

Access to justice

Factsheet



Find more information on the [dynamics of domestic violence](#) in [Module 1](#).



Learn more about why victims of domestic violence do not leave [in this video](#).

Barriers for victims of domestic violence

Domestic violence does not always end when the victim escapes, tries to terminate the relationship, and/or seeks help. Often, the violence intensifies because the perpetrator feels a loss of control over the victim. In fact, leaving the perpetrator is the most dangerous time for a victim of domestic violence. The victim's reasons for staying with their perpetrators are complex and, in most cases, based on the reality that the perpetrator will follow through with threats. The victim may not be able to safely escape or protect those they love.¹

The same mechanisms of power and control that contribute to the perpetuation of domestic violence hinder victims from seeking justice. Fear of reprisals from the perpetrator, including threats to drop charges or only accept unfair settlements, can be barriers for victims to seeking justice. Perpetrators may further manipulate victims by accusing them of making false allegations or using emotional blackmail. One in four victims of domestic violence do not report serious incidents mainly due to fear, anger, and shame.²

The following personal, social and cultural, societal, and legal barriers can affect access to justice at all stages³:

Personal barriers

- Embarrassment/shame
- Fear of judgment or stigmatisation
- Low self-esteem
- Limited financial resources
- Lack of education, work history and/or job training
- Fear of revenge/retribution
- Belief that violence is normal
- Love/wish the violence to end, but not the relationship
- Feelings of isolation, depression and helplessness
- Functional limitations due to post-traumatic stress disorder (PTSD)
- Lack of awareness that help and services are available

Social and cultural barriers

- Cultural or ideological beliefs that enable/justify violence
- Traditional gender roles and expectations in relationships
- Lack of validation and support from friends and family
- Cultural or ideological beliefs that reinforce staying in the relationship
- Geographic and/or social isolation from other communities and different ideological perspectives
- Language barriers
- Distrust experienced by the community towards the judiciary

- Preference within the community to resolve matters without involvement of public authorities

Societal barriers

- Affordable housing
- Not being eligible for social services even though there is need and only limited financial resources being available
- Limited employment opportunities
- Lack of public transportation to support services
- Lack of translation services
- Lack of affordable childcare options
- Lack of domestic violence shelters or victim support services in the area

Legal barriers

- Fear of arrest /loss of child custody
- Lack of victim support by law enforcement
- Reluctance to prosecute cases
- Probation and/or fines are more common than jail time
- Perpetrator can easily return and repeat violence
- High cost of legal representation
- Fear of deportation
- Struggles with substance abuse

Vulnerable groups and multiple discrimination

Victims of domestic violence come from a wide range of backgrounds and face various barriers to justice. They often have no trust in the justice system, fearing mistreatment or dismissive attitudes, resulting in discrimination, secondary victimisation, or inadequate legal counsel from law enforcement and legal professionals.

Vulnerable groups refer to persons belonging, or perceived to belong, to groups that are in a disadvantaged position or marginalised.⁴

Multiple discrimination is any combination of forms of discrimination against persons on the grounds of sex, racial or ethnic origin, religion or belief, disability, age, sexual orientation, gender identity or other characteristics. This discrimination can be suffered by those who have, or who are perceived to have, those characteristics.⁵ **Intersectional discrimination** takes place on the basis of several personal grounds or characteristics/identities, which operate and interact with each other at the same time in such a way as to be inseparable.⁶

Victim-blaming

Attitudes, beliefs, and behavioural patterns play an important role when working with victims of domestic violence. Victim-blaming attitudes, based on [stereotypes and unconscious bias](#), marginalise the victim and make it harder to come forward and report the violence.

Victim-blaming and discriminatory attitudes from legal professionals significantly impact reporting, prosecution, and sentencing in cases of domestic violence. Studies have shown that such attitudes can lead to a lack of empathy



Find more information on the [diverse spectrum of victim groups](#) in [Module 1](#).



[This video](#) recreates an experiment on **prejudice, discrimination, and racial segregation**.



Find more information on stereotypes and unconscious bias in [Module 8](#).

towards victims, causing them to be disbelieved or even blamed for the violence they have experienced.⁷ This can result in delayed reporting and a lack of trust in the justice system. Moreover, victim-blaming attitudes can lead to secondary victimisation, where victims feel re-traumatised by the response they receive when seeking help. In legal proceedings, victim-blaming can also manifest as leniency towards offenders, as they are perceived as less culpable for their actions. [Stereotyping](#) further complicates the handling of domestic violence cases, as assumptions about the victim's behaviour or motives can lead to biased decision-making.

To address these issues and improve the handling of cases of domestic violence, it is crucial for legal professionals to receive comprehensive training on topics such as [victim-blaming and stereotyping](#).

Secondary victimisation

Secondary victimisation occurs when the victim suffers further harm not as a direct result of the criminal act but due to the manner in which institutions and other individuals deal with the victim. It may be caused, for example, by repeated exposure of the victim to the perpetrator, repeated interrogation about the same facts, the use of inappropriate language or insensitive comments made by all those who come into contact with victims.⁸

To prevent secondary victimisation, legal professionals must adopt a sensitive and empathetic approach. How legal professionals conduct interviews during judicial proceedings greatly affects the victim's willingness to cooperate. Testifying in court can be particularly distressing and intimidating for victims of domestic violence due to the intimate nature of the violence. They may feel a lack of control, shame, fear of the perpetrator, and intimidation by the court, and be unwilling to repeatedly recall traumatic events. If the victim feels safe, heard, and believed, they are more likely to provide necessary information for the case.

Investigation⁹

Immediate response

Investigations need to be carried out without undue delay and in an effective manner, in accordance with the principles set forth in the Istanbul Convention. This means, for example, establishing the relevant facts, interviewing all available witnesses and conducting forensic examinations based on criminal investigative methods. Any measures taken should not compromise the rights of defence or the standards of a fair trial.

Conducting interviews with victims

In cases of domestic violence, statements from the victim and witnesses are often the most important pieces of evidence. Victims are usually more willing to make statements immediately after an incident rather than after a few days. The victim's statement is also important for immediate risk assessment and safety planning. Therefore, whenever possible, efforts should be made to interview the victim immediately after the incident.



Find further details on [police intervention in cases of domestic violence](#) in [Module 4 for the police](#).

Pre-trial¹⁰

The pre-trial period represents an increased risk for victims, especially if perpetrators are not in custody or supervised before the trial. Victims may face retaliation and intimidation. Therefore, it is important to assess and manage the safety risks in each case, according to standardised procedures and in co-operation with other agencies. During this pre-trial stage, different stakeholders play crucial roles in ensuring the safety and support of the victim. Law enforcement agencies should provide protection and monitor the perpetrator's movements to prevent any threats or acts of retaliation. Prosecutors should prioritise victim safety when negotiating bail conditions or requesting protective orders. Victim support services and shelters should be available to provide immediate assistance and safe accommodations if needed. Additionally, legal aid organisations can help victims navigate the legal process and advocate for their rights in court. Health professionals should be involved in assessing and documenting the physical and psychological impact of domestic violence on the victim.

Protective measures

Legal options to provide safety for victims may include bail conditions, emergency barring orders, restraining orders, or protection orders. These measures are important not only during the pre-trial phase but should also be reevaluated throughout the trial process in response to changing circumstances:

- Consider pre-trial detention
- Removal from residence
- Maintaining distance from the victim
- Prohibiting contact with the victim
- Restricting or suspending child visits

Evidence gathering

Evidence gathering is primarily the responsibility of law enforcement. However, prosecutors may also need to provide guidance on necessary evidence, procedures to obtain admissible evidence, and assess whether there is sufficient proof to charge the perpetrator.

Evidence gathering includes:

- Spontaneous comments
- Photos of victim's injuries
- Psychological evidence
- Medical evidence

Witnesses

Witnesses are not just limited to eye-witnesses. Many others may have valuable information relevant to the case, for example:

- Neighbours who overheard discussions or fights.
- Friends who were confided in about the incident.
- Teachers who were informed about what happened.



Find more information on **evidence gathering** in [Module 4](#).

The police should actively make inquiries into individuals the victim may have confided in. By broadening the scope beyond the victim's testimony and considering all potential witnesses, investigations can uncover more evidence to prove what happened.

Trial¹¹

Victims who feel that they are supported and treated in a respectful manner are more likely to continue co-operation with the justice authorities. Preparing the victim for the trial is important in order to avoid the victim's reluctance to testify.

Keeping the victim well informed of proceedings, their progress and potential outcome and explaining the role of the victim can help minimise the risk that the victim will decide not to prosecute or to support the prosecution. In some cases, victims may still choose to withdraw their support for the prosecution.

If a victim chooses to withdraw their support, prosecutors should refrain from criticising or blaming the victim. Even if this may pose challenges to the prosecution, prosecution can still proceed, at least with regard to serious offences.



Find more information on the roles of the involved persons **in the court room** in [Module 4](#).

Prosecution

The prosecutor must decide on several critical actions: whether to charge the perpetrator, consider alternative dispute resolution or mediation, or drop the charges altogether. In cases of domestic violence, delaying action could lead to further, potentially more severe acts of violence in the near future. Choosing to drop charges might signal to the perpetrator that their behaviour is all right.

When deciding whether to prosecute a case, prosecutors need to assess whether there is sufficient evidence, whether a conviction is likely and if there is a public interest in pursuing the matter.

Charges

The culmination of the previous steps is the presentation of the charges. Poorly investigated cases leading to inappropriate charges can hinder adequate sentencing and erode victim's trust in the justice system.

Prosecutors should ensure that the charges:

- Reflect the seriousness of the offence
- Provide adequate sentencing and post-conviction measures
- Present the case clearly
- Reflect the impact on the victim

In the court room

At all stages of investigations and judicial proceedings, protective measures should be put in place to ease the experience of the trial for victims and facilitate their testimony. In this way, judicial proceedings can potentially contribute to the healing and empowerment of the victims, instead of further traumatising them.



Learn more about aggravating and mitigating factors in **sentencing** in [Module 4](#).

Delay and limitation periods

Both victim and defendant have the right to a trial without undue delay.

Judicial discretion

Judges play a crucial role in the justice system's response to domestic violence as they are generally the final authority in both civil and criminal matters. Their decisions have impact on the victim, the perpetrator as well as their children. They can establish courtroom policies and procedures to create a safe environment for victims and improve their access to courts by:

- Understanding the dynamics of domestic violence, the risks faced by victims and their children, and patterns of violence
- Treating victims with courtesy, compassion, dignity and sensitivity, even if they are not present
- Considering victim and child safety at all levels and at all times
- Taking advantage of all available resources that offer safety and support to victims
- Taking into account victim's needs and specific circumstances of each case
- Taking time to explain the proceedings, in particular the different stages of the process, in a language the victim can understand

Judicial discretion is important in cases of domestic violence due to the complex dynamics of violence, which laws alone cannot address. However, judicial decisions are influenced by judges' beliefs and perceptions of domestic violence. Misconceptions can undermine the victim's safety and the perpetrator's accountability. Judicial stereotyping, where decisions are based on beliefs rather than factual evidence, can severely impact the access to justice for victims.

Judicial neutrality and impartiality are fundamental to a fair trial and access to justice. While complete neutrality is impossible, judges must strive to maintain a distance from their own beliefs and opinions, focusing on the facts and the case file. Examining their own personal beliefs can help judges develop neutrality and impartiality.

Sentencing

The primary goal of sentencing is to stop the violence, protect the victim, hold the perpetrator accountable for their actions and to serve as a general deterrent.

The following requirements for sentencing should be taken into account:

- **Information:** Do you have all the information needed to sentence appropriately?
- **Risk-assessment:** Have you considered the perpetrator's dangerousness?
- **Victim's testimony:** Have you heard the victim at the time of sentencing?
- **Other factors:** Have you considered factors such as the nature and gravity of the offence, the history of violence, previous efforts at rehabilitation, the defendant's character and current rehabilitative

needs and the interests of the community in protection and punishment?

Offences should be punishable by effective, proportionate, and dissuasive sanctions, taking into account their seriousness. These may include sentences involving deprivation of liberty, potentially leading to extradition. Other measures, such as monitoring or supervising convicted persons and withdrawing parental rights (considering the child's best interest), may be adopted. Ensuring contact with the abusive parent may not only have a negative impact on the child, but may also pose a serious risk to the safety of the victim, because it often gives the perpetrator a reason to contact or see the victim and may not be in line with a restraining or barring order in place. As part of sentencing, perpetrators could be mandated to attend perpetrator intervention programmes, aiming to address their behaviour and potential for rehabilitation, particularly concerning their rights to contact children. Such programmes may be crucial in determining whether and under what conditions contact with children is safe and appropriate, aligning with protective measures for the victim and children's well-being.

Civil lawsuits¹²

Civil remedies ensure that victims can seek adequate civil law remedy against perpetrators. This includes court-ordered injunctions to stop or prevent certain behaviours or to compel specific actions. National legislation may also provide more specific remedies like barring orders, restraining orders, and non-molestation orders, particularly relevant in cases of domestic violence. These complement the immediate and often short-term protection of emergency protection orders.

Family court

In family court, decisions hinge on credibility, especially in cases of domestic violence. Therefore, it is important to understand the underlying dynamics and to recognise the risks of decisions for victims of domestic violence.

Victims of domestic violence often suffer [severe psychological distress](#), which can unfairly influence custody decisions in favour of the abusive partner, who may appear more stable to care for the children. This situation can arise despite the children witnessing the abusive behaviour. Judges should be aware of these dynamics and the potential for perpetrators to manipulate perceptions of competency.

Additionally, perpetrators frequently claim of parental alienation, alleging that the victim is intentionally alienating the children. These tactics are commonly used in family court proceedings. Judges must be vigilant about perpetrator gaslighting tactics, which continue even within legal settings. Granting perpetrators access and control over the children often means maintaining control over the victim. Therefore, legal processes must prioritise restoring control to victims over their life.

Domestic violence often starts or escalates during separations or divorces. Judges should therefore screen family law cases affected by domestic violence

to prevent further harm to the victim. In such situations offering the victim legal aid, prioritising and expediting the case should be considered.

Custody and visitation rights

Domestic violence is an important factor when determining custody of the children and visitation rights by the court. If incidents of domestic violence are not considered by the judicial authorities when determining custody of children or visitation rights, the victim and the children can be placed in further risk allowing the perpetrator to gain access to the victim and the children and continue their violent behaviour.

Children in cases of domestic violence often represent the only ongoing connection between the victim and perpetrator. For many victims and their children, complying with visitation orders poses serious safety concerns. In such cases, the court should mandate supervised visits with the perpetrator, typically facilitated by social services or another third party.

Compensation

Compensation rights for victims, in both criminal and civil proceedings, aim to address physical and psychological injuries as well as other emotional impacts like fear, suffering, and stress. Courts must assess these damages with medical evidence in mind.

Primary liability for compensation rests with the perpetrator, but victims may also seek compensation from insurance companies or state-funded schemes. In cases where offenders are unable to pay or are unknown, state obligations may apply under internal laws to ensure victims are compensated.

Mediation¹³

Victim-offender mediation in criminal law is available in some jurisdictions to allow victim and offender to discuss the crime in a structured and mediated way. The aim is for the offender to take responsibility for their actions and for the victim to reach closure. Supporters of mediation in family matters argue that such methods help preserve important family relationships and reduce the traumatic impact of a family break-up on children.

However, mediation poses risks, especially in cases of domestic violence:

- Mediation may lead to the belief that domestic violence is a private matter.
- The victim's consent may be coerced due to threats or fear of court testimony.
- There may be serious risks for the victim's safety.
- The perpetrator may use mediation to further intimidate the victim.
- The victim may agree to unfavourable settlements on critical matters like divorce, custody, and property.

A thorough risk assessment must be carried out before voluntary mediation can be considered.

Helpful sources

They can be found [here](#).