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MINISTRY OF JUSTICE
NATIONAL LEGAL AID AGENCY

HANDBOOK

FOR LEGAL AID PROVIDERS AT LOCAL LEVEL TO PROVIDE LEGAL AID IN DOMESTIC VIOLENCE CASES

Ha Noi, December 2011



INTRODUCTION

Domestic violence is a pervasive problem in all regions of the world, including Vietnam. It has educational, economic and health dimensions and causes devastating physical, emotional, financial and social effects on the victims, families and communities. Domestic violence is a human rights issue cutting across all cultures, religions, geographic boundaries and different levels of socio-economic development. The importance of combating domestic violence has been recognised by the Government of Viet Nam through the adoption of the Law on Domestic Violence Prevention and Control 2007 in addition to other legislation and subsequent legal policies. This law sends a clear message that such violence is not to be tolerated and should no longer be seen as a “private matter”.

To successfully prevent and reduce the impacts of domestic violence, the legal framework must be enforced, monitored and effectively implemented. Domestic violence prevention and control is the responsibility of everyone in society. Government agencies have a particular responsibility in ensuring a comprehensive, coordinated and multi-faceted response to domestic violence. Legal aid play a crucial role in that response. As legal aid providers, you can be effective agents in protecting the victims, ending impunity, providing access to justice and redress, and responding to the special needs and vulnerabilities experienced by victims within the justice system.

Victims of domestic violence are overwhelmingly female who face many challenges in accessing justice and protection. In many societies, including Viet Nam, persistent gender inequality and a culture of male domination socialize women to accept, tolerate and even rationalize domestic violence and to remain silent about such experience. Therefore ongoing efforts to raise awareness within communities about domestic violence and to change attitudes are required, so that domestic violence does not remain a hidden issue and women who are affected will be able to seek help and support. Despite the Domestic Violence Law coming into force in 2008, the attitude that domestic violence is “a private family issue” still persists and many in society and in authority do not intervene. Women remain hesitant to talk about or report domestic violence or seek support due to stigma concerns, lack of supportive and sensitive responses from family members and authorities, or fear of consequences for themselves and their children.¹ The acceptance of domestic violence behavior is often reinforced by cultural patterns and practices that are also reflected in the justice system and its officers. Therefore it is important to increase the understanding of domestic violence amongst legal aid providers.

This handbook is for legal aid providers at all levels. Whether you are a legal aid provider at the local level, a legal specialist, a legal aid collaborator of the State legal aid centre, a member of the board of legal aid clubs or an official of any organization involved in carrying out legal aid, the information contained in this book will assist you in handling cases that could involve clients who are victims of domestic violence.

A survey on the current situation of legal aid for female victims of domestic violence and training needs for legal aid providers was conducted by the National Legal Aid Agency in October 2010.² At that time, neither domestic violence victims nor domestic violence was a specific category of eligibility for legal aid under the Legal Aid Law. However, despite that, still over one-third of all the legal aid providers interviewed affirmed their involvement in dealing with cases involving domestic violence, with that one-third noting that in the preceding 12 months, they handled 1 to 3 domestic

¹ Results from National Study on Domestic Violence Against Women in Vietnam 2010 – Summary Report (General Statistics Office of Viet Nam, supported by the United Nations-Government of Viet Nam Joint Programme on Gender Equality) at page 5.

² For further information on the survey, please see the Report on the Survey Findings of Current Situation of Legal Aid for Women Being Domestic Violence Victims and Training Needs as well as Capacity Building for Legal Aid Officers in Conducting Legal Aid in Domestic Violence related Cases, conducted by the National Legal Aid Agency and UNODC in October 2010 (hereinafter the “Survey Report”).

violence cases per person.³ The survey further highlighted that even where cases are not labeled as domestic violence cases, legal aid officers frequently came into contact with victims of domestic violence, particularly when dealing with family law and divorce cases. One legal aid officer interviewed for a UNODC study in 2009 said that 8 out of 10 divorce cases have signs of domestic violence. Still, not every legal aid provider might be able to detect or identify the victims and often the victims do not self-identify or seek legal aid assistance for that specific problem.

However in the future, legal aid providers might see an increase in domestic violence cases for a number of reasons. First, in March 2011, the Viet Nam government passed a Circular on ensuring gender equality in personnel structure and activities of legal aid organizations. Article 12 of the Circular adds victims of domestic violence to those women who are subjects for priority policies prescribed in article 2 of Decree No 07/2007/ND-CP. Second, there has been a public campaign to raise awareness and encourage victims of domestic violence to seek help from state officials. Third, there has been increased awareness and enhanced skills amongst legal aid providers to detect victims when individuals seek their help in other types of cases such as divorce cases.

The survey also found that information about domestic violence attributed to legal aid providers was not based on their own knowledge and experience but mainly provided by victims.⁴ Furthermore, the survey findings showed that legal aid providers faced many difficulties and challenges when providing legal aid in situations involving domestic violence. This includes:

- Victims are hesitant to share information about their situation.
- Legal aid providers have limited awareness and knowledge about the Law on Domestic Violence Prevention and Control and other relevant legislation.
- Victims withdraw or give up their rights.
- There is lack of coordination and support from relevant agencies and organizations.

The findings of the survey highlight the need for enhancing the knowledge of legal aid providers on the existing legal framework to respond to domestic violence as well as building their capacity and skills to effectively handle domestic violence cases. The interviewed legal aid providers requested further information and training on legal aid and this handbook represents a first step towards realizing this aim.

Objective of the Handbook

This handbook is meant to be a practical tool for legal aid providers to guide them when they are providing legal aid services in cases involving victims of domestic violence, including providing further guidance and information to enhance their knowledge and skills when dealing with cases involving such victims in order to improve the overall quality of legal aid services available to victims.

Target Groups

The target groups for using the handbook are:

- Legal Aid Centre officers
- Legal aid lawyers
- Legal aid collaborators
- Legal aid assistants
- Legal consultants
- Officials of socio-political associations, like legal aid clubs
- Officials of the Department of Justice involved in legal aid

³ The Survey Report findings include 35.34% of all the interviewees affirm their involvement in dealing with cases of domestic violence, and the number of domestic violence cases being handled by them within 12 months preceding the assessment ranges from 1 to 3 cases per person (88.65%). See *supra* note 2.

⁴ The Survey Report found 148/160 interviewees.

Scope of the Handbook

The primary focus of this handbook is on violence against women in domicile and intimate relationships. This includes violence towards a woman from her husband or intimate partner, former husband or intimate partner, and also includes violence from other family members such as her son, mother or father-in-law, or other relative.

While other forms of violence within the family are also serious, this handbook addresses the unique characteristics of violence against women in their intimate relationships. The fact is that the victims of domestic violence are overwhelmingly female. Although the statistics vary, research indicates that women may be the victims of domestic violence in as much as 95% of the cases.⁵ Persistent gender inequality and a culture of male domination continue to result in female victims of violence being more vulnerable and less capable of asserting their rights. Female victims require special support and protection due to the intimate nature of the relationship in which the violence has occurred.

This handbook will not deal specifically with the situation where children have been directly victimized by domestic violence as this requires specialized skills in identifying, assessing and responding to child victims. However there is increasing recognition that children who witness violence against their mothers are also victims and therefore interventions that protect and support the mother should also take into account the needs of the victim's children.

Organization of the Handbook

The Handbook includes the following Chapters:

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This handbook is intended to be practical, concrete and useful. Each chapter contains a summary of key issues to the topic.

This handbook has been developed by the National Legal Aid Agency of the Ministry of Justice with the assistance of the United Nations Office on Drugs and Crime (UNODC) Viet Nam Country Office. The development of the handbook follows from the October 2010 survey on the current situation of legal aid for female victims of domestic violence and training needs for legal aid providers. This survey and handbook are part of UNODC's project on "Strengthening capacity of law enforcement and justice sectors to prevent and respond to domestic violence in Viet Nam" (VNM/T28), and part of the United Nations Joint Programme on Gender Equality.

⁵ Minnesota Advocates for Human Rights training material. According to Statistics Canada, women are victims of domestic violence in 83% of the cases: Statistics Canada "Family Violence in Canada: A Statistical Profile 2008".

PART I: BACKGROUND INFORMATION ON DOMESTIC VIOLENCE

Summary of key points

1. Domestic violence is intentional behaviour as well as learned behaviour.
2. Domestic violence is a form of gender-based violence rooted in persistent attitudes and beliefs that see women as inferior to men.
3. Women are victims in as high as 95% of domestic violence cases.
4. Domestic violence typically involves repetitive behaviours; encompassing different types of abuse.
5. There are four types of abuse: physical, psychological, sexual and economical.
6. The abusers use various kinds of behaviours to gain power and control over their victims.
7. It is the abuser who causes the violence - not substance abuse, the victim, or the relationship.
8. Understanding the dynamics of domestic violence and barriers to assistance experienced by victims will assist legal aid providers to respond more effectively to domestic violence cases.

1. Definition

Is domestic violence defined in the law?

Yes. The Domestic Violence Law provides for a definition in Article 1(2):

“Domestic violence is defined as purposeful acts of certain family members that cause or may possibly cause physical, mental or economic injuries to other family members”.

Domestic violence is a phenomenon where one or more family members use power and violence or threat of violence over another family member to cause physical injuries, psychological crisis or social isolation in order to subdue, dominate and control another family member.⁶ In other words, domestic violence is intentional behaviour. Its purpose is to establish and exert power and control over another. The violence is used to intimidate, humiliate or frighten the victim.

Domestic violence:

- may include a single act of violence; or
- a number of acts forming a pattern of abuse through the use of assaultive and controlling behaviour.

The National Study on Domestic Violence in Viet Nam indicates that 60% of women who suffered domestic violence reported that they have been injured more than once and 17% had been injured many times.⁷

What are the categories of domestic violence?

Four types of domestic violence

Physical: e.g. hitting, pushing, biting, punching, choking

Emotional / Psychological: e.g. cursing swearing, attacks on self esteem, blaming, criticizing thoughts and feelings, threatening, throwing, smashing, breaking things, punching walls, hiding things

⁶ Centre of Research and Gender Application – Families – Women and Juveniles (CSAGA) training material on Gender – Gender violence and Communication on domestic violence protection, Ben Tre, May 2007.

⁷ The National Study on Domestic Violence Against Women in Viet Nam, *supra* note 1.

Sexual: any non-consenting sexual act or behaviour

Economic: e.g. preventing individual from getting or keeping a job, strictly controlling family income; restricting access to family income

REMEMBER - domestic violence is often a pattern of coercion and control that one person exerts over another. It might not be just one physical attack and it might not even involve a physical act. It often includes the repeated use of a number of tactics, including intimidation, threats, economic deprivation, isolation and psychological and sexual abuse. Some of the abusive behaviours used by perpetrators result in injuries that harm the victims both physically and emotionally. Other techniques employed by perpetrators involve emotionally abusive behaviours. While these behaviours may not result in physical injuries, they are still psychologically damaging to the victim.

IMPORTANT - There is no universally accepted definition of emotional abuse. Emotional or psychological violence is often the most difficult to identify for a number of reasons. First, there are no outward signs of harm caused by emotional violence. Second, the tactics or behaviours used, such as “insulting” or “blaming” can happen in any relationship and might not reach the threshold of “abuse”. To determine whether this type of behavior is a form of domestic violence, one must look to see whether it is based on power and control. Generally psychological or emotional abuse is limited to acts of persistent threatening, demeaning or controlling behavior, rather than simply creating mental pressure or offending one’s pride.

Physical violence	Psychological / emotional violence
<p>Any intentional act causing physical injuries, including violent acts and minor level of injury.</p> <ul style="list-style-type: none"> • Includes such acts as corporal beating, ill-treating, torturing or other purposeful acts causing injuries to one’s health and life. • Can include the use of weapons, such as sticks, canes, knives or scissors. • The National Study shows that 31.5% of ever-married women had once experienced physical violence by their husbands or ex-husbands in their lifetime.⁸ • The National Study found that the lifetime prevalence of physical violence by partners increase with age. • Small scale studies in Vietnam conclude that physical violence is the most frequent type of gender-based violence reported, with 16-37% of women reporting they have experienced physical abuse.⁹ • One study of 465 couples reports that 50% of men say they beat their wives, while 37% of women reported being abused, showing women under-report the violence they experience.¹⁰ 	<p>Any intentional act which hurt others psychologically and reaches the threshold of abuse.</p> <ul style="list-style-type: none"> • Includes behaviours that can severely affect a woman’s mental health, including using insults, cursing, threatening or other offending behaviours, controlling and prohibiting her in participating in social or business activities. • The National Study shows that the prevalence rate of lifetime psychological abuse by husbands is 53.6%. • Small scale studies indicate that emotional violence occurs at higher rates than physical violence, at 19% to 55%.¹¹ • A 2006 study of 2000 married women revealed that 25% of women experienced emotional violence in their families.¹² • It is difficult to identify psychological violence, because there are no outward signs of harm. • It can also be difficult to distinguish between arguments which might involve insults and emotional violence. • Each situation must be assessed on its own facts. Look at the power and control relationship between the couple.

⁸ The National Study on Domestic Violence Against Women in Viet Nam, *supra* note 1, at page 52-53.

⁹ Vung et al 2008, Luke et al 2007, UNFPA 2007, Loi et al 1999, cited in “Gender-Based Violence: Issue Paper” (UN Vietnam, May 2010).

¹⁰ Mai et al 2004, cited in Issues Paper, *supra* note 9.

¹¹ Vung et al 2009, UNFPA 2007, Thi and Ha 2006, cited in Issues Paper, *supra* note 9.

¹² No. 2330 TTr/UBXH 2006 cited in UNFPA 2007:22, cited in Issues Paper, *supra* note 9.

Sexual violence	Economic violence
<p>Any act of sexual harassment, coercion or obtaining non-consensual sex.</p> <ul style="list-style-type: none"> • Includes acts such as rape; forced sex; using words or actions to force the victim to do something sexual that she finds degrading or humiliating; using threats to have sex. • The National Study shows that 1 out of every 10 every-married women (9.9%) experience sexual violence by husbands in their lifetime. • A 2006 survey by the Parliamentary Committee for Social Affairs in 8 provinces and cities, up to 30% of women who responded had been forced into unwanted sex by their husbands.¹³ • Data from Cua Lo counselling centre indicates that 42 of 107 cases reported sexual violence. 	<p>Any international act that uses economics means to control the wife or use the woman's income against her will or that bans her from having access to those resources or who force woman to work harder than they can.</p> <ul style="list-style-type: none"> • Acts include forcing other family members to overwork or to contribute more earning than they can afford; controlling other family members' income to make them financially dependent. • Little research has been done on this form of violence in Vietnam. However, data from the counselling centre at Duc Giang show that 11% of clients have suffered from economic violence.

What acts of domestic violence are described in the Domestic Violence Law?

The Vietnamese Law on Domestic Violence Prevention and Control lists a number of acts as domestic violence (in Article 2(1)):

- (a) corporal beating, ill-treating, torturing or other purposeful acts causing injuries to one's health and life;
- (b) insulting or other intended acts meant to offend one's human pride, honour and dignity;
- (c) isolating, shunning or creating constant psychological pressure on other family members, causing serious consequences;
- (d) preventing the exercise of the legal rights and obligation in the relationship between grandparents and grand children, between parents and children, between husband and wives as well as among brothers and sister;
- (e) forced sex;
- (f) forced child marriage; forced marriage or divorce and obstruction to freewill and progressive marriage;
- (g) appropriating, demolishing, destroying or other purposeful acts to damage the private properties of other family members, or the shared properties of family members;
- (h) forcing other family members to overwork or to contribute more earning than they can afford; controlling other family members' income to make them financially dependent;
- (i) conducting unlawful acts to turn other family members out of their domicile.

Are victims of domestic violence only women?

Domestic violence can occur in any relationship in the family, including between spouses, former spouses, step-parents and children, in-laws, parents and children as well as life partners. However the fact is that victims of domestic violence are overwhelmingly female. While statistics vary, research indicates that women may be the victims of domestic violence in as much as 95% of the cases.¹⁴ Domestic violence against women is often referred to as "gender-based violence" because it partly evolves from women's subordinate gender status in society. In most cultures, unequal power relationships between women and men created and maintained by gender stereotypes is the basic underlying cause of violence against women.

¹³ Nguyen et al 2008, cited in Issues Paper, *supra* note 9.

¹⁴ This is reflected in international research as well as recent studies in Viet Nam. See the UN Gender Based Violence Issues Paper, May 2010, *supra* note 9 and the recent National Study, *supra* note 1.

2. Understanding the Causes of Domestic Violence Against Women

The underlying cause: gender inequality

Domestic violence takes root from century-lasting behavior and the attitude of society in which women are believed to be inferior to men and less deserving in controlling their own lives and making their own decisions. Gender inequality remains and is reflected in gender stereotypes. Such wrong thinking supports the belief that men have a right to educate their wives through physical correction to protect the honour of the family. Violence against women has often been overlooked as it is seen as normal by society, including by the women victims of violence.

The National Study findings reflect women's perception of their role:

- » 27% of the women agreed with the idea of "a good wife always obeys her husband even if she disagrees"
- » the same percentage agreed with the statement "every important decision in the family has to be made by the husband"
- » However, the majority of women want their husbands to share household work when they are working (97.7%).

At present, many societies are built on the basis of a system in which men have more financial and political power than women. These societies are considered "patriarchal" where men dominate in politics, business and are viewed as heads of the family. Male power is nurtured by the belief that men are stronger and more capable of being leaders. This has created unequal access for women to education, skills, job opportunity and financial resources and thereby continuing unequal power relations between men and women. The purpose of domestic violence is to develop, reinforce power and control over others.

Perceptions can maintain gender inequality and violence

Regarding education, children are directly affected by their own families in terms of how they view the gender roles, violent acts of fathers and endurance of mothers. It has been said that children witnessing domestic violence will experience the same effect as being tortured.¹⁵ Witnessing domestic violence causes psychological injuries to children; they may feel anxious, depressed and have low performances at school. Research shows that children from families with domestic violence have higher possibilities of alcohol or drug abuse, becoming juvenile criminals and increase the possibility of becoming victims themselves. Children can also learn that nothing happens to a person who abuses or uses violence against another person.

Regarding law enforcement, legislation has not been enforced seriously and comprehensively. Several authorized agencies and individuals have not acknowledged their roles and responsibilities in the prevention and control of domestic violence.

Regarding the opinions and attitude of the society, violence against women has not been acknowledged and strongly accused by the society. Family is still believed to be a private sphere and controlled by men. Women are often forced to accept violence as a solution for family conflict.

Regarding the economy, women often rely on men in terms of economy. Women spend most of the time taking care of the family and doing housework, limited their access to jobs, education and training.

¹⁵ From NLAA draft -should get their source.

3. Myths and Misconceptions about Domestic Violence

Efforts to respond to domestic violence can sometimes be hindered by common misconceptions or myths about domestic violence. These myths develop in part because it can be difficult to understand why one person would hurt another, particularly in the context of an intimate relationship. Myths provide erroneous information about why domestic violence happens, and many of these myths are common throughout the world. Understanding these myths and realities of domestic violence is critical to developing effective responses to addressing domestic violence.

According to the National Study, there are a number of perceptions as to why domestic violence happens:

- | | |
|----------------------------------|---------------------------------------|
| -husbands getting drunk (33.7%); | -family issues emerge (27.8%) |
| -financial difficulties (24.7%) | -wives disobey their husbands (22.6%) |
| -for no specific reason (11%) | |

Firstly, alcohol is not the main cause of domestic violence. Although alcohol and drugs are often associated with domestic violence, they do not cause the violence. As stated already, domestic violence against women is rooted in the historically unequal power relationship between men and women and is used to gain power and control over another person. Many men who beat their wives do not drink. Men who drink and beat their wives usually do not beat random people on the street, their parents or their bosses. They direct their violence only at their wives. Men who beat their wives often continue to do so even after they stop drinking. An abuser may use alcohol as an excuse for the violence, or alcohol may prevent him from realizing the level of force he is using, but alcohol is not the cause. Domestic violence and substance abuse must be understood and treated as independent problems.

Secondly, violence towards his wife does not show that the husband loves his wife so much that he must control her. Violence is never justified regardless of what the wife says or does. Women are beaten for reasons as ridiculous as the dinner was cold. Even when husbands might have a reason to be angry, they have no right to express their anger violently. Believing that the wife is participating in the dynamic of the violence and must also change her behaviour for the violence to stop is a myth as only the abuser has the ability to stop the violence. Domestic violence is a behavioral choice for which the abuser must be held accountable.

Thirdly, the husband does not have the right to “teach” his wife using violence. This statement reflects old thinking wherein many societies believed that men were superior to women and had the right to physically discipline their wives and children. This way of thinking saw the wife as “property” to the husband and his family and that the wife’s education starts right after getting married. This is not the case now. Since Constitution of 1946, Viet Nam has protected the equality between men and women. Women are no longer to be considered the property of men.

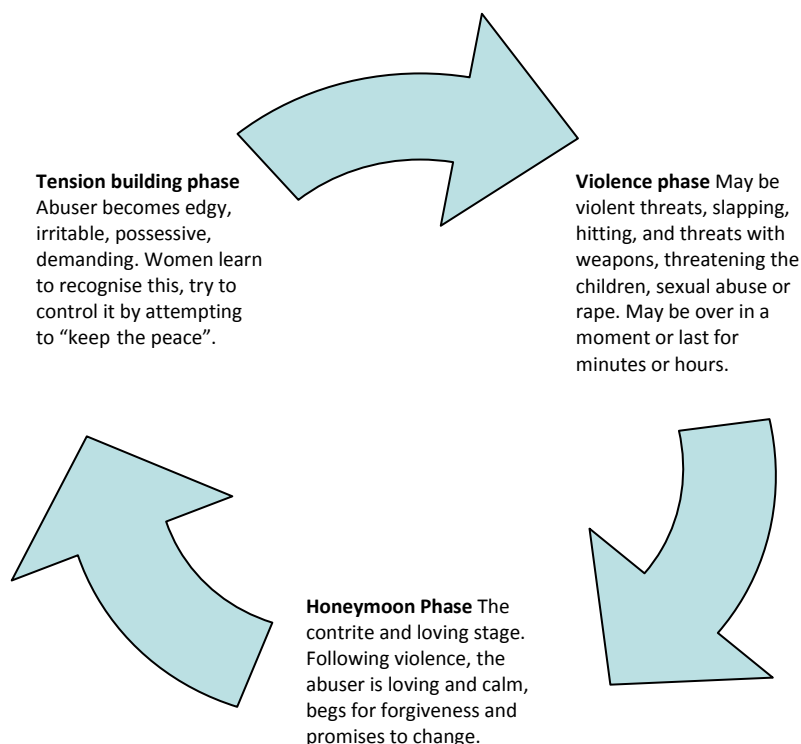
Fourthly, having financial difficulties is not the cause of domestic violence. Domestic violence is common throughout all levels of society, whether rich / poor, educated / uneducated, rural / urban. Studies consistently find that violence occurs among all types of families, regardless of income, profession, religion, ethnicity or educational level. The violence does not happen because of poverty or lack of education; rather it is rooted in the historically unequal power relationship between men and women. However because of economic reasons, the woman might choose to stay in an abusive relationship as she might have no place to go or ways to support herself or her children.

As you can see, there are many myths about domestic violence and these tend to reinforce stereotypes. In explaining the causes of domestic violence, the myths generally focus on blaming the victim or some other factor, such as alcohol, anger or a lack of education. As a result, these myths obscure the abuser’s responsibility for his actions. It is important to recognise that domestic violence is intentional conduct that is designed to gain power and control over another. An abusive husband

uses violence or threat of violence, reinforced by other manipulative and coercive tactics, to ensure that his wife behaves in certain ways.

4. Understanding the Cycle of Violence

An understanding of the cycle of violence helps the legal aid provider when assisting the victim. Often, before the first physical assault, the abuser uses control tactics, such as isolation of the victim from social or family connections, threats, financial dependency, and by doing this the abuser has degraded the victim to the point that she believes statements made against her and lacks self-confidence necessary to leave or appropriately respond to the violence.



Often at the tension building stage, the abusive behaviour is not reported to the authorities, or if it gets reported, the case is ridiculed. This encourages the abuser to proceed to the next stage. It calls upon the state to take seriously all violence related incidences when they are brought forward, regardless of how petty they may seem. After the violence and during the honeymoon stage, the victim wants to believe this is the last time. The woman sometimes withdraws charges because of the false hope that the abuser will never do it again. State officials should recognise the temporary nature of the “honeymoon” and counsel the victim to make an informed decision. Tension building almost always starts again.

5. Reasons Why Victims Stay in an Abusive Relationship

There are many social, economic and cultural reasons why a woman might choose to stay in an abusive relationship. These reasons are rational. Often, there is no place for her to go. She may not have a way to support herself or her children if she leaves, feel embarrassed or humiliated about the abuse, or fear that her friends, family and community will blame her for the abuse. She may be reluctant to leave for emotional or religious reasons. In addition, leaving entails substantial risks. She may fear that her husband will carry out threats to harm her, himself, the children, friends or family.

Research shows that victims are in the greatest danger of severe or even lethal attacks when they attempt to leave, and she is the only one who can judge when it is safe for her to do so.

6. Consequences of Domestic Violence

Consequences for the victim

- Effect on physical health, mental health and well-being.
- Violence is likely to become more frequent and more serious the longer it continues.
- Violence can result in death.
- Victims may find it difficult to give evidence or report the abuser because of the complex nature of domestic violence.

The National Study found that women who had experienced physical or sexual violence were consistently more likely to report “poor” or “very poor” health compared with those who never experienced domestic violence. They are also more likely to have problems with walking and carrying out daily activities, pain and memory loss, emotional distress and suicidal thoughts, miscarriages, abortions and stillbirths.

Consequences for the families

- Economic costs to families.
- Damage to relationships.
- Decrease working ability of women.
- Impact on children who witness violence.
- Decrease in living standard for women and children.

The National Study noted that women who had children between 6 to 11 years old and who had experienced partner violence were consistently more likely to report that their children had behavioral problems (such as nightmares, bedwetting, aggressive behaviours and low performance at school) compared with those women who never experienced violence.

Consequences for the community

- Decrease of contribution of victim to society.
- Increase pressure on healthcare system.
- If the perpetrator is not held accountable by the community, it means that this violent behaviour is acceptable and will likely lead to more serious violence.

Consequences for the abuser

- Administrative or criminal sanctions.
- Lose of face in the community.
- Violence could result in husband’s death (battered women’s syndrome¹⁶)

In summary, domestic violence not only affects the victims, but also the family, particularly the children. The family is the cell forming the society. If each cell is not healthy, it is impossible for the whole society to be complete and strong.

¹⁶ Battered women syndrome is a syndrome suffered by women who, because of repeated violent acts by an intimate partner, may suffer depression and unable to take any independent action that would allow her to escape the abuse, including refusing to press charges or offers of support.

PART II: THE LEGAL FRAMEWORK

Summary of key points

The legal framework works together to provide for both protection and support measures for the victims and to hold the abuser accountable.

1. Legal aid eligibility

- » Circular No. 07/2011/TT-BTP identifies women victims of violence to be a target group which is to be prioritized by legal aid organizations in providing assistance.
- » Circular sets out duties for legal aid providers and for legal aid organizations (re: identifying victims, in providing legal advice, in providing legal representation).

2. The Law on Domestic Violence Prevention and Control

- » Defines domestic violence and lists 9 categories of acts that amount to domestic violence.
- » Sets out principles and measures for prevention and controlling DV (support services, forbidden contact orders, reconciliation, sanctioning abuser) and the roles and responsibilities of various agencies.
- » Supplementing Decrees include: No. 08, No. 19 and No. 110.

3. Administrative and criminal sanctions

- » Penal Code offences apply to any criminal violence, including within the family. Most common crimes in DV cases: article 104 and 151.
- » Ordinance on Dealing with Administrative Violations 2002 sets out the sanctions for those who violate laws which do not constitute crimes, but meet the threshold of administrative violation. Includes those violations mentioned in other laws, such as Decrees No. 110 and 08, and Article 43 of the DV Law.

4. Civil Law provisions

- » If victim is seeking a divorce, apply under article 89 of the Law on Marriage and Family, showing that the situation is serious, couple can no longer live together and the marriage purpose cannot be achieved.
- » Consider whether victim can claim compensation for damages under article 604 of the Civil Code (further detailed in Resolution on Extra Contractual Damage Compensation).

As legal aid providers, you likely will come into contact with victims of domestic violence through the course of your work. The victims might identify themselves as victims of violence and seek specific assistance regarding their legal rights as victims. Or more often than not, they will be seeking assistance for other legal matters, such as divorce cases, civil property disputes, or child custody matters, and may not immediately reveal the domestic violence which they are experiencing. It is important for all legal aid providers to be familiar with the various laws and legal procedures in place to respond effectively to domestic violence.

A number of Vietnamese laws provide the legal framework in which State officials, such as legal aid providers, can respond to situations of domestic violence against women. Provisions in the criminal, administrative and civil laws provide the basis for ensuring protection to the victims of domestic violence and holding abusers accountable. In addition, the Constitution and the laws on gender equality, as well as marriage and family promote equality between men and women.¹⁷

¹⁷ As previously discussed in the earlier chapter, given that the overwhelmingly number of victims of domestic violence are female, reference is made to the concept of gender equality provided for in the Constitution 1992, amended by some article of resolution 51/2001/QH10 dated December 25, 2001 and the Law on Gender Equality, 2006.

While the Constitution recognizes that the family is the nucleus of society (article 64), it also stipulates that the State will protect the right of everyone to life, health, honour and dignity, which includes individual family members (article 71). Furthermore, article 63 provides for equality between husband and wife in stipulating that “all citizens regardless of their sex have equal rights in all respects, political, economic, cultural, social and in family life” and that “any discrimination against women and violation of women’s dignity is strictly prohibited”. The Constitution stipulates that all citizens have the right to lodge a complaint regarding transgression of the laws by any individual and prohibits retaliation against those who lodge such complaints (article 74).

This Chapter will cover the following areas of law:

- Legal aid eligibility for victims of domestic violence.
- The Law on Domestic Violence Prevention and Control, 2007 and subsequent decrees, which provides for explicit protection from violence within the family and sets out preventative and support measures. Note that while the new Domestic Violence Law defines specific acts as domestic violence and subjects them to specific administrative penalties (as defined in Decree 110/2009), the Domestic Violence Law does not create new Penal Code offences.
- A summary of the administrative and criminal laws which punish violence and abusive behaviour which, of course, includes violence that occurs within the context of family.
- A summary of relevant civil law provisions which can assist domestic violence victims in accessing justice and ensuring their protection.

Taken together, all of these various laws provide for a comprehensive approach: support and protection to the victim (Domestic Violence Law, Legal Aid Circular) while ensuring accountability of the abuser (criminal and administrative sanctions).

1. Relevant Legal Aid Provisions

Are women victims of domestic violence eligible for legal aid?

As you know, the Law on Legal Aid 2006 and Decree No. 07/2007/ND-CP, which set out the categories of people who are eligible to be legal aid beneficiaries, do not specifically list victims of domestic violence as one of those categories.¹⁸ However, victims of domestic violence are still eligible for legal aid if they meet the criteria as set out in Article 10 of the Law (and detailed in Article 2 of the Decree). In other words, women victims of domestic violence who are poor, elderly, disabled, had served meritoriously or of an ethnic minority that resides in difficult socio-economic conditions would qualify for legal aid.

For those women living in a domestic violent situation whose family income is above the poverty line likely will have difficulty accessing the family income in order to pay for legal advice. Therefore, in an effort to ensure equal access for men and women to legal aid and specifically to address the concern of gender-based violence, the Department of Legal Aid was assigned by the Ministry of Justice to develop a Circular of the Ministry of Justice to guide the implementation of gender equality in organizing and conducting legal aid. Circular No. 07/2011/TT-BTP was enacted in March 2011. Of note, the Circular identifies women victims of domestic violence to be a target group which is to be prioritized by legal aid organizations in providing assistance.

Circular No. 07/2011/TT-BTP

Article 12 – Legal assistance to protect rights and benefits of women

1. Legal aid organizations shall assign legal aid providers who have awareness on gender equality laws and experiences on providing legal aid in proper fields (except legal fields of business and trade) to poor women or women are subjects for priority policies prescribed in Article 2 of Decrees No. 07/2007/ND-CP dated January 12, 2007 of the Government detailing and guiding the implementation of some provisions of the Law on Legal Aid and women in the following cases:

a. Victims of domestic violence;

The Law on Gender Equality provides that women and men are equal in all fields and that no one should be discriminated against based on gender. Article 18 provides further details as to what gender equality in the family means, including wife and husband's equal rights and duties in possessing common assets and are to be equal in using their common income and in deciding their family resources; and that each have the responsibility to share housework. Of particular note is article 41 which provides that treating family members unequally on the grounds of gender bias is a violation of this law. Depending on the nature and level of the violation, the violator can be subject to disciplinary measures, administration sanctions or criminal prosecutions (article 42).

¹⁸ See annex 2 for the text of the relevant legal provisions.

- b. Women who are in proceedings of getting marriage as well as getting divorce;
- c. Victims of human trafficking;
- d. Victims of the exploitation of women labour or sexual abuse;
- e. Persons who have legal disputes or problems, criminal victims, the accused as well as defendants are pregnant or raising under-six month children;
- f. People of ethnic minority, who live in areas of especially difficult socio-economic conditions;
- g. HIV infected persons;
- h. Women labour who gets unfair dismissal; women who were cheated in labour or family and marriage relationships; women who were cheated out of their properties illegally.

In principle, only subjects who are regulated in Article 10 of Law on Legal Aids and Article 2 Decree 07/2007/ND-CP dated 12/01/2007 are eligible for legal aid.

What are legal aid providers' obligations in identifying victims of domestic violence?

When legal aid providers receive requests for legal aid from any woman, they are to look for signs to see whether the woman is a victim of gender-based violence. If the woman tries to hide the fact that she is a victim of domestic violence, the legal aid provider is responsible to explain the woman's rights and how the laws can provide to her protection (Article 13 of the Circular).

Duties of legal aid provider once they identify a victim

When the legal aid provider is receiving a case and has become aware that the case involves a person who has been the victim of domestic violence, either from the woman identifying herself or the legal aid provider reading the signs, the receiver has a number of duties, according to the recent Circular (Article 13):

- Interview the victim to find out about her needs and inform her of her rights and legitimate interests;
- Ensure timely collection of information, such as medical tests, if necessary;
- Keep evidences as archives;
- Assign proper legal aid providers.

Duties when the legal aid provider is providing legal advice

The legal aid provider who has been assigned to provide "legal advice" is to:

- Interview the victim and collect the necessary information;
- Provide basic information about the laws on gender equality and her rights under the law;
- Provide legal advice on relevant laws and the measures she can take that apply to her domestic violence situation and give proper legal solutions;
- Introduce her to relevant agencies or organizations or other support services;
- Apply for protection orders where necessary to protect the best right and legitimate interest of the victim;
- Ensure that any negotiations or mediation protects the best right and legitimate interest of the victim.

Duties when the legal aid provider is providing legal representation at trial

The legal aid provider who has been assigned to provide "legal representation" at trial is to:

- Interview the victim, gather and verify information;
- Preserve and transfer evidences;
- Attend the trial and represent the interests of the victim, including calling witnesses or supporters to confirm her statements;
- Keep the victim informed of the case and explain to her the legal procedures at each step of the case;

- Request a secret trial to ensure confidentiality, if circumstances require;
- Make sure the victim gets psychological assistance during the justice process;
- Make sure the abuser does not have contact with the victim during the justice process in cases where such contact will cause agitation to the victim or threaten her well being.

Duties for the organization

Legal aid organizations are to:

- Conduct professional activities such as legal aid mobile clinics and other activities out of office hours in order to improve access and receipt of legal aid services for women.
- Ensure that there are some legal aid officials and lawyer collaborators who are women and/or have the skills and gender knowledge to handle cases involving domestic violence victims.

2. Law on Domestic Violence Prevention and Control, 2007

The Law on Domestic Violence Prevention and Control is fairly new law in Viet Nam, coming into force in 2008. There are also a number of decrees enacted to guide the implementation of the law. This section summarizes the law and highlights particular provisions that can guide legal aid providers in performing their duties.¹⁹

Broadly speaking, the Law on Domestic Violence Prevention and Control sets out principles and measures for prevention and control of domestic violence and the roles and responsibilities of various agencies and organizations in the prevention and control of domestic violence. One main aspect emphasized in this Law is prevention. It provides for comprehensive measures relating to information, communication and education to raise public awareness and public education on the subject and developing a greater understanding within the community of domestic violence.

Legal aid providers should pay particular attention to the principle set out in article 3: all domestic violence acts are to be timely discovered, stopped and dealt with in accordance with laws. No longer should domestic violence be considered a “private” matter to be addressed within the family. Legal aid providers, as state agents, have a clear responsibility to respond when domestic violence happens.

Defining Domestic Violence

The Act contains a fairly broad definition of domestic violence to include physical violence, sexual violence, psychological/emotional violence; and economic abuse.

Article 1(2) Domestic violence is defined as purposeful acts of certain family members that cause or may possibly cause physical, mental or economic injuries to other family members.

Article 2(1) The acts of domestic violence consist of:

- corporal beating, ill-treating, torturing or other purposeful acts causing injuries to one’s health and life;
- insulting or other intended acts meant to offend one’s human pride, honour and dignity;
- isolating, shunning or creating constant psychological pressure on other family members, causing serious consequences;
- preventing the exercise of the legal rights and obligation in the relationship between grandparents and grand children, between parents and children, between husband and wives as well as among brothers and sister;
- forced sex;
- forced child marriage; forced marriage or divorce and obstruction to freewill and progressive marriage;

¹⁹ See annex 3 for the text of the Law on Domestic Violence Prevention and Control.

- (g) appropriating, demolishing, destroying or other purposeful acts to damage the private properties of other family members, or the shared properties of family members;
- (h) forcing other family members to overwork or to contribute more earning than they can afford; controlling other family members' income to make them financially dependent;
- (i) conducting unlawful acts to turn other family members out of their domicile.

Dealing with Domestic Violence Perpetrators

Article 42 provides that the perpetrator of domestic violence, depending on the severity of the violation, can be dealt with by administrative violation or criminal punishment. It should be noted that, in defining these violent acts, the Law does not create new criminal offences to sanction the perpetrator. Criminal sanctions to be imposed are defined in the Viet Nam Penal Code. Administrative sanctions as defined under the Ordinance on Dealing with Administrative Violations can be imposed in domestic violence situations. In addition, Article 43 of the Law on Domestic Violence Prevention and Control also provides for administrative sanctions for abusers who frequently commit acts of domestic violence. The government has stipulated specific administrative violations and the levels of penalties, such as fines, in the recent Decree 110/2009.

Article 43

- (a) Persons frequently committing domestic violence, having been warned, reprimanded and criticized by the community and within 6 months from the date of those measures taken still committing domestic violence which is not serious enough for criminal liability, shall be re-educated at their communes, townships or wards.
- (b) The domestic violence committing persons, having been re-educated in communes, wards and townships and still committing domestic violence that is not serious enough for criminal liability shall be sent to compulsory re-education schools. Persons under 18 years of age shall be sent to the youth custody school in accordance with the regulations on civil violations.
- (c) Authority, duration and procedures for taking such re-education measures at the wards, communes, townships, or sending them to the compulsory re-education schools, youth custody schools, shall be in accordance with the regulations on civil violations.

The recently adopted Decree 110/2009 on Handling Administrative Violations in the area of preventing and combating domestic violence provides for forms of violations and levels of sanctions.²⁰ The Decree includes the following forms of sanctions (article 4):

Principle sanctioning forms:

- Warnings;
- Fines (from 100,000 VND to 30,000,000 VND).

Additional sanctioning forms:

- Stripping off the right to use permits, professional practice certificates;
- Confiscating exhibits and/or means used to commit administrative violations;
- Forcible restoration of the initial state altered due to the administrative violation;
- Forcibly making public apology when the victim makes a request.

Protection

The victims of domestic violence have the right to be protected whether or not there is an on-going criminal or administrative penalty investigation. The Domestic Violence Law sets out the situations in which the victim can apply for a special protection order: the forbidden contact order.

Forbidden contact orders

²⁰ See annex 4 for the text of the Decree 110/2009.

The Law contains emergency temporary measures to protect victims of domestic violence – the forbidden contact order. Victims can apply for forbidden contact orders in two ways:

1. The Chairperson of the commune People’s Committee where the domestic violence situation occurred can make an Order prohibiting the perpetrator from contacting the victim for up to three days (article 20);
2. The Court can issue a Decision, in civil proceedings, prohibiting contact for up to four months (article 21).

The victim must make the request for an order. They can be used in situations where the domestic violence acts “cause or threatens to cause serious physical injury to health or life of the victim”. Breach of the forbidden contact ordered by the People’s Committee is an administrative breach and subject to a fine or, according to Decree 08, subject to custodial measures, such as temporary detention. Supervision of the court’s decision of no-contact is dealt with by the community leader who would assign people to supervise the decision. According to Decree 08, no-contact also includes contact through telephone, fax, email, etc.

Other protection measures include safe and confidential temporary domiciles, such as shelters or reliable addresses in the community or at health stations.

Supportive Services

The victims of domestic violence should have access to a number of services, whether or not there is an on-going investigation. As legal aid providers dealing with requests from women on family law matters, you might be the first government official to become aware that she is a victim of domestic violence, as she might not have reported the violence to the police or leaders in her community. As such you should be familiar with what support services are available in their community and be able to refer the victims to them.

Medical services:

- Victims should have medical care and treatment with the expenses covered by the medical insurance fund if they hold medical insurance cards (Article 23). If they do not have insurance, the commune People’s Committee is to play the lead role and collaborate with the Committee of Viet Nam Fatherland Front to ensure emergency support to meet essential needs of the victim (Article 24).
- In addition to providing medical assistance, public health stations can also provide temporary domicile to the victims (Article 27).

Counselling

- Victims should have access to advice on health care, family, domestic behaviour, law and psychological issues (Article 24).
- This counselling should be available from health stations, social protection centres, domestic violence counselling centres, and domestic violence victim support facilities (Article 24).

Legal advice

- Victims should have access to legal advice which should be available at the domestic violence victim support facilities (Article 29).

Access to information about their rights

- Victims should have access to information about the laws and policies on domestic violence, gender equality, as well as the rights and obligations of family members (Article 10).

Discovering and Reporting Domestic Violence

Recognizing that domestic violence often goes undetected and unreported due to the private context in which it occurs, the Law on Domestic Violence Prevention and Control imposes an obligation on those who discover such violence to report to the nearest police station or the local authorities, such as the People's Committee or commune leader. Where legal aid providers are informed of an act of domestic violence, they are responsible to ensure immediate treatment and apply specified prevention and protection measures. The legal aid providers may refer the matter to the police who in all cases must keep the identity of the reporter confidential. Medical staff who treat victims and believe a crime has been committed have an obligation to inform the police. This new Law will likely increase the number of domestic violence incidents being reported to police.

Reconciliation

The Law on Domestic Violence Prevention and Control describes principles of reconciliation. This includes respecting the free will of all the parties involved in reconciliation. Therefore if the victim cannot exercise free will due to feeling threatened or intimidated by the perpetrator, the reconciliation should not take place. The Law further stipulates that there should be no reconciliation of incidents of a criminal or administrative nature. In other words, the law provides that mediation or reconciliation should not be used in cases where there is serious or persistent violence. If the incident is of a criminal nature, the victim can request for an exemption from criminal proceedings and proceed to reconciliation. The legal aid providers should ensure that the victim's request is made voluntary and without intimidation. If the incident involves a violation of an administrative nature, no reconciliation should be conducted by an institution, organisation or grass root reconciliation team.

Article 12 Principles of reconciliation of conflicts and disputes among family members

- (1) Timely, proactive and patient.
- (2) In harmony with the policy of the Communist Party, the Law of the State, the social morality and the good customs and practices of the people.
- (3) Respect for the free will of all conflicting parties to come to reconciliation.
- (4) Impartiality, fairness, sensibility and sentiment.
- (5) Maintaining one's privacy.
- (6) Respect for the rights and legitimate interests of other people; no encroachment on the State and public interests.
- (7) No reconciliation of conflicts and disputes among family members stipulated in Articles 14 (institution/organization) and 15 (grassroots reconciling teams) of this Law, in the following cases:
 - (a) Incidents of criminal nature, unless the victims requests for an exemption from criminal proceedings;
 - (b) Violations of Administrative laws subject to civil fines.

Comments and criticism of a community towards a perpetrator of domestic violence should be directed towards those who continue to commit domestic violence after reconciliation has been tried.

Decrees supplementing the Law on Domestic Violence Prevention and Control

Following the enactment of the Law on Domestic Violence Prevention and Control, three decrees were passed.

- Decree No. 08²¹ deals with counselling and advice, expression of criticism in the communities, the application of forbidden contact decisions and shelters.
- Decree No. 19²² deals with Temporary Detention of Persons by Administrative Procedure.
- Decree No. 110²³ deals with handling administrative violations for domestic violence acts.

²¹ Decree No.08/2009/ND-CP detailing and guiding the implementation of a number of articles of the Law No.02/2007/QH12 on domestic violence prevention and control dated 4/02/2009.

²² Decree 19/2009/ND-CP dated 19/02/2009.

²³ Decree 110/2009/CP on Handling Administrative Violations in the area of preventing and combating domestic violence.

Decree No. 08 provides details for some of the provisions in the Law with respect to counselling and advice; expression of criticism in the communities; the application of forbidden contact decisions made by the Chairperson of the People's Committee; and the facilities that offer support to victims of domestic violence. Article 7 stipulates that the advice and expressions of criticism in the community are to be recorded and a report sent to the civil servants in charge of justice and in charge of cultural-social affairs. Article 9 provides that the police are one of the competent agencies that can make a request in writing to the People's Committee for a forbidden contact decision. The police can make the request when any one of the following conditions is present:

- Written certificate is issued by a health facility of its examination and treatment of the injury caused to the victim.
- Signs of injuries on the victim's person can be seen clearly with the naked eye or obvious signs of mental panic are shown by the victim.
- There is evidence providing the use of threats to harm the health or life of the victim.

Legal aid providers should assist the victim in either submitting the application for the forbidden contact order or assisting them in requesting the police to do so.

Decree No. 19 amends and supplements a number of provisions of the Regulations on Temporary Detention of Persons by Administrative Procedure. Temporary detention of persons by administrative procedure can apply in the following circumstances:

- When it is necessary to prevent and/or stop immediately acts of disturbing public order or injuring other persons.
- When it is necessary to gather and verify information for use as grounds for deciding penalties for administrative violations or ensuring penalties for administrative violations.
- When a perpetrator of domestic violence violates a forbidden contact decision of the Chairperson of a commune-level People's Committee.

Decree No. 110 provides further details as to the level and measures of administrative sanctions for the nine specific acts of domestic violence defined in article 2(1) of the Domestic Violence Law as well as defining eight more violations.

- Acts of violence to the person who prevents, detects and reports on domestic violence and the persons who help victims of domestic violence;
- Acts of compelling, inciting, instigating or assisting others to commit acts of domestic violence;
- Acts of intentionally not preventing or reporting domestic violence or hindering such prevention, reporting or handling of such acts;
- Acts of using, propagating information, images and sound in an attempt to incite domestic violence;
- Acts of disclosing information about the victims;
- Acts of taking advantage of domestic violence prevention and control activities to make a profit;
- Acts that violate regulations on operational registration for the stations assisting domestic violence victims and counselling centres on domestic violence;
- Acts of violating the decision on prohibition of contacts by the Chairman of the commune People's Committee.

3. Administrative and Criminal Sanctions

Laws Relating to Administrative Punishment

One way of sanctioning perpetrators for acts of domestic violence is by applying administrative law. The Ordinance on Dealing with Administrative Violations 2002 sets out sanctions for those who

violate the law which do not constitute crimes, but are required by law to be administratively sanctioned. This includes those acts mentioned in other legal documents:

- Decree No. 110 provides clarity as to when to use administrative punishment for the nine acts of domestic violence that are defined in article 2(1) of the Law on Domestic Violence Prevention and Control and eight other acts dealing with misuse of other provisions of the Law.
- Regarding a violation of forbidden contact order: Decree No. 08 provides that the offender can be subjected to temporary detention taken in accordance with administrative procedures where there is a written request by the victim or police and the violation is seen as deliberate after being warned by the relevant authorities.
- Regarding frequent abusers: article 43 of the Law on Domestic Violence Prevention and Control calls for administrative sanction for frequent abusers where the domestic violence act is considered not to amount to criminal behaviour.
- Regarding ill-treating family members: the Law on Marriage and Family provides for the use of administrative sanctions for ill-treating, persecuting or hurting the honour and dignity of their family member.
- Regarding unequal treatment of family members: the Law on Gender Equality stipulates that it is an administrative violation to treat unequally family members because of gender bias.

Decree No. 150 on administrative punishment in the field of security and social order stipulates that persons making brutal gestures, speeches to provoke, annoy, infringe upon the honour of other persons or make noise from 11 p.m. to 5 a.m. can be administratively punished.

The Ordinance provides for different types of sanctions:

- Sanctioning according to simple procedure. This means the individual will not receive a written record and involves sanctions of warning or fines from 10,000 to 200,000 dong.
- Sanctioning involving written record. In this case the official gives a written record to the violator. The president of the commune-level People's Committee reviews a copy of the written record and decides on the sanction. If the president deems that the violation shows criminal elements, then he or she must transfer the file to the police for investigation.

There are a range of administrative sanctions that can be applied. In determining the appropriate sanction, the authorities will review: previous record of sanctions, frequency of the abuse, and level of harm to victim.

- Warnings;
- Fines;
- Stripping off the right to use permits, professional practice certificates;
- Confiscating exhibits and/or means used to commit administrative violations;
- Forcible restoration of the initial state altered due to the administrative violation;
- Forcibly making public apology when the victim makes a request.
- Educating offenders at their communes, wards and towns;
- Consignment to compulsory education establishments;
- Juvenile detention centres, where applicable.

Laws Relating to Criminal Sanctions

The Penal Code defines a number of offences that are relevant to domestic violence against women. As in many countries, the general offence of intentionally causing injury or the offence of assault can apply to both violence involving strangers as well as violence occurring within the family.

Likely the two most commonly seen crimes by authorities that would apply to domestic violence against women are:

Article 104 - intentionally inflicting injury on or causing harm to the health of other persons	Article 151 ill-treating or persecuting of grand-parents, spouses, children, grandchildren, etc
<p>There are 4 levels of injury that can be considered criminal, each specific level attracts different sentences:</p> <ol style="list-style-type: none"> i. Where the infirmity rate is under 11% and an aggravating factor is present, such as: using a dangerous weapon; causing minor permanent injury to the victims; committing the crime more than once against the same person; committing the crime against pregnant women, being of hooligan character or dangerous recidivism - non-custodial reform for up to 3 years or between 6 months and 3 years of imprisonment. ii. Where the infirmity rate is between 11-30% - non-custodial reform for up to 3 years or between 6 months and 3 years of imprisonment. iii. Where infirmity rate is between 31-60% or 11-30% with an aggravating factor as listed above - between 2-7 years of imprisonment. iv. Where infirmity rate is above 61% or between 31 - 60% with an aggravating factor as listed above -between 5-15 years of imprisonment. 	<p>There are two main elements:</p> <ol style="list-style-type: none"> i. ill treatment or persecution of family member; ii. either causing serious consequences or having already been administratively sanctioned for acts but repeating their violations. <p>The Inter-circular No 01/2001 provides that:</p> <p>“Ill-treatment and persecution” are understood as the maltreatment in terms of food, clothing, accommodation in daily life activities against relatives, such as scolding, forcible abstention from eating, drinking, forcible standing in the cold, worn-out clothing in abnormal ways or acts of violence against victims, such as beating, detention, thus making the victim suffer from physical and spiritual pains.</p> <p>“Serious consequences” means always tormenting sentimentally, hurting their honour, undergoing spiritual suffering or getting injured, damaging their health.</p>
<p><i>Some notes on article 104</i></p> <ul style="list-style-type: none"> • <i>The victim’s consent is required to proceed with criminal investigation where the infirmity rate is under 31%.</i> • <i>Where the infirmity rate is 31% and over, the authorities are to proceed with criminal charges notwithstanding the victim’s agreement.</i> • <i>Authorities should not consider abuser’s excuses of violence toward his wife, such as being “too talkative”, “lazy” or “jealousy” as provocation which would reduce the crime as per article 105. According to article 105 there must be “strong provocation” meaning “provoked as a result of serious illegal acts of the victims towards such persons or their next of kin”.</i> • <i>Need of medical certificate which documents infirmity rate.</i> 	<p><i>Some notes on article 151:</i></p> <ul style="list-style-type: none"> • <i>The victim’s consent is not required.</i> • <i>Medical certificate is not required.</i> • <i>This offence can involve an isolated act of ill-treatment where it results in serious consequences.</i> • <i>This offence can involve a pattern of repeated and persistent abuse as “ill-treatment” or “persecution”.</i> • <i>There is no need to prove that the accused intended to cause injury or health damage.</i> • <i>Note the importance of holding the abuser accountable administratively, as this then provides the ability of the law enforcement and justice sector to respond criminally where the violence is repeated.</i>

In order to determine the percentage of infirmity rate, Inter-Circular No 12/1995 provides injury standards that are used by forensic examiners who prepare a medical certificate indicating the percentage of infirmity rate.

Sample of some of the injury standards

Injury	Infirmity Rate
Scarring in lower parts of the throat, causing difficulties to speak and swallow	41-45%
Throat injuries causing difficulties in swallowing	21-25%
Fracture in the skull, which will heal but have long-term consequences	21-25%
3-5 broken ribs with slight impacts on respiration	10-12%
Scars or injuries in sexual organs - Male, <55 yrs old, Female, <45 yrs old - Male, >55 yrs old, Female, >45 yrs old	21-25% 10-15%
Broken nose bridge - Without impacts on respiration/ smelling - Clear consequences on respiration/ smelling	10% 25-30%
Burn scars in hands and fingers, leading to dysfunction	41-45%
Burn scars on feet, leading to difficulties in moving	21-25%

There are a number of other Penal Code provisions that could apply in domestic violence situations. These are listed in annex 4.

4. Relevant Civil Law Provisions

Legal aid providers often will come across domestic violence victims when the victims are seeking assistance for other legal issues, such as divorce and family law matters. It is therefore important for legal aid providers to know what the Law on Marriage and Family, 2000 provides when victims of domestic violence are seeking a divorce or child custody. There are other civil law provisions that might be relevant in domestic violence cases, including the Civil Code provisions which allow for the victim to claim compensation for damages.

Law on Marriage and Family, 2000 - Prohibiting ill-treatment

The Law on Marriage and Family stipulates that ill-treatment and persecution against family members is forbidden (article 4). Ill-treating, persecuting or hurting the honour and dignity of their family member shall, depending on the nature and seriousness of their violations, be administrative sanctioned or criminally penalized. This Act further provides that the competent agencies are to promptly stop and severely handle those who commit acts of violating the Law on Marriage and Family (article 4).

Article 21 calls for the husband and wife to respect each other and preserve each other's honour, dignity and prestige. Further, the article strictly forbids acts of ill-treating, persecuting or hurting the honour, dignity or prestige of each other.

Divorce and domestic violence

The Law on Marriage and Family sets out the right of either spouse to request the Court to settle a divorce (article 85). While the Act does encourage grassroot-level reconciliation, article 86 provides that such reconciliation shall comply with the law. It is therefore important to recall the principles of reconciliation which are set out in Article 12 of the Law on Domestic Violence Prevention and Control. These principles clearly provide that reconciliation shall only take place with the voluntary consent of all parties. Furthermore, no reconciliation is to take place where the violence is of a criminal or administrative nature.

Article 89 provides that if the Court deems that the situation is serious and that the couple can no longer live together and the marriage purposes cannot be achieved, the Court is to permit the

divorce. Resolution No 2 provides guidance on critical cases.²⁴ The relationship is considered severe when:

- The husband and wife no longer love, appreciate, care and help each other, leaving a wife or husband alone despite having gone through reconciliation many times by their relatives or agencies and unions;
- Either of the spouses **abuse each other, such as beatings or other acts that hurt the dignity and reputation** of the other, despite having gone through reconciliation many times by their relatives, agencies and unions.
- Unfaithful spouses as having adulterous relationship, despite the reconciliation many times by wife, husband, relatives, agencies or union.

From the survey conducted by the National Legal Aid Agency in October 2010, one of the findings was that a main cause for women seeking divorces was due to domestic violence. For many domestic violence victims, the only way to protect themselves is to seek a divorce.

Issues of child custody, property division and domestic violence

The Law on Marriage and Family has provisions that cover child custody, property division and spousal support. Article 92 provides that the court shall consider the child's interest when determining which parent should be granted custody. As legal aid providers who are representing women victims of violence who are seeking child custody in divorce proceedings, you should inform the court of how children are directly affected by the violence they witness in the family. Witnessing domestic violence causes psychological injuries to children; they may feel anxious, depressed and have low performances at school. If the abuser uses the right to visit the children in order to continue to abuse his ex-wife, article 94 sets out the circumstances in which the Court can restrict such person's right to visit children.

The Law on Marriage and Family provides that one of the principles of the division of property upon divorce is that it will be based on the agreement of the parties. Legal aid providers who are representing women victims in divorce cases need to ensure that such agreement be made voluntarily and without intimidation by the abuser. Basically, all common property should be divided in half. If the woman is consenting to less than half, this should alert the legal aid provider to question whether she is doing so out of pressure or fear.

Civil Code, 2005

The Civil Code contains some provisions by which the victim of domestic violence can claim compensation for damages. Article 307 provides for liability to compensate for damages that include both material and mental damage.

- Material damage includes loss of property, reasonable expenses incurred in preventing, mitigating and/or redressing the damage and the actual loss or reduction of income.
- Mental damage includes infringement upon the life, health, honour, dignity or prestige of a person.

Article 604 provides that those who intentionally or unintentionally infringe upon the life, health, honour, dignity, prestige, property, rights or other legitimate interests of individuals and thereby cause damage shall have to compensate. Legal aid providers must be aware that the statute of limitations for initiating lawsuits to demand for damage compensation is two years counting from the date the legitimate rights and interests of the individual are infringed (article 607). The Code provides details of how damage is determined in terms of property, health, life, and honour, dignity or prestige.

²⁴ Resolution No. 02/2000/NQ-HDTP dated 23 December 2000 of the Judge Council, People's Supreme Court which provides guidance to some of the provisions of the Law on Marriage and Family 2000.

A Resolution guiding the application of a number of provisions of the 2005 Civil Code on Extra Contractual Damage Compensation was passed by the Judges' Council of the Supreme Peoples Court. In order for an abuser to be liable to pay compensation for damage to his victim, there must be:

- Damage (material or spiritual);
- Illegal acts committed;
- The cause-effect relations between damage caused and illegal acts;
- Intentional or unintentional faults of the damage causers.

The provisions provide that the agreements reached between the parties on the compensation levels, forms and modes should be respected if such agreements do not run counter to law and social ethics. Legal aid providers should be reminded that in abusive relationships, the abuser wields much power and control over the victim, so any settlement agreement should be carefully reviewed by the legal aid provider to ensure there has been no coercion or intimidation.

The victims claiming damage compensation are to clearly provide for every actual damage caused, the compensation level demanded and produce valid vouchers or receipts on reasonable expenses and their incomes.

Reasonable health expenses, victim can show reasonable expenses for treatment, nursing and the rehabilitation of health and/or lost impaired functions of the victims, including money paid for rental of vehicles to carry the victim for emergency treatment at medical establishments; medicines and purchased medical instruments, cost of X-ray, scanner, ultrasonic checks, tests, surgery, blood transfusion, physiotherapy under doctor prescription, hospital charges, money paid for the purchase of tonic medicines, protein fluid transfusion, for rehabilitation of health of the victims under doctor prescriptions, other actual and necessary expenses for the victims (if any) and expenses for artificial legs, arms, spurious eyes, wheelchairs, crutches and aesthetic rehabilitation to support or replace the impaired or lost body functions of the victims (if any).

Lost or reduction of actual income, can be compensated if can show that before their health is infringed they were receiving income but later due to the infringement upon their health, they are hospitalized and their actual income is lost or reduced. The Resolution sets out steps for calculation.

Reasonable expenses and lost actual income of the persons who take care of the victims during the time of treatment, is another damage that can be claimed. This can cover the caregivers' travel fares, house rents and actual loss of income.

Compensation for mental suffering, is based on their impacts on profession, aesthetics, social relations, family life and individual.

Summary of the Legal Framework

Promoting Gender Equality <i>Constitution; Law on Gender Equality; Law on Marriage and Family</i>	
Holding abusers accountable <i>Penal Code;</i> <i>Ordinance on Administrative Violations</i> <i>DVL Decree 110/2009</i> <i>Civil law compensation</i>	Protection and support to victims <i>Law on Domestic Violence Prevention and Control</i> <i>DVL Decrees 8, 19 and 110</i> <i>Legal Aid Circular</i> <i>Civil Law</i>

ANNEXES

1. A Summary of Relevant International Standards
2. Legal Aid Law and Decree provisions regarding eligibility
3. The Law on Domestic Violence Prevention and Control, 2007
4. Decree 110/2009
5. Selected Provisions from the Penal Code

PART III: IDENTIFICATION METHOD AND SKILLS FOR HANDLING LEGAL AID CASES WITH SIGNS OF DOMESTIC VIOLENCE

Summary of key points

1. There are many reasons why victims are hesitant to report the violence, one being that they do not believe that the authorities will take them seriously.
2. When women seek legal aid on family law matters, look for whether they exhibit warning signs of someone experiencing domestic violence.
3. Whether or not the women exhibits signs of domestic violence, during the initial interview, create a friendly and supportive atmosphere to ensure that statements are taken in a sensitive, respectful and confidential manner.
4. Legal aid centres can organize a number of activities to proactively detect domestic violence victims in their community: surveys, in-depth interviews, mobile legal aid clinics, focal group discussions, communication campaigns and encourage referrals from other coordinating / government agencies.
5. When the women reveals domestic violence, obtain as comprehensive account of the abuse as you can – get the full story.
6. Always keep in mind how best to ensure safety and support to the victim.
7. Review the available legal options: what are the available sanctions, protection measures, and / or civil law options.

Persistent gender inequality and a culture of male domination socialize women to accept, tolerate and even rationalize domestic violence and to remain silent about such experience. The majority of cases are never reported and often hidden from view. Many victims do not report the violence because of feelings of shame, embarrassment or fear. Marital rape is particularly invisible as very few, if any, cases are reported. The silence of domestic violence victims makes it hard to detect such cases.

When victims of domestic violence start to look for assistance, they normally look for support from unofficial sources first, such as family members or friends.²⁵ When authorities do get involved in a domestic violence incident, such as the head of the village, the ward or commune level police, the ward or commune level People's Committee, members of the Women's Union or other local mass organization or local health workers, the violence likely has already become a pattern and should be dealt with seriously. If women are unable to clearly articulate the problem of domestic violence, due to shame, stigma, economic dependence on the abuser or out of fear of revenge, they might seek help from the legal aid agency on another matter, such as divorce or property disputes, in the hopes of dealing with the underlying problem of domestic violence.

In order to build the capacity of legal aid providers to respond to their obligations under Circular 07/2011 in identifying victims of domestic violence and representing their legal interests, this Chapter will cover the following topics:

- Understanding domestic violence victims;
- Detecting domestic violence;
- Skills for conducting the initial interview with the victim;
- Type of case and possible legal aid assistance – an overview.

²⁵ UNODC research found that the victims most often talk to their family members (61%), friends or neighbours (55%), Women's Union representatives (49%) but rarely to colleagues (3%) or medical staff (1%). "Research in the Quality of Criminal Justice Services Available for Victims of Domestic Violence in Viet Nam" UNODC in collaboration with the research Centre for Gender and Development (RCGAD) in Hanoi and the European Institute for Crime Prevention and Control (HEUNI) in Helsinki.

1. Understanding domestic violence victims

Why don't victims report the violence?

A woman who is being abused may endure the abuse for a long time before seeking help, while some victims never tell anyone about the abuse. She may be reluctant, unable to talk about, or unwilling to report the abuse for many different reasons.

She may:

- Not want to discuss the problem outside the family and believe that domestic violence is a private family issue.
- Belittle or minimize the violence and convince herself it is not serious.
- Fear that the abuser will retaliate against her or her loved ones.
- Not want the abuser to be removed from the home, go to jail, or have a criminal record.
- Be ashamed or embarrassed about her situation or blame herself for the violence.
- Be emotionally attached to the abusive partner.
- Have strong beliefs about keeping their relationship or family together.
- Fear being stigmatized by others.
- Be economically dependent on the abusive partner.
- Live in an isolated area.
- Be socially isolated from others.
- Face communications, language or cultural barriers.
- Not believe that involving the police or the justice system will stop the abuse.
- Not believe that the state authorities can help or protect her.

Coping strategies of the victim

The victim's behaviour is often a way of ensuring survival. The victim may use the following coping strategies in domestic violence situations:

- Minimizing or denying the violence.
- Taking responsibility for the violence.
- Using alcohol or drugs as a numbing effect.
- Using self-defence.
- Seeking help.
- Remaining in the abusive relationship to avoid escalation of violence.
- Initiating violence as a means of gaining some control.

Barriers for victims to access help

If victims do seek help from local authorities, often their complaints are not taken seriously.

- In such cases, the local authorities reflect traditional values, and they might be reluctant to intervene due to the traditional view (common throughout the world) that domestic violence is an internal family matter.
- Often local authorities do not take full account of the nature and dynamics of violence in an intimate relationship.
- Individual abusive acts are viewed in isolation, rather than within the context of power and control in an abusive domestic relationship.
- Local authorities might believe in the myths about domestic violence and this has implications for the way they take statements, manage cases and interact with the victim.

Attitudes of legal aid providers towards domestic violence

Legal aid providers should ask themselves what is their own personal view and understanding of domestic violence. Does it reflect the traditional way of thinking that domestic violence is an internal family matter? Or do they believe the myths surrounding domestic violence such as the wife asked for it or the violence was caused by alcohol thereby shifting blame away from the abuser? If so, they need to recognise that they have a responsibility to uphold the law and must put aside their personal views and judgments as this will have implications for the way they treat the victim.

2. Detecting domestic violence

When women come to legal aid seeking assistance, it is important for the legal aid provider to spend time with them to get an accurate understanding of their situation. At the initial meeting, the legal aid officer who receives the woman's application for legal aid must review the eligibility criteria to determine if the woman qualifies as a legal aid beneficiary.

Does the woman qualify as a legal aid beneficiary?

Type of problem	Qualify for legal aid?
Where the woman is seeking legal aid assistance on any matter and she is either poor, of meritorious service, elderly, disabled, or of ethnic minority living in difficult conditions	
Domestic violence, divorce, child custody, property dispute, etc	Yes She will qualify as a legal aid beneficiary as she meets the criteria under Article 10 of the Law on Legal Aid
Where the woman does not meet the Article 10 criteria and comes in seeking assistance regarding domestic violence	
Domestic violence	Yes She will qualify as a legal aid beneficiary as she meets the category of beneficiaries set out in Circular 07/2011.
Where the woman does not meet the Article 10 criteria and comes in seeking assistance on a legal issue such as divorce or child custody, etc...	
Other legal issue (divorce, child custody, civil law issues....)	Maybe If the woman shows signs of being a domestic violence victim, and this is confirmed during the interview, she will qualify as a legal aid beneficiary according to the Circular 07/2011. If the woman does not show signs, then she likely will not qualify.

a) Victims who come to legal aid with a complaint of domestic violence

Research shows that almost all domestic violence survivors do not seek support from the police or the court system unless the abuse is serious.²⁶ It follows that rarely do victims seek assistance from legal aid providers for domestic violence. While many women have suffered a combination of physical, psychological, sexual or economic violence, most victims contact local authorities when they suffer severe physical injuries. This is similar to the research in other countries which finds that a victim's first contact with authorities rarely happens after the first or even the second domestic violence

²⁶ Minh 2007, Mai et al, 2004 as cited in "Gender Based Violence: Issues Paper" Prepared for the UN Gender Programme Coordination Group, Final Draft, 17 May 2010.

incident. The authorities usually become involved only after the pattern of abuse is well established and the level of physical injury has become serious.

If a woman is seeking legal aid assistance to stop the violence she is experiencing in the home, then likely the situation has been going on for some time. Therefore, all reports of domestic violence to legal aid providers should be taken seriously and should be assigned as a priority.

b) Women who come to legal aid for assistance on other matters and have signs that they might be victims of domestic violence

Not all women who are seeking legal aid assistance suffering abuse in the home will reveal that they are victims of domestic violence. Probably you will first meet them when they apply for assistance on other legal matters, most likely a divorce. As the survey interviews revealed, one legal aid provider noted that in her experience, as many as 8 out of 10 divorce cases showed signs of domestic violence.

Victims of domestic violence can involve women of any age, socio-economic and educational background, having different personality types, and can come from rural or urban areas. Legal aid providers should not have preconceived notions of what a typical “domestic violence victim” looks like. More women will likely reveal the violence to legal aid providers if they know they will be treated with respect and dignity and have their complaints listened to in confidence. Therefore when the legal aid providers meet any applicant they should be modest, show proper attitude, respect the individual and keep an open conversation to develop confidence based on mutual understanding.

In addition to there being no ‘typical’ domestic violence victim, there is no one “typical” behaviour exhibited by domestic violence victims. There are a range of possible responses by victims to questioning whether she has experienced domestic violence.

- She may be passive, quiet and reserved, reluctant to talk about the abuse.
- She might be in denial and be aggressive if anyone suggests her husband is abusive.
- She might be angry, as prior reports of abuse did not lead to any punishment of the husband.
- She might be afraid and fear that speaking about the abuse might cause more violence.

While there is no way to tell for sure if someone is experiencing domestic violence, there are some warning signs you can keep in mind.

Domestic violence warning signs:

> Injuries and excuses: if the woman has bruises and injuries and tells elaborate stories / excuses about how she got those injuries, she might be covering up abuse. However remember, not all domestic violence acts will leave visible bruises. Does the woman appear to be wearing clothes designed to hide bruises or scars, for example wearing long sleeves in the summer or sunglasses indoors?

> Absences from work or school: if the woman is being abused, she might take time off from her normal schedule or be regularly late for her appointments.

> Limited access to family income or assets: if the woman does not have control over her income or family car and other assets.

> Low self-esteem: the woman may have high self-esteem in some areas of their life (at work, as a mother, etc), however she often has low self esteem within their relationship. If the woman has had a major personality change or appears depressed, anxious or suicidal.

> Accusations of having an affair: this is a common tactic used as an excuse to beat the woman and isolate her. If she talks about her husband’s temper, jealousy or possessiveness.

- > Fear of conflict: for someone who is being abused, it is easier to give into others and likely do not assert their own needs and desires.
- > Difficulty to express what they want or how they feel: for woman who experience abuse, she might suppress her feelings and therefore have difficulty expressing herself.
- > Self-blaming: if the woman blames the conflict in the home as all her fault.
- > Controlling tactics of the abuser: if the husband or husband's family is present at the meeting, if he appears to be controlling the woman's conversation and her behaviour. Or if she seems afraid or anxious to please her husband.

When you think that the woman might have signs of being a domestic violence victim, you should ensure that she is able to speak to you in confidence and without the husband or members of his family being present. Because of the power and control situation, it is important that you, as legal aid providers, ensure that the victim can speak to you out of sight and hearing of the abuser.

If there is a language barrier, the legal aid provider should arrange for a translator in order to understand the woman's statement and request. If possible, such translator should not be part of the husband's family, as there might be pressure for the woman not to speak about the domestic violence.

c) Pro-actively detecting domestic violence cases

UNODC research shows that the services of legal aid were used only by 8% of the victims. There are a number of steps the legal aid centre, as an organisation, can take to pro-actively encourage domestic violence victims to access legal assistance. The following information is addressed to the local legal centres as an organization, rather than to individual front-line legal aid providers.

Surveys

The legal aid centre could conduct a survey in their jurisdiction. In order to ensure that such a survey adheres to ethical and safety standards, guidance on developing and conducting surveys should be sought from the National Legal Aid Agency. The results of such surveys can assist the local legal aid centre and local providers to understand the situation in their region.

Information collection through in-depth interview

In addition to surveys, local legal aid centres can supplement this knowledge with in-depth interviews. For more information regarding how to conduct the in-depth interviews, how to choose the interviewees, how to ensure confidentiality and safety for the interviewee, guidance should be sought from the National Legal Aid Agency.

Mobile legal aid agencies

Mobile legal aid conducted at the grassroots levels can enhance access to legal aid providers for those women living in rural and remote areas, including women experiencing domestic violence. Victims are less likely to report or seek assistance if they have to spend time and money to travel for help. Ensuring available legal aid in more areas might lead to increase cases of domestic violence victims seeking assistance from legal aid.

Focal group discussions

Local legal aid centres and legal aid clubs can organize focal group discussions to raise the legal literacy of the communities on topics such as free legal aid services, the legal aid system, understanding of domestic violence and gender inequality, the law on domestic violence, and other laws relevant to gender and domestic violence. This will also provide the opportunity for women to come forward with their own situations and seek legal aid assistance.

Communication

The legal aid centre can develop a communication plan in order to introduce legal documents related to domestic violence, provide hotline numbers, contact numbers and addresses of legal aid agencies to all citizens as well as local agencies and organizations. Effective communication will assist legal aid centres in gathering more cases relating to domestic violence.

d) Referrals from other coordinating / government agencies

Another way victims of domestic violence might come to the attention of the legal aid provider is from referrals from other coordinating or government agencies. Therefore, legal aid centres should enhance their cooperation and coordination with other local agencies and individuals, including village and hamlet leaders, women's union, youth union, fatherland front, commune police, commune people's committee, to ensure that the victims of domestic violence will have access to legal assistance when needed. Close cooperation can ensure timely detection of domestic violence cases and to respond effectively and provide safety to the victim.

Cooperation goes two ways.

Firstly, other agencies should be familiar with the services provided by the legal aid centre to domestic violence victims as they might refer them to the legal aid centre.

Secondly, the legal aid centre can refer the legal aid beneficiary who is a victim of domestic violence to other support services and government officials in the community. This can include: health clinics, transition houses or reliable addresses, counselling and support centres, as well as the police.

3. Skills for conducting the initial interview with the victim

Legal aid providers should be aware that dealing with cases of domestic violence are some of the most challenging cases. The emotional and intimate relationship between the abuser and the victim adds complexities that are often not found in other legal aid cases. Many victims seek help to stop the violence and do not necessarily want their husbands to be held criminally or administratively liable. As previously mentioned, victims might have difficulty providing you with the full information you need to make a full assessment of the situation. Therefore, legal aid providers need to possess skills of approaching domestic violence victims to make sure that the victims feel confident in telling their experiences.

a) Interviewing skills

The legal aid provider needs to create a friendly and supportive atmosphere to ensure that statements are taken in a sensitive, respectful and confidential manner. Legal aid providers should arrange a separate room for meeting victims. Telling their stories in a quiet and private space helps them to feel comfortable to open up about their experiences. The interview should always be conducted in the absence of the abuser and his family.

Attitude of the legal aid provider

A sensitive response towards victims by legal aid providers is essential in every case. The way in which you respond to the victim can have a significant impact on whether she pursues legal remedies for the violence she has suffered.

Be calm, considerate and patient. Remember, victims of domestic violence may not behave like victims of other violent crimes or unlawful behaviour. They can display a variety of behaviours. You should understand and be prepared for a range of possible responses. Ask about her family and health and whether she has experienced any difficulty in terms of accessing legal aid or other authorities (such as transportation or other challenges).

Be nonjudgmental and willing to help. Showing that you care and are open will create an environment where the woman will feel more comfortable and confident to share her account. The woman should at all times be treated without prejudice or discrimination. You are there to help the victim, not to judge.

Interviewing techniques

During the interview, you want the woman to feel comfortable to share her account. You can do this through the use of body language showing your openness. You might want to consider discussing the following to help put the woman at ease:

- I am here to help, not judge or accuse.
- If I misunderstand something you say, please tell me. I want to know, and I want to get it right.
- If you don't understand something I say, please tell me and I will try again.
- If you feel uncomfortable at any time, please tell me or show me the stop sign (one hand held up, palm facing the other person).
- Even if you think I already know something, tell me anyway.
- If you are not sure about an answer, please do not guess, tell me you are not sure before you say it.
- Please remember when you are describing something to me that I was not there when it happened. The more you can tell me about what happened, the more I will understand what happened.
- Please remember that I will not get angry or upset with you.
- Only talk about things that are true and really happened.

Ask the woman to tell what she experience, saw, and heard in her own words. They should verbally reconstruct, in as much detail as possible, the circumstances of the incidents. *"I'd like you to tell me everything you remember about what happened, starting from the beginning"*. Do not interrupt. This can be the most detailed and important part of the interview where the victim discloses the most detailed information. If the woman stops, ask "what happened next?" or "You were saying that (restate the last thing they said)". Use voice prompts to keep them talking, such as "uh huh", "umm". You should listens to the entire story without asking any questions or interrupting. If the women pauses, the investigator encourages them to continue (ie "And then what happened?"). You need to listen, be patient and take detailed notes.

It is a good practice to use open ended questions to encourage the victim to tell her story. An open ended question is one that is worded in such a way as to enable the individual to provide more information about any event in a way that is not leading, suggestive or puts them under any pressure. Open-ended questions allow the person to control the flow of information and minimize the risk that the investigators might unknowingly impose their own personal view of what happened. Here, the interviewer asks specific open questions (ones that cannot be answered "yes" or "no"). For example:

- Tell me about.....
- What happened next?
- And then what did you see?
- Tell me what else you remember.

It is important to remember that the woman is a victim and should not be subjected to aggressive interrogation.

b) Information to be gathered

Obtain as comprehensive account of the abuse as you can. Get the full story. Often authorities view individual abusive acts in isolation rather than within the pattern of abuse and in the context of power and control found in abusive domestic relationships. Sometimes the method of assessing the seriousness of the violation is based on the degree of the physical injury which may fail to take into account the nature and dynamics of violence in an intimate relationship. So remember, get the full picture.

Sample checklist of questions to cover with the victim:

- Details of current incident
- Current and past status of relationship
- History of violence / abuse in the relationship (physical, sexual, verbal, financial, emotional)
- Details of abuser: employment status, drugs, alcohol use, mental illness, stress level
- Controlling behaviours, such as isolation, jealousy
- Presence of weapons
- Any prior police or People's Committee or Women's Union response
- Threats to harm / stalking behaviour
- Escalation
- Victim's fears and concerns

c) Ensuring safety and support to victim

There are many things the legal aid provider can do to address the safety needs of women who are victims of domestic violence. Possible measures to take include:

- Seeking a court protection order, such as forbidden or no contact orders.
- Referring or escorting women to shelters or safe addresses.
- Assisting the victims to identify risk factors and create safety plans.
- Conducting risk assessment and enacting threat management plans to mitigate the risk of future attacks.
- Refer the matter to the police who can issue a temporary detention order and instigate an investigation.

Every interview with a women victimized by domestic violence should include at some point the discussion and an assessment of the risks for the woman and her children. Legal aid providers can help the victim assess the risk the abuser poses to her. The legal aid provider can help the victim understand the choices and options that are available to her; however, only the women herself can make the decision about what course of action is best for her. If the legal aid provider is concerned for the victim's safety, you should encourage the woman to go to the police.

The local legal aid centres could create a referral resource sheet that contains a list of all of the support services in their area. This referral resource sheet could be distributed to all the legal aid providers in their area who could then hand them to victims they come into contact.

Sample Referral Resource Sheet				
Name of organization	Services	Address	Telephone number	Contact person
Shelter / Peaceful house	Free food, accommodation; and medicine	20 Thuy Khue, Tay Ho, Ha Noi		
Reliable addresses in the community	Free food, accommodation			
Health clinic / centre				
Counselling centre / social protection centres				
Local police				
Local women's union rep				
Village head / chief of People's Committee				

4. Types of cases and possible legal aid assistance – an overview

Legal aid providers need to identify accurately the nature of the case, reconfirm the information obtained at the meeting with the victim, and assess the appropriate legal options. The victim should be reminded that the legal aid providers can only provide accurate, legitimate and comprehensive advice if they present the matter honestly and objectively.

Once you have gathered the information, and determined the question of eligibility for legal aid, you then need to assess the nature of the violence to determine the appropriate legal options. The Vietnamese legal framework provides a range of responses, depending on the specific circumstances of the case.

Review the facts of the case to determine:

- what sanctions might apply (whether criminal, administrative)
- what protection measures might be applicable (forbidden contact orders, temporary administrative detention)
- what other legal options could be applicable (divorce, custody issues, civil damages)

Legal Procedures for Responding to Domestic Violence

In dealing with domestic violence situations, there are a number of agencies as well as procedures available to the authorities. Depending on the circumstances of domestic violence, they range from reconciliation in minor disputes to administrative sanctions to criminal investigations and prosecution. They could involve civil law including a claim for damages or an application for divorce or a civil court forbidden contact order.

Possible actions	Authorities / agencies involved	Issues to consider
Where domestic violence act is not serious enough to warrant administrative or criminal sanction:		
Reconciliation	Grassroots reconciliation team; commune-level	<i>The Ordinance on Organization and Activities of Reconciliation at the Grassroots, 1998 and</i>

<p>Community advice and criticism</p>	<p>People’s Committees in guiding, assisting and facilitating grassroots organizations, judicial officers who provide advice to reconciliation teams Agencies and organizations also conciliate conflicts between family members</p> <p>Head of the village / community leader People’s Committees shall assist and facilitate community heads</p>	<p><i>Decree 160 stipulates that reconciliation is to deal with minor violations of law and minor disputes.</i></p> <p><i>Legal aid providers should be mindful of the dynamics of violence and how this impacts on victims safety and her “consent” to reconciliation; the power imbalance at the reconciliation meetings; and intimidation by perpetrator before and during reconciliation meetings.</i></p> <p><i>Legal aid providers should also question whether reconciliation is appropriate where there is a history of persistent domestic violence.</i></p> <p><i>Community advice and criticism can be taken if violence continues after reconciliation by the grassroots reconciliation team.</i></p> <p><i>Decree 8 provides that giving advice and expressing criticism in the community is to be used if the interval between any two consecutive acts of violence is not more than 12 months.</i></p> <p><i>The meeting needs to be recorded and the report sent to the civil servants in charge of justice and in charge of cultural-social affairs at the commune level. Record shall be kept.</i></p>
<p>Where domestic violence is serious enough to warrant administrative or criminal sanction:</p>		
<p>Determine if administrative sanctions apply</p>	<p>Police, Chairs of People’s Committee at 3 levels (commune, district and province), Border Guard, MOCST inspectorates</p>	<p><i>Ordinance on Dealing with Administrative Violations and article 42 and 43 of the Law on Domestic Violence provide for sanctioning of administrative violations and applying other administrative measures, such as educating offenders at their communes, wards and towns, measures of consignment to compulsory education establishments, measures of sending to juvenile detention centres.</i></p> <p><i>This covers acts of domestic violence, as defined by the 2007 Law that do not constitute criminal offences, and, as required by law, must be administratively sanctioned, see Decree 110/2009.</i></p> <p><i>The victim’s consent is not required to proceed by administrative sanction</i></p>
<p>Determine if criminal investigation and prosecution</p>	<p>Police, Criminal Investigating Agency, Procuracy, Courts</p>	<p><i>For some criminal investigations, the victim’s consent is required, but not for all.</i></p> <p><i>For some offences, a medical certificate is required, however not for all. There is no provision in the law that requires the victim’s written consent to be medically examined. However in practice, if the victim refuses to go for a medical examination, the police will</i></p>

		<p>conduct a reconciliation after requiring the victim to sign a document that they will not commence any lawsuits against the police for failing to investigate. Legal aid providers should be mindful of the vulnerability of the victim and encourage her to seek medical treatment even if she will later not want to proceed with criminal charges.</p>
<p>In every case of domestic violence explore what protection measures can be taken:</p>		
<p>Determine if a forbidden contact order or decision should be made</p>	<p>Chair of People’s Committee, Courts</p>	<p><i>Request in writing of the victim (legal aid providers could assist this) or by a competent agency can make such a request in writing on behalf of the victim.</i></p> <p><i>Act of domestic violence has been committed that harms or threatens to harm the health or jeopardize one’s life. This can be shown either by written certificate issued by a health facility of its examination and treatment of the injury (no reference to % is required here); signs of injury that can be seen or obvious signs of mental panic; or evidence of using threats.</i></p> <p><i>Perpetrator and victim have different places of residence for the duration (3 days if ordered by the People’s Committee or 4 months if ordered by the civil court).</i></p>
<p>Determine if temporary detention of person by administrative procedure (Decree 19)</p>	<p>Chairs of People’s Committees, urban police chiefs, district police chiefs, heads of provincial Department of Public Security, heads of mobile police units</p>	<p><i>Can last up to 12 hours, and can be extended to 24 hours.</i></p> <p><i>This can happen when it is necessary to prevent and/or stop immediate acts of disturbing public order or injuring other persons; and when a perpetrator of domestic violence violates a no-contact order</i></p>
<p>In every case of domestic violence explore what other legal options might be available:</p>		
<p>Determine if victim has a right to compensation for damages</p>	<p>Civil Courts</p>	<p><i>Civil Code 2005 (art 604) and Resolution guiding the application of a number of provisions of the 2005 Civil Code on Extra Contractual Damage Compensation gives power to the courts to order an abuser to pay compensation for damage to his victim.</i></p>
<p>Determine if victim can obtain an immediate divorce without further reconciliation procedures</p>	<p>Civil Courts</p>	<p><i>Article 89 provides that if the Court deems that the situation is serious and that the couple can no longer live together and the marriage purposes cannot be achieved, the Court is to permit the divorce. Resolution No 2 provides guidance on critical cases</i></p>

Annex

6. Determining the Thresholds: Criminal, Administrative Sanctions or Informal Measures

PART IV: KEY SKILLS WHEN CONDUCTING CRIMINAL LAW LEGAL AID CASES INVOLVING DOMESTIC VIOLENCE VICTIMS

Note: The purpose of this module is NOT to provide a detailed explanation of the skills that legal aid providers should possess for handling all cases going through the criminal justice system in Viet Nam. Rather it is meant to highlight some specific issues and skills for legal aid providers dealing with criminal law cases involving domestic violence victims.

The criminal justice system has an important role in addressing domestic violence, ensuring it is treated as seriously as other violent crime. The system can help protect victims and their families, deter further acts of violence by holding perpetrators accountable for their actions and convey the message to society that domestic violence will not be tolerated and that the abuse is not the fault of the victim. Victims require access to the courts, guidance and support, and often protection, as they proceed through the criminal justice process. The legal aid providers who represent them during the criminal justice process have a key role to play.

Given that the focus of this handbook is to enhance the skills of legal aid providers who are assisting women who have been victimized by spousal abuse, this chapter will cover:

- Assistance provided to women **victims** in criminal law cases.
- Assistance to women victims of domestic violence who might be **defendants** in criminal law cases.

1. Key skills for legal aid providers when representing victims in criminal cases

Traditionally, the criminal justice system has focused mainly on the most serious cases of domestic violence, such as homicide or involving serious injury requiring hospitalization, or when the violence has occurred frequently in the past and has not been deterred by administrative penalties. Even when the case involves serious consequences to the victim, there are high attrition rates. Attrition refers to the sifting out of cases as they move through the criminal justice system, from reporting to the police, investigating the case and laying a charge against a suspect, prosecuting the accused, arriving at a conviction and passing a sentence.

UNODC research involving interviews with 900 women victims of domestic violence in Viet Nam found that most cases reported to the police do not lead to a criminal charge against the perpetrator.²⁷ The study showed that the percentage of perpetrators against whom charges were brought by the police after reporting were low, just 12%.²⁸ This meant that in 81% of the cases where the victim reported the case to the police, no charges were brought against the perpetrator. Out of the 46 cases that were brought to court, only 8 lead to a conviction. From these results, one can conclude that the justice system is not handling domestic violence cases very severely. According to this study, only 1 out of 100 victimizations of domestic violence led to a conviction in criminal court.

Despite the fact that domestic violence is a widespread problem everywhere that it has been studied, women continue to face many obstacles when they seek relief from the criminal justice system. In order to effectively respond to domestic violence, the legal aid provider who is assisting the victim needs to have an understanding of the barriers in the criminal justice system that impede victim's ability to access justice in order to enhance this access.

²⁷ "Research in the Quality of Criminal Justice Services Available for Victims of Domestic Violence in Viet Nam" UNODC in collaboration with the Research Centre for Gender and Development (RCGAD) in Hanoi and the European Institute for Crime Prevention and Control (HEUNI) in Helsinki.

²⁸ *Ibid.*

Advocate for timely and prompt criminal proceedings

Legal aid providers representing victims should ensure that the handling of the domestic violence investigations and the institution of criminal cases is in line with the legal framework as set out in the Penal Code and Criminal Procedure Code. All incidents involving criminal offences should be actively pursued. Keep in mind that domestic violence is not only a crime against the individual victim but a crime against the state, and a concern of the whole community. The criminal justice system needs to respond carefully and proactively to domestic violence crimes in order to ensure safety for victims and accountability for abusers. The legal aid provider might have to advocate to the police and prosecutor to continue the investigation and prosecution.

Domestic violence cases should be managed as rapidly as possible without compromising the victim's safety. The victim is often more willing to cooperate immediately after the incident, rather than later, when the abuser has reasserted control over the victim. Also delays in proceeding to trial can increase the opportunity for, and the likelihood of, additional offences, which may become more serious.

Support and encourage victim to participate in the criminal proceedings

In domestic violence cases, many times the victims are reluctant to provide information or consent to proceeding with formal charges. The victim's reluctance to proceed with criminal investigation is often misunderstood by the police and investigators who believe that the victim does not care and that they should not bother to proceed with criminal investigations and prosecution. As legal representative for the victim, you need to understand why the victim may be reluctant, whether out of fear of reprisal from the abuser, family or community alienation, or out of fear of being left alone if the abuser is removed from the home. You need to relieve the fears and take concrete steps to protect and support the victim. This can include taking the victim to a shelter, seeking a forbidden contact order against the abuser where the circumstances and the law permits, and working with the victim to create a personal safety plan.

The victim's reluctance may surface at various stages of the criminal investigation and the prosecution process. Research shows that early contact with victim support, such as counsellors or legal representatives who provide information and support about domestic violence, the court process and the victim's role help to encourage cooperation.

As legal representative for the victim, you should meet with the victim early on in the case.

- Take the time to explain the steps of the criminal system process to the victim.
- Explain her role as a witness in the process.
- Provide information about community resources which can provide her protection and support.
- Assist the victim in connecting with these resources.

In order to proceed with certain criminal charges, the Criminal Procedure Code requires the consent of the victim. For example, to proceed with charges under Article 104(1), intentionally inflicting injury on or causing harm to the health of other persons where the infirmity rate is assessed to be not over 30%, the victim needs to consent. It should be noted that where the infirmity rate is 31% and over, a serious physical assault has taken place which is clearly criminal in nature and the police are to proceed with an investigation even without the consent of the victim.

In those situations where the consent of the victim is required to lay a criminal charge, the legal aid provider should encourage the investigators:

- To conduct a professional evidence based investigation and allow the victim time to decide whether to proceed or not.

- To determine whether the circumstances meet the elements of other Penal Code offences that do not require the victim's consent, such as article 151.
- Keep in mind that administrative sanctions do not require the consent of the victims and therefore might be an alternative to initiating a criminal investigation where the victim will not consent, despite being provided support.

In many districts, the onus is on the victim to file her complaint to the police rather than the police taking her statement. In these cases, the legal aid provider should be the one to draft up the complaint on behalf of the victim to ensure that the legal requirements for instigating an investigation are met.

Following the filing of the complaint, when the victim is being questioned by police, the legal aid provider should be present. You need to ensure that the victim is not interviewed in an aggressive manner or interrogated. She should not be blamed for the violence nor told that violence in the family is a private matter. If there has been a delay between the violence and the reporting of the incident by the victim, no adverse inference should be drawn from this and should not influence the assessment of credibility of the victim's statement. As legal representative for the victim, you need to ensure that the police bear in mind that such delays are not uncommon in reporting domestic violence cases. The victim might fear stigmatization, humiliation, not being believed, retaliation, concern about her financial dependence on her husband, distrust in the criminal justice system, or lack of understanding the criminal justice system. Unfortunately, in many countries, justice sector professionals interpret these delays as meaning that the victim is unreliable.

Another issue that appears to require the consent of the victim is the obtaining of a medical certificate prepared after the medical examination indicating the percentage of infirmity rates. You should encourage the victim to seek medical assistance, even if later she decides not to proceed with criminal charges. No matter what legal proceedings might be taken, her injuries should be examined and she should receive medical attention.

Ensure comprehensive gathering of evidence

The onus is on the police and the criminal investigation agency to gather evidence of a crime. However, as representative of the victim, you should ensure that they undertake a comprehensive collection of all relevant evidence. In situations where the investigator might not be trained in domestic violence cases, you should ensure that they have an understanding of the distinctive dynamics of domestic violence, which is often not merely the single isolated incident that they have been asked to deal with but rather part of a pattern. Therefore, provide them with any evidence you have regarding the history of abuse.

Given that the victim might be uncooperative, for the various reasons already mentioned, you should ensure that the police consider the evidence which is independent of the victim's account or corroborates the victim's account. It might be possible to try the case without the victim being present if sufficient additional corroborative evidence is available.

Corroborated evidence means other evidence that can be relied upon apart from the victim's account to prove that the incident occurred as described by the victim. This could include:

- ◇ Police officer's account
- ◇ Neighbour's account
- ◇ Another eye witness account (perhaps from a child)
- ◇ 113 or 115 report recording
- ◇ Notes of injuries from the police report
- ◇ Medical evidence

- ◇ Photographs of injuries and the scene
- ◇ Property damage noted by the police officer
- ◇ History of previous incidents, criminal record, administrative penalties, or reconciliation
- ◇ Information of the suspect's previous bad character, for example, convictions or cautions, etc
- ◇ Information from other agencies, such as shelters or reliable addresses

Regarding medical evidence, some charges do not require a formal medical certificate (ie. ss. 151, 103, 110, 121). In those cases, copies of past medical records or hospitalization could be useful to show the history of abuse.

In those cases that require a formal medical certificate be part of the evidence (ie. s. 104), you should review the certificate and bear in mind:

- A medical certificate assessing the seriousness of the injury usually only documents the one incident as an isolated event. It will not measure the impact of repeated injuries over a period of time or measure the psychological injury.
- At the time of the forensic examination, the extent of the injuries might not be fully known. For instance, strangulation is one of the most common but overlooked injuries in domestic violence. Recent studies indicate the lethality of this injury. Due to brain damage caused by oxygen deprivation, victims could suffer stroke, miscarriage, or die up to several weeks later. The initial signs of strangulation, which include change in the voice; wheezing; difficulty swallowing; difficulty breathing; scratches, abrasions and discoloration to the neck; impressions in the skin; swelling of the tongue; ruptured capillaries in the eyes; might not be considered as being above 11% on the infirmity rate.
- The certificate might be prepared by medical personnel who are not trained to deal with domestic violence victims. They might believe in the myths about domestic violence victims. If they believe that the wife provoked her husband by being "lazy" or "too talkative", they might take this into account when assessing the rate of infirmity and lower the rate in those circumstances. It should be up to the courts to judge whether the act is a crime, and not left up to the medical personnel.

Representation during pre-trial stage

The onus of drafting the bill of indictment and reviewing the indictment is that of the Procuratorate and the Judge, respectively. As representative for the victim, you should ensure that this is done in a manner that takes into account the unique needs and perspectives of victims of domestic violence and that the standards for the collection of the best evidence has been met. If not, you might want to advocate that the presiding judge return the case file to the procuracy where evidence in the case needs to be further examined.

In reviewing the indictment, issues you might want to consider include:

- Ensure that the charges do not take into account the excuses made by the husband to justify his violence towards his wife, such as his wife was "too talkative" or "lazy" or he was "jealous". Therefore an article 104 offence (intentionally causing injury) should not be reduced to an article 105 offence or an article 93 offence (murder) to an article 95 offence as a result of these justifications.
- If the indictment originally set out a charge under article 104 (intentionally causing injury) and the victim wants to withdraw her consent to initiate criminal proceedings, review to see if there are other charges that can proceed without the victims consent. So for instance, if the

infirmity rate is above 31%, the case can still proceed to court. If the infirmity rate is under 31% and the victim's consent is required to proceed under article 104(1) and (2), determine whether other charges might be possible such as article 151 (ill-treating or persecuting spouses); article 110 (ill-treating other persons); article 103 (threatening to kill someone); article 130 (infringement upon women's rights to equality); or article 121 (humiliating other persons), where the evidence supports such elements of the crimes.

Evidentiary matters at trial

As counsel for the victim at the trial, you will have an opportunity to present evidence and cross examine the defence.

Cross examining the accused

The accused first presents his opinions on the indictment at trial and a statement. The trial panel can then question the accused about any insufficient or contradictory points in the accused's statement. As representative for the victim, you should ensure that the inquiry is to be objective, respecting the rights of the defence and the dignity of all participants in the trial. The abusive behaviour by the accused towards his wife should never be justified or excused by nor should expressions of sympathy with such explanations that she deserved it because she was too lazy or talked too much be allowed by the state authorities, ie Procuratorate or police. As counsel for the victim, you can cross-examine the accused. You should bear in mind that there is no justification for violence, and the excuses made by the abuser or his minimizing the incident should be challenged forcefully. In cross examining the accused, consider the credibility of the accused's account.

When cross-examining the accused, consider the credibility of the accused's account:

- ◇ How plausible is the accused's account?
- ◇ Were there any signs of injury to the accused upon arrest (could these be aggressive wounds like scraped knuckles or self-defence wounds?)
- ◇ Are there any contradictions in the accused's account?

Presenting the victim's statement

As legal counsel for the victim, you will assist the victim in presenting her statement to the court. It is important to remind the judges and procurator to remember that a victim of domestic violence may not behave like victims of other violent crimes. Generally, victims want justice, vindication and restitution. While some abused women also want these things, many victims of domestic violence might not. The victim might call the police to the house to stop the violence but not necessarily want her husband arrested or charged with an offence. She might only want him removed for the night to stop the current crisis. There are many reasons why a victim may be unwilling and/or unable to participate in criminal prosecution. Procurators and judges who understand these reasons are more likely to avoid developing an antagonistic relationship with the victims.

Victims are more likely to respond positively to empathetic and proactive prosecution strategies that address the specific concerns of individual victims. The treatment of victims by the procuracy and the courts can help to restore the power and respect that the victim lost as a result of the abuse. You should protect her from intrusive or embarrassing questions at trial, unless the questions are necessary and the reasons for asking them are explained.

Dealing with a Recanting Victim

What if the victim wants to recant or withdraw her statement before the trial? If this happens, you should interview the victim to understand the reasons for recanting or withdrawing her statement, before deciding what action to take. You need to determine whether the victim might be pressured or frightened into retracting. You should reassure and encourage the victim to continue to proceed with the criminal charge. Ask her how she feels if forced to face the accused during the trial? What measures can minimize this encounter? However, even if after your encouragement, the victim resolutely refuses to proceed, you have to raise this with the procurator. They will be the ones to determine whether they can continue the case even without the victim, submit the victim's statement given to the police without the attendance of the victim, or whether there is enough other evidence to proceed without victim's statement. REMEMBER, the criminal process should not re-victimize the victim.

Expert evidence

The legal aid provider might consider calling or suggesting to the Procuratorate, to call expert testimony. Experts can assist the court in understanding the dynamics of domestic violence, power and control tactics and dynamics of victimization. The experts could assist the court in explaining the victim's actions, if she stayed, returned or recanted or if there was a delay in reporting or ambivalence about prosecuting the abuser. The use of expert testimony in domestic violence cases would have to comply with the Vietnamese procedure and admissibility rules.

Expert Testimony

You could consider the following when developing substantive questions for the expert:

- ◇ Power and control exerted on the victim.
- ◇ Recantation, denial and minimization as typical of many, but not all, victims.
- ◇ Confusion, love and fear experienced by victims involved with the courts, as the abuser apologizes and promises the abuse will not recur.
- ◇ Focus on the impact of the accused's abuse on the victim.

Measures to facilitate victim's participation during the trial

Being present at the court house for trial, requiring to answer questions and confronting the abuser can be a deeply traumatic experience for victims of domestic violence, particularly in cases of rape or sexual violence. Many female victims fear the court process or are intimidated by the court. Measures to alleviate this fear are important in ensuring the right to dignity of women as well as to improve the quality of their evidence at trial.

In Viet Nam, the trial panel can determine whether the victim's inquiry can take place in a close setting. The Court can designate a "secret trial" if victim's privacy needs to be protected (pursuant to article 18 of the Criminal Procedure Code). Disallowing the public access to the trial can protect the victim from embarrassment and also intimidation when she has to attend trial and give her evidence.

In Viet Nam, the following measures can be taken to facilitate the victim's evidence:

- Arrange the victim's seat in the courtroom, far away from the accused's seats, as well as their relatives or see if you can ensure that the victims are never in the same room at the same time or use video equipment.

- When victims are giving statements, it is prohibited to let defendants or his relatives show acts of intimidation or threats. No mobile phones are allowed in the court room.
- Arrange another room for the victim, so that they are in need only for testimony to come to courtroom. The defendant can be escorted out before the victim enters the room to make sure they never see each other. Statements will then be read in court.
- Should not ask questions that will embarrass the victim and is not relevant to the case at hand.

As representatives for the victim at trial, you should ensure that such measures are in place, as required in the circumstances.

Safety measures before, during and after trial

Studies show that victims of domestic violence often experience secondary victimization, which means victimization that occurs not as a direct result of a criminal act but through the response of institutions and individuals to the victim. Treating the victims with sensitivity and dignity not only respects their rights but also can contribute to a successful prosecution and trial. Victims should be routinely informed of the status of their case and provided an opportunity to have input. Lack of information can result in misunderstanding of the criminal justice process by the victim as well as contribute to her feelings of intimidation and fear.

Prior to trial, you need to be mindful that the abuser will often attempt to maintain control over the victim during the prosecution process. The success of maintaining this control is directly related to the degree the perpetrator has access to the victim. Domestic violence can be lethal and the victim is at the highest risk for serious injury and death when separated from the abuser. The courts can apply deterrent measures such as temporary detention, or release the accused on certain conditions, such as imposing a ban from travelling outside one's place of residence, guarantee or deposit of money or valuable property as bail. The presiding judge has the competence to apply or vary pre-trial release conditions whereas the vice president and president of the courts have the competence to apply or vary detention measures. During all decisions regarding arrests, detention, remand or bail, the officials are to pay attention to the protection of the victim. For instance, where the decision is made to release the accused pending trial, he or she should ensure any conditions of release promote victim safety and prevent future acts of violence. Victim should be informed promptly of any bail decisions.

The courts should pay due attention to the victim's safety when they are in court session. They can coordinate with police to ensure protection and to prevent the accused or his relatives from contacting the victim. If there are grounds to determine that the accused has threatened or infringed on the victim's life, honour, dignity or their relatives, and this is seen to hinder the trial process, the judge in charge of the case can report to the Court's president or vice-president to issue a decision to temporarily detain the accused, pursuant to article 80 of the Criminal Procedure Code.

The courts, in the arrangement of a trial, should consider that the safety of the victim is a priority. She must be able to feel safe to give her evidence and feel protected in the courthouse. The courts should assist the victim in ensuring safe entrance and waiting areas, away from the accused person. The victim might require police escort to and from the courthouse. All court documents, which are accessible to the public and the abuser, should be careful of references to victim's location, if she is no longer residing with the abuser. Giving information on court session will be conducted without disclosing the victim's identity, address, photos or private life history.

Summary of the Role of Legal Aid Providers in Representing Victims in the Criminal Justice Process

Summary of skills /tasks		
Investigation	Prosecution	Trial
<p><i>Encourage matter to be referred to police.</i></p> <p><i>Assist victim in drafting her complaint.</i></p> <p><i>Encourage victim to participate in investigation.</i></p> <p><i>Assist victim in seeking medical examination.</i></p> <p><i>Advocate for prompt, timely action by criminal investigation body.</i></p> <p><i>Ensure comprehensive gathering of evidence – ie. History of violence, witness statements, photos.</i></p> <p><i>Provide support and information to victim and refer to other services.</i></p> <p><i>Ensure appropriate protection measures are in place.</i></p>	<p><i>Ensure effective supervision of investigation by prosecutor.</i></p> <p><i>Advocate for appropriate charges to be included in the Bill of Indictment.</i></p> <p><i>Continue providing support and information on the process.</i></p> <p><i>Continue ensuring effective protection measures are in place.</i></p> <p><i>Encourage victim to continue to participant and not withdraw or recant.</i></p>	<p><i>Request for measures to facilitate victim's participation during trial.</i></p> <p><i>Cross-examination of the accused, bearing in mind no justification for violence.</i></p> <p><i>Ensuring victim not subject to unnecessary intrusive or embarrassing questions.</i></p> <p><i>Advocate for calling expert witness, where appropriate.</i></p> <p><i>Continue providing support and information on the process.</i></p> <p><i>Continue ensuring effective protection measures are in place.</i></p>

2. Key skills for legal aid providers when representing defendants in criminal cases

Women victims of domestic violence might themselves become defendants in criminal cases when they defend themselves and cause injury or even death to their abuser. Legal aid providers who represent these women accused of criminal charges should review the law on self-defence. In preparing their defence strategy, they should consider the issues of whether the women defendant was the (i) primary aggressor or (ii) suffering from battered women syndrome.

Where possible, the legal aid provider should ensure that they have a meeting with the accused woman before the investigator's questions. Further, the legal aid provider should consider meeting with the investigator to inform him or her of the intention to ask questions about the history of domestic violence and to provide information on the phenomenon of domestic violence to the investigator.

Primary aggressor

In some situations, the investigating officer and prosecutor might have to determine who the predominate or primary aggressor was. Individuals who defend themselves against violence and abuse should not be charged with a criminal offence. When both individuals are arrested at the domestic violence scene, this dual arrest further victimizes the victim, decreases the chances of the victim seeking future assistance, increases the possibility of a more serious offence, including homicide, and lessens the ability to prosecute.

If, as a legal aid provider, you are representing an accused who you believe is a victim of domestic violence and she is being investigated for or charged with injuring her husband, you should ensure you get details of the incident and the history of domestic violence. Remember that persons using self-defence will often admit to their use of violence but may not know what to call it. A person who is being assaulted or is about to be assaulted may realize that they are no match for the violence that is about to be used against them and will often use a weapon or object as an equalizer. The basic human survival is based on the premise of "fight or flight".

Obtain a clear picture of the situation from a review the police file and interview with your client.

What to look for to determine if there is a defence to be made:

- √ Prior complaints of domestic violence.
- √ Relative severity of the injuries inflicted on each person.
- √ The likelihood of future injury to each person.
- √ Whether one person acted in self-defence.
- √ Crime scene – does the scene match statements of the parties, does the story fit the evidence.
- √ Evidence and statement of others.
- √ Whose things are broken.
- √ General violence.
- √ Check to see if the evidence reveals what might be self-defence wounds on the abuser:
 - Scratches to the back of hands, wrist or arms.
 - Scratches to face and neck.
 - Bite marks on inside of arms (indicates possible strangulation from behind).
 - Indications of hair pulling.
 - Groin or “kicking” injuries.

Battered woman syndrome

Where you are representing a woman who is accused of murdering her husband, you should review the facts to determine whether she has any defence available to her. If the facts reveal that the woman has been a victim of constant and severe domestic violence, she might have a condition that is known as “battered woman syndrome”. Battered woman syndrome is suffered by women who, because of repeated violent acts by an intimate partner, may suffer depression and are unable to take any independent actions that would allow them to escape the abuse, including by refusing to press charges or accepting offers of support.²⁹

While this defence has not been used before in Vietnamese courts, it has been accepted by courts in some jurisdictions. Normally courts hear from experts witnesses who explain the syndrome and provide information on the latest research. Some courts have recognised this evidence to support the claim of self-defence to murder or to mitigate the sentence.

Claims of self-defence by women who have been victims of violence, particularly in cases of battered woman syndrome, could be taken into account in investigations, prosecutions and sentences against them.

²⁹ The UN Updated Model Strategies and Practical Measures to Eliminate Violence Against Women in the Field of Crime Prevention and Criminal Justice.

PART V: KEY SKILLS WHEN CONDUCTING CIVIL LAW LEGAL AID CASES INVOLVING DOMESTIC VIOLENCE VICTIMS

Note: The purpose of this module is NOT to provide a detailed explanation of the skills that legal aid providers should possess for handling all cases going through the civil law system in Viet Nam. Rather it is meant to highlight some specific issues and skills for legal aid providers dealing with civil law cases involving domestic violence victims.

Legal aid providers may come into contact with domestic violence victims when the victims are seeking assistance for other legal issues, such as divorce and family law matters. Your assistance to these women should help protect their safety and deter further acts of violence. Victims require your guidance as to how to effectively access the civil courts, whether they are seeking a divorce, claiming compensation for the damages they have suffered or seeking a forbidden contact order.

The focus of this handbook is to enhance the skills of legal aid providers who are assisting women who have been victimized by spousal abuse. Therefore, in addition to encouraging the women to involve law enforcement authorities where the nature of the violence meets the thresholds for administrative or criminal law, legal aid providers might assist women with their civil law legal options. Therefore this chapter will cover:

- Assistance provided to women victims in divorce cases.
- Assistance to women victims of domestic violence seeking civil damages.
- Assistance to women victims seeking civil orders for no contact.

1. Key skills for legal aid providers when representing victims in divorce cases

After the initial intake or receiving legal aid officer has made the determination about eligibility and assigned the case to a legal aid provider, there are a number of steps for the legal aid provider to take in a divorce application, keeping in mind that the women is a victim of domestic violence.

Meeting with the client

The purpose of the first meeting with the legal aid beneficiary is for the legal aid provider to clarify her request in order to provide counselling, orientation and proper solutions. This is a key stage for domestic violence victims. If the legal aid provider reflects traditional attitudes of domestic violence, then they might advise the women to reconcile with the husband, discounting the violence and its consequences. Therefore, during this initial meeting, bearing in mind the dynamics of domestic violence, legal aid providers should respond in ways that are most useful and supportive to the victim. Legal aid providers should understand the legal options available to the victims, as well as what community resources are available to the victim – such as shelters, counselling, and medical support.

In reviewing the information from the client, the legal aid provider should bear in mind the facts of the case and determine the appropriate legal options:

- If the facts reveal that the domestic violence meets the threshold of a criminal or administrative sanction, the legal aid provider should discuss this option with the victim and seek her consent to refer the matter to the appropriate authorities.
 - ⇒ The legal aid officer should either encourage the victim to report the matter to the police refer the case to the police or local commune official.
 - ⇒ If the victim agrees, the legal aid officer should refer the case to the police or local commune official.

- If the information from the client reveals that she is at risk for further violence, the legal aid provider should discuss the option of applying for a forbidden contact order.
 - ⇒ If victim agrees, assist with an application for a forbidden contact order (for more details, see section 3 of this chapter).
- If the client reveals that the reason for the divorce is domestic violence, the legal aid provider should carefully consider whether this is an appropriate case to refer the matter to grassroots-level reconciliation. You should determine if and how many reconciliations have been done in the past and how successful they have been to stop the violence. You should bear in mind that article 86 of the Law on Marriage and Family provides that such reconciliation is to comply with the law. According to Article 12 of the Law on Domestic Violence Prevention and Control, reconciliation should only take place with the voluntary consent of all parties and no reconciliation is to take place where the violence is of a criminal or administrative nature.
 - ⇒ Carefully consider if reconciliation is appropriate in this case (for further information see chapter VI).
- If the facts of the case reveal that the domestic violence is serious, where the couple can no longer live together and the marriage purpose cannot be achieved, apply for the divorce under article 89 of the Law on Marriage and Family.
 - ⇒ Assist with an application for divorce on the basis of the seriousness of the situation caused by domestic violence (article 89 of the Law on Marriage and Family).

Assisting to initiate the civil proceeding

As legal aid providers, you are to assist the client in preparing the civil lawsuit record. This includes preparing a petition requesting the court to handle the civil case and organizing the documents (evidence) to clarify the plaintiff's position. The petition requesting the Court to handle a civil case is a significant legal basis for the court to examine and decide to handle the case. Therefore it must be prepared in accordance with art 164 of the Civil Procedure Code. The petition is to be clear and contain the content of the dispute, development of the case, requests of the plaintiff and the legal arguments for bringing the case to the court. The lawsuit records must be arranged systematically in a scientific order to show the legal basis of the plaintiff's request.

In a divorce application, legal aid providers need to ensure that the legal basis for an immediate divorce under article 89 is set out clearly, listing the arguments as to why delays might jeopardize the safety of the victim. Resolution No 2 provides guidance on what elements are needed to show as to why the case should be considered critical.

- List the facts that illustrate that the husband and wife no longer love, respect, care for and help each other despite having gone through reconciliation many times by their relatives or agencies and unions.
- List the facts that show that the husband abuses the wife, such as beatings or other acts that hurt the dignity and reputation of the other, despite having gone through reconciliation many times by their relatives, agencies and unions.
- If the woman is seeking child custody, set out clearly the facts that show that it is in the child's best interest to live with the mother, the non-abusive parent.

Verify, collect and supply relevant evidence to the court

Legal aid providers are to instruct and assist clients in collecting relevant evidence. The evidence is required to prove that their requests are well-grounded and lawful. According to articles 81 and 82 of Civil Procedure Code, there are five types of evidence:

Firstly, regarding documents, these must be original copies or certified ones provided by and certified by relevant agencies or organisations. Legal aid providers are to assist client in preparing requests to these agencies or organizations that they need documentation from. Documents that might be necessary for an article 89 divorce application could include documents that show evidence of past domestic violence. This could include:

- Hospital records and /or health clinic records – Ministry of Health
- Official reconciliation records – Grassroot reconciliation committees, Women Unions, Chair of People’s Committee
- Official records of any community criticism - People’s Committee
- Records of any administrative or criminal sanction – police, People’s Committee, courts.
- Records of any police investigation, including witness statements – police
- Record of stays in shelters or reliable address

Secondly, audible, visual documents such as record tapes, video tapes, photos, are to be accompanied by certificates of origin so that these documents can be considered as evidence. For example, if the woman’s friend or family member takes photos of her injuries after a beating, the friend or family member can write a confirmation letter providing the photos were taken by her, in order to have the photos submitted to court.

Thirdly, an item being considered as evidence must be an original one related to the civil case. So for example, if the husband has used a knife to threaten her or a belt to beat her, the original item must be submitted as evidence.

Fourthly, local practices acknowledged by a community can be considered evidence. It should be noted that only practices which are not illegal and against social morals will be used. Therefore, practices of beating your wife to “discipline” her are no longer considered an acceptable practice, according to the Law on Domestic Violence.

Fifthly, other types of evidence include examination results, on-site examination reports, statement of witnesses and parties to the lawsuit. This could include gathering of witness statements from people who have seen incidences of past domestic violence. If the woman is seeking custody of her children, you might want to consider evidence that informs the court of how children are directly affected by the violence they witness in the family.

You might have to consider whether you need to make a request to apply provisional emergency measures. If evidence must be protected to prevent serious consequences, then you can file a request to the court to authorize provision emergency measures (s. 102 Civil Procedure Code).

In cases where the client is unable to collect evidence, the legal aid provider can request the court to collect evidence (Article 85 Civil Procedure Code). You will have to show your efforts to try to collect the evidence but that they failed. So for example, if police or the Peoples Committee did not provide to the woman the records of reconciliation, the court can request these organisations to comply.

Participate in any court mandated reconciliation process

If the court mandates a reconciliation process, and also where you prepare your statement for the court and are required to identify areas of dispute which can likely be settled and can conclude with proposed solutions, keep in mind the dynamics of domestic violence. As representatives for the woman victim, be aware of the controlling tactics often used by abusive husbands which can continue before, during and after the legal proceedings.

Participate in court sessions

During the trial of first instance, ensure jury members do not hold the traditional belief that domestic violence is private matter. If they do, you must educate them to appreciate the dynamics of domestic violence and the legal obligations of the state and society to prevent and control domestic violence.

The issue of postponement of the trial is an important one in family law cases involving domestic violence. As the lawyer representing the victim, you should represent any concerns she might have if the abuser requests a postponement of the divorce hearing. The legal aid provider should consider proposing their objection toward the postponement. If the abuser fails to show up to the court hearing, you should explain to the court the possibility that the abuser is using a control tactic and is in contempt of the summons to the court and ask the judge to proceed with the case without the abuser being present.

If there is an imposed case settlement procedure in the case, the legal aid lawyer needs to be aware of the role they should play to ensure that the settlement is voluntary and fair. Be aware that the victim might be scared or controlled by the abuser, and therefore she might agree to a settlement which might not be in her best interest. As the victim's representative, you should ensure that any settlement is in the victim's best interest.

If the legal aid provider notes that the jury's questions reflect biases against the domestic violence victims or reflect traditional misunderstanding, this should be addressed by the legal aid provider in their response. Furthermore, the legal aid provider should object to any aggressive or embarrassing questioning of his client.

2. Key skills for legal aid providers when representing victims in compensation cases

Assisting to initiate the civil proceeding

The Civil Code stipulates that any individual who suffers damages from another individual can make a claim for compensation. The law does not deny this right to women whose husbands or ex-husbands have caused them personal injury. Article 307 of the Civil Code provides for liability to compensate for damages that include both material and mental damage.

- Material damage includes loss of property, reasonable expenses incurred in preventing, mitigating and/or redressing the damage and the actual loss or reduction of income.
- Mental damage includes infringement upon the life, health, honour, dignity or prestige of a person.

Article 604 provides that those who intentionally or unintentionally infringe upon the life, health, honour, dignity, prestige, property, rights or other legitimate interests of individuals and thereby cause damage shall have to compensate. Legal aid providers must be aware that the statute of limitations for initiating lawsuits to demand for damage compensation is two years counting from the date the legitimate rights and interests of the individual are infringed (article 607).

Verify, collect and supply relevant evidence to the court

Evidence must be gathered to show the following³⁰:

- Damage (material or spiritual);

³⁰ A Resolution guiding the application of a number of provisions of the 2005 Civil Code on Extra Contractual Damage Compensation was passed by the Judges' Council of the Supreme Peoples Court.

- Illegal acts committed;
- The cause-effect relations between damage caused and illegal acts;
- Intentional or unintentional faults of the damage causers.

The Code provides details of how damage is determined in terms of property, health, life, and honour, dignity or prestige.

The victims claiming damage compensation are to clearly provide for every actual damage caused, the compensation level demanded and produce valid vouchers or receipts on reasonable expenses and their incomes.

Reasonable health expenses, victim can show reasonable expenses for treatment, nursing and the rehabilitation of health and/or lost impaired functions of the victims, including money paid for rental of vehicles to carry the victim for emergency treatment at medical establishments; medicines and purchased medical instruments, cost of X-ray, scanner, ultrasonic checks, tests, surgery, blood transfusion, physiotherapy under doctor prescription, hospital charges, money paid for the purchase of tonic medicines, protein fluid transfusion, for rehabilitation of health of the victims under doctor prescriptions, other actual and necessary expenses for the victims (if any) and expenses for artificial legs, arms, spurious eyes, wheelchairs, crutches and aesthetic rehabilitation to support or replace the impaired or lost body functions of the victims (if any).

Lost or reduction of actual income, can be compensated if can show that before their health is infringed they were receiving income but later due to the infringement upon their health, they are hospitalized and their actual income is lost or reduced. The Resolution sets out steps for calculation.

Reasonable expenses and lost actual income of the persons who take care of the victims during the time of treatment, is another damage that can be claimed. This can cover the caregivers' travel fares, house rents and actual loss of income.

Compensation for mental suffering, is based on their impacts on profession, aesthetics, social relations, family life and individual.

Participate in any court mandated reconciliation process

The provisions provide that the agreements reached between the parties on the compensation levels, forms and modes should be respected if such agreements do not run counter to law and social ethics. Legal aid providers should be reminded that in abusive relationships, the abuser wields much power and control over the victim, so any settlement agreement should be carefully reviewed by the legal aid provider to ensure there has been no coercion or intimidation.

3. Key skills for legal aid providers when representing victims in forbidden contact applications to civil courts

The victims of domestic violence have the right to be protected whether or not there is on-going criminal, administrative penalty investigation or civil proceedings. The Law on Domestic Violence Prevention and Control sets out the situations in which the victim can apply for a special protection order – the forbidden contact order.

There are two different types of no-contact order that could be applied for:

1. Application to the Chairperson of the commune People's Committee where the domestic violence situation occurred can make an Order prohibiting the perpetrator from contacting the victim for up to three days (article 20, DV Law).
2. Application to the civil court for a decision in civil proceedings, prohibiting contact for up to four months (article 21, DV Law).

The Procedure

- The victim or her legal representative must make the request for an order.
 - ⇒ The legal aid provider should assist the victim in making this application.
 - ⇒ Check with the courts and the community leader to see if they have developed forms for which the victim can fill out. If not, draft an application which sets out the necessary information.
- The application must show the following facts:
 - ⇒ The acts of domestic violence “cause or threaten to cause serious physical injury to the health or life of the victim”.
 - ⇒ The evidence to show domestic violence acts could be:
 - a written certificate issued by a health facility of its examination and treatment of the injury.
Note: there is no mention of the requirement of the rate of injury to be a certain level in order to obtain this order.
 - sign of injury or injuries on the victim's person can be seen clearly with naked eyes or obvious signs of mental panic is shown by the victim.
Note: importance of taking photos immediately after the violent act as well as a couple of days later when the bruising might be more visible.
 - evidence to prove the use of threats to harm the health or life of the victim.
Note: this could include statements from witnesses who hear the abuser utter threats.
 - ⇒ The abuser and the victim are not living in the same domicile during the forbidden contact duration.
- The supervision of the court's decision is dealt with by the community leader who is to assign people to supervise the decision.

What does “no-contact” mean?

According to Decree No. 08, prohibition of contact with the victim means not to allow the perpetrator to:

- Approach the victim within a distance of less than 30 metres; except in cases where they are separated with a wall, a fence or any other partition that ensure sufficient safety for such victim.
- Using telephone, facsimile, email or any other means of communication to commit further acts of violence against the victim.

What if the abuser does not comply with the order?

Once the forbidden contact order has been received, the legal aid provider needs to inform the victim that if the abuser violates the forbidden contact order this is an administrative breach and the abuser can be subject to a fine or custodial measure such as temporary detention. A violation is when he

contacts her through any form, including through telephone, fax, email or showing up to her place of residence or work.

The victim should inform the following people of the breach:

- The community leader and the people who are assigned to supervise the order.
- The police.
- The legal aid provider.

PART VI: KEY SKILLS IN RECONCILIATION CASES INVOLVING DOMESTIC VIOLENCE VICTIMS

Legal aid providers who are involved in conciliation cases where one party is a victim of domestic violence face challenging cases. The emotional and intimate relationship between the abuser and the victim adds complexities for them that are not often present in mediating cases involving strangers.

This chapter will cover the following matters to assist legal aid providers who become involved in reconciliation where domestic violence is present.

- Screening cases for reconciliation or mediation;
- Reconciliation of cases involving domestic violence.

Legal aid providers can play various roles in the reconciliation process.

Firstly, they might represent or assist victims during a reconciliation process. Legal aid agencies are responsible for assigning officers to attend conciliation to assist victims of domestic violence who are legal aid beneficiaries and request such assistance.

Secondly, legal aid providers may be appointed as conciliators. According to Article 40 of Decree No 7/2007/ND-CP, upon request by one or both parties, legal aid agencies can assign a legal aid provider to play an intermediary role in mediating their dispute. The legal aid provider will analyze the case circumstances, explain the legal issues, provide guidance to involved parties for negotiating a solution without bringing the case to the court or competent agency, to solve disputes among themselves and voluntarily follow the solutions.

Thirdly, legal aid providers often offer conciliation advice informally when they meet legal aid beneficiaries who seek advice in different cases, such as divorce.

1. Screening cases for reconciliation or mediation

Whether you have been assigned to assist a victim in a grassroots reconciliation process or assigned to be the conciliator or you are giving informal advice in divorce cases, legal aid providers need first to screen the case to determine whether mediation or reconciliation is appropriate in that case.

Why is screening required?

The purpose of the institution of conciliation is to simplify problems, prevent crimes arising from conflict, decrease petitions to the courts and other government agencies, save time, money and effort of the state and its people. A successful reconciliation is one which stops the violence. However, research done by the Ministry of Justice and UNODC revealed that all of the victims interviewed said that they had been subjected to violence at least ten times a year and almost half claimed that after reconciliation the violence continued.³¹ Therefore if the violence continues, there can be serious consequences to the individual victim, as well as the family and society as a whole. There are economic costs, increasing health care costs for the woman, decreasing the woman's ability to work, as well as damaging the family relationship, and having an impact on children who witness the violence.

From the point of view of a legal institution, in theory as well as in reality, conciliation is a combination of legal norms which regulate social relationships resulted from reconciliation of

³¹ Ministry of Justice and UNODC "Summary of the assessment of current practices of administrative punishment and the use of reconciliation / mediation teams when dealing with cases of domestic violence in Viet Nam (Hanoi, 20 June 2009).

disputes. Conciliation is an institution of civil law, and therefore reflects the nature of civil law, such as equality, agreement among parties, self-determination and contract for dispute resolution. The law recognises that conciliation is not appropriate in all kinds of cases. According to Article 181 of the Civil Procedure Code in 2004, “civil cases arising from transactions which are contrary to law or social ethics” do not require conciliation procedure to be applied.

The legal aid provider needs to consider whether the extent and nature of domestic violence in a particular case is contrary to either the law or social ethics. In doing so they should consider:

- How does the domestic violence affect the relationship between the two parties? Can the parties mediate from positions of equality, or in other words, is there equal balance of power between them to ensure fair conciliation?
- Domestic violence is intentional conduct; usually a pattern of coercion and control that one person exerts over another. It is not just one physical attack and it might not even involve a physical act. Abusers use a number of tactics, including intimidation, threats, economic deprivation, isolation and psychological and sexual abuse, to help maintain power and control over their wives or girlfriends.
- Because of the power imbalance in relationships involving domestic violence, victims might be reluctant to speak out and provide to the reconciliation process the information required to make a full assessment of the situation.

Domestic violence is complex and rooted in attitudes and behaviours that are hard to change and are persistent in many officials and even reconciliation teams. Legal aid providers should have a sound understanding the dynamics of domestic violence and the control tactics used by abusers. Research shows that abusers usually escalate violent behaviour in frequency and intensity over time, especially when they are not held accountable by society for their violent acts.

As in all societies, Viet Nam emphasizes the importance of happy families. However when abuse is taking place within a family, the home becomes a very unsafe place for the victim. Many times forcing women and children to stay in an abusive home is a death sentence. If the root of the violence is not addressed and the abuser is not held accountable for his actions, the violence will more than likely continue and this can threaten the stability of the family and negatively impact all family members, including the children who witness the violence. Domestic violence is not to remain a private family matter. It violates the law, whether this is a violation of the Penal Code, the Ordinance on dealing with Administrative Violations or the Law on Domestic Violence Prevention and Control. This means domestic violence is behaviour that the community does not accept. It is important for abusers to receive the message from the community that domestic violence will not be tolerated.

Reconciliation agreements that place blame on both parties and requires both parties to modify their behaviour to avoid the “dispute” in the future are not appropriate in domestic violence situations. Where the victim is blamed for the violence perpetrated by the abuser, this minimizes the seriousness of domestic violence and does not hold the abuser accountable for his actions. This consequently will undermine the reconciliation process and likely contribute to further violence. The reconciliation process does not allow for sophisticated risk assessments required in domestic violence cases.

Principles to follow when screening the case

There are a number of principles set out in the law that the legal aid providers should follow when screening cases for reconciliation.

Determine the seriousness of the violence

- ⇒ If the domestic violence meets the threshold where an administrative or criminal sanction would apply, then this case should NOT be referred to reconciliation.

- ⇒ In other words, reconciliation should NOT be used in cases where there is serious or persistent violence.
- ⇒ Research indicates that the majority of domestic violence incidents are not isolated and there will usually have been numerous incidents before the conciliation team are involved. Therefore it is imperative to have a comprehensive understanding of the circumstances to determine if reconciliation is the appropriate approach.

The Law on Domestic Violence, Article 12 (7) No reconciliation of conflicts and disputes among family members stipulated in Articles 14 (institution/organization) and 15 (grassroots reconciling teams) of this Law, in the following cases:

- (a) Incidents of criminal nature, unless the victims requests for an exemption from criminal proceedings;
- (b) Violations of Administrative laws subject to civil fines.

Ordinance on Organization and Activities of Reconciliation at the grassroots 1998 and Decree 160 stipulate that reconciliation is to deal with minor violations of law and minor disputes.

Respect for the free will of all conflicting parties

- ⇒ If the victim does not provide voluntary informed consent to the reconciliation process, the reconciliation should NOT take place.
- ⇒ Before the victim voluntarily gives her consent, she should receive full information regarding her rights under the law and available legal options.
- ⇒ If the victim cannot exercise her free will during the process due to feeling threatened or intimidated by the perpetrator, the reconciliation should NOT take place.

The Law on Domestic Violence, Article 12(1) Respect for the free will of all conflicting parties to come to reconciliation.

Civil Code, Article 11 No one may use force or threaten to use force in the resolution of civil disputes.

Screening tips

How to ensure voluntary informed consent of the woman who is a victim of domestic violence:

- Never meet with the woman and seek her consent with her husband or his family in the same room.
- You should ensure that the space where you meet the woman allows for her to speak to you in private and in confidence.
- Take your time in talking to the woman in order to get the full story. Some victims might not provide right away the information required for the conciliator to make a full assessment of the situation.
- You need to inform her of the law and principles of reconciliation and that she has the right not to participate in the reconciliation if she does not want to.

How to determine the seriousness of the domestic violence and what thresholds are met:

- Get the full account from the woman regarding past incidences of violence and responses, including reconciliation (informal and formal).
- If the information reveals that the domestic violence has been recurring despite previous reconciliation, the legal aid provider should question whether another reconciliation is appropriate.

2. Reconciliation of cases involving domestic violence

Selection of conciliators

For those cases deemed appropriate for reconciliation and have passed the screening, conciliators are to be chosen by legal aid agencies in conformity with each type of victim and case. In general, they must be prestigious persons who master conciliation skills and local custom, manners and who have a good understanding of the law.

In order to conduct conciliation, the usual process is for the legal aid agencies to select and assign conciliators. Conciliators then approach the involved parties who then select appropriate timing and locations for meeting the parties; listen to both parties and request documents and evidence supporting each argument; examine these documents and verify the case; meet witnesses; study the legal framework; consult experts, where necessary; and apply their own experiences to counsel, instruct and persuade the parties. Each of these steps requires conciliation skills. The following focuses on the skills required by conciliators involved specifically with domestic violence cases.

Types of cases

The job of the conciliator is to discuss with the parties about the case, the reasons for the dispute and clarify the right and wrong of the case on the basis of the law, tradition, customs and manners to persuade both parties to participate in conciliation and settle the case. Where the case involves a victim of domestic violence, the conciliator needs specific skills³² in order to ensure that they respond in ways that are most useful and supportive to the victim.

Victims might be involved in two kinds of cases:

- Cases where the “dispute” is the domestic violence. The goal of this reconciliation is not just to settle the recent incident but also how to prevent future violent acts and protect the victim.
- Cases where the “dispute” is a not specifically domestic violence but related to a civil law dispute, such as land dispute or custody issues but where the facts of the case reveals that one party is a victim of domestic violence. For example, in a land dispute between former spouses, the wife might have been abused by her husband but never mentioned this to anyone. The legal aid provider should be aware that in certain kinds of civil law cases, particularly involving family members, that they should screen (ask questions of each party separately) to ensure that domestic violence is not an issue. For if there is a past history of domestic violence, there likely will continue to be a power imbalance that will affect the ability to mediate on an equal level.

Skills needed by the conciliator in domestic violence cases

1. Possess an understanding of the dynamics of domestic violence

Appreciating the power imbalance of the parties is imperative for the reconciliation. This will give the conciliator insight into the behaviour of the victim and the abuser during the reconciliation. A conciliator is to persuade and encourage both parties to reach an appropriate agreement. In order for a conciliation to be successful, the conciliator must understand the feelings and characteristics of each party as well as the nature of the case in order to apply suitable methods and avoid impatiently

³² According to “Administrative dictionary” by chief editor To Tu Ha, “skill” is the ability to apply knowledge of one field into reality. According to writer Ivans Banki “skill is the in-born or learnable ability which is applied into professional activities, a specific job or expertise”. Ivans Banki (US) Administration and Management Dictionary.

or hastily labeling or hurting the involved parties. For example, if the victim is reluctant to speak out in front of the abuser, the conciliator might have to modify the reconciliation process and speak to the parties separately in order to get a better understanding of the real situation.

2. Not allow intimidation tactics during the reconciliation

Conciliators or legal aid providers assisting victims in the process need to ensure that throughout the process there is no intimidation or controlling tactics being used against the woman. Keep an eye for such controlling tactics:

- Physical assault or threats of violence.
- Threats to take the children away from the mother.
- Sending notes or “looks” during the meeting. An abuser can send threatening messages to the victim through body language that will go unnoticed by all others present.
- Bringing family or friends to the reconciliation meeting to intimidate the victim.
- Speeches about how the victim “made me to it”.
- Statements of profound devotion or remorse to the victim and reconciliation team.
- Requests for mutual orders of protection as a way to continue control over the victim and manipulate the reconciliation process.

3. Ability to gain comprehensive understanding of the relationship

The reconciliation team needs to have a comprehensive understanding of all the circumstances before deciding on what action to take. They should meet both parties separately to get their account of the situation. They should also invite several persons acting as witnesses or representatives of social, political organizations who might have witnessed the domestic violence in the past. They should objectively analyze all the information before them.

4. Appreciating accountability is needed to prevent future violence

In domestic violence cases, in assessing the “right” and “wrong” of the parties, the reconciliation should never blame the victim for the violence she has suffered. The reconciliation should ensure that accountability is placed squarely on the abuser. Believing that the wife is participating in the dynamic of the violence and must also change her behaviour for the violence to stop is a myth as only the abuser has the ability to stop the violence. Domestic violence is a behavioral choice for which the abuser must be held accountable. Many victims make numerous attempts to change their behaviour in the hope that this will stop the abuse. Women also often blame themselves because they have been consistently told that the violence is all her fault.

Another issue that might arise in domestic violence reconciliations is the issue of alcohol and drug use. The conciliator should be careful not to excuse the violent behaviour on the alcohol. However alcohol is another problem that the reconciliation team should address. The abuser might require assistance to stop drinking which could be a condition of the reconciliation agreement.

5. Understanding the parameters of the relevant law

The Domestic Violence Law provides for clear principles with respect to reconciliation of domestic violence cases. In addition, the Civil Code stipulates that no one may use force or threaten to use force in the resolution of disputes. If during the reconciliation process, you feel that the abuser is using force or threats of force to reach an agreement, you should stop the reconciliation process and refer the matter to the authorities.

6. Recognizing traditional attitudes

It is important for legal aid providers, either those who represent the victims in conciliation or legal aid providers that are appointed as conciliators, to understand such attitudes and traditional cultural assumptions about gender roles when responding to domestic violence. According to Viet Nam's Law on Gender Equality, gender preconception refers to "the negative and partial attitude, acknowledgement and assessment of the characteristics, positions, role and capacity of man or women" (Article 5). It further defines gender discrimination as the acts of restricting, excluding, not recognising or not appreciating the role and position of man and women leading to inequality between man and women in all fields of social and family life. The conciliators should ensure that their handling of reconciliation in domestic violence do not perpetrate these negative attitudes and result in violation of gender equality.

Tips for conciliators

Do not expect a quick process.

- A dispute cannot be solved in a blink. In order to have both parties arrange themselves to reach an agreement, conciliators have to spend time and effort in talking to each of the parties or both parties together in order to analyze, explain or persuade.
- In cases involving domestic violence, likely a number of meetings will be required, with the conciliator interviewing each party separately, at the very least for the preliminary meeting.
- The parties involved in a reconciliation need to have time to consider and make their decisions.
- Conciliators need to be patient. However if during the reconciliation process, the husband continues to be violent toward his wife, the conciliator should refer the matter to the authorities.

Setting the time and location of the reconciliation.

- The preliminary interview with the victim should take place without the presence of the abuser. The victim may feel more comfortable if she is with someone who can provide support, such as a friend, family member or representative from the Women's Union.
- The preliminary interview may occur in different locations. Regardless of the location, the conciliator should conduct all such interviews in a manner that respects the privacy and confidentiality of the victim.
- The timing and location of the interview should be sensitive to the needs of the victim.

Treating the victim with sensitivity.

- Speaking with the women requires care and sensitivity. Some may be reluctant to give details, hesitant to recite facts, or attempt to withdraw their statement at some point. They may be so nervous that they might have difficulty telling their account.
- You should provide her with information of the reconciliation process to eliminate misunderstanding and build trust.
- Develop an open and friendly atmosphere at the meeting so that she can express all her thoughts, feelings and account of the situation. Avoid interrogation-like and judgmental negative atmosphere.
- Treat her with respect.

When both parties are present at the meeting.

- Ensure that there is no intimidation or threats being made against the victim.
- Be observant of any change of behaviour of the victim from the preliminary meeting. If she appears uncomfortable or scared of her husband, then you might need to spend more time with the parties separately to review the facts and evidence of the case.

In analyzing the case and coming to agreement.

- In analyzing the case, ensure you have all relevant documents relating to past and present violent behaviour.
- Review the appropriate legal framework to ensure that the principles in article 12 are being followed. If unsure, check with experts who are more familiar with the domestic violence law.
- Important to emphasize that violence is never justified by non-violent behaviour of the victim and should also include a warning to the abuser that if violent again, more serious sanctions will apply.
- Offender accountability means appropriate and consistent sanctioning of the abuse, including holding the abuser accountable for any breaches or future violations.
- The reconciliation should in no way make excuses for the violent behavior.
- Offender accountability should include access to treatment for the abuser.
- Reconciliation should include access to support for the victim.

Make detail record of the reconciliation.

- Conciliation must be recorded in writing. The record must include the results of the conciliation process, opinions of the legal aid providers and involved parties, signatures of the involved parties to reflect their agreement of the process.
- Important for reconciliation records to be filed with the appropriate authority and be made available to relevant authorities, such as the police, in case the violence continues.
- The conciliator should further provide information to the victim regarding her options and community support available that she can turn to if the reconciliation fails.

If no agreement or conciliation can be reached.

- The conciliator should refer the matter to the appropriate authorities.
- Legal aid providers appointed to assist the victim should review their other legal options.

Example of a bad reconciliation

Conciliator calls both parties together and says he has only an hour to settle this dispute. Before him he sees on one side of the room, a young woman who looks nervous and uncomfortable. On the other side of the room is the husband sitting with a huge smile, confident, with his mother, father and two brothers sitting beside him. He asks what the dispute was. The husband speaks first and explains that he hardly touched his wife and in any case she deserved it as she never gets his dinner for him on time. The conciliator then asks the wife if this is true. She says weakly that she tries to get the food ready in time, but then he doesn't come home directly after work because he goes out drinking and she doesn't know when he will return home for dinner.

The conciliator tells them both to sign a reconciliation agreement requiring the wife to ensure she makes the husband's dinner on time and requiring the husband not to hit his wife.

Annex:

7. Relevant provisions on reconciliation in the Law on Domestic Violence

PART VII: COORDINATION ISSUES – RELATIONSHIP BETWEEN LEGAL AID AGENCIES AND RELATED AGENCIES AND ORGANIZATIONS

1. Responsible agencies for responding to domestic violence

The Government, as a whole, has a responsibility for preventing, controlling and punishing domestic violence. It is the Government that is to unify the overall management of the state response to domestic violence. This responsibility involves a number of sectors of the government and the civil society: the local authorities, People's Committees, health sector, social services sector, education sector, justice sector, legal aid agencies, law enforcement sector, and mass organizations such as the Women's Union as well as the media.

The Law on Domestic Violence Prevention and Control: provides extensive details about the roles and responsibilities of various agencies and organizations. These responsibilities include:

Individual:	<ul style="list-style-type: none"> • Preventing domestic violence acts in a timely manner • Reporting the violence to relevant authorities
Families:	<ul style="list-style-type: none"> • Preventing disputes within the home; taking care of victims • Cooperating with relevant authorities
Fatherland Front Committee:	<ul style="list-style-type: none"> • Organizing communication and education activities • Jointly supervising the enforcement of the Law
Women's Union:	<ul style="list-style-type: none"> • Organizing counselling centres and victim support centres • Organizing vocational training, credit and saving activities for victims • Cooperating with other agencies to protect and assist victims
Ministry of Culture, Sports and Tourism:	<ul style="list-style-type: none"> • Focal point for exercising the state management of domestic violence prevention and control • Developing action plans and programmes • Providing guidance on counselling and establish counselling centres and victim assistance centres • Ensuring enforcement of the Law • Preparing statistical reports
Ministry of Health:	<ul style="list-style-type: none"> • Preparing regulations with respect to treatment of victims • Developing procedure of treating alcoholism
Ministry of Labour, War Invalids and Social Affairs:	<ul style="list-style-type: none"> • Integrating the Law into programmes on poverty reduction and hunger elimination, training and employment • Assisting victims at the Social Protection and Assistance Centres
Ministry of Education and Training:	<ul style="list-style-type: none"> • Integrating the knowledge of domestic violence prevention and control into academic curriculums
Ministry of Information and Communication:	<ul style="list-style-type: none"> • Instructing media and press agencies to disseminate the policies and Law
Police, Courts and Investigating Bodies:	<ul style="list-style-type: none"> • Cooperating with the concerned organizations in protecting the rights and interests of victims • Timely discovering, stopping and dealing with any violations of the Law • Providing statistics to relevant organization

Importance of a Coordinated and Integrated Approach

Many studies stress the importance of a co-ordinated and comprehensive approach to the problem of domestic violence, involving all relevant agencies, organizations and individuals. Coordination can take place on a number of levels. The justice sectors need to collaborate with the health, education, and social sectors as well as local authorities, community leaders, mass organisations and the civil society.

A challenge to inter-agency cooperation is that each sector has different interests, perspectives and expectations. However this could be seen as a positive in that each sector brings different strengths to the discussion. Coordination and collaboration needs to take place at all levels in all relevant sectors:

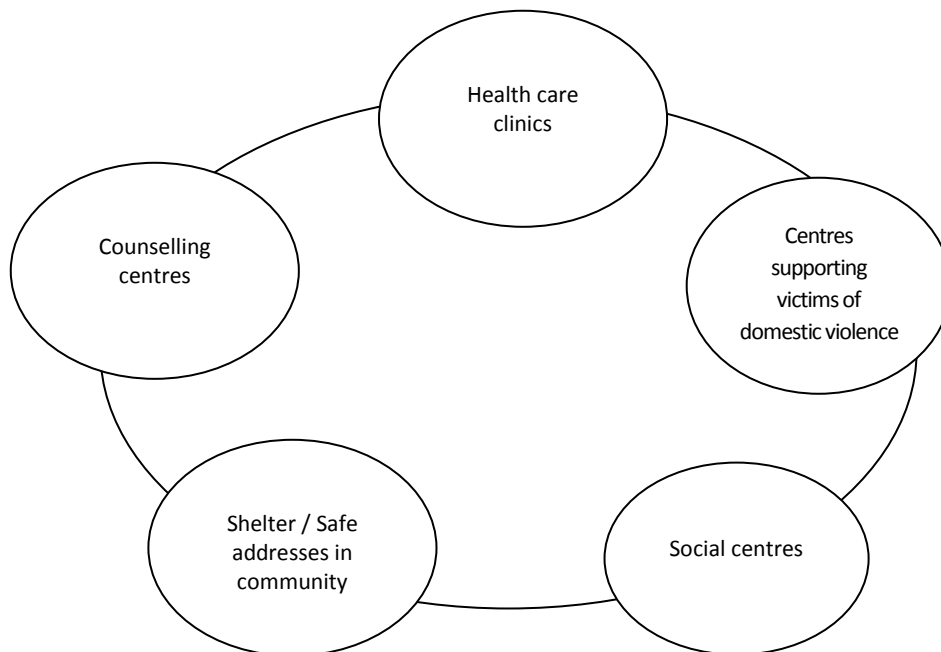
- Front-line practitioners who are operational.
- Mid-level management.
- Senior management, policy and decision makers.

A coordinated and integrated strategy can take various approaches. One approach is to ensure each agency has an internal “champion” who promotes the protection of women and inter-agency collaboration, which in turn is supported by a senior, public policy level champion. Another approach could be to create a national or regional clearing house for the collection, analysis, and distribution of related data and research. Other approaches in various countries have included creating regional call centres available to victims, police, and other service providers, that helps disseminate information on policy, protocols and how best to access local services that support victims and professionals.

2. Legal aid providers coordination with supporting services

Supporting agencies

In Viet Nam, there are a number of agencies which provide support to victims of domestic violence. Legal aid providers should be aware of these services.



Coordination between legal aid providers and support services

Once the legal aid provider is aware of a domestic violence case, they should refer the woman to existing supporting services that are available to her in her community.

The local legal aid centres should create a referral resource sheet that contains a list of all of the support services in their area. As already mentioned in Chapter 3, a referral resource sheet should be

distributed to all the legal aid providers in their area. This sheet should then be provided to each victim and you should discuss with her whether she wants to contact these agencies or whether she requires the legal aid provider to assist her to make the contact.

Some key issues to keep in mind:

- The legal aid provider should inform the victim of the support services and it should be up to the victim to decide whether she wants to contact them or not.
- The victim's name and circumstances shared with the legal aid provider is private and confidential. This information should not be shared with any other agency or organization unless the woman has provided her consent in writing.

The local legal aid agencies should also inform each support service agency of their mandate and the role legal aid providers can play in assisting domestic violence victims. The support service agencies, such as shelters or health clinics, might be the first place a victim goes for help. These agencies should be in a position to inform the victim of where she can go to seek legal assistance.

Coordination between legal aid providers and related government agencies

1. Sharing statistical data

Legal aid agencies may provide certain information on domestic violence to relevant government agency. This could include information:

- on the nature and extent of domestic violence in their district;
- the number of cases of domestic violence they dealt with;
- how did the cases come to their attention - reported to them by victims, referred to them by other agencies, etc;
- how these cases have been disposed of.

The procedures established for collecting and sharing this data should ensure that it respects the confidentiality and human rights of the women. The data should be collected and shared in such a way that does not jeopardize the safety of the women.

2. Coordination meeting to discuss main challenges

At the local level, the main government stakeholders that need to respond to domestic violence in their area could nominate a focal person to attend regular inter-governmental agency meetings which discuss generally the main challenges and issues being experienced by each agency in their response to prevent and control domestic violence. The sharing of information at these meetings should be respectful of the confidentiality and privacy expectations of the victim.

3. Awareness raising activities

Legal aid agencies and other agencies and organizations that provide assistance and support to victims should enhance their communication activities so that they understand each other's mandate and roles in responding to domestic violence. This could involve joint trainings on the issue of domestic violence, regular meetings, and / or local conferences.

Pre- and post exercise/ test

1. What is the main cause of domestic violence?

- Poverty
- Lack of education
- Low status of women in society
- Alcohol or drug use

2. How many types of domestic violence are there?

- 1
- 2
- 3
- 4

3. Witnessing domestic violence as a child can have devastating consequences for his or her development and well-being

- True
- False

4. Men are victims of domestic violence as often as women are.

- True
- False

5. When do female domestic violence victims qualify for free legal aid? (Check all that apply)

- In every case
- When they are poor, elderly, disabled or had served meritoriously
- When they are from Ethnic minority in difficult economic situation

6. Female domestic violence victims should always receive free guidance and legal advice from the legal aid centre

- True
- False

7. In what type of cases should you pay special attention and screen to determine whether the client might be a victim of domestic violence? (Check all that apply)

- The woman wants a divorce but does not want to say why.
- The woman has visible bruises but says she fell down the stairs.
- The husband accompanies the women to support her to receive free legal aid and she seems comfortable with that.
- The husband accompanies the wife and she seems to be afraid to talk in his presence.

8. According to the Law on Domestic Violence Prevention and Control, when should you advise the woman to agree to reconciliation services? (Check all that apply)

- Always, regardless of the agreement of the husband and the wife, it is the best for the family.
- When the women asks for reconciliation.
- When the level of injury is none to minor (e.g. less than 11% of infirmity rate for physical injuries) and it is the first incident and the woman voluntarily consents to reconciliation.
- When the injury level is minor but the violence has been repeated in the last 12 months.
- When the infirmity rate is over 11%.
- When community criticism has proven to be ineffective and the violence continues.

9. What is an appropriate thing to say to female victims of domestic violence during the interview? (Check all that apply)

- I am here to help, not judge or accuse.
- Please explain to me what you did to make your husband angry.
- Please remember that I will not get angry or upset with you.
- I am here to advice you on how to be a better wife so your husband will not beat you anymore.
- Only talk about things that are true and really happened.

Post training evaluation forms for participants

Date:.....	Location:.....	Name:.....
Gender:.....	Age:.....	Occupation:..... Level:.....
Telephone number:.....		Email:.....

1. How relevant was this workshop for your work? (Please circle one)

not relevant	relevant	very relevant			
1	2	3	4	5	6

2. How did the content of the workshop meet your expectations? (Please circle one)

not at all		some		most	all
1	2	3	4	5	6

3. How did this workshop meet the objective/s? (Please circle one)

not at all		some		most	all
1	2	3	4	5	6

4. How much of the content of the workshop was new to you? (Please circle one)

nothing new		some new		much new	all was new
1	2	3	4	5	6

5. How would you evaluate the following: (Please circle one)

	Very poor	poor	adequate	good	excellent	
Facility/meeting room	1	2	3	4	5	6
Technical equipment (microphones, visual aids etc)	1	2	3	4	5	6
Administrative support	1	2	3	4	5	6
Facilitation of the workshop	1	2	3	4	5	6
Quantity and quality of written material	1	2	3	4	5	6

6. Were the written materials sufficient for you to understand the presentations and take an active part in discussions? (Please circle one)

insufficient		sufficient		excellent	
1	2	3	4	5	6

7. Were the teaching methods used sufficient for the learning process? (Please circle one)

insufficient		sufficient		excellent	
1	2	3	4	5	6

8. Please specify which training methods that would further enhance the learning process:

.....

.....

.....

9. Please specify which training methods you feel should be used less in future workshops:

.....
.....
.....

10. Please rate the time given to the following areas: (Please circle one)

	too little time		about right		too much time	
Lectures	1	2	3	4	5	6
Group work	1	2	3	4	5	6
Discussion	1	2	3	4	5	6
Experience sharing	1	2	3	4	5	6
Express your views	1	2	3	4	5	6

11. Please rate your experience of the lecturer: (Please circle one)

	very poor	poor	adequate	good	excellent	
Knowledge	1	2	3	4	5	6
Clear presentation	1	2	3	4	5	6
Good facilitation	1	2	3	4	5	6
Methods used	1	2	3	4	5	6

12. Please describe which modules you thought were most useful for you in your work:

.....
.....
.....

13. Please describe which modules you thought were least useful for you in your work:

.....
.....
.....

14. Which contents of the workshop would you have liked to spend more time discussing?

.....
.....
.....

15. Were there any other topics that you think could have been included in the workshop?

.....
.....
.....

16. Please give other comments you might have of the workshop, and what could be done to improve future offerings of this workshop:

.....
.....
.....
.....
.....
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.....
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.....

Thank you for your participation, and for your comments!

ANNEXES

1. Summary of Relevant International Standards

Viet Nam has demonstrated its strong commitment to promote gender equality and to end violence against women by ratifying several core international human rights treaties, including those on civil and political rights (ICCPR), economic, social and cultural rights (ICESCR), racial discrimination (CERD), gender equality (CEDAW) and child rights (CRC).³³ These international agreements state clearly the importance of recognising, protecting and fulfilling the rights to health, life, protection and security of men, women and children. These commitments have laid a strong foundation for the creation of national legal and policy frameworks that address gender-based violence in Viet Nam. International agreements are embodied in the 1995 Constitution and in national laws and policies. The government is also committed to achieve the 1994 Cairo International Conference on Population and Development Plan of Action, the 1995 Beijing World Conference on Women Platform of Action and the United Nations Millennium Development Goals.³⁴

By ratifying these treaties and agreeing to other international instruments (such as Declarations, Principles and Guidelines), Viet Nam has international obligations to ensure gender equality and to act with due diligence to prevent, investigate and punish acts of domestic violence against women.

While United Nations instruments generally define rights for all persons, there are many specific examples of language focusing on women and girls.

UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

- CEDAW is the most comprehensive treaty on women's human rights. It provides for equality between women and men in civil, political, economic and cultural rights.
- The Convention contains no specific reference to domestic violence, however the CEDAW Committee highlights in its General Recommendation No. 19 that gender-based violence, including domestic violence, is a "form of discrimination which seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men".
- States are not only obliged to refrain from committing violations themselves, but are also responsible for otherwise "private" acts if they fail to fulfil their duty to prevent and punish such acts. This is the "due diligence" principle.

UN Declaration on the Elimination of Violence Against Women

- Recognizes that violence against women in the family and society is pervasive and cuts across lines of income, class and culture and is "a manifestation of historically unequal power relationships between men and women".
- Provides a clear and comprehensive definition of violence against women and the rights that need to be ensured to eliminate all forms of violence against women.
- Women are entitled to the equal enjoyment and protection of all human rights, including the right to life, equality, liberty, security of persons, equal protection under the law and the right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.
- States have an obligation to condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligation with respect to its elimination.
- States must exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or private persons.
- States are obliged to develop preventive approaches that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender consideration, enforcement practices and other interventions. States must work to ensure that women subjected to violence, and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling and health and social services, facilities and programmes.

³³ (1) ICCPR or International Covenant on Civil and Political Rights (Viet Nam acceded in 1982), (2) ICESCR or International Covenant on Economic, Social and Cultural Rights (Viet Nam acceded in 1982), (3) CEDAW or Convention on the Elimination of All Forms of Discrimination Against Women (Viet Nam ratified in 1982), (4) CRC or Convention on the Rights of the Child (Viet Nam ratified in 1990).

³⁴ Results from the National Study on Domestic Violence Against Women in Viet Nam, page 27.

- States must take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women.

UN definition of “violence against women”

Article 1: “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Article 2: “violence against women” shall be understood to encompass, but not limited to, the following:

- (a) Physical, sexual and psychological violence occurring the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

UN Updated Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice (adopted by the General Assembly, December 2010)

- States are to take a series of measures to improve the laws and criminal justice processes for dealing with violence against women.
- Criminal procedure should ensure that the primary responsibility for initiating prosecution lies with prosecution authorities.
- Laws should ensure that police can enter premises and conduct arrests in cases of violence against women.
- Women should have the opportunity to testify in court equal to that of other witnesses and that there are measures that facilitate the testimony of victims.
- Evidence of prior acts of violence should be considered during court proceedings.
- Courts should have the authority to issue protection and restraining orders.
- Laws should ensure that acts of violence are responded to promptly by the police and that police procedures take into account the need for safety of the victim.
- Investigative techniques should not degrade women, but rather minimize intrusion and maintain standards for the collection of best evidence.
- States should encourage women to join the police force.
- Sentencing policies should hold offenders accountable; take into account their impact on victims; and be comparable to those for other violent crimes.
- Sentencing processes should take into account the severity of the physical and psychological harm and impact of victimization, possibly through victim impact statements.
- Measures should be adopted that protect the safety of victims and witnesses during, before and after criminal proceedings.
- Victims should have support and assistance as they go through the court process, including information of their rights and remedies, ensuring court mechanisms and procedures are accessible and sensitive to the needs of women.

2. Legal Aid Law, Decree and Circular provisions regarding eligibility

Legal Aid Law, No. 69/2006/QH11

Article 10 – Legal aid beneficiaries

1. Poor people;
2. People with meritorious services to the revolution;
3. Lonely elderly people, disabled people and helpless children;

4. Ethnic minority people permanently residing in areas with exceptionally difficult socio-economic conditions.

Decree detailing and guiding the implementation of a number of articles of the Law on Legal Aid, No. 07/2007/ND-CP

Article 2 – Legal aid beneficiaries

1. Poor people entitled to legal aid defined in Clause 1, Article 10 of the Legal Aid Law are people living below the poverty line prescribed by law.
2. People with meritorious services to the revolution entitled to legal aid defined in Clause 2, Article 10 of the Law of Legal Aid include:
 - a. Revolutionary activists before the August 19, 1945 General Uprising
 - b. Vietnamese Heroic Mothers
 - c. Heroes of the People's Armed Forces, Labour Heroes
 - d. War invalids and people entitled to policies like war invalids
 - e. Diseased soldiers
 - f. Resistance war activists infected with chemical toxins
 - g. Revolutionary activists and resistance war activists who had been imprisoned or exiled by the enemy
 - h. Activists in the resistance wars for national liberalization, Fatherland salvation or performance of international duties
 - i. People with meritorious services to the revolution
 - j. Parents and spouses of fallen heroes, fallen heroes' children aged under 18; those who had nurtured fallen heroes
3. Elderly people entitled to legal aid defined in Clause 3, Article 10 of the Legal Aid Law are people who are aged full 60 or more and live alone or helplessly.
4. Disabled people entitled to legal aid defined in Clause 3, Article 10 of the Legal Aid Law are those who suffer from defects in one or many body parts or functions expressed in different types of infirmity and reduced operation capacity, and therefore, meet labour, daily-life and study difficulties or those who are infected with chemical toxins, HIV/AIDS or other diseases which deprive them of their civil act capacity and live helplessly.
5. Children entitled to legal aid defined in Clause 3, Article 10 of the Legal Aid Law are those who are aged under 16 and live helplessly.
6. Ethnic minority people entitled to legal aid defined in Clause 4, Article 10 of the Legal Aid Law are those who permanently reside in areas with exceptionally difficult socio-economic conditions prescribed by law.
7. Other people entitled to legal aid according to treaties to which the Socialist Republic of Viet Nam is a contracting party.

Circular on ensuring gender equality in personnel structure and activities of legal aid organizations, No. 07/2011/TT-BTP

Article 12 – Legal assistance to protect rights and benefits of women

1. Legal aid organizations shall assign legal aid providers who have awareness on gender equality laws and experiences on providing legal aid in proper fields (except legal fields of business and trade) to poor women or women are subjects for priority policies prescribed in Article 2 of Decrees No. 07/2007/ND-CP dated January 12, 2007 of the Government detailing and guiding the implementation of some provisions of the Law on Legal Aid and women in the following cases:
 - a. Victims of domestic violence;
 - b. Women who are in proceedings of getting marriage as well as getting divorce;
 - c. Victims of human trafficking;
 - d. Victims of the exploitation of women labour or sexual abuse;
 - e. Persons who have legal disputes or problems, criminal victims, the accused as well as defendants are pregnant or raising under-six month children;
 - f. People of ethnic minority, who live in areas of especially difficult socio-economic conditions;
 - g. HIV infected persons;

- h. Women labour who gets unfair dismissal; women who were cheated in labour or family and marriage relationships; women who were cheated out of their properties illegally.
2. When necessary, legal aid organizations shall conduct professional activities such as legal aid mobile clinics, discussions on legal aid topics, legal classes combining with providing legal advice out of office hours in accordance with the laws to improve the access and receipt of legal aid services for the women mentioned in clause 1 of this article.

Article 13 – Identifying legally aided persons

When receiving legal aid requests of women, receiver shall identify the cases mentioned in clause 1 Article 12 of this Circular by finding out the needs of legally aided persons, the signs proved that these women are victims of gender-based violence to timely collect information, ask for medical tests if necessary, keep evidences as archives or assign proper legal aid providers.

In the cases that legally aided persons are victims of gender-based violence, but they tried to hide their cases, legal aid providers are responsible to convince and explain to make legally aided persons to know clearly and provide information about their cases so that their rights and legitimate interests can be protected as best as possible under the laws.

Article 14 – Ensuring gender equality in providing legal advice

For legal aid cases, legal aid providers shall:

1. Provide basic information about laws on gender equality; inform rights and legitimate interests of legally aided persons, rights to be protected in cases of gender-based violence, rights to fair treatment and respect, especially women rights under the laws.
2. Provide legal advice to legally aided persons on provisions of laws directly relating to legal aid cases as well as measures necessary to be applied; collect information, give proper solutions that include concrete legal provisions can be applied to protect the best their rights and legitimate interests so that legally aided persons can make final decisions.
3. Introduce legally aided persons to relevant agencies or organizations or other support services for assistance.

Article 15 – Ensuring gender equality in participating in proceedings

1. Ensure the participants of legal aid officials or lawyer collaborators who are women or other legal aid providers who have legal aid skills and gender knowledge to defend, represent or protect rights and legitimate for female legally aided persons.
2. Legal aid providers shall directly contact and understand the conditions and circumstances of the legally aided persons; gather and verify information, preserve and transfer evidences and attend the trial; explain to legally aided persons about applied legal provisions and procedures, including legal provisions for women; discuss to legally aided persons on necessary measures at each procedure period and help them to self-select the most proper solution.
3. When providing legal aid to women mentioned in clause 1 Article 12 of this Circular, legal aid providers shall make legally aided persons get psychological stability or require a secret trial to ensure confidentiality requirements for them; invite witnesses or supporters at the trial to confirm their statements, avoid the connection between victims and violator when victims are too agitated or threatened to their honour and lives.

Article 16 – Ensuring gender equality in representation outside proceedings

1. Legal aid providers shall contact, analyze information, concrete requirements, conditions and circumstances to agree with legally aided persons about solutions of legal aid cases. Legal aid providers shall explain to legally aided persons so that legally aided persons can understand properly and fully legal terms, decisions and forms of documents that they agree with as well as rights to be respected and rights to disagreement with the solutions of cases in the process of negotiation.
2. For the case of gender-based violence, legal aid providers shall suggest for the application or cancel of protection measures, negotiation or mediation to protect the best right and legitimate interests of legally aided persons.

3. The Law on Domestic Violence Prevention and Control, 2007

The Law on Domestic Violence Prevention and Control is fairly new law in Viet Nam, coming into force in 2008. There are also a number of decrees enacted to guide the implementation of the law. This section summarizes the law and highlights particular provisions that can guide law enforcement and justice officers in performing their duties.

Broadly speaking, the Law on Domestic Violence Prevention and Control sets out principles and measures for prevention and control of domestic violence and the roles and responsibilities of various agencies and organizations in the prevention and control of domestic violence. One main aspect emphasized in this Law is prevention. It provides for comprehensive measures relating to information, communication and education to raise public awareness and public education on the subject and developing a greater understanding within the community of domestic violence.

Law enforcement officers should pay particular attention to the principle set out in article 3: all domestic violence acts are to be timely discovered, stopped and dealt with in accordance with laws. No longer should domestic violence be considered a “private” matter to be addressed within the family. Law enforcement officers have a clear responsibility to respond when domestic violence happens.

Art. 3(2) Domestic violence acts must be timely discovered, stopped and dealt with in accordance with laws.

Defining Domestic Violence

The Act contains a fairly broad definition of domestic violence to include physical violence, sexual violence, psychological/emotional violence; and economic abuse. In some respects, the definition is even broader than what is generally understood to be violence by international standards. For instance, psychological or emotional abuse is generally limited to acts of persistent threatening, demeaning or controlling behaviour, rather than simply creating mental pressure or offending one’s pride.

Article 1(2) Domestic violence is defined as purposeful acts of certain family members that cause or may possibly cause physical, mental or economic injuries to other family members.

Article 2(1) The acts of domestic violence consist of:

- (j) corporal beating, ill-treating, torturing or other purposeful acts causing injuries to one’s health and life;
- (k) insulting or other intended acts meant to offend one’s human pride, honor and dignity;
- (l) isolating, shunning or creating constant psychological pressure on other family members, causing serious consequences;
- (m) preventing the exercise of the legal rights and obligation in the relationship between grandparents and grand children, between parents and children, between husband and wives as well as among brothers and sister;
- (n) forced sex;
- (o) forced child marriage; forced marriage or divorce and obstruction to freewill and progressive marriage;
- (p) appropriating, demolishing, destroying or other purposeful acts to damage the private properties of other family members, or the shared properties of family members;
- (q) forcing other family members to overwork or to contribute more earning than they can afford; controlling other family member’s income to make them financially dependent;
- (r) conducting unlawful acts to turn other family members out of their domicile.

Dealing with Domestic Violence Perpetrators

Article 42 provides that the perpetrator of domestic violence, depending on the severity of the violation, can be dealt with by administrative violation or criminal punishment. It should be noted that, in defining these violent acts, the Law does not create new criminal offences to sanction the perpetrator. Criminal sanctions to be imposed are defined in the Viet Nam Penal Code. Administrative sanctions as defined under the Ordinance on Dealing with Administrative Violations can be imposed in domestic violence situations. In addition, Article 43 of the Law on Domestic Violence Prevention and Control also provides for administrative sanctions for abusers who frequently commit acts of domestic violence. The government has stipulated specific administrative violations and the levels of penalties, such as fines, in the recent Decree 110/2009.

Article 43

- (d) Persons frequently committing domestic violence, having been warned, reprimanded and criticized by the community and within 6 months from the date of those measures taken still committing domestic violence which is not serious enough for criminal liability, shall be re-educated at their communes, townships or wards.
- (e) The domestic violence committing persons, having been re-educated in communes, wards and townships and still committing domestic violence that is not serious enough for criminal liability shall be sent to compulsory re-education schools. Persons under 18 years of age shall be sent to the youth custody school in accordance with the regulations on civil violations.
- (f) Authority, duration and procedures for taking such re-education measures at the wards, communes, townships, or sending them to the compulsory re-education schools, youth custody schools, shall be in accordance with the regulations on civil violations.

The recently adopted Decree 110/2009 on Handling Administrative Violations in the area of preventing and combating domestic violence provides for forms of violations and levels of sanctions. The decree includes the following forms of sanctions (article 4):

Principle sanctioning forms:

- Warnings;
- Fines (from 100,000 VND to 30,000,000 VND).

Additional sanctioning forms:

- Stripping off the right to use permits, professional practice certificates;
- Confiscating exhibits and/or means used to commit administrative violations;
- Forcible restoration of the initial state altered due to the administrative violation;
- Forcibly making public apology when the victim makes a request.

Further details of Decree 110/2009 will be addressed in Module 6 on the Administrative Punishment System.

Protection

The victims of domestic violence have the right to be protected whether or not there is an on-going criminal or administrative penalty investigation. The Domestic Violence Law sets out the situations in which the victim can apply for a special protection order: the forbidden contact order.

Forbidden contact orders

The Law contains emergency temporary measures to protect victims of domestic violence – the forbidden contact order. Victims can apply for forbidden contact orders in two ways:

3. The Chairperson of the commune People’s Committee where the domestic violence situation occurred can make an Order prohibiting the perpetrator from contacting the victim for up to three days (article 20);
4. The Court can issue a Decision, in civil proceedings, prohibiting contact for up to four months (article 21).

The victim must make the request for an order. They can be used in situations where the domestic violence acts “cause or threatens to cause serious physical injury to health or life of the victim”. Breach of the forbidden contact ordered by the People’s Committee is an administrative breach and subject to a fine or, according to Decree 08, subject to custodial measures, such as temporary detention. Supervision of the court’s decision of no-contact is dealt with by the community leader who would assign people to supervise the decision. According to Decree 08, no-contact also includes contact through telephone, fax, email, etc.

Other protection measures include safe and confidential temporary domiciles, such as shelters or reliable addresses in the community or at health stations.

Supportive Services

The victims of domestic violence should have access to a number of services, whether or not there is an on-going criminal or administrative penalty investigation. If the police are first responders at the scene of domestic violence cases, they should be familiar with what support services are available in their community and be able to refer the victims to them.

Medical services:

- Victims should have medical care and treatment with the expenses covered by the medical insurance fund if they hold medical insurance cards (Article 23). If they do not have insurance, the commune People's Committee is to play the lead role and collaborate with the Committee of Viet Nam Fatherland Front to ensure emergency support to meet essential needs of the victim (Article 24).
- In addition to providing medical assistance, public health stations can also provide temporary domicile to the victims (Article 27).

Counselling

- Victims should have access to advice on health care, family, domestic behaviour, law and psychological issues (Article 24).
- This counselling should be available from health stations, social protection centres, domestic violence counselling centres, and domestic violence victim support facilities (Article 24).

Legal advice

- Victims should have access to legal advice which should be available at the domestic violence victim support facilities (Article 29).

Access to information about their rights

- Victims should have access to information about the laws and policies on domestic violence, gender equality, as well as the rights and obligations of family members (Article 10).

Discovering and Reporting Domestic Violence

Recognizing that domestic violence often goes undetected and unreported due to the private context in which it occurs, the Law on Domestic Violence Prevention and Control imposes an obligation on those who discover such violence to report to the nearest police station or the local authorities, such as the People's Committee or commune leader. Where police or local authorities are informed of an act of domestic violence, they are responsible to ensure immediate treatment and apply specified prevention and protection measures. The local authorities may refer the matter to the police who in all cases must keep the identity of the reporter confidential. Medical staff who treat victims and believe a crime has been committed have an obligation to inform the police. This new Law will likely increase the number of domestic violence incidents being reported to police.

Reconciliation

The Law on Domestic Violence Prevention and Control describes principles of reconciliation. This includes respecting the free will of all the parties involved in reconciliation. Therefore if the victim cannot exercise free will due to feeling threatened or intimidated by the perpetrator, the reconciliation should not take place. The Law further stipulates that there should be no reconciliation of incidents of a criminal or administrative nature. In other words, the law provides that mediation or reconciliation should not be used in cases where there is serious or persistent violence. If the incident is of a criminal nature, the victim can request for an exemption from criminal proceedings and proceed to reconciliation. The authorities should ensure that the victim's request is made voluntary and without intimidation. If the incident involves a violation of an administrative nature, no reconciliation should be conducted by an institution, organisation or grass root reconciliation team.

Article 12 Principles of reconciliation of conflicts and disputes among family members

- (8) Timely, proactive and patient.
- (9) In harmony with the policy of the Communist Party, the Law of the State, the social morality and the good customs and practices of the people.
- (10) Respect for the free will of all conflicting parties to come to reconciliation.
- (11) Impartiality, fairness, sensibility and sentiment.
- (12) Maintaining one's privacy.
- (13) Respect for the rights and legitimate interests of other people; no encroachment on the State and public interests.
- (14) No reconciliation of conflicts and disputes among family members stipulated in Articles 14 (institution/organization) and 15 (grassroots reconciling teams) of this Law, in the following cases:
 - (a) Incidents of criminal nature, unless the victims requests for an exemption from criminal proceedings;
 - (b) Violations of Administrative laws subject to civil fines.

Comments and criticism of a community towards a perpetrator of domestic violence should be directed towards those who continue to commit domestic violence after reconciliation has been tried.

4. Decree 110/2009

Government Decree 110/2009/NĐ-CP stipulating sanctions for administrative violations in domestic violence prevention and control

GOVERNMENT

No: 110/2009/NĐ-CP

SOCIALIST REPUBLIC OF VIET NAM
Independence – Freedom - Happiness

Hanoi, 10 December 2009

DECREE

Stipulating sanctions for administrative violations in domestic violence prevention and control

GOVERNMENT

Pursuant to the Law on Organization of the Government dated 25 December 2001;
Pursuant to the Law on Domestic Violence Prevention and Control dated 21 November 2007;
Pursuant to Ordinance on handling of administrative violations dated 02 July 2002 and the Ordinance on amendments and modifications of some articles in the Ordinance on handling of administrative violations dated 02 April 2008;

Considering the request of the Minister of Culture, Sports and Tourism,

HEREBY DECREES:

Chapter 1 **GENERAL PROVISIONS**

Article 1. Scope of adjustment

1. This Decree stipulates acts of administrative violations, forms of violations, levels of sanctions, measures to overcome the consequences, competence and procedures of punishing administrative violations in the field of domestic violence prevention and control.
2. Administrative violations in the field of domestic violence prevention and control are acts of domestic violence and other acts intentionally or unintentionally committed by an organization or individual that violates regulations of the law in the field of domestic violence prevention and control, which, however, do not constitute crimes, must be administratively sanctioned under regulations of the law.
3. Other acts of administrative violations in the field of domestic violence prevention and control that are not defined in this Decree will be dealt with according to relevant regulations of the law on sanction for administrative violations in the field of state management; the acts of administrative violations in the field of prevention and control of domestic violence on children will be punished in accordance with the regulations of the law on sanction for administrative violations on child protection, care and education.

Article 2. Subjects of application

1. Individuals or organizations in Viet Nam that commit acts of administrative violations in the field of domestic violence prevention and control shall be punished under regulations of this Decree and other pertinent regulations on sanction for administrative violations.
2. Foreign individuals or organizations that commit acts of administrative violations in the field of domestic violence prevention and control on the territory of the Socialist Republic of Viet Nam shall be punished under regulations of this Decree.
3. With regard to the acts that violate the mission regime of cadres and civil servants while exercising the assigned duties in the field of domestic violence prevention and control but those acts are not up to the level of being held criminal responsibility shall be dealt with under regulations of the law on cadres and civil servants.
4. Minors who commit acts of administrative violations in the field of domestic violence prevention and control shall be punished as stipulated in point a Clause 1 Article 6 and Article 7 of the Ordinance on handling of administrative violations.

Article 3. Principles of sanctioning

Principles of sanctioning administrative violations in the field of domestic violence prevention and control are exercised under stipulations at Article 3 of the Ordinance on handling of administrative violations.

The sanction for administrative violations in the field of domestic violence prevention and control mainly aims at educating the offenders to be aware of their offences, to be self-willing to amend themselves, to fulfill obligations provided by the law or to stop lawful acts and for deterrence and prevention in general.

Article 4. Forms of sanction and measures to overcome the consequences

1. With regard to each act of administrative violation in the field of domestic violence prevention and control, individuals or organizations in violation will be applied with one of the following forms of sanction:

- a. Warning;
- b. Fines.

The specific rates of fines for each committed act are prescribed in Chapter II of this Decree.

Acts of administrative violations in the field of domestic violence prevention and control may be fined from 100,000 VND to 30,000,000 VND.

2. Depending on the nature and seriousness of their violations, individuals and/or organizations that commit administrative violations may also be subject to the application of one or more both of the following additional sanctioning forms

- a. Stripping off the right to use permits, professional practice certificates;
- b. Confiscating exhibits and/or means used to commit administrative violations

3. Apart from the sanctioning forms prescribed in Clauses 1 and 2 of this Article, the violating individuals and organizations may also be subject to the application of one or many of the following consequence-overcoming measures:

- a. Forcible restoration of the initial state altered due to the administrative violations;
- b. Forcible application of measures to overcome the environmental pollution, epidemic spreads, caused by the administrative violations;
- c. Forcible destruction of articles which cause harms to human health, domestic animals and cultivated plants, and harmful cultural products;
- d. Forcibly make public apology under the victims' request.

4. Foreigners who commit administrative violations in the field of domestic violence prevention and control within the territory of Viet Nam may also be sanctioned with expulsion. The expulsion shall be applied as a principal sanctioning form or an additional sanctioning form depending on each specific case. Competence, sequencing/order, procedures for application of expulsion shall be exercise under applicable law regulations on sanctioning in form of expulsion in conformity with administrative procedures.

Article 5. Extenuating circumstances

1. The violators of domestic violence have prevented or reduced harms done by the violations or volunteer to overcome the consequences, pay compensations
2. The violators of domestic violence have voluntarily reported their violations, honestly repenting their mistakes.
3. The violators commit acts of domestic violence in the state of being spiritually incited by the victim's illegal acts.
4. The violators commit acts of domestic violence due to being forced to or due to their material or spiritual dependence.
5. The violators of domestic violence are pregnant women, are minors, are old and weak persons, persons suffering from ailment or disability which restrict their capacity to perceive or to control their acts.
6. The violators commit offences due to particularly difficult plights brought upon them not by themselves.
7. The acts of domestic violence are committed due to backwardness.

Article 6. Aggravating circumstances

1. Acts of domestic violence are committed in an organized manner.
2. The acts of domestic violence are committed many times or administrative violations have been dealt with due to committed acts of domestic violence but those acts are repeated in the same domains.
3. Inciting, dragging minors to commit violations, forcing materially or spiritually dependent persons to commit acts of domestic violence.
4. The acts of domestic violence are committed in the state of being intoxicated by alcohol, beer or other stimulants.
5. Abusing one's positions and powers to commit violations.

6. Taking advantage of war, natural disaster circumstances or other special difficulties of the society to commit violations.
7. Committing acts of domestic violence while serving criminal sentences or decisions on handling of administrative violations.
8. Continuing to commit acts of domestic violence though the competent persons have requested the termination of such acts.
9. After the violations, having committed acts of fleeing or concealing the administrative violations.

Article 7. Statute of limitations for handling of administrative violations

1. The statute of limitations for sanctioning an administrative violation in the field of domestic violence prevention and control shall be one year as from the date such administrative violation is committed.
2. For individuals who were sued, prosecuted or got decisions to be brought to trial according to criminal procedures, but later got decisions to suspend investigation or suspend the cases where acts of violation show signs of administrative violations in the field of domestic violence prevention and control, they shall be administratively sanctioned; within three days as from the date of issuing the decisions to suspend the investigation, suspend the cases, the person who issued the decisions on suspension of investigation or suspension of the cases must send the decisions and the dossiers on the violations to the persons with sanctioning competence; in this case, the statute of limitations for sanctioning administrative violations shall be three months as from the date the persons with sanctioning competence receive the decisions on suspension of investigation or suspension of the cases and the dossiers on the violations.
3. Within the time limits prescribed in Clauses 1 and 2 of this Article, if the violating individuals or organizations continue committing new administrative violations in the field of domestic violence prevention and control or deliberately evade or obstruct the sanctioning, the statute of limitations prescribed in Clauses 1 and 2 of this Article shall not apply. In this case, the statute of limitations for sanctions shall be re-calculated from the time the new acts of administrative violations are committed or the time when individuals or organizations terminate the acts of evading and/or obstructing the sanctioning terminate
4. If the statute of limitations stipulated in Clause 1 and Clause 2 of this Article has been exceeded, the violator shall not be sanctioned but shall be applied with consequence-overcoming measures prescribed in this Decree.

Article 8. Time limits for being considered not yet administratively sanctioned

One year as from the date of completely serving the sanctioning decisions or the date of expiry of the statute of limitations for executing the sanctioning decisions, if the individuals and organizations sanctioned for administrative violations in the field of domestic violence do not repeat their violations, they shall be considered not yet being administratively sanctioned.

Chapter 2.

**ACTS OF ADMINISTRATIVE VIOLATIONS IN THE FIELD OF DOMESTIC VIOLENCE,
FORMS OF VIOLATIONS AND LEVELS OF SANCTIONS**

Article 9. Acts of corporal beating or other acts that cause injuries to the health of one's family member(s)

1. A fine ranging from VND 1,000,000 to VND 1,500,000 shall apply to acts of corporal beating that cause injuries to one's family member.
2. A fine ranging from VND 1,500,000 to VND 2,000,000 shall apply to one of the following acts:
 - a. Using murder weapons to beat, which cause injuries to one's family member(s);
 - b. Not timely sending the victims for first aid and medical treatment in case where the victims need timely emergency aid, not taking care of the victims during the period of treatment for trauma/injuries caused by acts of domestic violence, unless the victims refuse these offers.
3. Additional forms of sanctions and measures to overcome consequences:
 - a. Confiscating exhibits or means used to commit the acts defined in point a clause 2 of this Article;
 - b. Forcibly giving public apologies upon request of the victims with regards to the acts defined in clauses 1 and 2 of this Article.

Article 10. Acts of corporal beating and ill-treating to family member(s)

1. A fine ranging from VND 1,000,000 to VND 1,500,000 shall apply to regular acts that cause injuries to health and mental wounds for one's family members but do not fall within the cases prescribes in clause 2 of this Article.
2. A fine ranging from VND 1,500,000 to VND 2,000,000 shall apply to one of the following acts:

- a. Ill treatment to a family members such as: forcing them to abstain from eating, drinking, forcing them to suffer from cold, to wear torn clothes, not allowing them or limit them to have personal hygiene, confine them in a hazardous and toxic environment;
 - b. Forcing family members to commit unlawful acts;
 - c. Abandoning or not taking care of family members who are old, weak, disabled, pregnant women, women raising young children/babies;
 - d. Regularly intimidating a family member by the images, animals or objects that he/she is scared of;
 - e. Rearing animals, cultivating the types of plants that cause harms to health of family members at their dwelling place;
 - f. Force one's family members to watch, listen or read terrifying, debauching cultural products.
3. Consequence-overcoming measures
 - a. Forcible destruction of articles which cause harms to human health, domestic animals and cultivated plants, and harmful cultural products; taking measures to overcome environmental pollution, epidemic spread with regard to the acts stipulated at point d, e and f clause 2 of this Article;
 - b. Forcibly giving public apologies upon request of the victims with regards to the acts defined in clauses 1 and 2 of this Article.

Article 11. Acts that are offensive to honor and dignity of one's family members

1. A fine ranging from VND 1,000,000 to VND 1,500,000 shall apply to acts of reviling, cursing, and nagging one's family members.
2. A fine ranging from VND 1,500,000 to VND 2,000,000 shall apply to one of the following acts:
 - a. Disclosing or disseminating materials belonging to private secrets of one's family members, which aims at offending their honor and dignity;
 - b. Disseminating leaflets or using means of communications to offend the honor and dignity of one's family members;
 - c. Disseminate and disperse writings, images, sound of a domestic violence case, which aims at offending victims' honor and dignity;
 - d. Force one's family members to put off their clothes before other people or at a public place.
3. Additional forms of sanctions and consequence-overcoming measures:
 - a. Confiscating exhibits or means used to commit the acts defined in points a, b and c clause 2 of this Article;
 - b. Forcibly giving public apologies upon request of the victims with regards to the acts defined in clauses 1 and 2 of this Article

Article 12. Acts of isolating, shunning or creating constant psychological pressure

1. A warning or a fine ranging from VND 100,000 to VND 300,000 shall apply to one of the following acts:
 - a. Forbidding any family member to get out of the house, preventing any family member from meeting relatives, friends or having legal and healthy social relationships in an attempt to isolate or create constant psychological pressure on that family member;
 - b. Not allowing any family member to exercise the right to work;
 - c. Not allowing any family member to read books, newspapers, listen or watch radio, television programmes or get access to daily mass information;
 - d. Regularly demand other family members to meet the requirements that are beyond their capabilities;
 - e. Threatening to cause injuries to oneself or causing injuries to oneself to demand other family members to meet one's requirements;
 - f. Regularly observing any family member due to jealousy, which causes wounds to honor, prestige and dignity of that family member;
 - g. Not allowing any family member to participate in legal and healthy social activities;
 - h. Committing other acts that create constant psychological pressure on any family member.
2. A fine ranging from VND 300,000 to VND 500,000 to the activities of forcing any family member to witness violent actions/scene to a human or an animal.
3. A fine ranging from VND 500,000 to VND 1,000,000 shall apply to one of the following acts:
 - a. Forcing any family member to witness the scene of sexual intercourse;
 - b. Forcing the wife or the husband of the person who commits violent acts to live in the same house or sleep in the same room with the lover/partner of the person who commits violent acts;
 - c. Forcing other family members to commit erotic actions or to use sexually arousing/stimulating drugs;
 - d. Committing acts of sexual arousal or physical abuse to any family member that is not one's wife or husband;
 - e. Commit acts of violence in marital sexual intercourse without content of one's wife or husband.

4. Additional forms of sanctions and consequence-overcoming measures
 - a. Confiscating exhibits or means used to commit the acts defined in point c clause 3 of this Article;
 - b. Forcibly giving public apologies upon request of the victims with regards to the acts defined in clauses 1, 2 and 3 of this Article

Article 13. Acts of preventing the exercise of the legal rights and obligations in the relationship between grandparents and grandchildren, between parents and children, between husbands and wives as well as among brothers and sisters

A warning or a fine ranging from VND 100,000 to VND 300,000 shall apply to acts of preventing the right to visit and care between grandparents and grandchildren; between parents and children, except for the case where the parent(s)' right to taking care of their children is restricted under the Court's decision; between husbands and wives; among brothers and sisters.

Article 14. Acts in contravention of regulations on caring, rearing and alimony/maintenance

A warning or a fine ranging from VND 100,000 to VND 300,000 shall apply to one of the following acts:

1. Refusing or evading the obligation of alimony between spouses after a divorce, refusing or evading the obligation of rearing among brothers and sisters, between paternal grandparents, maternal grandparents and grandchildren under law regulations;
2. Refusing or evading the obligation of supporting and rearing one's parents; the obligation of supporting and caring one's children after a divorce under law regulations.

Article 15. Acts of forced marriage or divorce, forced child marriage or obstruction to freewill and progressive marriage

A warning or a fine ranging from VND 100,000 to VND 300,000 shall apply to one of the following acts:

1. Forcing others to get married, get divorced or get a child marriage by corporal beating, ill-treating, and mental bullying or by other tricks.
2. Obstructing other people's marriage or divorce, obstructing freewill and progressive marriage by corporal beating, ill-treatment, mental bullying, wealth claims or by other tricks.

Article 16. Acts of violence in terms of economy

1. A fine ranging from VND 500,000 to VND 1,000,000 shall apply to one of the following acts:
 - a. Not allowing any family member to use common property for a right/legitimate purpose;
 - b. Strictly controlling financial resource of any family member or the family's common financial source in an attempt to make the family member become financially independent;
 - c. Forcing any family member to make financial contributions that exceed their capabilities;
 - d. Smashing/demolishing one's own property in an attempt to create psychological pressure on family members;
 - e. Committing intentional acts of ruining other family members' private property or the family's common property.
2. A fine ranging from VND 1,000,000 to VND 2,000,000 shall apply to one of the following acts:
 - a. Appropriating private property of any family member;
 - b. Appropriating common property of the family to use for personal purpose;
 - c. Forcing other family members to overwork or to do hard and hazardous work, to be in contact with toxic substances or to do the types of work that are in contravention with law regulations on labor;
 - d. Forcing other family members to go begging or to walks the streets to earn a living.

3. Consequence-overcoming measures:

Force the restoration of the initial state altered with regards to the acts defined in point e clause 1 of this Article.

Article 17. Unlawful acts to coercively turn other family members out of their legal domicile

1. A warning or a fine ranging from VND 100,000 to VND 300,000 shall apply to the acts of coercively turning other family members out of their legal domicile.
- (2) A fine ranging from VND 500,000 to VND 1,000,000 shall apply to one of the following acts:
 - i. Regularly threatening to use violence in an attempt to force other family members to get out of their legal domicile;
 - ii. Forcing other family members to get out of their legal domicile at night or when it is raining, stormy, windy and cold;
 - iii. Conduct acts in an attempt to create difficulties in daily activities to compel other family members to get out of their domicile.

3. Consequence-overcoming measures:

Force the restoration of the initial state altered or take measures to overcome the environmental pollution or epidemic spread with regards to the acts prescribed in point c clause 2 of this Article.

Article 18. Acts of violence to the person who prevents, detects and reports on domestic violence, the person who helps victims of domestic violence

1. A warning or a fine ranging from VND 100,000 to VND 300,000 shall apply to one of the following acts:
 - a. Intimidating the person who prevents, detects and reports on domestic violence, the person who helps victims of domestic violence;
 - b. Offending the honor and dignity of the person who prevents, detects and reports on domestic violence, the person who helps victims of domestic violence.
2. A fine ranging from VND 500,000 to VND 1,000,000 shall apply to one of the following acts:
 - a. Assaulting the person who prevents, detects and reports on domestic violence, the person who helps victims of domestic violence;
 - b. Demolishing or destroy property of the person who prevents, detects and reports on domestic violence, the person who helps victims of domestic violence.
3. Additional forms of sanction and consequence-overcoming measures:
 - a. Confiscating exhibits or means used to commit the acts defined in clause 2 of this Article;
 - b. Force the restoration of the initial state altered with regards to the acts stipulated in point b clause 2 of this Article;
 - c. Forcibly giving public apologies upon request of the victims with regards to the acts defined in clauses 1 and 2 of this Article

Article 19. Acts of compelling, inciting, instigating or assisting others to conduct acts of domestic violence

1. A warning or a fine ranging from VND 100,000 to VND 300,000 shall apply to the acts of inciting, instigating or assisting others to conduct acts of domestic violence.
2. A fine ranging from more than VND 300,000 to VND 500,000 shall apply to the acts of compelling others to conduct domestic violence acts.

Article 20. Acts of intentionally not preventing or reporting on acts of domestic violence and hindering the prevention, reporting and handling of domestic violence acts

1. A warning or a fine ranging from VND 100,000 to VND 300,000 shall apply to one of the following acts:
 - a. Knowing the ongoing of domestic violence acts, being in a position to prevent but did not prevent, which leads to serious consequences;
 - b. Knowing the ongoing of domestic violence acts but did not report the case to a competent agency, organization or person;
 - c. Committing acts of hindering others from detecting or reporting on domestic violence acts.
2. A fine ranging from more than VND 300,000 to VND 500,000 shall apply to the acts of hindering the handling of domestic violence acts.

Article 21. Acts of using, propagating information, images and sound in an attempt to incite the acts of domestic violence

1. A warning or a fine ranging from VND 500,000 to VND 1,000,000 shall apply to the acts of using, propagating information, images and sound in an attempt to incite the acts of domestic violence.
2. A fine ranging from VND 5,000,000 to VND 10,000,000 shall apply to the acts of depicting in details obscene actions, horrible slaughtering related to domestic violence in news bulletins, writings, images in newspapers and other mass media in an attempt to incite domestic violence.
3. Additional forms of sanctions:
Confiscating exhibits or means used to commit the acts defined in clauses 1 and 2 of this Article.

Article 22. Acts of disclosing information about victims of domestic violence

A warning or a fine ranging from VND 1,000,000 to VND 3,000,000 shall apply to the health staff, counselors, reporters from media agencies, duty implementers in the field of domestic violence prevention and control that commit one of the following acts:

1. Disclose personal information of domestic violence victims without the consent of the victims or the victims' guardian, which affects the victims' honors, prestige and dignity;
2. Intentionally disclose or enable the person who commits domestic violence acts to know the shelter of the domestic violence victim.

Article 23. Acts of taking advantages of domestic violence prevention and control activities to make profits

1. A warning or a fine ranging from VND 100,000 to VND 300,000 shall apply to one of the following acts:
 - a. Asking for money from victims or victims' family members after the acts of assisting domestic violence victims;
 - b. Requiring payments for the victim's costs of living at the reliable address in the community;
 - c. Taking advantages of the domestic violence victim's plight to ask them to conduct unlawful acts.
2. A fine ranging from VND 10,000,000 to VND 30,000,000 shall apply to one of the following acts:
 - a. Establishing counseling centres on domestic violence prevention and control, stations to assist domestic violence victims for making profits;
 - b. Taking advantages of domestic violence prevention and control activities to conduct unlawful acts.
3. Additional forms of sanction:

Stripping off the right to use Operational licences concerning the acts stipulated in point a clause 2 of this Article, professional practice certificates concerning the acts stipulated in point b clause 2 of this Article.

Article 24. Acts that violate regulations on operational registration for the stations assisting domestic violence victims, counseling centres on domestic violence prevention and control

1. A fine ranging from VND 3,000,000 to VND 5,000,000 shall apply to stations assisting domestic violence victims, counseling centers on domestic violence prevention and control that operate outside the scope of the operational licenses or that fail to meet enough conditions during the operational process.
2. A fine ranging from more than VND 5,000,000 to VND 10,000,000 shall apply to stations assisting domestic violence victims, counseling centers on domestic violence prevention and control that have been granted with operational licenses or that do not register for operation.

Article 25. Acts of violating the decision on prohibition of contacts by the Chairman of the commune People's Committee

1. A warning or a fine ranging from VND 100,000 to VND 300,000 shall apply to one of the following acts:
 - a. Deliberately coming into contacts with victims of domestic violence during the time of executing the decision on prohibition of contacts;
 - b. Using telephone or other means of communications to intimidate, curse or offend victims of domestic violence.
2. Additional forms of sanction:

Confiscating exhibits or means used to commit the acts defined in point b clause 1 of this Article.

Chapter 3.

COMPETENCE AND PROCEDURES TO HANDLE ADMINISTRATIVE VIOLATIONS

Article 26. Competence to handle administrative violations of Chairmen of People's Committees at all levels

1. Chairmen of People's Committees at communal level have the right to:
 - a. Impose warning;
 - b. Impose fines of up to VND 2,000,000;
 - c. Confiscate exhibits and/or means used for administrative violations, with value of up to VND 2,000,000
 - d. Compel the restoration of initial state altered due to administrative violations;
 - e. Compel the application of measures to overcome the environmental pollution or epidemic spread, caused by the administrative violations;
 - f. Compel the destruction of articles which cause harms to human health, domestic animals and cultivated plants; and harmful cultural products.
2. Chairmen of People's Committees at district level have the right to:
 - a. Impose warning;
 - b. Impose fines of up to VND 30,000,000;
 - c. Strip off the right to use licenses, professional practice certificates under their jurisdiction;
 - d. Confiscate exhibits and/or means used for administrative violations;
 - e. Apply consequence-overcoming measures prescribed at points d, e and f Clause 1 of this Article.
3. Chairmen of People's Committees at provincial level have the right to:
 - a. Impose warning;
 - b. Impose fines of up to VND 30,000,000;
 - c. Strip off the right to use licenses, professional practice certificates under their jurisdiction;
 - d. Confiscate exhibits and/or means used for administrative violations;
 - e. Apply the measures of forcibly giving public apologies upon request of the victims, consequence-overcoming measures are defined in points d, e and f Clause 1 of this Article.

Article 27. Competence to handle administrative violations of People's Police

1. People's Police officers being on official duty shall have the right to:
 - a. Impose warning;
 - b. Impose fines of up to VND 200,000.
2. The station heads and team heads of the persons defined in Clause 1 of this Article shall have the right to:
 - a. Impose warning;
 - b. Impose fines of up to VND 500,000.
3. The commune-level police chiefs may apply the administrative violation- handling measures prescribed in Clause 1 Article 26 of this Decree.
4. The district-level police chiefs, heads of the Mobile Police units of the company or higher level, Heads of the Police Bureaus for Administrative Management of Social Order, heads of Traffic Police Bureaus, Heads of Police Bureaus for Order shall have the right to:
 - a. Impose warning;
 - b. Impose fines of up to VND 10,000,000;
 - c. Strip off the right to use licenses, professional practice certificates under their jurisdiction;
 - d. Confiscate exhibits and/or means used for administrative violations;
 - e. Apply consequence-overcoming measures prescribed in points d, e and f Clause 1 Article 26 of this Decree.
5. The directors of the provincial-level Police Departments shall have the right to:
 - a. Impose warning;
 - b. Impose fines of up to VND 30,000,000;
 - c. Strip off the right to use licenses, professional practice certificates under their jurisdiction;
 - d. Confiscate exhibits and/or means used for administrative violations;
 - e. Apply consequence-overcoming measures prescribed in points d, e and f Clause 1 Article 26 of this Decree.
 - f. Decide on the application of the sanctioning form of expulsion in accordance with decentralization of power by the Minister of Public Security.
6. The director of the Police Department for Administrative Management of Social Order shall have the right to:
 - a. Impose warning;
 - b. Impose fines of up to VND 30,000,000
 - c. Strip off the right to use licenses, professional practice certificates under their jurisdiction;
 - d. Confiscate exhibits and/or means used for administrative violations;
 - e. Apply consequence-overcoming measures prescribed in points d, e and f Clause 1 Article 26 of this Decree.

Article 28. Border guards' competence to handle administrative violations

1. Border guard combatants being on official duties have the right to:
 - a. Impose warning;
 - b. Impose fines of up to VND 200,000
2. The team leaders of the persons prescribed in Clause 1 of this Article, Head of Border Control Station have the right to:
 - a. Impose warning;
 - b. Impose fines of up to VND 500,000
3. Border post chiefs, border flotilla commanders, border sub-region commanders, Harbor gate border commanders shall have the right to:
 - a. Impose warning;
 - b. Impose fines of up to VND 10,000,000
 - c. Confiscate exhibits and/or means used for administrative violations;
 - d. Apply consequence-overcoming measures prescribed in points d, e and f Clause 1 Article 26 of this Decree.
4. The provincial-level border guard commanders, the commanders of the border guard fleets under the Border Guard Command shall have the right to:
 - a. Impose warning;
 - b. Impose fines of up to VND 30,000,000
 - c. Confiscate exhibits and/or means used for administrative violations;
 - d. Apply consequence-overcoming measures prescribed in points d, e and f Clause 1 Article 26 of this Decree.

Article 29. Competence to handle administrative violations of Culture, Sports and Tourism inspectorates

1. Culture, sports and tourism inspectors being on official duty shall have the right to:
 - a. Impose warning;
 - b. Impose fines of up to VND 500,000
 - c. Confiscate exhibits and/or means used for administrative violations, with value of up to VND 2,000,000;
 - d. Apply consequence-overcoming measures prescribed in points d, e and f Clause 1 Article 26 of this Decree.
2. Chief Inspector of Department of Culture, sports and tourism shall have the right to:
 - a. Impose warning;
 - b. Impose fines of up to VND 30,000,000
 - c. Strip off the right to use licenses, professional practice certificates under their jurisdiction;
 - d. Confiscate exhibits and/or means used for administrative violations;
 - e. Apply consequence-overcoming measures prescribed in points d, e and f Clause 1 Article 26 of this Decree.
3. Chief Inspector of the Ministry of Culture, Sports and Tourism shall have the right to:
 - a. Impose warning;
 - b. Impose fines of up to VND 30,000,000
 - c. Strip off the right to use licenses, professional practice certificates under their jurisdiction;
 - d. Confiscate exhibits and/or means used for administrative violations;
 - e. Apply consequence-overcoming measures prescribed in points d, e and f Clause 1 Article 26 of this Decree.

Article 30. Principles for determining the competence to handle administrative violations

1. The competence of sanctioning administrative violations as defined in this Decree is the competence applicable to an act of administrative violation. In case of fine, the sanctioning competence shall be determined on the basis of the maximum level of the fine frame prescribed for each specific act of violation. Where an administrative violation falls within the sanctioning competence of many persons, the sanction shall be effected by the person who first receives and processes the case.
2. Where a person is sanctioned for many acts of administrative violation, the sanctioning competence shall be determined on the following principles:
 - a. If the sanctioning form and level prescribed for each act are under the competence of the sanctioning person, the sanctioning competence also belongs to such person;
 - b. If the sanctioning form and level prescribed for one of the acts are beyond the competence of the sanctioning person, he/she shall have to transfer the case of violation to the authority with sanctioning competence;

Article 31. Procedures for sanctioning administrative violations

Procedures for sanctioning administrative violations in the field of domestic violence prevention and control are implemented as stipulated in articles from Article 20 to Article 38 of the Government Decree No. 128/2008/NĐ-CP dated 16 December 2008 stipulating in details the implementation of some articles in the Ordinance on Handling of Administrative violations in 2002 and the Ordinance on amendments and additions of some articles in the Ordinance on Handling of Administrative violations in 2008.

**Chapter 4.
IMPLEMENTATION PROVISIONS****Article 32. Implementation effect**

1. This Decree takes effect as from 27 January 2010.
2. Repealing Article 7, Article 10, stipulations on acts of corporal beating, ill-treating to family members in Article 11, Article 12 and Article 15 of the Government Decree No. 87/2001/NĐ-CP dated 21 November 2001 on sanctioning administrative violations in the field of marriage and family as from the day this Decree comes into force.

Article 33. Implementation responsibility

1. The Minister of Culture, Sports and Tourism, within the scope of their functions and duties, shall have the responsibility to organize the implementation of this Decree.

2. Ministers, Heads of ministerial-level agencies, Heads of agencies under the Government, Chair people of People's Committees of provinces and cities under Central control and pertinent individuals, organizations shall have the responsibility to exercise this Decree.

On behalf of the government

Prime minister

Nguyễn Tấn Dũng

5. Summary of Relevant Penal Code Provisions

- Article 93 - Murder
 - (1) Those who commit murder in one of the following cases shall be sentenced to between 12 and 20 years of imprisonment, life imprisonment or capital punishment:
 - (b) Murder of women who are known by the offender to be pregnant.
 - (p) Murder of people for despicable motivation.

Note: Officers could consider whether power and control of one's wife can be considered a "despicable motive".
Officers should not consider abuser's excuses that his wife was being "too talkative", "lazy" or "jealousy" as provocation which would reduce the murder charge as per article 95. Article 95 stipulates that the provocation must be "caused by serious illegal acts of the victim towards such person or his/her next of kin" in order to mitigate the sentence.
- Article 103 - Threatening to murder
 - (1) Those who threaten to kill other persons, in circumstances such as to make the latter believe that such threat shall be realized, shall be subject to non-custodial reform for up to two years or sentenced to between 3 months and 3 years of imprisonment.

Note: Threats made by the husband to the wife in situations of domestic violence likely reach the threshold of "in circumstances such as to make the latter believe that such threat shall be realized".
- Article 100 - Forced suicide
 - (1) Any person who cruelly treats, constantly intimidates, ill-treats or humiliates a person dependent on him/her, inducing the latter to commit suicide, shall be sentenced to between 2 and 7 years of imprisonment.

Note: The pattern of repeated domestic violence likely meets the threshold of "cruelly treats, constantly intimidates, ill-treats or humiliates a person dependent on him"
- Article 98 - Accidentally causing human death
 - (1) Any person who unintentionally causes the death of another person shall be sentenced to between 6 months and 5 years of imprisonment.

Note: An abuser who unintentionally causes the death of his wife after beating her could be criminally liable under this offence.
Article 104(4) covers situations where the abuser intentionally inflicts injury that results in death.
- Article 111 – Rape
 - (1) Those who use violence, threaten to use violence or take advantage of the victim's state of being unable for self-defence or resort to other tricks in order to have sexual intercourse with the victims against the latter's will shall be sentenced to between 2 and 7 years of imprisonment.

Note: There is no explicit exclusion in the law regarding the application of this provision when the rape occurs within marriage.

Cultural attitudes prevail that a husband is entitled to demand sex from his wife and the wife should submit. This belief is reflected in the lack of application of this provision to domestic cases. However it should be clear that the law as written does not preclude applying article 111 to rape in marriage. Furthermore, it should be noted that the recent Law on Domestic Violence specifically includes "forced sex" within the family as an act of domestic violence, reflecting the shift in cultural attitudes. The challenge in domestic violence situations is the evidentiary burdens when the victims have sex unwillingly but do not use self-defence against physical violence because of power differentials between the husband and wife.

Sentence is to be higher in certain circumstances, including committing forcible sexual intercourse more than once; making the victim pregnant; causing harms to the victim's health with an infirmity rate of between 31% and 60%.

- Article 113 – Forcible sexual intercourse

- (1) Those who employ trickery to induce persons dependent on them or persons being in dire straits to have sexual intercourse with them against their will shall be sentenced to between 6 months and 5 years of imprisonment.

Note: This includes forcible sexual intercourse within marriage.

"Persons dependent" refers to many kinds of dependencies, including religious, financial, work, etc. It can include wives.

- Article 110 - Ill-treating other persons

- (2) Those who cruelly treat persons dependent on them shall be subject to warning non-custodial reform for up to one year or imprisonment of between 3 months and 2 years.

Note: In situations where the proof of injury does not meet the threshold of article 104, officers could consider using this article as it covers cruelly treating persons dependent on them.

- Article 121 – Humiliating other persons

- (1) Those who seriously infringe upon the dignity or honour of other persons shall be subject to warning, non-custodial reform for up to 2 years or a prison term of between 3 months and 2 years.

Note: The threshold is "serious infringe" on the "dignity or honour of other persons".

- Article 108 – Unintentionally inflicting injury on or causing harm to the health of other persons

- (1) Those who unintentionally inflict injury on or cause harm to the health of other persons with an infirmity rate of 31% or higher shall be subject to warning, non-custodial reform for up to 2 years or imprisonment of between 3 months and 2 years.

Note: Domestic violence is often used to maintain power and control and the use of violence is not an uncontrollable act. Therefore, should carefully consider whether the violent act is "unintentional".

- Article 146 - Forcible marriage

- (1) Those who force other persons into marriage against their will or prevent other persons from entering into marriage or maintaining voluntary and progressive marriage bonds through persecution, ill-treatment, mental intimidation, property claim or other means, and who have already been administratively sanctioned for such acts but repeat their violations, shall be subject to warning, non-custodial reform for up to 3 years or a prison term of between 3 months and 3 years.

Need to show either: forced into marriage; prevention of marriage or prevention of maintaining voluntary and progressive marriage; by the action that amounts to persecution, ill-treatment, mental intimidation, property claim.

Inter-circular 01/2001 defines further the meaning of “persecution and ill-treatment” and “mental intimidation”.

“Ill-treatment and persecution” means cruel, ill treatment of other persons, thus causing prolonged physical or spiritual pains, such as frequent beating (possibly not causing permanent physical injuries), detention, forcible abstention from eating and drinking, forcible standing in the cold, scolding, humiliation, etc.

“Mental intimidation” means threatening to harm the lives, health, honour, property or legitimate interests of the intimidated persons, causing them to have grounds to be scared, hence having to be subdued, and includes threatening to set fire to the house, kill relatives, disclose personal lives of the intimidated persons, parents or family members, threaten to commit suicide, etc.

- Article 152 – Refusing/evading obligation to provide financial support

(1) Those who have the obligation to provide financial support and have the actual capability to provide the financial support for the persons they are obliged to do so according to the provisions of law but deliberately refuse or evade the obligation to provide financial support, thus causing serious consequences or who have already been administratively sanctioned for such acts but repeat their violations, shall be subject to warning, non-custodial reform for up to 2 years or a prison term of between 3 months and 2 years.

- Article 130 – Infringement upon women’s right to equality

Those who use violence or commit serious acts to prevent women from participating in political, economic, scientific, cultural and social activities shall be subject to warning, non-custodial reform for up to 1 year or a prison term of between 3 months and 1 year.

- Article 143 - Destroying or deliberately damaging property

(3) Those who destroy or deliberately damage other persons’ property, causing damage of between 500,000 Vietnamese Dong (VND) and under 50 million VND, or under 500,000 VND but causing serious consequences, or who have already been administratively sanctioned for such act or sentenced for such offense and not yet entitled to criminal record remission but repeat their violations shall be subject to non-custodial reform for up to 3 years or to a prison term of between 6 months and 3 years.

- Article 123 – Illegal arrest, custody or detention of people

(1) Those who illegally arrest, hold in custody or detain other persons shall be subject to warning, non-custodial reform for up to 2 years or a prison term of between 3 months and 2 years.

Note: This perhaps could be used where husband prevents wife from leaving the house by locking her in a room.

- Article 132 - Infringement upon the rights to complain and/or denounce

(2) Those who take revenge on the complainants and/or denounciators shall be subject to non-custodial reform for up to 3 years or a prison term of between 6 months and 5 years.

Note: Perhaps this could be used when husband pressures a victim/witness to drop the case or not give evidence.

Note: The first part of this offence deals with abusing positions to obstruct the lodging of complaints and/or denunciations. This might cover those situations where police or local officials pressure the wife to participate in reconciliation or mediation when the act could be criminal in nature.

6. Determining the Thresholds: Criminal, Administrative Sanctions or Informal Measures

The above chart sets out the possible actions when domestic violence reaches certain thresholds of “seriousness”. Determining when those thresholds are reached can be difficult. An assessment of the appropriate legal procedure should be made when the officer has made a full and comprehensive inquiry into the situation.

Determining “seriousness” depends on a number of various factors, such as the level of harm to the victim; the frequency / history of domestic violence that has been reported and the previous sanction imposed on the abuser.

Thresholds and the Four Forms of Domestic Violence			
Threshold: criminal cases	Threshold: administrative punishment	Threshold: community criticism	Threshold: information warning or reconciliation
Physical Violence: for example, corporal beating, ill-treating, torturing or other purposeful acts causing injuries to one’s health and life			
<p>Criminal</p> <p>(1) Where first reported incident and the level of injury is above 11%, then article 104 applies. To assess infirmity rate need a forensic examination.</p> <p>(2) Where first reported incident and there is “serious consequences” caused by physical ill-treatment and persecution, then article 151 applies. “Serious consequences” involve the victim being tormented; damaged to her honour; or victim’s mind is in a state of “wretchedness”.</p> <p>(3) If the case involves death of the victim, and there is premeditation, then article 93 (murder) would apply. If there was no premeditation, article 98 (accidentally causing death) might apply.</p> <p>(4) If the harm is less than 11% or not serious enough for article 151 or 110, then frequency may determine if criminal sanction is applicable: if administrative punishment has been increasingly used, from warning, fine, educating offenders in the community, compulsory education, or juvenile detention centres.</p>	<p>Administrative</p> <p>(1) Where first reported incident and the level of injury is less than 11%. There is no explicit guidance with respect to how minimum the infirmity rate should be before administrative punishment applies. Therefore there is broad discretion by first responders on when to apply administrative sanctions for first reported incidents. Generally, first responders take into account victim’s wishes as well as if the violence disrupts the neighbours.</p> <p>(2) Frequency: if reconciliation and community criticism have already been done but the domestic violence continues, then administrative sanctions should apply.</p> <p>The use of administrative sanctions can increase depending on repeat incidences: from warning, fine, educating offenders in the community, compulsory education or juvenile detention centres</p>	<p>Community criticism</p> <p>(1) If level of injury is none to minor, but this is a repeat incident within 12 months after the reconciliation</p> <p>(2) Where this is the first reported incident and the level of injury is too serious for reconciliation but not serious enough for administration.</p>	<p>Reconciliation</p> <p>Level of injury: none to minor</p> <p>Frequency: first incident</p>
Psychological Violence, for example, insulting or other intended acts meant to offend one’s human pride, honour and dignity; or isolating, shunning or creating constant psychological pressure on other family members, causing serious consequences			

Identifying the threshold for emotional abuse is difficult

<i>Identifying the threshold for emotional abuse is difficult</i>			
<p>Criminal</p> <p>If proceeding under article 121: humiliating other persons, the injury is defined as seriously infringing upon the dignity or honour. To assess the seriousness, this is based on the intensity, continuousness of the acts, the attitude and awareness of the perpetrator, or the act is committed before to many other persons.</p> <p>If proceeding under article 151, ill treatment and persecution, the injury is serious consequences. This offence can involve a pattern of repeated and persistent abuse. "Serious consequences" involve the victim being tormented; damaged to her honour; or victim's mind is in a state of "wretchedness".</p>	<p>Administrative</p> <p>In situations where perpetrator infringes upon the dignity or honour but not reaching the seriousness for criminal offence.</p> <p>Decree 110 provides further details and examples of the types of acts that should be administratively sanctioned. Some examples are:</p> <p>Regularly intimidating family member by images, animals or objects that she is scared of (art 10(2)(d)).</p> <p>Disclosing documents having private secret with the purpose of infringing upon someone's dignity (art 11(2)(a)).</p> <p>Forcing one to take off their clothes in public (art 11(2)(d)).</p> <p>Forbidding anyone from leaving the house, preventing from meeting relatives, friends or having legal and healthy social relationships in an attempt to isolate or create constant psychological pressure (art 12(1)(a)).</p>	<p>Community criticism</p> <p>After reconciliation and within 12 months again of emotional abuse behaviour, for example swearing</p>	<p>Reconciliation</p> <p>Minor emotional abuse act such as swearing several times</p>
<p>Sexual Violence, for example, forced sex by husband with wife <i>The challenge in domestic violence cases, the victims have sex unwillingly but might not use self-defence because of power differentials between husband and wife.</i></p>			
<p>Criminal</p> <p>If proceeding under article 111, this can apply in a number of situations.</p> <p>(i) Using violence to force sex, such as punching, beating, striking, slapping, when the victim does not want to have sex.</p> <p>(ii) Using threats of violence to force sex upon unwilling person, such as explicit threats of killing or physically hurting victim if refuse sex or implicit threats, such as making suggestive remarks as to what might happen if they do not comply with demand for sex.</p> <p>(iii) take advantage of the victim's state of being unable</p>	<p>Administrative</p> <p>Decree 110 provides further details and examples of the types of acts that should be administratively sanctioned. Some examples are:</p> <p>Using violence in marital sexual intercourse without wife's consent (art 12(3)(e)).</p>	<p>Community criticism</p> <p>Not used in these serious cases.</p>	<p>Reconciliation</p> <p>Not used in these serious cases.</p>

<p>to defend herself or resort to tricks in order to have sexual intercourse</p> <p>If proceeding under article 113, forcible sexual intercourse, this might apply to spouses as the wording is victims who are dependent on the perpetrators.</p>			
<p>Financial Violence, forcing other family members to overwork or to contribute more earning than they can afford; controlling other family members' income to make them financially dependent</p>			
<p>Criminal</p> <p>If proceeding under article 152, refusing / evading obligation to provide financial support, the threshold is "deliberately" and thus causing "serious consequences". Serious consequences might include making the victim or the victim's children ill or causing death.</p> <p>Article 152 also provides that those who have already been administratively sanctioned for such acts but repeat their violations.</p> <p>Article 143 may also be applied here, destroying or deliberately damaging property.</p>	<p>Administrative</p> <p>Decree 110 provides further details and examples of the types of acts that should be administratively sanctioned. Some examples are:</p> <p>Not permitting family member to use common property for a legitimate purpose (art 16(1)(a)).</p> <p>Strictly controlling financial resources of family in an attempt to make the family member become financially independent (art 16(1)(b)).</p> <p>Smashing / demolishing one's own property in an attempt to create psychological pressure on family member (art 16(1)(d)).</p> <p>Forcing one to overwork or do hard and hazardous work (art 16(2)(c)).</p>	<p>Community criticism</p> <p>After reconciliation and within 12 months again of financial abusive behaviour or any other kind of abusive behaviour.</p>	<p>Reconciliation</p> <p>Minor financial abuse act such as harassing wife to overwork.</p>

7. Relevant Provision on Reconciliation in the Law on Domestic Violence

PART 2 - RECONCILIATION OF CONFLICTS AND DISPUTES AMONG FAMILY MEMBERS

Article 12 Principles of reconciliation of conflicts and disputes among family members

- (15) Timely, proactive and patient.
- (16) In harmony with the policy of the Communist Party, the Law of the State, the social morality and the good customs and practices of the people.
- (17) Respect for the free will of all conflicting parties to come to reconciliation.
- (18) Impartiality, fairness, sensibility and sentiment.
- (19) Maintaining one's privacy.
- (20) Respect for the rights and legitimate interests of other people; no encroachment on the State and public interests.
- (21) No reconciliation of conflicts and disputes among family members stipulated in Articles 14 (institution/organization) and 15 (grassroots reconciling teams) of this Law, in the following cases:
 - (a) Incidents of criminal nature, unless the victims requests for an exemption from criminal proceedings;

(b) Violations of Administrative laws subject to civil fines

Article 13 Reconciliation of conflicts and disputes by the family and clan

The family shall be responsible for timely discovering and reconciling conflicts and disputes among family members.

In the case that the family cannot reconcile or at the request of any family member, the head or the prestigious person in the clan or the prestigious person in the community shall actively conduct the reconciliation.

Article 14 Reconciliation of conflicts and disputes by an institution / organization

Institutions / organizations shall be responsible for conducting reconciliation of conflicts and disputes between their employees and their family members at the family members' request. If necessary, they shall cooperate with their local counterparts in conducting reconciliation.

Article 15 Reconciliation of conflicts and disputes by the grassroots reconciling team

1. The grassroots reconciling team shall conduct reconciliation of conflicts and disputes among family members in accordance with legislation on reconciliation at the grassroots level.
2. The People's Committees of communes, wards and townships (referred to as Commune People's Committee) shall be responsible for cooperating with the Committee of Viet Nam Fatherland Front at the same level and its members in giving guidance, assistance and good conditions to the grassroots reconciling teams to reconcile conflicts and disputes among family members.