



BELIZE JUDICIARY

# **JUSTICE THROUGH A GENDER LENS**

## **Gender Equality Protocol for Judicial Officers**

# CHECKLIST



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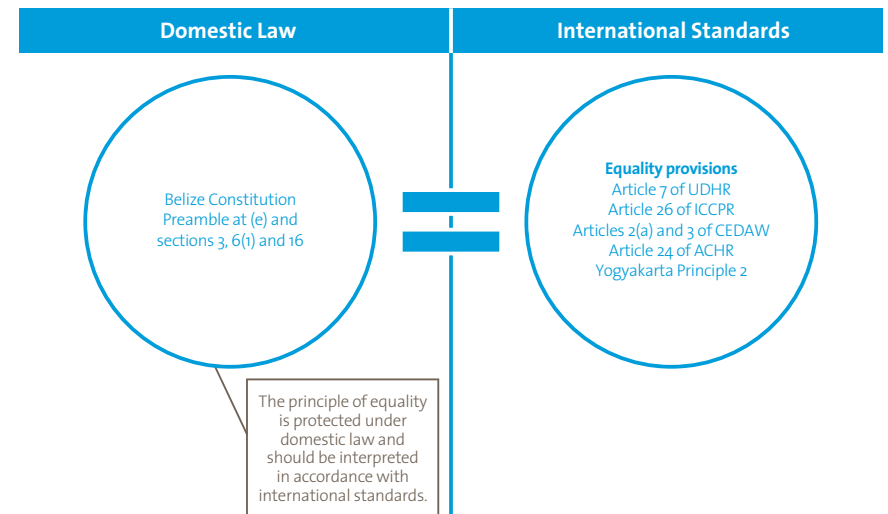
# PART 4. CHECKLIST

## 4.1. Principle of Equality



Judicial officers should strive in their judicial decision-making to incorporate a substantive approach towards gender equality, which consists of:

- o Understanding that gender equality does not mean women and men are to be treated the same or that we use a “mathematical formula to calculate and achieve absolute homogeneity”;
- o Embracing the differences between women and men in society, and recognizing that justice lies in appropriate differential treatment to achieve equal opportunities for all;
- o Ensuring their decisions result in gender-equitable outcomes by considering the historical disadvantages women have and continue to face in accessing justice;
- o Appreciating that judicial officers have an obligation both to consider the distribution of power between parties and to redistribute power more equitably in appropriate cases in order to achieve justice.

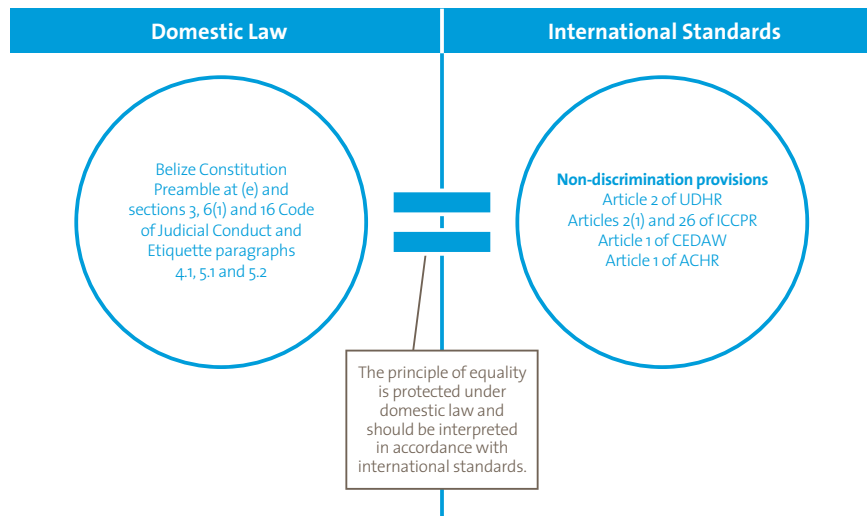


## 4.2. Principle of Non-discrimination

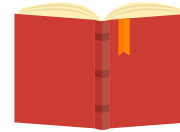


The principle of non-discrimination is a key step towards achieving gender equality and as such:

- o Judicial officers must uphold the principle of non-discrimination by making decisions that are not based on unreasonable differentiations between people based on status or personal characteristics that form the core of an individual's identity;
- o Not all differentiation is a breach of the principle of non-discrimination: certain social and biological realities may make it justifiable to treat people differently;
- o No person is ever only defined by her/his gender and it is therefore important that judicial officers be cognizant of the ways in which gender intersects with other statuses or personal characteristics to create both privileges and vulnerabilities for women and men.

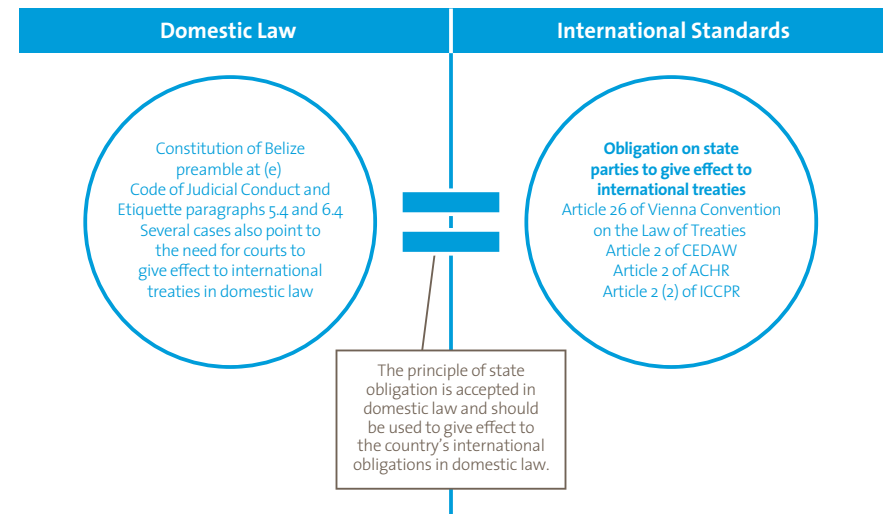


## 4.3. Principle of State Obligation and the Use of International Treaties



Where Belize has adopted international treaties that establish or promote gender equality, judicial officers should bear in mind that:

- o Where incorporated into domestic law, obligations under such treaties must be enforced, and the jurisprudence of the international tribunals that is established to interpret and enforce these treaty provisions is relevant and applicable;
- o Where appropriate, international human rights standards dealing with gender equality may be used in the following situations:
  - As an interpretative guide or to resolve ambiguity in domestic legislation;
  - To fill gaps in domestic legislation, provided that to do so would not be inconsistent with domestic legislation;
  - Where it can be considered that a citizen has derived a legitimate expectation arising from governmental conduct in its acceptance of treaties promoting gender equality.

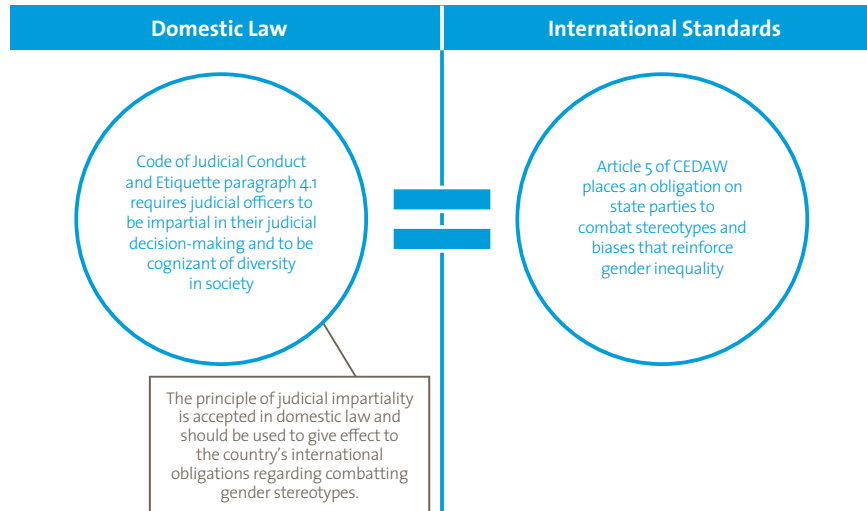


## 4.4. Judicial Impartiality



Judicial officers are reminded that:

- o Judicial impartiality demands, at a minimum, that a judge
  - 1) is aware of her/his own prejudices and biases and 2) thereafter puts in place measures to ensure that a fair-minded and informed observer could not reasonably deem her/his judgement partial;
- o Judicial officers should be careful to identify their own gender bias, whether conscious or unconscious, particularly when those biases exist together with prejudices regarding other social identities and statuses such as sexual orientation and socio-economic status;
- o Judicial officers must ensure their decisions from the bench do not perpetuate stereotypes that reinforce discrimination against specific subgroups of Belizean men and women. Specific subgroups of Belizean women and men have and continue to face discrimination because of their sexual orientation, socio-economic status, language abilities, existing disabilities and gender identity/expression.

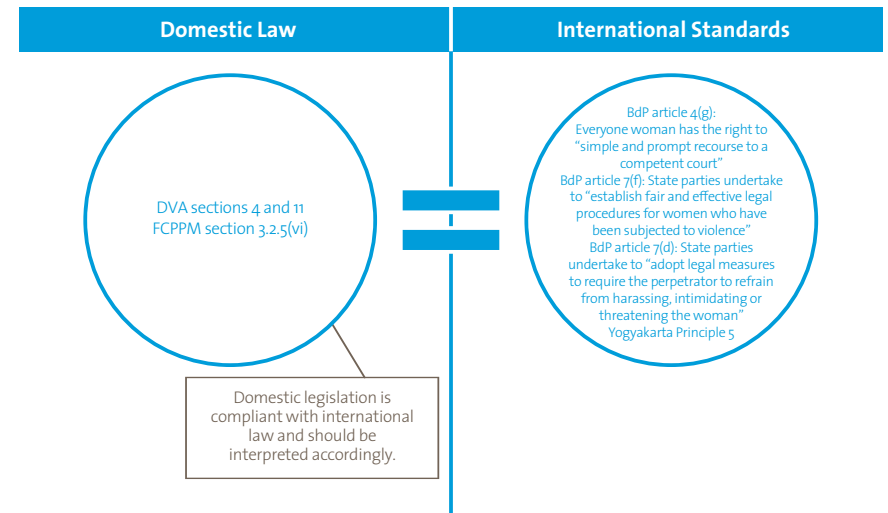


## 4.5. Intimate Partner Violence

Courts are advised to:

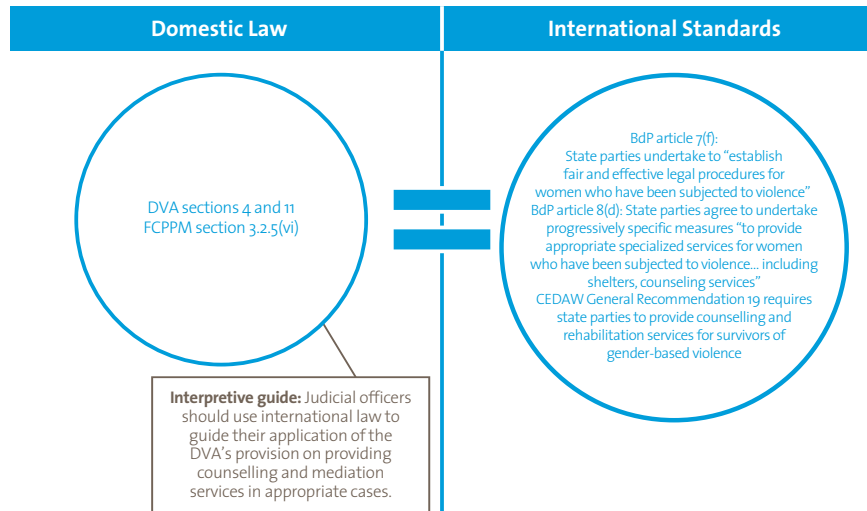
**Contribute to effective and fair legal procedures by:**

- o Promptly issuing interim protection orders and holding the main hearing before the expiration of the interim order;
- o Granting interim orders in cases where delay would or might cause serious injury or undue hardship or create a risk to personal safety;
- o Not allowing cases of domestic violence to linger for too long in the courts;
- o Ensuring they are not setting the requirements for obtaining protection orders more strictly than domestic legislation requires;
- o Being mindful that, in granting interim protection orders, the DVA already has built-in mechanisms to ensure the respondent's right to be heard is not unnecessarily infringed.



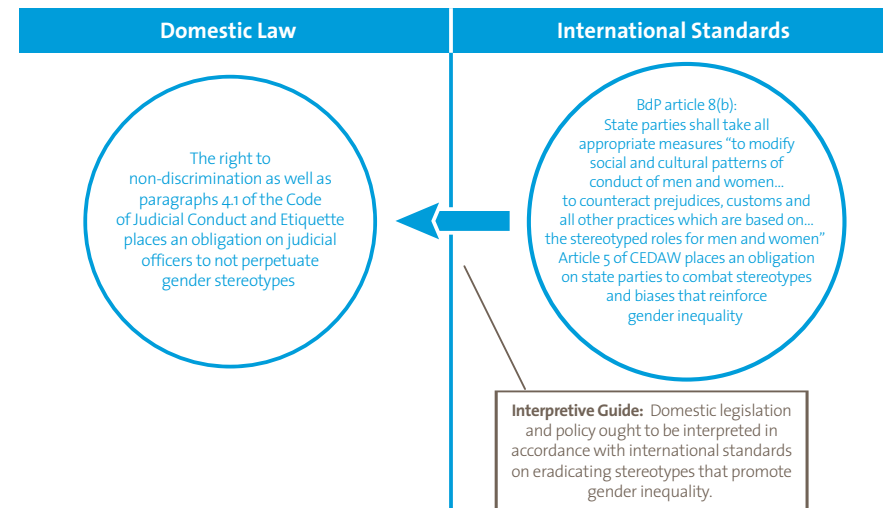
**Offer survivors of domestic violence legitimate protection by:**

- o Providing separate waiting areas for parties involved in a domestic violence matter in order to minimize the likelihood of the abuser wittingly or unwittingly intimidating the applicant;
- o Ordering the use of video recording and/or screens for children and vulnerable witnesses;
- o Ensuring that, where appropriate, both the complainant and the abuser receive separate and specialized counselling in domestic violence cases;
- o Ensuring that the applicant and the respondent are actually attending and benefiting from the counselling sessions;
- o Only suggesting mediation either where there is not a substantive power imbalance between the parties or where the mediators have specialized training in dealing with domestic violence cases.



**Eliminate biases and stereotyping regarding notions of domestic violence by:**

- o Recognizing that individuals, even though they are victims of abuse, have many legitimate reasons to return to their abuser, and this should not be a factor that militates against the need for protection;
- o Acknowledging that an applicant may want to remain in an abusive relationship because of economic or psychological dependence on the respondent;
- o Tailoring the terms of the protection order to provide the applicant with the resources to lessen or cut her/his emotional or economic dependence on the respondent;
- o Being mindful of any pre-existing biases or judgements they may have regarding the language used and grooming style of the applicants and respondents who appear before them;
- o Not allowing these biases or prejudices to **negatively** impact either their interaction with the parties or the orders they make.

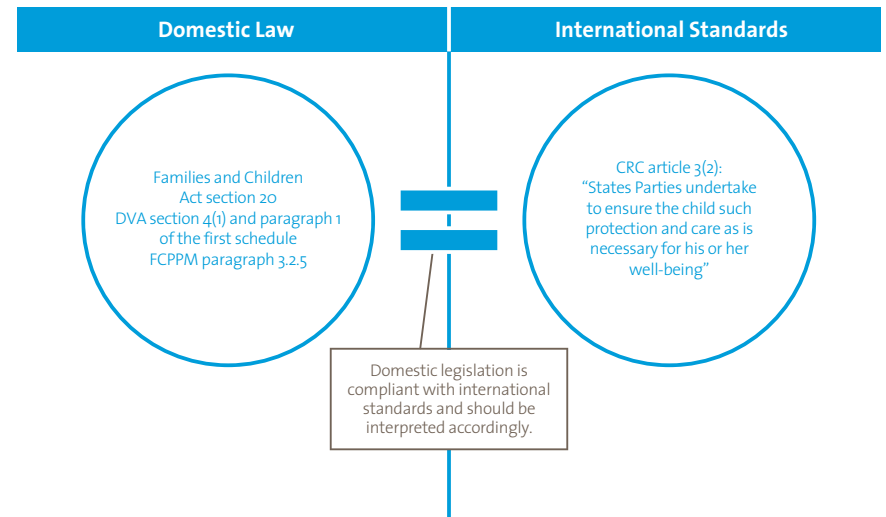
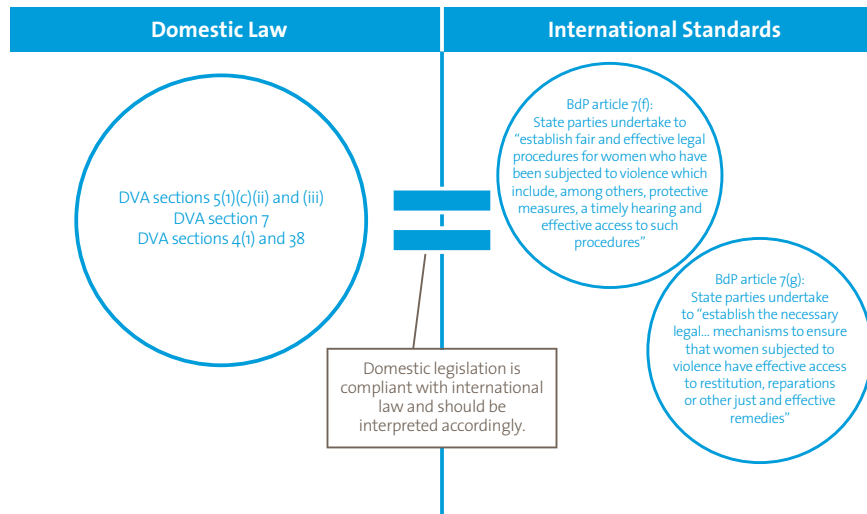


**Provide effective remedies to assist an individual leaving an abusive relationship by:**

- o Making an occupation order in justifiable circumstances, such as where there are children involved and the applicant has nowhere else to live;
- o Supplementing occupation orders with other orders to offer maximum protection to the applicant – for example ordering the abuser to pay rent and/or utilities;
- o Ordering the abuser to pay for the applicant’s rent and utilities, in cases where the applicant has to move out of the home, has children and is financially dependent on the respondent;
- o Giving survivors of domestic violence adequate economic protection by ordering the abuser to pay compensation for pecuniary losses and/or making payments towards the applicant’s rent and utilities;
- o Ensuring maintenance awarded to applicants will adequately provide for the needs of their dependants;
- o Ensuring the procedure for obtaining evidence is gender-sensitive and does not re-victimize the complainant;
- o Giving notice of the protection or occupation order to the police and informing the applicant of whom they can call or where they can go if the order is breached.

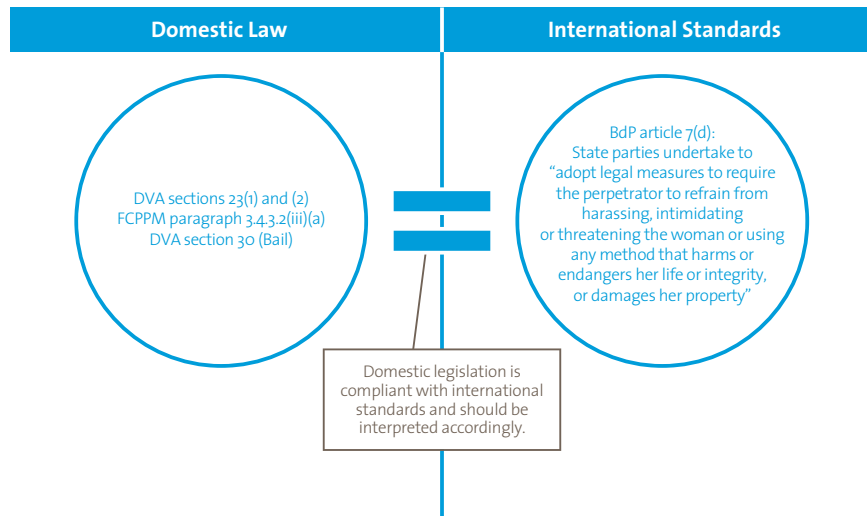
**Protect children of abusive relationships by:**

- o Granting custody of the child (ren) to the parent or guardian where there is least likelihood of the child being abused;
- o Ordering supervised visits in cases where the abuser is granted visitation rights;
- o Requesting that children receive counseling;
- o Ensuring the abuser continues to pay maintenance.



**Ensure the abuse does not take place again by:**

- o Making sure to punish a breach of the protection order in order to deter the abuser from meddling with applicant;
- o Considering whether breach of the protection order also amounts to a non-indictable criminal offence under any relevant law and thereafter deal with both in the same hearing;
- o Encouraging applicants to follow through with criminal proceedings in cases where the abuse also constitutes a crime.

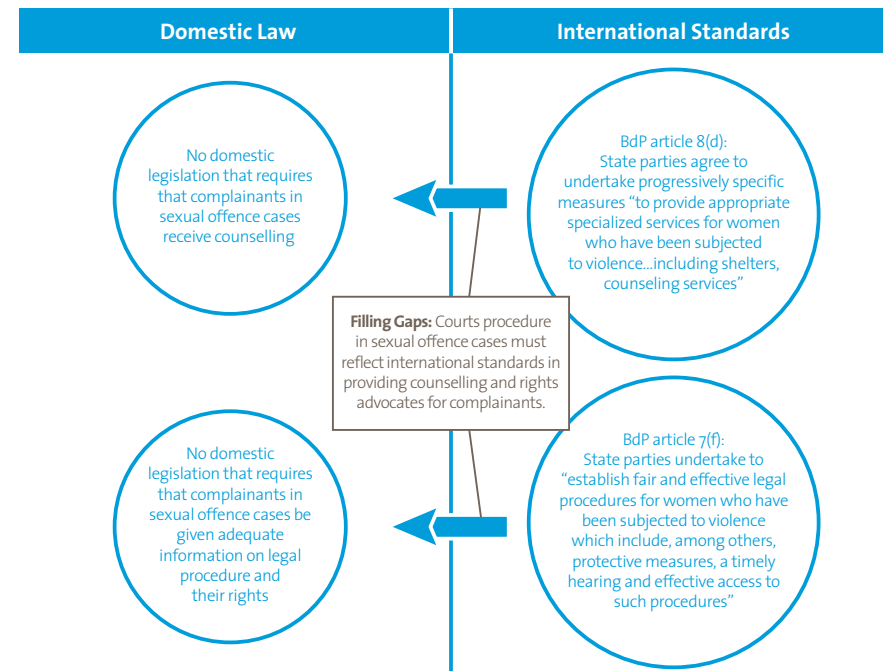


## 4.6. Sexual Offences

Courts are advised to:

**Protect the rights of the complainant in sexual offence cases by:**

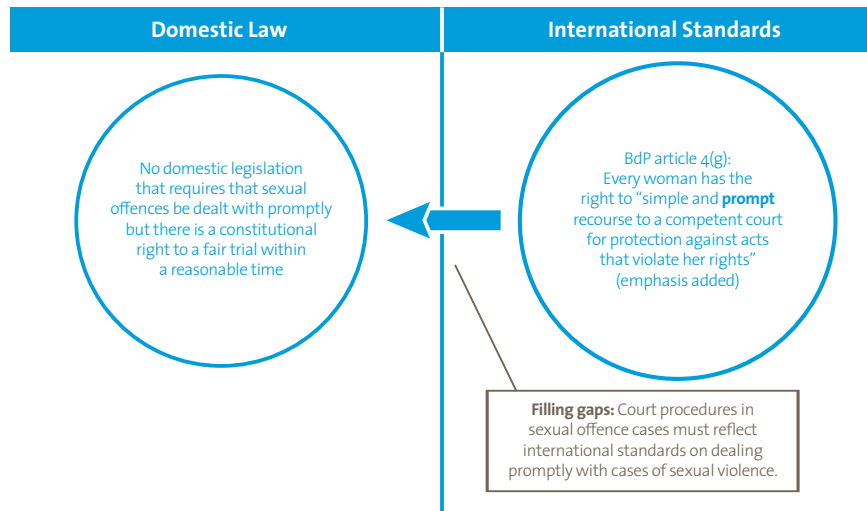
- o Referring complainants in sexual offence cases to counselling that will assist the complainant with healing and prepare her/him for the rigours of a trial;
- o Requesting that the complainant in sexual offences be given adequate information on legal procedures and how to fully exercise their rights.





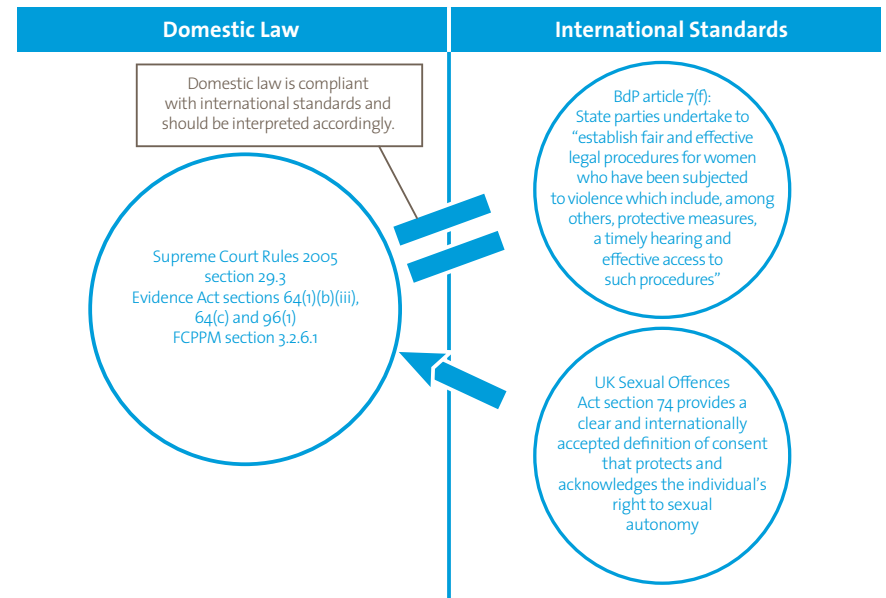
**Employ fair and effective legal procedures by:**

- o Giving priority to cases of sexual assault on the case management list;
- o Dealing with cases of sexual assault within a reasonable time to ensure complainants are readily available and able to give more reliable evidence at trial;
- o Utilizing appropriate measures to neutralize any threats that publicity from the media, including social media, may pose to the fair administration of justice or the accused’s right to a fair trial.



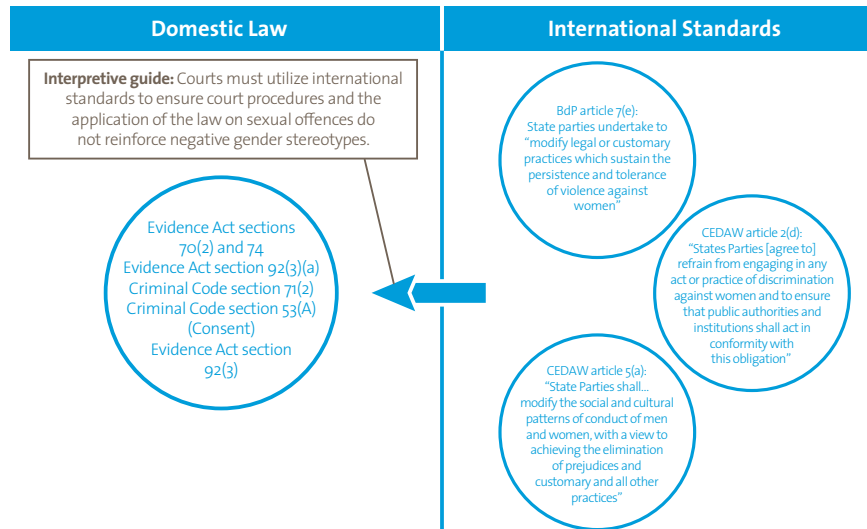
**Offer complainants in sexual offence cases legitimate protection by:**

- o Providing separate waiting areas for the complainant and the accused in order to prevent the use of intimidating tactics;
- o Hearing all sexual offence cases in-camera;
- o Using video recording and screens for vulnerable witnesses such as children;
- o Preventing repetitive questions and character assassinations "which serve no useful purpose apart from traumatising victims" during cross examination;
- o Admitting evidence of a complainant’s sexual history with persons other than the accused **only where sections 74(1) and (2) of the Evidence Act have been satisfied**;
- o If they decide it is necessary to admit evidence of the complainant’s sexual history, ensuring the complainant is not re-victimized and her/his dignity is preserved;
- o Warning jurors 1) not to conclude that consent to sex on one occasion means consent to sex in another setting and 2) that an intimate partner is just as likely to commit rape as a stranger;
- o Clearly explaining to the jury that 1) the choice to engage in sexual activity must be freely given (not constrained in any way) and 2) the complainant must have the capacity (age and/or understanding) to make that choice.



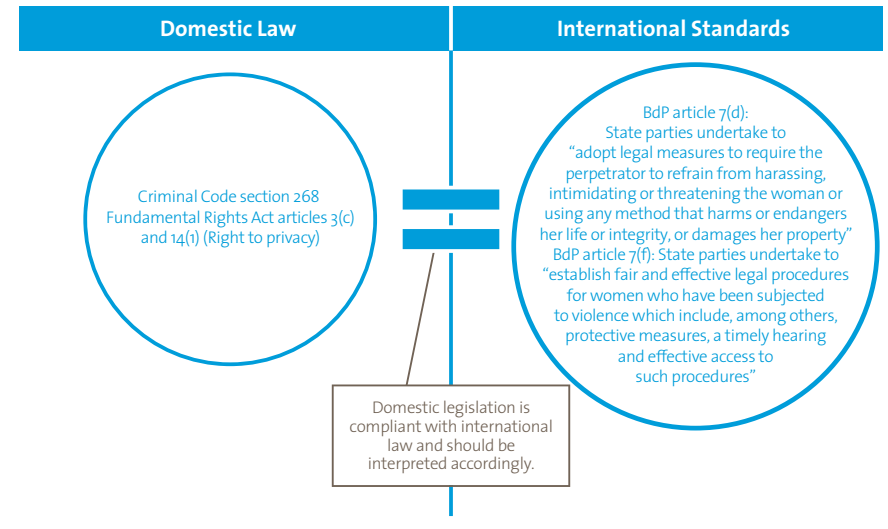
**Change traditional notions of sexual violence by:**

- o Warning the jury about relying on stereotypes of female and male sexuality when determining 1) the credibility of the accused and the complainant and 2) whether consent had been given to the sexual activity;
- o Ensuring the use of evidence relating to the complainant’s sexual history with the accused does not lead to gender discrimination by, for example, promoting stereotypes regarding women’s sexual activity or history;
- o Being mindful of the underlying prejudices of the original corroboration rule;
- o Ensuring that, in exercising their discretion to give the corroboration warning, they are also warning the jury about the dangers of relying on stereotypes regarding the propensity of women and girls to lie about having sexual intercourse.



**Ensure adequate protection to the complainant in sexual offence cases by:**

- o Not granting bail to the accused if it puts the complainant or witnesses in danger of being harassed and/or there is a real possibility that the accused will commit a similar offence;
- o Utilizing appropriate measures to neutralize any threats that publicity from the media, including social media, may pose to the fair administration of justice or the accused’s right to a fair trial;
- o Reminding counsel and officers of the court of the section 268 prohibition on revealing the identity of the complainant in the press and the corresponding punishment for breaching the section.



## 4.7. Child Custody and Child Support

In custody matters, judicial officers are advised to:

- o Be cognizant of the fact that section 4 of the Family Law Act gives both mother and father equal parental rights and responsibilities;
- o Bear in mind that custody is decided based on the best interest of the child and the gender of the parent is not a relevant factor in determining which parent should have legal custody;
- o Ensure their decisions do not perpetuate stereotypes regarding gender roles that are harmful to the cultivation of the child's bond with both parents;
- o Ensure they do not use the sexual orientation or gender identity of either parent as a basis for refusing custody (see IACHR decision in *Atala Riffo and Daughters v Chile*);
- o Inform probation officers/social workers of the relevant factors to be used in their assessment of which parent should get custody.

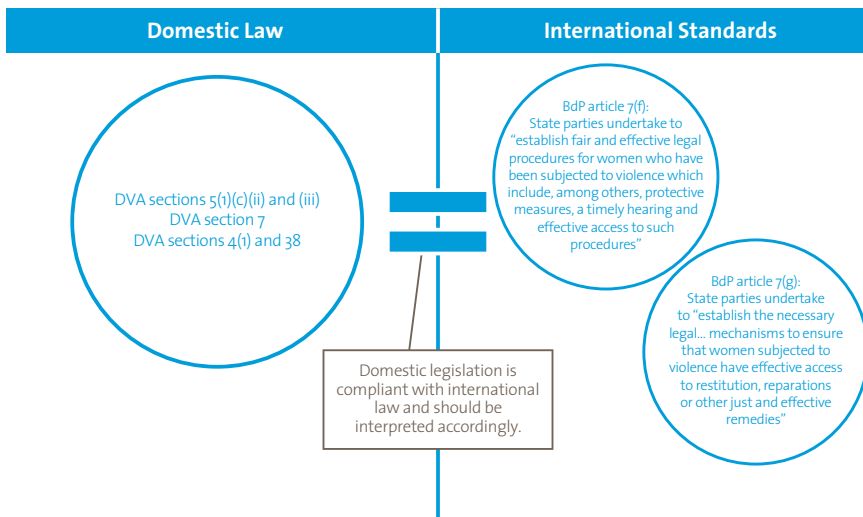
In child support matters, judicial officers are advised to:

- o Always place the welfare of the child as a primary concern;
- o Understand that the welfare of the child cannot be sufficiently advanced until the parents are given the support and tools they need to be better parents;
- o Be cognizant that the court can support the parents as follows:
  - To assist parents in dealing with the acrimony in their relationship, judicial officers are advised to order both parents to receive separate counselling. Joint counselling should be carried out only on the advice of a professional counsellor.
  - Judicial officers should always be on the lookout for abuse or power dynamics between parties to determine whether mediation or counselling is a preferred option. Mediation is useful only where there are no significant power imbalances or a history of abuse in the relationship between the parents.
  - Judicial officers should use their position to promote a paradigm shift towards women and men sharing the nurturing responsibilities.
  - Judicial officers can do this by adopting a wider definition of child support to include not only financial contribution but also in-kind contribution and care work. This will mean that:
    - ▶ When deciding the split in child care expenses, for example medical and school expenses, 50/50 is not necessarily appropriate, as the caring and nurturing provided by a custodial parent must be considered equally important to any financial contribution.

- ▶ Unemployed or seasonally employed non-custodial parents can make non-monetary contributions to their children's welfare. These non-financial contributions can either be used to significantly lessen their monetary obligations or be accepted temporarily in lieu of financial contributions.

- Judicial officers should not rely on imprisonment as a standalone means to encourage compliance with child support orders.
- Instead, judicial officers should encourage compliance with child support orders as follows:
  - ▶ Make non-custodial parents feel they are more than a “cash cow” for their children and are not financing the lifestyle of an ex-partner under the guise of “maintenance payments”. When parents are made to feel that their contribution to their child's life is more than financial they are better able to accept that their children have a legitimate expectation to be prioritized when it is time to apportion their income.
  - ▶ Three alternatives to increasing compliance with support orders are 1) making attachment orders mandatory in cases where the non-custodial parent works in the formal sector; 2) making orders for the unemployed or financially challenged non-custodial parent to make non-monetary contributions to the child's needs; or 3) ordering non-custodial parents to make direct payments for the needs of the child.
- All family matters should be conducted in private: only the parties involved and the court officers directly involved in the case should be present during the proceedings.
- It is important for judicial officers to not allow the grooming, speaking style, gender identity, sexual orientation or socio-economic status of the parents to determine the process and outcome in child support and custody cases:
  - ▶ Judicial officers must not denigrate men who are “hustlers”, sport an afro, wear tight jeans with their underwear exposed and speak patois fluently but struggle with English.
  - ▶ They must also not reproach women with low skills and low levels of education and who have children by several men. The women do not need to be told they are “loose” or that they should have “closed their legs” or chosen better men to sleep with.

- o Instruct probation officers on the relevant factors in assessing financial capability and the needs of the child;
- o Consider whether an order should be made for both parents to receive separate counselling post-custody and maintenance application hearings;
- o Request that probation officers/social workers 1) assist the parents in complying with the orders of the court and 2) make follow-up visits to ensure the best interest of the children is being served.



## 4.8. Human Trafficking

Judicial officers and magistrates are advised to:

- o Protect victims of human trafficking by regarding them not as criminals but as individuals that need protection;
- o Determine whether the facts of a prostitution case indicate forced or wilful prostitution;
- o Ensure interpreters are available at the committal hearing and trial;
- o Give priority to hearing human trafficking cases;
- o Conduct human trafficking cases involving sexual offences and vulnerable witnesses in-camera;
- o Provide a friendly courtroom environment for the survivors of human trafficking;
- o Deal with human trafficking cases promptly, as the longer the cases languish in the court system, the less likely it is that the survivors will be available to testify at trial.

