
**PROTOCOL OF FEMINIST LAWYERS
IN HANDLING CASES OF VIOLENCE
AGAINST WOMEN AND CHILDREN**

WOMEN'S LEGAL BUREAU, INC.
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This protocol was developed in December 1998 for the Legal Advocates for Women Network (LAWNET), a Philippine national network of women lawyers and female law students committed to address violence against women and children. The Women's Legal Bureau, Inc. is the Convenor-Secretariat of LAWNET. For comments on this Protocol, please contact the Women's Legal Bureau, Inc., 11 Matimtiman St., Teachers Village, Diliman, Quezon City 1101, Philippines; Tel. Nos. (632) 9213893/ 9218053; Fax No. 9214389; E-mail: wlb@philonline.com.ph

The WOMEN'S LEGAL BUREAU, INC, is a feminist legal resource NGO servicing women and women's organizations. Its programs include legal services and development, legal and policy research and advocacy, developmental legal education and training, and legal information services and development.

GENERAL PRINCIPLES

We, feminist lawyers who handle cases of violence against women and children, believe that:

1. Violence against women and children is systemic and must be seriously addressed. The various forms of violence against women and children constitute human rights violations that the government is obliged to address. The government is accountable for these violations by reason of the action or inaction of its agents, branches and instrumentalities that perpetuates or contributes to violence against women and children, or aggravates its impact on its victims.

2. VAW occurs because of the system of gender-based dominance where women's and children's subordination and oppression is perpetuated and reinforced by various cultural practices, religious beliefs, and economic marginalization.

3. The law by itself cannot address the root causes of violence against women and children. In many ways, the legal system contributes to the perpetuation of violence against women and children, or aggravates the impact of the violence on them. Women and children are often subjected to insensitive, cruel and inhuman treatment in the process of seeking redress through law enforcement agencies, prosecution offices and the courts. Many forms of violence against women are not recognized in law. Where there is legislation, it is in many cases either inappropriate or inadequate because it does not reflect the experiences of women.

4. While the legal system has its built-in limitations in addressing violence against women and children, particularly its root causes, available legal remedies remain useful to address the practical and short-term needs of women and children. Because of its power and influence, the law is a potential tool for the advancement of women's and children's rights.

5. While feminist lawyers recognize the power of the law, they also recognize that it must be challenged in various ways for women's and children's experiences to be genuinely addressed. Thus, feminist lawyers' advocacy against violence against women and children is not limited to the courtroom. The various forms of advocacy that a feminist lawyer can undertake include litigation, legal counseling, legislative or policy advocacy, legal and policy research, education and training, organizing, and public information and campaign. Every strategy should involve the articulation of women's and children's issues and concerns and creativity to address the limitations of law-related action.

6. In advocacy, feminist lawyers are not limited by the strictures of legal precedents and rules of procedure. They are always conscious of making innovations, striving to set new precedents. Feminist lawyers must engage in continuous criticism of the law and integrate feminist advocacy in every opportunity.

7. In undertaking feminist legal advocacy, a feminist lawyer should listen to women, learn from women's experiences, engage in critical thought, value collective action, and seek to collaborate and build partnerships with women's organizations and other disciplines.

8. The development of paralegals and advocates in communities, as well as the sharing of skills and information with other women, is an integral part of feminist legal advocacy.

9. As advocates, feminist lawyers make the choice to extend legal representation only in cases that will not create conflict in their advocacy.

GUIDELINES IN CASE HANDLING

The following are some specific principles and guidelines that a feminist lawyer must strive to adhere to and abide by in handling cases of violence against women and children.

□ Nature of lawyer-client relationship

1. In recognition of the complex nature of violence against women and children, a feminist legal practitioner believes that her role in every case is not limited to legal advice and representation in court. It is also her role to take steps in order that the medical and psycho-social needs of the client are addressed through referral of the client to competent and sensitive counselors, therapists and doctors where this is necessary. This includes as well coordination with the appropriate private and government agencies that can provide further assistance to the client.

2. A feminist lawyer does not purport to be the ultimate problem solver, and does not make grand promises to her client.

3. The feminist lawyer-client relationship in cases of violence against women and children should be in the nature of a partnership. It discourages lawyer-dependence and lawyer-control over decision-making and strategies. The nature of the relationship should be empowering to the client.

4. In recognition of the reality that many women and children victims of violence do not have the financial resources to obtain the services of counsel, the fees that may be charged in cases of violence against women and children should depend on the client's capacity to pay.

☐ **Accountability**

1. The accountability of a feminist lawyer handling VAW cases is not only to her clients but also to women in general as well as to the women's movement. Feminist legal practice requires the often precarious balancing between the individual interests of clients and the goals of advocacy.

2. The objective in handling every case of violence against women and children is to address the needs of the client and contribute to her empowerment. In addition, it must, as much as possible, serve the goals of advocacy on the issue, or, at the very least, be consistent with these goals. In this regard, a lawyer must strive to engage in creative but ethical methods in case handling.

3. A feminist practitioner must, at all times, strive to maintain transparency with the client about her action on the case. This includes explaining to the client the legal process and the details of every proceeding in a language understood by the client.

4. As much as possible, a feminist practitioner must avoid litigation involving a woman against another in gender-based violence cases where both women are perceived to be victims.

5. A feminist practitioner must avoid representing the accused in violence against women and children cases. She has, however, the obligation to refer the accused to competent counsel.

☐ Decision-making

1. Every lawyer handling VAW cases must strive to make the process of decision-making in every case interactive and participatory. This process seeks to change the traditional hierarchical leadership of the lawyer in case handling, empower the client to take control of the case as it involves her own life, and ensure that the women's viewpoint is taken into account in the legal process. To this end, the lawyer must refrain from imposing on the client her position on what course of action should be taken or from prescribing solutions to the problem. The client must, in the end, make the final decision on what action to take.

2. A feminist approach to decision-making entails a careful discussion of options with the client, including the possible gains and odds involved in each, towards her making an informed decision. The same principle applies even to major procedural matters.

3. Even in cases involving children, a feminist lawyer must ensure that the child is consulted and her wishes are respected. She must strive to ensure that the child-client

understands the nature of the action to be taken on her behalf and must ask her opinion about the same. In case of conflict between the decision of the parent, guardian or adult responsible for the child and the wishes of the child, the latter shall prevail. To ensure that the child is ready and able to articulate her wishes sufficiently, the intervention of a competent counselor or therapist may be obtained. This applies also in cases where the child is confused or not ready to make a decision. Every decision affecting the child must be therapeutic to the child.

4. Children should be encouraged to open up either with the help of trained counselors or child-psychologists. The feminist lawyer must discuss (when appropriate and possible) the legal process with the child as well as with her family, counselor or therapist.

☐ Sensitive and Appropriate Methods

1. A feminist lawyer listens to her client. Listening to the client entails sensitivity to what the client is not saying as well as being able to recognize the hesitation to open up as a possible sign of confusion, trauma or shock. The lawyer can address this by requesting for the intervention of a competent therapist or counselor to facilitate the healing process of the client. Cultivating the trust and confidence of the client in the lawyer and emphasizing confidentiality can also help. The lawyer must also ensure that confidentiality is maintained by other direct service providers involved in the case.

2. Feminist lawyers must make an effort to understand the circumstances of women who exhibit confusion, constantly

change their minds, and eventually decide to withdraw the case. Still, the lawyer must emphasize to the client the need for her to take steps to address her situation.

3. A feminist lawyer must at all times refrain from any conduct or statement that has the effect or impact of blaming a woman or child for the violence she has experienced. She must also strive to call attention to or address any form of victim-blaming perpetrated by any person.

4. Feminist lawyers reject the concept of "detachment" of lawyers from their client's problems. Treating clients as human beings will entail a degree of emotional involvement and create a bond between the lawyer and her client that can potentially empower both without creating or fostering dependence.

5. A feminist lawyer must take steps to address the other needs of the client (i.e., counseling, psycho-social and emotional support). In suggesting psycho-social intervention such as counseling to the client, the lawyer must, with sensitivity, explain the objective of counseling to address the client's misgivings about its implications on her person and eliminate any fear or hesitation from seeking counseling or professional help. The client must consent to counseling or therapy before a lawyer can refer her to a counselor or therapist.

6. A feminist lawyer must coordinate with the client's counselor, psychologist and social worker towards a more effective and integrated intervention.

7. It is the duty of a feminist lawyer to ensure proper documentation of the details and developments in every case of violence against women and children.

8. In interviews or conferences with the client, a feminist lawyer must ensure that the client understand the objective of documentation and that the method of documentation does not offend the client's sensibilities. The lawyer must also ensure that the client does not go through repetitive and cruel interviews.

9. Interviews or conferences with clients must be done in an appropriate venue that facilitates disclosure and building of confidence in the lawyer and the process.

10. By not limiting her methods and strategies to litigation, a feminist lawyer is open to the possibilities of negotiation, conciliation and mediation and other forms of alternative dispute resolution. However, the decision to pursue any of these methods must be made by the client. In the pursuit of any of these methods, the lawyer must strive to ensure that the interest of the client is promoted, that the violence she has experienced is not trivialized or ignored, and that the process of pursuing the method is empowering and its outcome is just.

11. In court, a feminist lawyer must take steps to protect the right of the woman or child to a humane and sensitive process. Towards this end, she must be sensitive to her client throughout the process, particularly for any sign of any negative effect on her of the proceedings, and use creative techniques and make objections that are not limited to technical points.

12. Feminist lawyers recognize that for legal assistance to be empowering, it must involve the consciousness-raising of both the client and her family about violence against women and children. This can strengthen family support, contribute to the client's healing process and her empowerment, and bring her to the ranks of women who contribute to the advocacy against gender-based violence.

DEALINGS WITH JUDGES, COURT PERSONNEL, OPPOSING LAWYERS, COLLEAGUES, AND GOVERNMENT AGENCIES

1. As an advocate of women's and children's rights, a feminist lawyer has the duty to maximize every opportunity to increase the understanding by judges, court personnel, law enforcers, and social workers of gender-specific and children's issues, particularly violence against women and children.

2. Feminist lawyers must not assume that clients will always understand the practice of lawyers of relating amicably or socializing with the opposing counsel. The practice of privately conferring with the opposing counsel, for instance, can be a cause of distrust or doubt when this is not explained to the client. Feminist lawyers, thus, must be sensitive to the reaction of the client to her dealings with the opposing counsel.

3. Feminist lawyers should strive to bring to the attention of government agencies the issues and problems in the government's delivery of services in cases of violence against women and children and advocate for these to be addressed.

4. Feminist lawyers must make the effort to extend their advocacy on gender-specific issues in their place of work, especially among their colleagues.

PUBLIC ADVOCACY AND CLIENT'S NEEDS

Public advocacy activities should ideally serve the interest of the client as well as the objective of raising the consciousness of the public about violence against women and children. However, a feminist lawyer must ensure that the needs of the client for sensitive and appropriate services and legal representation are not sacrificed for the sake of public advocacy. To this end:

1. It is a feminist lawyer's duty to ensure that a client's case is not used unethically in research, for fundraising, and even to serve the career advancement of the lawyer.

2. Public expose' or media advocacy on a client's case may only be made with the express and informed consent of the client.

3. The objective of public advocacy on a client's case, the extent of her involvement, and the manner and extent that her case is used must at all times be determined by the client. She must have control over the direction of the public advocacy on her case. The lawyer must ensure that the client understands the possible gains and adverse effect on her person of public advocacy, particularly of the possible public and media insensitivity. The lawyer must caution the client that public advocacy will not necessarily bring positive results to her case.

4. The lawyer must ensure that public advocacy involving the client's case will not prejudice her healing process. To the extent possible, the opinion of the client's counselor or therapist must be obtained regarding this. The lawyer must also take steps, together with the counselor or therapist, to regularly monitor the impact of the public advocacy on the client's person.

5. The lawyer must take immediate steps to address any adverse effect of the public advocacy on the client, and, if necessary, put a stop to the client's involvement or the use of her case in the advocacy.

SOLIDARITY WITH BASIC SECTORS

1. Recognizing that feminism is against *all* forms of oppression, feminist lawyers must strive for consistency not only in terms of the cases they handle but likewise in their own lives.

2. In recognition of the integral link between women's and children's issues, particularly violence against women and children, and the issues and concerns of the basic sectors (e.g., peasants, workers, indigenous peoples, fisherfolk), a feminist lawyer must strive to engage in solidarity work on issues affecting the basic sectors and refrain from engaging in any form of work or advocacy that will prejudice the interests of these sectors.

Adopted this 5th day of December 1998 in Cebu City, Philippines, by the participants of the National Workshop of Lawyers on Feminist Legal Practice, organized by the Women's Legal Bureau, Inc.

