  
the referral pathway.*

”





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Tithetse !  
Nkhanza ●

Our Shared Responsibility



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