



## PREVENTING AND RESPONDING TO DOMESTIC VIOLENCE

TRAINEE'S MANUAL  
FOR LAW ENFORCEMENT AND JUSTICE SECTORS IN VIET NAM

**Hanoi 2011**  
*(Edition 2)*





## **TRAINING FOR LAW ENFORCEMENT AND JUSTICE SECTORS ON DEALING WITH CASES OF DOMESTIC VIOLENCE**







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## Forewords

Violence against women is a global phenomenon and its magnitude and effects are often underrated. It directly affects a third of the world's female population, as more than one out of three women worldwide have been beaten, coerced to sex, or in other ways abused throughout their lives.

This training manual has been developed under the framework of UNODC project "Strengthening capacity of law enforcement and justice sectors to prevent and respond to domestic violence in Viet Nam" (VNM/T28). The project aims at contributing to effective prevention of domestic violence against women through more responsive law enforcement and justice services. Under the project, police, prosecutors and judges will be trained on the principles of gender equality, the common characteristic of domestic violence, and best practices on dealing with the victims, witnesses and perpetrators.

The project applies a TOT (training-of-the-trainers) modality. For the purpose, specific training manuals have been developed both for trainers and for trainees. I wish these training tools will support the local officers in their important work in assisting victims of domestic violence in accessing justice.



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Domestic violence has taken place in Viet Nam for a long time, since the feudal society, occurring in all social classes, both rural and urban. The consequences of domestic violence are enormous, not only affecting the victim and the family members, but also resulting in financial consequences due to the costly investigation and prosecution of cases, court procedures, medical expenses and victim support costs.

In the past years, the Communist Party and the Government have paid great attention to domestic violence prevention. In 1980, the Government of Viet Nam became a signatory of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The Law on Domestic Violence Prevention and Control was passed by the National Assembly in November 2007 and it came into effect in July 2008. So far, the process has led to encouraging results. The situation of domestic violence remains, however, complicated both in terms of prevalence and seriousness.

Training law enforcement and justice sectors officers in order to strengthen the capacity to prevent and respond to domestic violence in Viet Nam is essential. We hope that this training manual will contribute to the enhanced capacity to recognize the existence of domestic violence, to effectively prevent and investigate cases, and to take strict measures against the phenomenon.



Deputy General Director,  
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## **MODULE 1**

### **INTRODUCTION: TRAINING FOR LAW ENFORCEMENT AND JUSTICE OFFICERS ON DEALING WITH DOMESTIC VIOLENCE IN VIET NAM**



**UNODC**  
United Nations Office on Drugs and Crime



## **Module 1**

### **Introduction: Training for Law Enforcement and Justice Officers on Dealing with Domestic Violence in Viet Nam**

#### **Section 1: Background and Purpose of the Training Manual<sup>1</sup>**

Domestic violence is a pervasive problem in all regions of the world, occurring in every culture and social group. It has devastating physical, emotional, financial and social effects on the victims, families and communities. The victims 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. International efforts have recognised the need for a comprehensive and multi-sectoral approach to this complex social problem, with the law enforcement and justice sectors having crucial roles to play.

Recent legislation in Viet Nam to address domestic violence sends a clear message that such violence is not to be tolerated and should no longer be seen as a "private matter". In Viet Nam, various government agencies and mass organizations have a role in ensuring a comprehensive, coordinated and multi-faceted response to domestic violence. The law enforcement and justice sectors are key sectors as they can be mobilized to become more effective tools in protecting the victims, ending impunity, providing access to justice and redress, and responding to the special needs and vulnerabilities experienced by women victims within the justice system.

This training manual is for professionals in the law enforcement and justice sector. It is primarily intended for use by those law enforcement and justice sector officials who are first responders in situations of domestic violence. However other justice sector officials, including prosecutors, judges, court administrative staff, and judicial officers who are engaged in the prevention, investigation, prosecution and adjudication of domestic violence cases will find this material useful. This manual has been developed by the United Nations Office on Drugs and Crime (UNODC) Viet Nam Country Office, with the assistance of the Ministry of Public Security and the Ministry of Justice. It is one of the most important components 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.

#### **1.1 Objective of the Training Manual**

This manual aims to:

- Develop a better understanding by members of the Local Police, People's Committee, Criminal Investigating Bodies, Procuracy and the Courts of the dynamics of domestic violence, the root causes of the violence and the concept of gender equality.
- Familiarize law enforcement and justice sector professionals with the national laws and international standards relating to key issues for responding to domestic violence, particularly violence experienced by women occurring in the family.
- Develop skills of members of the Local Police and People's Committee who are first responders to domestic violence, as well as members of Criminal Investigating Bodies, the Procuracy and the Courts, to respond effectively to domestic violence, ensuring the protection and safety of victims while holding the abuser accountable.

#### **1.2 Target Groups**

The overall target groups for training involve the law enforcement and justice sector officers. The main sectors involved are:

- First Responders, including Local Police Officers and People's Committee representatives;
- Criminal Investigators;

<sup>1</sup> This training manual relies heavily on UNODC's previous training materials, particularly, the Draft UNODC "Effective Police Responses to Violence Against Women: Training Curriculum" developed by Mark Lalonde; and the Draft UNODC "Handbook on National Procedure to Identify and Investigate Cases of Trafficking in Persons in Viet Nam".

- Procurators;
- Judges and court personnel.

The training can also include representatives from the Viet Nam Women's Union, as they form part of reconciliation teams and have the responsibility to interact with police officers in this regard. Furthermore, judicial officers at the commune or district level who provide advice to reconciliation teams benefit from being included in this training.

### **1.3 Scope of the Manual**

The primary focus of this training manual 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 manual 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.<sup>2</sup> 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 manual 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.

### **1.4 Organization of the Manual**

The Manual includes the following Modules:

1. Introduction: Training for Law Enforcement and Justice Officers on Dealing with Domestic Violence in Viet Nam
2. Understanding Gender Equality and Domestic Violence
3. The Legal Framework for Responding to Domestic Violence in Viet Nam
4. First Responders to Domestic Violence Cases
5. The Administrative Sanctioning System and Domestic Violence Cases
6. The Criminal Justice System and Domestic Violence Cases

The modules are intended to be practical, concrete and useful. Each module contains a summary of key issues to the topic; references to applicable Vietnamese laws, policies and practices; and examples of promising practices and international standards.

The training programme is based on a participatory and experiential learning model and uses a variety of training techniques, including warm up activities and ice-breakers, presentations and discussions, small group work, brainstorming, case studies, role-plays and simulations.

The training programme is designed for a 3-day training experience. The first day is designed to increase the participants' knowledge and understanding of the concept of gender and domestic violence. The second day will cover the legal framework for responding to domestic violence in Viet Nam. The last day is designed to highlight the respective roles and skills of local police as first responders to domestic violence situations, and is designed to also be beneficial to criminal investigators, procurators and judges.

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<sup>2</sup> 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".

## **Section 2: Setting the Context**

### **2.1 Domestic Violence in Viet Nam**

Domestic violence is a frequent and often deadly fact of life for many women in Viet Nam, as in the rest of the world. The media publishes a few of the more shocking cases, often the ones that are brought to the attention of the criminal justice system, but the majority of cases of domestic violence are never reported and often hidden from view. Many victims don't report the violence to the police or others because of feelings of shame, embarrassment, or fear. Marital rape is particularly invisible as very few, if any, cases are reported. Victims of domestic violence who do choose to report to the police may receive advice from the local police officer to stay with the abusive husband to keep the family together or have the matter referred to a reconciliation team who may place some of the blame for the violence on the woman. Victims who do go through the administrative or criminal justice system might be re-traumatized by that experience.

Domestic violence is a complex issue in Vietnamese society, as it is in every society. It is supported by strong cultural traditions and beliefs concerning family and traditional gender roles. In Viet Nam, formal equality between men and women has been established in the Constitution since 1945. However, men continue to generally hold dominant positions within and outside the household while women assume primary responsibility for housework and childcare. The belief that the husband can use violence as a legitimate means of educating or disciplining his wife is often used to justify violence as an effective way to maintain control over women.

In Viet Nam, the importance of family is emphasized in the Constitution. As in all societies, the family is seen as the fundamental and natural unit of society. To bolster healthy families, progressive marriages and the well-being of the family, family members are to treat each other with respect and dignity. Often, reconciliation of domestic violence situations focuses on restoring calm within the home and maintaining family unity over the safety of the woman. If the root of the violence is not addressed, 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.

#### **Statistics – Viet Nam**

Recently, the first ever "National Study on Domestic Violence against Women in Viet Nam 2010" was conducted and published in Viet Nam by the General Statistic Office (GSO) with technical assistance from the World Health Organization (WHO).

- This data shows that overall, 32% ever married women have experienced physical violence in their life and 6% had experienced physical violence in the past 12 months. Results show that physical violence starts early in the relationship and lessens with the age.
- Even though it is much more difficult for women to talk about sexual violence, as much as 10% of ever-married women reported in the interviews that they experienced sexual violence in their lifetime and 4% in the past 12 months. Furthermore, in Viet Nam, as in many other countries, women who report sexual violence almost always also report physical violence.
- The results also show high prevalence of emotional abuse: 54% of all women report lifetime emotional abuse and 25% report current emotional abuse.
- The prevalence rate of economic abuse for lifetime is 9%.
- Comparing partner and non-partner violence, women in Viet Nam are three times more likely to have experienced violence by partners rather than by someone else.

UNODC supports the conducting of research on the quality of criminal justice services available for victims of domestic violence in Viet Nam. Some of the preliminary findings include:<sup>3</sup>

- While most victims (65%) found it easy to report domestic violence to the police and considered the police to be polite (76%) and sympathetic (72%), nevertheless, many were not satisfied with the result of the police work (47%) and thought that the measures taken by the police were not strict enough (54%).
- In 83% of the cases, the police visited the house of the victim; however, in 34% of the cases the police suggested the victim to solve the problem herself inside the family, or to contact another agency, such as the

<sup>3</sup> "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.

Women's Union or reconciliation team.

- The services of legal aid were used only by 8% of the victims.
- In 77% of cases which involved reconciliation, the violence continued after reconciliation.

#### **Statistics – from other parts of the world<sup>4</sup>**

- Globally, on average, at least one in three women is beaten, coerced into sex or otherwise abused by an intimate partner in the course of her lifetime \*.
- Women aged 15-44 are more at risk from rape and domestic violence than from cancer, motor accidents, war and malaria according to World Bank data.
- Studies show that worldwide, between ¼ and ½ of all women have been abused by an intimate partner.
- Several global studies suggest that ½ of all women who die from homicide are killed by their current or former husbands or partners. In Australia, Canada, Israel, South Africa and the United States, 40% - 70% of female murder victims were killed by their partners, according to the World Health Organization.
- In many countries, domestic violence victims account for the single largest category of women seeking treatment in hospital emergency rooms.
- The cost of intimate partner violence in the United States alone exceed US\$5.8 billion per year: \$4.1 billion is for direct medical and health care services, while productivity losses account for nearly \$1.8 billion.
- In Canada, a 1995 study estimated the annual direct costs of violence against women to be Can \$ 684 million for the criminal justice system, \$187 million for police and \$294 million for the cost of counselling and training, totally more than \$1 billion a year.

#### **2.2 Multi-faceted Response**

Domestic violence is learned behaviour in which physical and psychological coercion is used to assert and maintain control over an intimate partner. It is often a cyclic pattern of behaviour which escalates in severity, endangering the lives and emotional well-being of victims and their children. Domestic violence needs to be taken seriously, and dealt with aggressively by the State.

In Viet Nam there is a serious effort to address domestic violence, reflected for instance in the recent enactment of The Law on Domestic Violence Prevention and Control in 2007. The government as a whole is responsible for preventing and controlling domestic violence. This requires a comprehensive,

coordinated and multi-faceted approach, including the creation of a culture that does not tolerate violence against women in any form. All relevant sectors of government and civil society should be involved in the prevention and control, including the local authorities, People's Committee, health sector, social services sector, education sector, justice sector, law enforcement sector, and mass organizations such as the Women's Union and the media.

As mentioned, domestic violence against women is embedded in and supported by social values, cultural patterns and practices. The professionals in these various government agencies and departments are not immune to such values and thus have not always regarded domestic violence with the same seriousness as other violence. Preventing domestic violence requires long term changes to entrench attitudes and traditional cultural assumptions about gender equality and gender roles

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<sup>4</sup> UN Commission of the Status of Women, 2000 and UNITE to End Violence against Women: UN Secretary-General's Campaign fact sheet.

## Coordinated community response

To end the cycle of domestic violence, a coordinated community response is required. Each part of the community has a role to play: the reconciliation teams, administrative and criminal justice systems, the civil law system, People's Committee, health services, including mental health, education system, media, and civil society groups.

While the justice sector must work with other sectors to effectively respond to the problem of domestic violence, the justice sector can play a substantial role in preventing domestic violence through ensuring the safety of victims of violence and holding the abusers accountable, by increasing victims access to justice and improving the treatment of victims by law enforcement and judicial officers.

### 2.3 The Need for an Effective Response by the Law Enforcement and Justice Sector

A legal framework exists to enable official police and justice sector responses to prevent domestic violence and to intervene effectively where violence does occur. The responses include criminal sanctions, administrative penalties and civil law responses, forbidden contact orders, and reconciliation teams. However, despite the fact that the administrative and criminal justice systems have been in place for some time, there has been a lack of response to domestic violence by these sectors. Often, only in the most serious of cases do they get involved. Traditionally, the justice system focuses on incidents of violence occurring between strangers. The introduction of family relationships into this traditional response poses many challenges for the police, criminal investigators, procurators and courts.

Domestic violence is still viewed by many as a private family matter. The response of the administrative and criminal justice system reflects this view. The common police approach in Viet Nam is to mediate and defuse family "disputes", and to avoid making arrests or detentions except in the most serious cases. Procurators see only the most serious domestic violence cases and are often reluctant to pursue domestic violence cases because of the difficulties presented by these cases, and the belief that they will have little success with the prosecution. The courts regularly share the view that these cases do not belong in the criminal courtroom, and are best handled through mediation or reconciliation. These traditional approaches leave the victim, the children and the public unprotected from the devastating consequences of domestic violence.

The justice sector's standard method of assessing whether the abuse amounts to an administrative violation or a crime generally views 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. Furthermore the method of assessing the seriousness of the violation is based on the degree of physical injury which often fails to take into account the nature and dynamics of violence in an intimate relationship.

More women will likely report the violence to the police if they know they will be treated with respect and dignity and have their complaints listened to in confidence. The more domestic violence is reported, the more seriously it will be taken by the authorities and the general public. Ignoring domestic violence only ensures that the cycle of violence will continue. Research demonstrates that without intervention, domestic violence increases in both frequency and severity. Therefore early intervention by the police provides the best way of protecting the victims, prevents the escalation of a pattern of abuse, reduces the rate of domestic homicide and serious assaults, and where possible, maintains family stability.

Globally, research shows that the justice system has a critical role to play in stopping domestic violence and several studies have indicated that arrests act as deterrents to domestic violence. The effective intervention by law enforcement and the justice sector professionals requires specialized techniques designed to protect the victim from retaliation by the abuser, allay the victim's fears of the criminal justice system and encourage the victim's cooperation with police, procurators and courts.

Effective intervention can contribute to:

- Reducing significantly domestic violence;
- Protecting the victim from additional acts of violence by the abuser;
- Protecting children or other family members from domestic violence or exposure to violence;
- Enhancing safety of the general public;
- Holding the abuser accountable for his violent actions;
- Creating a general deterrence to domestic violence in the community;
- Rehabilitating the abuser.

### **Proposed Agenda for the Workshop: Three Day training course**

Day	Time	Training Module	Objectives
<b>Gender equality and understanding domestic violence</b>			
Day One	AM	<b>Opening ceremony</b>	
	PM	<b>Module on gender equality</b> <ol style="list-style-type: none"> <li>1. Explanation of why we are discussing gender equality in a domestic violence training course</li> <li>2. The difference between sex and gender</li> <li>3. Discussing gender inequality and defining gender equality</li> </ol> <b>Module on understanding domestic violence</b> <ol style="list-style-type: none"> <li>1. Defining domestic violence</li> <li>2. Myths and realities</li> <li>3. Power and control wheel</li> <li>4. Root causes and consequences of domestic violence</li> <li>5. Cycle of violence</li> <li>6. Reasons for lack of reporting, barriers for victims</li> </ol>	<ul style="list-style-type: none"> <li>• to be familiar with the concept of gender equality</li> <li>• to be able to distinguish between the terms of "sex" and "gender"</li> </ul> <ul style="list-style-type: none"> <li>• to be able to define domestic violence</li> <li>• to identify myths and realities regarding domestic violence</li> <li>• to have a better understand of how domestic violence differs from stranger violence</li> </ul>
<b>Legal framework</b>			
Day Two	AM	<b>Module on the Legal framework</b> <ol style="list-style-type: none"> <li>1. Lecture on Vietnamese legal framework</li> <li>2. Case study exercise</li> <li>3. Lecture on legal proceedings</li> <li>4. Case study exercise</li> </ol>	<ul style="list-style-type: none"> <li>• to become familiar with the Vietnamese laws relating to domestic violence</li> <li>• to review the various options for responding to domestic violence</li> </ul>
	PM	<ol style="list-style-type: none"> <li>1. Lecture on legal proceedings</li> <li>2. Case study exercise</li> </ol>	
<b>Skills to deal with domestic violence cases</b>			
Day Three	AM	Choose the following key topics and develop a training plan-lecture /exercises based on the modules. Choose topics based on the backgrounds of the trainees <ol style="list-style-type: none"> <li>1. Initial response at the scene; Gathering evidence (focus on the different types of evidence in DV cases)</li> </ol>	<ul style="list-style-type: none"> <li>• to enhance the skills of law enforcement and justice sector professionals when they deal with domestic violence cases</li> </ul>
	PM	Choose the following key topics and develop a training plan-lecture /exercises based on the modules. Choose topics based on the backgrounds of the trainees <ol style="list-style-type: none"> <li>2. Initial response at the scene;</li> <li>3. Gathering evidence (focus on the different types of evidence in DV cases)</li> </ol>	

**MODULE 2**  
**UNDERSTANDING GENDER EQUALITY AND DOMESTIC VIOLENCE**





## **Module 2**

### **Understanding Gender Equality and Domestic Violence**

#### **Purpose:**

By the end of this session, participants will:

- Understand why it is necessary to be familiar with the concept of gender equality when dealing with domestic violence cases and to be able to distinguish between the terms of "sex" and "gender";
- To be able to define domestic violence and identify different kinds of abusive behaviours that constitute domestic violence;
- To be able to identify myths and realities regarding domestic violence;
- To be able to describe some of the ways in which domestic violence differs from stranger violence.

#### **Section 1: Understanding the Link between Gender Inequality and Domestic Violence**

As noted in the introduction, the focus of this training manual is on domestic violence that affects female victims. The fact is that the 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. 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.

In Viet Nam, the Government has ensured that there is a legal framework to address gender inequality and domestic violence. In 2006, the National Assembly of the Socialist Republic of Viet Nam passed the Law on Gender Equality and in 2007, it passed the Law on Domestic Violence Prevention and Control. The adoption of these two laws demonstrates Viet Nam's growing attention towards gender equality and domestic violence and the importance of gender equality in achieving the country's development goals.

However despite the legal framework, gender-based violence is a complex problem, with roots in attitudes and behaviours that are hard to change. As in many societies, including Viet Nam, the persistent attitudes and beliefs that see women as inferior to men and a culture of male domination socialize men and women to accept, tolerate and even rationalize domestic violence and to remain silent about such experience. It is essential that law enforcement and justice professionals understand these entrench attitudes and traditional cultural assumptions about gender equity and gender roles in their response to domestic violence. This module aims to develop a better understanding of the dynamics of domestic violence, the root causes of the violence and the concept of gender equality.

#### **Section 2: The Concept of Gender and Gender Equality**

##### **1.1 Key Terms**

###### **Gender :<sup>1</sup>**

Refers to the relations between men and women in society which arises out of the roles they play. These roles are socially constructed<sup>2</sup> and not physically determined. They can change over time.

###### **Sex :<sup>3</sup>**

Refers to biological and physical characteristics of men and women

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<sup>1</sup> Gender is defined in Article 5 of the Law on Gender Equality.

<sup>2</sup> Socially constructed means referring to the social interpretations and values assigned to being a woman or a man. The identity of men and women in any given society is socially and psychologically determined. Where people live together, culture will arise, and they will develop common values and rules to internalize these. Gender roles refer to roles that men and women are expected to play in society. Socialization teaches and reinforces these roles. These gender roles are by no means inevitable. They can change over time and across societies.

<sup>3</sup> Sex is defined in Article 5 of the Law on Gender Equality.

## Difference between "gender" and "sex"

Gender	Sex
Different roles and social aspect between male and female. Changeable	Different biological and physical aspect between male and female. Unchangeable
Product of society, culture, tradition, shaped by teaching and learning	Inborn
Varies between regions, historic periods	Universal: identical all over the world

Sex refers to the biological differences between women and men that we are born with. Usually we cannot change our sex.

Gender roles are not determined at birth and unchangeable, but shaped by the education of family, school, society, friends and the surrounding environment. So for example, child rearing is often classified as a female role, however it is a female gender role not a female sex role, as it can be done by both male and female. It is society that ascribes these roles. Roles are learned through observation and instruction. Society ensures conformity by example, penalty or persuasion. Those who do not conform may be punished or ignored, cut off in some way. Traditional concept of the role of men and women, shaped years ago, continues to be passed down. The values around gender change with time, activism and shifting opinions. Gender is a basis on which people are labelled and judged, just like class, race and religion.

### For example:

Gender	Sex
Child care	Pregnancy and child birth
Men are rational, women are emotional	Muscle mass / physical strength
Men are the bread winners in the family	Growing beards

## 1.2 Gender Stereotypes and Inequality

### What is gender stereotyping?

When we require or expect a person to act in a specific way because they are a man or a woman, this is often referred to as "gender stereotyping". Gender stereotypes are beliefs held about characteristics, traits and activities that are "deemed" appropriate for men and women. So for example, in Vietnam based on Confucian tradition, it was believed that men and women should possess certain qualities <sup>4</sup>.

Traditional concept of women	Traditional concept of men
Women should possess 4 qualities: <ul style="list-style-type: none"> <li>• Cong – hard working;</li> <li>• Dung – attractive appearance;</li> <li>• Ngon – appropriate speech;</li> <li>• Hanh – virtuous behaviour.</li> </ul>	Men were thought to be; <ul style="list-style-type: none"> <li>• Superior;</li> <li>• Had an obligation to educate the inferior, the wife and teach her to protect the honour of the family</li> </ul>
Traits of "yin" – the negative, darkness and softness	Traits of "yang" – the positive, brightness and hardness
Characteristics of "passivity", "piety", "submissiveness", "preserve family harmony".	Characteristics of "hot tempered", "aggressive", "authority", "easy to anger"

The gender stereotypes are reflected in various fields, such as marriage, family, politics and economy.

### Gender inequality

Gender is far from being neutral. The differences established between women and men tend to attribute greater importance and value to the characteristics and activities associated with what is masculine, thereby producing unequal power relationships. In most societies, the female gender has less power and fewer privileges and rights

<sup>4</sup> Diane Gardsbane, Vu Song Ha, Kathy Taylor, "Gender Based Violence: Issue Paper" Prepared for the UN Gender Programme Coordination Group, May 2010.

than the male gender. It is not our physical differences that define our unequal conditions, but our social norms and values.

### Did you know?

In the world, women:	In Viet Nam, women:
<ul style="list-style-type: none"><li>do 70% of the world workload</li><li>get less than 30% of the world income</li><li>70% of their work is not paid</li><li>own less than 1% of world properties.</li></ul>	<ul style="list-style-type: none"><li>represent 75% of the rural agricultural labour force</li><li>work 14 hours a day, including both outside and inside the home</li><li>get paid 20-40% less than men<sup>5</sup></li></ul>

According to Vietnam'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 woman" (article 5). It further defines gender discrimination as the acts of restricting, excluding, not recognizing or not appreciating the role and position of man and woman leading to inequality between man and woman in all fields of social and family life.

### 1.3 Gender Equality

#### What is gender equality?

Gender equality means that women and men are equal in position and opportunity to work and develop. Equality does not mean only ensuring women's interests but rather focuses on both sexes. Women and men should have equal conditions for realizing their full human rights and potential, to engage in and contribute to political, economic, social and cultural development, and to benefit from the outcomes.

*All citizens regardless of their sex have equal rights in all respects, political, economic, cultural, social and in family life.*

*Article 63 of the Constitution*

*Gender equality indicates that man and woman have equal position and role; are given equal conditions and opportunities to develop their capacities for the development of the community, family and equally enjoy the achievement of that development*

*- Article 5 of the Law on Gender Equality*

#### Promoting gender equality

Currently, most societies are based on systems where men have more financial and political power than women do. These are called "patriarchal societies". In these societies, most political and business leaders are men and men are considered to be the decision-making heads of families and households. This power is maintained by the belief that men are stronger, more capable and naturally more suited for leadership. Unequal access to education, skills, job opportunities and financial resources also maintain unequal power relations. Violence sometimes is used to maintain power and control.

At present, women are more disadvantaged than men in society at all levels. Therefore, action for gender equality tends to pay more attention to women than men in order to address gender imbalances. Promoting gender equality means ensuring that similar opportunities are available to both women and men and that society places the same values on both the similarities and differences between women and men and the different functions of each. Different measures might be needed for women and men to ensure that they are being fairly treated.

<sup>5</sup> UN Gender Briefing Kit.

### **Section 3: Defining Domestic Violence**

#### **3.1 Definition of Domestic Violence**

Domestic violence is any use of physical or sexual force, actual or threatened, in an intimate or domicile relationship. It:

- 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.

Domestic violence is intentional behaviour. The purpose of domestic violence is to establish and exert power and control over another. The violence is used to intimidate, humiliate or frighten the victim. Men most often use it against their intimate partners, which can include current or former spouses, girlfriends, or dating partners.

#### **Four types of domestic violence**

**Physical:**

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

**Emotional / Psychological :<sup>6</sup>**

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

**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 is not just one physical attack and it might not even involve a physical act. It 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 victim 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.

**The Vietnamese Law on Domestic Violence Prevention and Control (DVL) 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.

<sup>6</sup> There is no universally accepted definition of emotional abuse. Emotional or psychological violence is often the most difficult to identify for a number of reason. First, there are no outward signs of harm caused by emotional violence. Second, the tactics or behaviors 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**

- Includes such acts as corporal beating, ill-treating, torturing or other purposeful acts causing injuries to one's health and life.
- 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.<sup>7</sup>
- 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.<sup>8</sup>

## **Psychological / emotional violence**

- Includes behaviours that can severely affect a woman's mental health, including using insults, using curse words, threatening or other offending behaviours, controlling and prohibiting a woman to participate in social or business activities.
- Small scale studies indicate that emotional violence occurs at higher rates than physical violence, at **19% to 55%.**<sup>9</sup>
- A 2006 study of 2000 married women revealed that 25% of women experienced emotional violence in their families.<sup>10</sup>
- 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. One factor to consider is whether there is inequality between the husband and wife, and what is the power and control relationship between the couple.

## **Sexual violence**

- Includes acts such as forced sex.
- While there is little research on this type of violence, a 2006 survey conducted by the Parliamentary Committee for Social Affairs of the Vietnam National Assembly in 8 provinces and cities, up to 30% of women who responded had been forced into unwanted sex by their husbands.<sup>11</sup>
- Data from a counselling centre in Cua Lo, Nghe An Province indicates that 42 of 107 cases reported sexual violence.

## **Economic violence**

- 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% (165/1884) of clients have suffered from economic violence.

UNODC is undertaking research on the quality of criminal justice services available for victims of domestic violence in Viet Nam.<sup>12</sup> Amongst 900 interviewed women victims of domestic violence, the following forms of violence were reported:

<b>Forms of violence</b>	<b>%</b>
Threatening to hurt physically	83
Throwing something or hit with something that hurts or frightens	69
Pushing, grabbing, twisting arm or pulling hair in a way that really hurts or scares	64
Slapping, kicking, biting, or hitting with a fist	90
Strangling, trying to suffocate, burning or scalding	29
Using or threatening to use a knife / sword / gun	37
Using physical violence in some other way	38
Forcing or attempting to force to have sexual intercourse	36

7 Vung et al 2008, Luke et al 2007, UNFPA 2007, Loi et al 1999, cited in Issues Paper, supra note 4.

8 Mai et al 2004, cited in Issues Paper, supra note 4.

9 Vung et al 2009, UNFPA 2007, Thi and Ha 2006, cited in Issues Paper, supra note 4.

10 No. 2330 TT/UBXH 2006 cited in UNFPA 2007:22, cited in Issues Paper, supra note 4.

11 Nguyen et al 2008, cited in Issues Paper, supra note 4.

12 "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.

Touching sexually against the will	20
Exploiting economically	32
Harming or threatening to harm or kill children or someone close	33

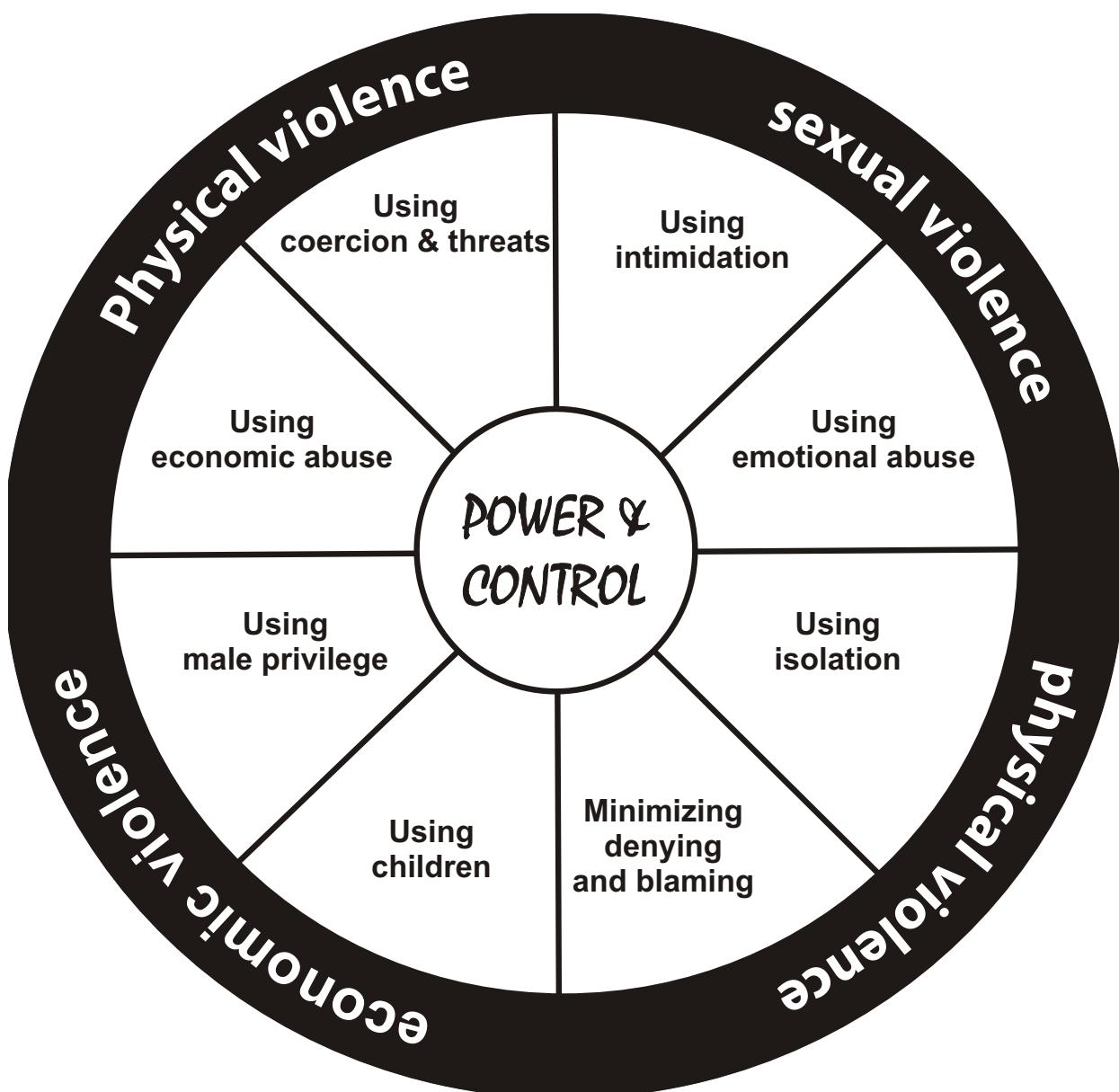
Almost all of these victims had experienced physical violence, most commonly been slapped, kicked, bitten or hit (90%). Over one-third of the victims had been forced, or attempted to force, sexual intercourse. Harm or threatening to harm or kill children or someone close is also common (33%). Nearly one-third of the victims said they had been exploited economically. During the interviews, the women mentioned that many husbands go out to work but do not give money to their wives to raise the children. Some men even asked their wives for additional money and beat them if they refused.

## 2.2 Understanding the Causes of Domestic Violence - Power and Control

Domestic violence is often a pattern of acts where the abuser uses various kinds of behaviours to gain power and control over their victims.

- Using intimidation:** Making her afraid by using looks, actions, gestures, smashing things, destroying her property, displaying weapons.
- Using emotional abuse:** Putting her down, making her feel bad about herself, calling her names, making her think she is crazy, playing mind games, humiliating her, making her feel guilty.
- Using isolation:** Controlling what she does, who she sees and talks to, what she reads, where she goes, limiting her outside involvement, using jealousy to justify actions.
- Minimizing, denying, blaming:** Making light of the abuse and not taking her concerns about it seriously, saying the abuse didn't happen, shifting responsibility for abusive behaviour, saying she caused it.
- Using the children:** Making her feel guilty about the children, using the children to relay messages, using visitation to harass her, threatening to take children away.
- Using male privilege:** Treating her like a servant, making all the big decisions, acting like the "master of the castle", being the one to define men's and women's roles.
- Using economic abuse:** Preventing her from getting or keeping a job, making her ask for money, giving her an allowance, taking her money, not letting her know about or have access to family income.
- Using coercion and threats:** Making and/or carrying out threats to hurt her, threatening to leave her, to commit suicide, to report her to welfare, making her drop charges, making her do illegal things.

The Wheel of Power and Control<sup>13</sup>



The behaviours described in the annotated Power and Control Wheel are not exhaustive. There are potentially unlimited examples of each of the tactics.

The Power and Control Wheel demonstrates the relationship between physical and sexual violence and the intimidation, coercion and manipulation of the wife and children that are often used by abusers. An abuser uses these tactics to reinforce the power and control established through physical and sexual violence. Even a single incident of physical violence or threat of physical violence may be sufficient to establish power and control over a partner. This power and control is then reinforced and strengthened by non-physical abusive and coercive behaviours. For example, a verbal attack following a physical attack carries the threat of another physical attack and thus may be sufficient to ensure the abusers power and control without additional physical violence.

<sup>13</sup> Developed by the Duluth Domestic Intervention programme.

Domestic violence is a pattern of acts. By themselves, the tactics described in the Power and Control Wheel may or may not be abusive. When these behaviours are used in conjunction with each other, however, they form a pattern of behaviours that ensure an abuser's control over his partner. The abuser's use of physical or sexual violence, or the threat of such violence, then gives power to these tactics. For example, a verbal attack by someone who has never been physically abusive will have a very different impact on the person who is attacked than a verbal attack by someone who had previously physically assaulted his partner or threatened to do so. Some of these behaviours may be criminal or administrative violations and some may not be criminal or administrative violations. While some of the tactics appear to be directed at children or property, these actions are designed to exert power and control over an abuser's partner.

#### **Section 4: Myths and Realities about Domestic Violence**

Efforts to respond to domestic violence can sometimes be hindered by common misconceptions or myths about domestic violence. Myths are commonly held beliefs or ideas that are not true. 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.

**Statement:** **Domestic violence is due to poverty or lack of education.**

Answer: False. 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.

**Statement:** **Domestic violence is a private issue of families.**

Answer: False. Violence against women and children violates the law. The Vietnamese legal framework includes: the Penal Code; the Ordinance on Dealing with Administrative Violations; and 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 and that the justice system will be involved until the violence ceases.

**Statement:** **Domestic violence is just a push, slap or punch – it does not produce serious injuries.**

Answer: False. Domestic violence is 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. It includes the repeated use of a number of tactics, including intimidation, threats, economic deprivation, isolation and psychological and sexual abuse. Physical violence is just one of these tactics. The various forms of abuse are used by men help to maintain power and control over their wives or girlfriends. Research shows that abusers usually escalate violent behaviour in frequency and intensity over time.<sup>14</sup>

**Statement:** **The wife is considered the property of the husband and the husband has the right to "teach" his wife.**

Answer: False. 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 is not the case now. Since Constitution of 1946, Viet Nam has protected the equality between men and women. Women and children are no longer to be considered the property of men.

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<sup>14</sup> According to statistics in the United States, 22-35% of women who visit medical emergency rooms are there for injuries related to ongoing partner abuse and that 30% of females murdered are killed by their husbands or male partners, compared to 6% of men.

**Statement:** **A wife who is victim of violence has many legitimate reasons for staying in a violent relationship.**

Answer: True. 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.

**Statement:** **Alcohol and drug use is a major cause of domestic violence.**

Answer: False. 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.

**Statement:** **Women are victims of domestic violence due to their "mistakes" - if she just behaved better this would not happen.**

Answer: False. No one deserves to be abused. Violence is never justified regardless of what the wife says or does. Women are beaten for reasons as ridiculous as the dinner was cold, the TV was turned to the wrong channel or the baby was crying. 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 behavioural 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 their faults.

**Statement:** **Men are victims of domestic violence as often as women are.**

Answer: False. Research shows that women are victims in as high as 95% of domestic violence cases. To the extent women do use physical violence, it is generally in self-defence. Reports of violence against men are often exaggerated because abusers will accuse their partners of using violence as a way to avoid or minimize their own responsibility. Particularly when discussing psychological abuse, often men respond that they are victims due to the "nagging" of their wives. In assessing whether domestic violence has occurred, a factor to consider is whether there is inequality between the husband and wife and what is the power and control relationship between the couple.

**Statement:** **Domestic violence against the wife has an impact on children.**

Answer: True. The fact is that children who witness domestic violence often suffer the same effects as if they themselves had been physically abused. Children experience emotional trauma of witnessing violence in the home, and they can suffer from anxiety, depression and poor performance in school. Research shows that children from violent homes have higher risks of alcohol and / or drug abuse, juvenile delinquency and are more likely to become victims themselves. They may also learn that when people abuse others, they do not get in trouble.

<b>Statement:</b>	<b>Men who abuse are violent because they cannot control their anger and frustration.</b>
Answer:	False. Domestic violence is intentional conduct, and abusers are not out of control. Their violence is carefully targeted to certain people at certain times and places. They generally do not attack their bosses or people on the streets, no matter how angry they may be. Abusers also follow their own internal rules about abusive behaviours. They often choose to abuse their partners only in private, or may take steps to ensure that they do not leave visible evidence of the abuse. They use acts of violence and a series of behaviours, including intimidation, threats, psychological abuse, isolation, etc to coerce and to control the other person. They choose their tactics carefully – some destroy property, some rely on threats of abuse, and some threaten children.
<b>Statement:</b>	<b>It is always best for families to stay together.</b>
Answer:	False. 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.

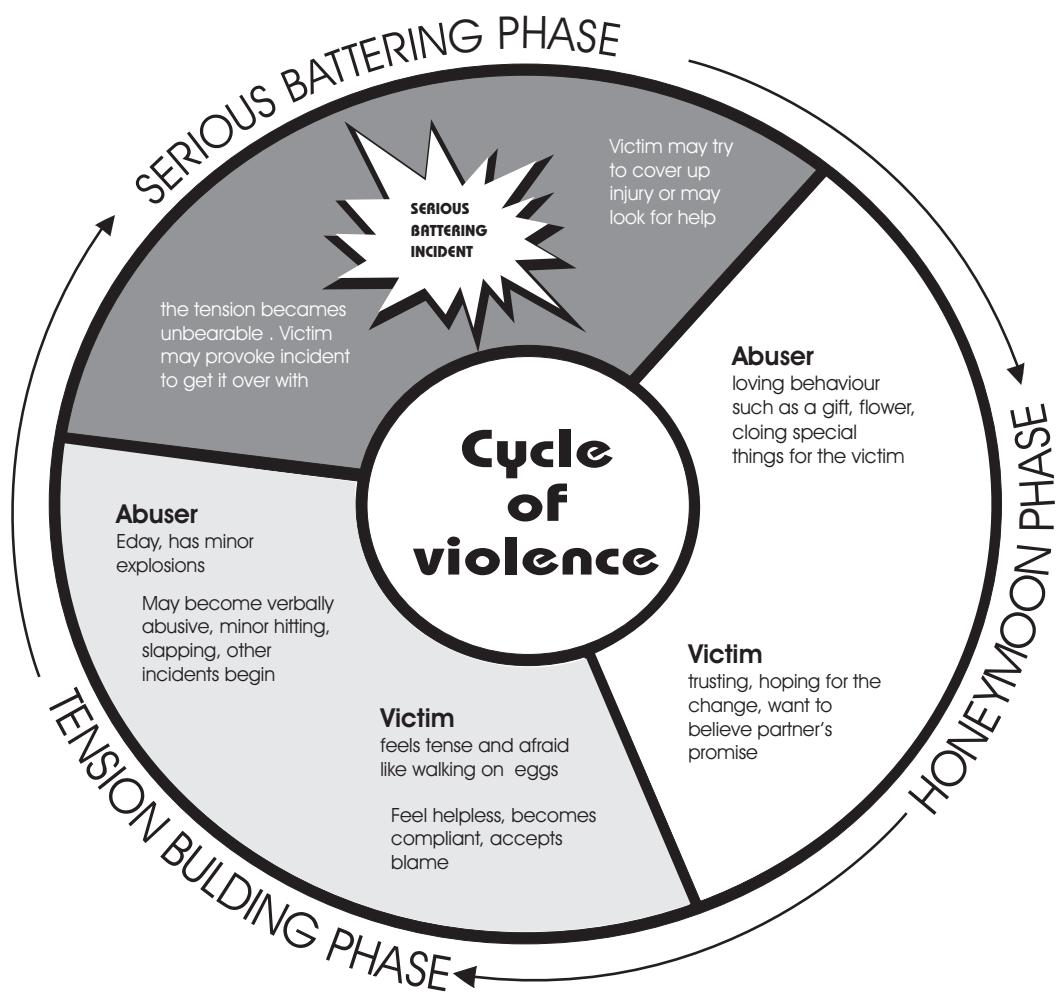
As you can see, there are many myths about domestic violence and these tend to reinforce stereotypes. In explaining the causes of domestic violence, the myths generally focus on blaming the victim or some other factor, such as alcohol, anger or a lack of education. As a result, these myths obscure the 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.

Because there are many reasons a victim may want or need to stay in a relationship, it may be useful to think of ways that the legal system can be changed to help women protect themselves while allowing them the freedom to stay in the relationship. A focus on the responsibility of the abuser is a critical part of any effective strategy for protecting victims and holding perpetrators accountable.

## Section 5: Understanding the Cycle of Violence

### **Cycle of Violence**

A comprehensive understanding of the cycle of violence helps the police and other justice professionals when they are assisting the victim. Often, before the first physical assault, the abuser uses control tactics, such as isolation of 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.



**Tension building phase** begins with anger, blaming and increased tension. The abuser becomes edgy, irritable, possessive, demanding and more prone to react negatively to any trivial frustration. Many women learn to recognise this tension building phase and try to control it by becoming nurturing and by attempting to "keep the peace". There may be bursts of verbal and physical violence. Also there is often a rapid increase in tension prior to a violent incident. The woman may use a variety of techniques, such as withdrawing, trying to accommodate the abuser, avoiding home or avoiding starting an argument, to break the intolerable tension.

*"When the rice cooks, turn down the flame"*

-Vietnamese proverb

The norm is that this stage is never reported to the police, or if it gets reported, the case is ridiculed. This encourages the abuser to proceed to the next stage. It calls upon the police to take seriously all violence related incidences when they are brought forward, regardless of how petty they may seem. Also, the woman often views the building rage in her husband as being directed toward her and internalizes the job of keeping the situation from exploding. If she does her job well, he will become calm; if she fails, it is her fault.

Violence phase is the explosion of violence from the abuser. For a woman who has experienced violence before, the mere threat of violence is disabling. However, the violence may consist of violent threats, slapping, hitting, and threats with weapons, threatening the children, sexual abuse or rape. The violence may be over in a moment or last for minutes or hours. There may be visible injuries, but often experienced abuser will leave no marks. Most

women are extremely grateful when the abuse ends. They might consider themselves lucky that it was not worse, no matter how bad their injuries are. They often deny the seriousness of their injuries and refuse to seek immediate medical attention.

Honeymoon Phase is the contrite and loving stage of the cycle. Following an intensive explosion of violence, the abuser is loving and calm. The abuser begs for forgiveness and promises to change. Abusers convince the victim and themselves that the promises are genuine. Underlying this is the belief that they were justified in their actions. 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. Police should recognise the temporary nature of the "honeymoon" and counsel the victim to make an informed decision. Tension building almost always starts again.

While many relationships involving violence do exhibit some type of cycle, it is important to be aware that violence relationships may not go through the cycle described above.

## **Section 6: Consequences of Domestic Violence**

### **6.1 Consequences of Domestic Violence**

Domestic violence can have devastating effect upon the victim, families and the society. Victims suffer physically, emotionally and financially. The violence threatens the stability of the family and negatively impacts all family members, including the children who witness the violence and grow up in a conflict-ridden, unhappy environment. Domestic violence negatively impacts the safety, health and social order of the community, and also negatively impacts the economy through the cost of medical expenses, sick leave, and victim's lost labour productivity.

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.

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.

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 syndrome<sup>15)</sup>

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<sup>15</sup> 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.

From UNODC's research<sup>16</sup>

As a consequence of the violence, 83% of the victims were physically injured. The most common injuries were bruises and contusions, cuts, scratches and burns, and head injuries. Almost all victims (98%) also suffered from psychological consequences. The most common psychological consequences are depression, fear, anxiety or panic attacks and difficulties in sleeping.

## 6.2 Reasons for Lack of Reporting of Domestic Violence

### Why victims might not report the violence

It is difficult to obtain a complete picture of the full extent of domestic violence as it often remains hidden. A wife who is being abused may endure the abuse for a long time before seeking help, while some victims never tell anyone about the abuse. A woman who is being abused may be reluctant, unable to talk about, or unwilling to report the abuse for many different reasons.

She may:<sup>17</sup>

- Be emotionally attached to the abusive partner.
- Have strong beliefs about keeping their relationship or family together.
- Fear that the abuser will retaliate against her or her loved ones.
- 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.
- Do not want the abuser to be removed from the home, go to jail, or have a criminal record.
- Do not believe that involving the police or the criminal justice system will stop the abuse.
- Do not believe that the police or the criminal justice system can help or protect them.

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

Victims of domestic violence generally face a number of barriers to escaping the abuser and accessing assistance, including the legal system.

Victims may not report the violence and suffer in silence.

- Violence occurs in the context of an intimate and ongoing relationship and the victim may be reluctant to seek help from the police or other authorities due to shame or stigma, economic dependence on the perpetrator, or fear of revenge.

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

- In such cases, the police or 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 police 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.

16 Draft "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.

17 This list is adopted from the Domestic Violence Handbook for Police and Crown Prosecutors in Alberta. Alberta Justice. 2008.

- Police or local authorities might believe in the myths about domestic violence and this has implications for the way the police take statements, manage cases and interact with the victim.

If victims do seek assistance and the investigation is on-going, the woman may withdraw the complaint.

- Due to the nature and dynamics of domestic violence, many victims seek to withdraw their complaint soon after it is made. When violence takes place, victims may report the violence to stop the violent behaviour. During the honeymoon phase, the victim may withdraw the complaint due to expressions of remorse from the abuser, pressure or threats, concerns about their financial situation or pressure from family members.

Identifying and responding appropriately to domestic violence cases requires that the special dynamics of the violence and the special vulnerabilities of the victim are understood and taken into account. Where the victim does seek assistance, there must be an effective and efficient legal response that places primacy on protection of the victim and ensures that victims are dealt with in a sensitive manner. If the abuser is not held accountable for his actions, his sense of dominance and power are reinforced, and the victim is at risk of increased violence in the future.

### **Section 7: 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. The victim's behaviour is often a way of ensuring survival.
9. Domestic violence is underreported for a number of complicated reasons.
10. Understanding the dynamics of domestic violence and barriers to assistance experienced by victims will assist law enforcement and justice officers to respond more effectively to domestic violence cases.

**MODULE 3**

**THE LEGAL FRAMEWORK FOR RESPONDING TO DOMESTIC VIOLENCE  
IN VIET NAM**



**UNODC**  
United Nations Office on Drugs and Crime



## Module 3

### The Legal Framework for Responding to Domestic Violence in Viet Nam

#### Purpose:

By the end of this session, participants will:

- Be able to list the national laws relating to domestic violence;
- Be familiar with the various legal procedures in place to respond effectively to domestic violence;
- Be familiar with the roles and responsibilities of other agencies in preventing and controlling domestic violence.

#### Section 1: Relevant International Standards

##### **1.1 International Legal Obligations**

Domestic violence is a human rights issue. The rights violated by domestic violence include core fundamental rights that are protected under international law, such as the right to life and bodily integrity and the freedom from torture and other cruel, inhumane or degrading treatment. Human rights are claims that every individual has on the society in which she or he lives and do not depend on gender, race, class or status. A woman is as much entitled to live free from harm as a man, simply by virtue of being human.

#### **General International instruments:**

**UN Universal Declaration of Human Rights** (1948) recognizes that all human beings are born free and equal in dignity and that everyone is entitled to all the rights and freedoms in the Declaration, without distinction with regard to race, colour, sex, religion, political or other opinion, national or social origin, property, birth or other status.

**International Covenant on Civil and Political Rights** (1966) provides that every human being has the inherent right to life and that no one shall be arbitrarily deprived of his or her life and further recognizes the right of men and women of marriageable age to marry and to found a family and that no marriage shall be entered into without the free and full consent of the intending spouse.

**Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (1984) provides that States have an obligation to prevent torture committed by private actors. Torture is severe mental or physical pain or suffering that is intentionally inflicted either by a State actor or with the consent or acquiescence of a State actor for an unlawful purpose.

#### **A word about international instruments**

International instruments include:

- Treaties, such as covenants, conventions, statutes, protocols, are legally binding on those States who have become States Parties by ratifying the treaty, and
- "Soft law" instruments such as declarations, principles and guidelines, have no legal binding effect. However they have been adopted by the international community and represent broad consensus on a further set of rules that provide details and guidance to States.

Governments who ratify treaties have to put into place domestic measures and legislation compatible with their treaty obligations and duties.

#### **Viet Nam is a State Party to:**

- The International Covenant on Civil and Political Rights (acceded 1982)
- The International Covenant on Social, Economic and Cultural Rights (acceded 1982)
- The Convention on the Elimination of All Forms of Discrimination Against Women (ratified 1982)
- The Convention on the Rights of the Child (ratified 1990)

## **1.2 International Instruments Regarding 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.
- 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 in 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 Commission on Crime Prevention and Criminal Justice, May 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.

**1.3 International Standards Specific to Law Enforcement and Justice Sector Professionals**

As State actors, law enforcement officials, procurators and judges, have a responsibility to promote, protect and implement the fundamental rights of all individuals. They 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 by private persons. In the conduct of these duties, the international community has developed codes of conduct and guidelines for law enforcement and justice sector professionals.

**UN Code of Conduct for Law Enforcement Officials**

- Police are to serve the community by protecting all persons from illegal acts, consistent with the high regard of responsibility required by their profession.
- In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

**UN Guidelines on the Role of Prosecutors**

- Prosecutors are to perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.
- Prosecutors are to carry out their functions impartially and avoid cultural, sexual or any other kind of discrimination.
- All matters in their possession are to be kept confidential, unless the performance of duty or the needs of justice require otherwise.
- Prosecutors should consider the views and concerns of victims.

## **UN Basic Principles on the Independence of the Judiciary**

- The judiciary is to decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.
- The judiciary is required to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

## **Section 2: Legislative Framework in Viet Nam**

### **2.1 Overview of the Legislative Framework in Viet Nam**

A number of Vietnamese laws provide the legal framework in which the State 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.

Depending on the form of violence and the severity of the injury, the administrative and criminal laws are to control and punish violent and abusive behaviour which, of course, includes violence that occurs within the context of the family. However with the increasing recognition that existing laws and procedures often do not adequately address the unique characteristics of domestic violence, a separate domestic violence law has recently been enacted: the Law on Domestic Violence Prevention and Control, 2007. This Domestic Violence Law provides for explicit protection from violence within the family and provides for preventative and support measures. While the new Law on Domestic Violence Prevention and Control 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.

Taken together, all of these various laws provide for a comprehensive approach: the new Domestic Violence Law promotes greater emphasis on support and protection to victims; and the criminal and administrative laws focuses on sanctioning abusers.

<b>Promoting Gender Equality</b> <i>Constitution; Law on Gender Equality; Law on Marriage and Family</i>	
<b>Holding abusers accountable</b> <i>Penal Code;</i> <i>Ordinance on Administrative Violations</i> <i>DVL Decree 110/2009</i>	<b>Protection and support to victims</b> <i>Law on Domestic Violence Prevention and Control</i>

The legislative framework provides for a multi-faceted response to preventing, combating and sanctioning domestic violence and involves various government agencies and mass organizations. These include the Ministries of Culture, Sport and Tourism; Health; Labour, War Invalids and Social Affairs; Education and Training; Information and Communication; as well as the Ministry of Public Security; Ministry of Justice; the Women's Union; and the Fatherland Front Committees. Given that this manual is for strengthening the capacity of the law enforcement and justice sectors to respond to domestic violence, the focus will be on the relevance of these laws to the first responding law enforcement authorities such as local police and other first responders, as well as investigating bodies, procuracies and the courts.

The law enforcement and justice sector not only have an obligation to hold the abuser accountable, they also have responsibility to ensure protection and support to victims of domestic violence.

### **2.2 The Broad Legislative Framework Promoting Gender Equality**

Before focusing on the Domestic Violence Law and its decrees, the Ordinance Dealing with Administrative Violations and the Penal Code, this section will mention briefly other relevant laws. As previously discussed in the earlier

module, given that the overwhelmingly number of victims of domestic violence are female, the manual focuses on the root cause of domestic violence: gender inequality.

#### **Constitution 1992, amended by some articles of Resolution 51/2001/QH10 dated on December 25, 2001**

The Constitution is the supreme law of the country and all domestic laws must comply with the principles contained therein. Therefore in applying laws such as the Penal Code and the Law on Domestic Violence Prevention and Control, it is important to bear in mind the key principles recognised in the Constitution, particularly the concept of gender equality.

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, honor 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).

#### **The Law on Gender Equality, 2006**

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 to the law enforcement and justice sectors 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).

#### **Law on Marriage and Family, 2000**

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 honor 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, including the law enforcement and justice sectors, are to promptly stop and severely handle those who commit acts of violating the Law on Marriage and Family (article 4).

#### **Civil Code, 2005**

The Civil Code contains some provisions by which the victim of domestic violence can claim compensation for damages. The law enforcement and justice sectors may be in a position to inform the victim of her rights to compensation.

### **2.3 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:

- (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, honor 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 member's 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. The decree includes the following forms of sanctions (article 4):

Principle sanctioning forms:

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

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:

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 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**

- (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. 08<sup>1</sup> deals with counselling and advice, expression of criticism in the communities, the application of forbidden contact decisions and shelters.
- Decree No. 19<sup>2</sup> deals with temporary detention of persons by administrative procedure.
- Decree No. 110<sup>3</sup> deals with handling administrative violations for domestic violence acts.

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 or criminal investigation agency 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.

Article 12 provides that any perpetrator who violates a forbidden contact decision shall be penalized in accordance with the provisions of law for administrative offences.

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.

1 Decree No.08/2009/NĐ-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 4/02/2009t

2 Decree 19/2009/NĐ-CP dated 19/02/2009

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

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.

Details are provided in the module 6 on administrative violations.

## **2.4 Laws Relating to Administrative Punishment**

One way of sanctioning perpetrators for acts of domestic violence is by applying administrative law. The recent Law on Domestic Violence Prevention and Control and its subsequent Decrees, No. 08 and No. 110, provide for additional administrative sanctions, such as one for violating the forbidden contact order and the administrative sanction referred to in article 43 regarding frequent abusers who continue to abuse after warnings and reprimands and which do not amount to criminal behaviour.

### **Ordinance on Dealing with Administrative Violations, 2002**

The Ordinance on Dealing with Administrative Violations 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 honor 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 honor 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;
- Forceable restoration of the initial state altered due to the administrative violation;
- Forceably 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.

## **2.5 Laws Relating to Criminal Sanctions**

### **Penal Code, 1999**

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 police, criminal investigative officers, prosecutors and judges that would apply to domestic violence against women are:

<b>Article 104 - intentionally inflicting injury on or causing harm to the health of other persons</b>	<b>Article 151 ill-treating or persecuting of grand-parents, spouses, children, grandchildren, etc</b>
<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"> <li>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.</li> <li>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.</li> <li>Where infirmity rate is between 31-60% or 11-30% with an aggravating factor as listed above - between 2-7 years of imprisonment.</li> <li>Where infirmity rate is above 61% or between 31 - 60% with an aggravating factor as listed above -between 5-15 years of imprisonment.</li> </ol>	<p>There are two main elements:</p> <ol style="list-style-type: none"> <li>ill treatment or persecution of family member;</li> <li>either causing serious consequences or having already been administratively sanctioned for acts but repeating their violations.</li> </ol> <p>The Inter-circular No 01/2001 provides that:  “Ill-treatment and persecution” are understood as the maltreatment in terms of food, clothing, accommodation in daily life activities against relatives, such as scolding, forceable abstention from eating, drinking, forceable 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 honor, undergoing spiritual suffering or getting injured, damaging their health.</p>

*Some notes on article 104*

- *The victim's consent is required to proceed with criminal investigation where the infirmity rate is under 31%.*
- *Where the infirmity rate is 31% and over, the police, investigating officers and procurators are to proceed with criminal charges notwithstanding the victim's agreement.*
- *Police, investigating officers and procurators 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".*
- *Need of medical certificate which documents infirmity rate.*

*Some notes on article 151:*

- *The victim's consent is not required.*
- *Medical certificate is not required.*
- *This offence can involve an isolated act of ill-treatment where it results in serious consequences.*
- *This offence can involve a pattern of repeated and persistent abuse as "ill-treatment" or "persecution".*
- *There is no need to prove that the accused intended to cause injury or health damage.*
- *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.*

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**

<b>Injury</b>	<b>Infirmity Rate</b>
Scarring in lower parts of the throat, causing difficulties to speak and swallow	41-45%
Throat injuries causing difficulties in swallowing	21-25%
Loss of hearing in one ear	25%
Loss of function in right thumb	30%
Loss of function in left thumb	20%
Cutting off two limbs; - From below shoulder - From below elbow	95% 85%
Cutting of a leg from below the knee	60%
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%
More than 6 broken ribs with serious consequences on respiration	41-45%
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%
Blindness (both eyes)	91%

Broken nose bridge - Without impacts on respiration/ smelling - Clear consequences on respiration/ smelling	10% 25-30%
Burn scars in elbows, limiting movement	26-30%
Burn scars in hands and fingers, leading to dysfunction	41-45%
Burn scars on feet, leading to difficulties in moving	21-25%

#### Other 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 121 – Humiliating other persons**

(1) Those who seriously infringe upon the dignity or honor 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 honor 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, honor, 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 intimated 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**

1. 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 denunciators 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.*

## **Section 3: Legal Procedure**

### **3.1 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.

Possible actions	Authorities / agencies involved	Issues to consider
<b>Where domestic violence act is not serious enough to warrant administrative or criminal sanction:</b>		
<b>Reconciliation</b>	Grassroots reconciliation teams; commune-level 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><i>The Ordinance on Organization and Activities of Reconciliation at the Grassroots, 1998 and Decree 160 stipulates that reconciliation is to deal with minor violations of law and minor disputes.</i></p> <p><i>Reconciliation can be used where the victim does not request or has withdrawn her request for prosecution or in which the Procuracy or the Court does not continue the proceeding or in which the offender is not administratively sanctioned.</i></p> <p><i>Authorities 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>Authorities 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>
<b>Community advice and criticism</b>	Head of the village / community leader People's Committees shall assist and facilitate community heads	<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>
<b>Where domestic violence is serious enough to warrant administrative or criminal sanction:</b>		
Determine if administrative sanctions apply	Police, Chairs of People's Committee at 3 levels (commune, district and province), Border Guard, MOCST inspectorates	<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><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><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 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. Authorities 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.</i></p>
<b>In every case of domestic violence:</b>		
Determine if a forbidden contact order or decision should be made	Chair of People's Committee, Courts	<p><i>Request in writing of the victim (police could assist this) or by a competent agency, which could include the police, i.e. police 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).</i></p>
Determine if temporary detention of person by administrative procedure (Decree 19)	Chairs of People's Committees, urban police chiefs, district police chiefs, heads of provincial Department of Public Security, heads of mobile police units	<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>

### 3.2 Determining the Thresholds: Criminal, Administrative Sanctions or Informal Measures

The above chart sets out the possible actions for law enforcement and justice sector officers 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
<b>Physical Violence:</b> for example, corporal beating, ill-treating, torturing or other purposeful acts causing injuries to one's health and life			
<b>Criminal</b> (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. (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 honor; or victim's mind is in a state of "wretchedness". (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. (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.	<b>Administrative</b> (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.	<b>Community criticism</b> (1) If level of injury is none to minor, but this is a repeat incident within 12 months after the reconciliation Frequency: first incident (2) Where this is the first reported incident and the level of injury is too serious for reconciliation but not serious enough for administration. (2) Frequency: if reconciliation and community criticism have already been done but the domestic violence continues, then administrative sanctions should apply. 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	<b>Reconciliation</b> Level of injury: none to minor Frequency: first incident

**Psychological Violence**, for example, insulting or other intended acts meant to offend one's human pride, honor 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*

Criminal	Administrative	Community criticism	Reconciliation
If proceeding under article 121: humiliating other persons, the injury is defined as seriously infringing upon the dignity or honor. 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.  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 honor; or victim's mind is in a state of "wretchedness".	In situations where perpetrator infringes upon the dignity or honor but not reaching the seriousness for criminal offence.  Decree 110 provides further details and examples of the types of acts that should be administratively sanctioned. Some examples are:  Regularly intimidating family member by images, animals or objects that she is scared of (art 10(2)(d)).  Disclosing documents having private secret with the purpose of infringing upon someone's dignity (art 11(2)(a)).  Forcing one to take off their clothes in public (art 11(2)(d)).	After reconciliation and within 12 months again of emotional abuse behaviour, for example swearing	Minor emotional abuse act such as swearing several times

**Sexual Violence**, for example, forced sex by husband with wife  
*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.*

Criminal	Administrative	Community criticism	Reconciliation
If proceeding under article 111, this can apply in a number of situations.  (i) Using violence to force sex, such as punching, beating, striking, slapping, when the victim does not want to have sex.  (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.  (iii) take advantage of the victim's state of being unable to defend herself or resort to tricks in order to have sexual intercourse  If proceeding under article 113, forcible sexual intercourse, this might apply to spouses as the wording is victims who are dependent on the perpetrators.	Decree 110 provides further details and examples of the types of acts that should be administratively sanctioned. Some examples are:  Using violence in marital sexual intercourse without wife's consent (art 12(3)(e)).	Not used in these serious cases.	Not used in these serious cases.

**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

Criminal	Administrative	Community criticism	Reconciliation
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.  Article 152 also provides that those who have already been administratively sanctioned for such acts but repeat their violations.  Article 143 may also be applied here, destroying or deliberately damaging property.	Decree 110 provides further details and examples of the types of acts that should be administratively sanctioned. Some examples are:  Not permitting family member to use common property for a legitimate purpose (art 16(1)(a)).  Strictly controlling financial resources of family in an attempt to make the family member become financially independent (art 16(1)(b)).  Smashing / demolishing one's own property in an attempt to create psychological pressure on family member (art 16(1)(d)).  Forcing one to overwork or do hard and hazardous work (art 16(2)(c)).	After reconciliation and within 12 months again of financial abusive behaviour or any other kind of abusive behaviour.	Minor financial abuse act such as harassing wife to overwork.

## **Section 4: Responsible Agencies**

### **4.1 Responsible Agencies**

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

This training manual focuses predominately on the law enforcement and justice sectors and their role in the prevention and responses to domestic violence against women. The roles of the relevant law enforcement and justice sector agencies are set out below and will be covered in more detail in the next modules.

- Role of the Police. It is the responsibility of the local police to prevent crime, maintain public order and enforce laws. Police are often called upon to intervene when an act of violence is in progress, or shortly after

it has taken place. It is their duty to effectively investigate all alleged incidents of violence and conduct all investigations in a manner that respects the rights and needs of all the parties involved.

- **Role of Investigating Bodies.** Investigators become involved where the unlawful conduct is considered to be criminal. The investigators conduct investigations, gathering and preserving evidence according to prescribed investigative procedures. They identify the unlawful activity by examining facts or circumstances of an incident, and identifying the enforcement option appropriate to the facts or circumstances.
- **Role of the Procuracy.** Procurators play a crucial role in the administration of justice. They are the nexus between the police and the courts. Promoting respect for and compliance with the rule of law, they contribute to a fair and equitable criminal justice system which protects citizens.
- **Role of the Courts.** Judges have an essential role in addressing domestic violence. In conducting criminal trials, judges can ensure protection and respect for the victims, ensure due process to the accused and impose effective sanctions on those found guilty. Through their judgments, judges can send a clear message to the community that domestic violence against women will not be tolerated. The court staff also has an important role in building court capacity to support victims in participating in the criminal justice process. Their efforts can increase the accessibility of court services, facilitate communications among different branches of the court, enhance the efficiency of court procedures and create a safe environment for victims and witnesses.
- **Role of the People's Committee.** The People's Committee has the responsibility to carry out preventing and controlling measures to crimes, social evils and other breaching acts, including carrying out decisions on handling administrative violations<sup>4</sup>. The People's Committee receives complaints and denunciations and can determine whether to settle the matter through reconciliation; community advice and criticism, administrative punishment; or refer the matter to the police for criminal investigation. The People's Committee also plays an important role in providing public legal education.
- **Role of the Judiciary Agencies.** The Ministry of Justice is responsible for State management of reconciliation tasks at the grass root level and directing the People's Committees at all levels in the performance of this task. At the local level it is the judiciary committee officers that provide advice on family issues at the grass root level to assist in the prevention and control of domestic violence.<sup>5</sup> While it is the head of the village that organizes the communal meeting to collect comments and criticisms of the community and invites concerned people, the judiciary officers will provide guidance.

The law enforcement and justice sectors must work together to ensure effective responses. The new Law on Domestic Violence provides that persons who discover domestic violence acts shall report these to the nearest police station or to the commune People's Committee or community leader. The People's Committee should consider involving the police in all domestic violence situations, to assist them in assessing the nature of the behaviour and whether it meets the criminal or administrative thresholds. The police can also then assist in the gathering of evidence and interviewing the victims, abuser and witnesses and ensuring comprehensive analysis of the situation. The People's Committee and police are required to record all administrative sanctioning decisions, including those for domestic violence acts. When the community leader is involved, he or she should send a written report of the meeting to the judiciary society civil service. The police, procurators and judges should ensure that they have the full record when they have a case file before them. Inviting the local police and local justice officers such as procurators and judges to these communal meetings can add weight to the message of the community that they no longer tolerate domestic violence.

The next modules will look at the various law enforcement and justice sector responses to domestic violence in more detail and the various measures available to them to ensure accountability of the perpetrator and the safety of the victim.

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<sup>4</sup> Law on Organization of People's Council and People's Committees

<sup>5</sup> Ordinance on organisation and operation of grass root reconciliation

## **4.2 Importance of a Coordinated and Integrated Approach**

As previously discussed, domestic violence is a social problem that must be dealt with in a holistic, integrated manner. Many studies stress the importance of a co-ordinated and comprehensive approach to the problem, involving all relevant agencies, organizations and individuals.

While this training manual focuses on the law enforcement and justice sectors, it has been emphasized that these sectors are part of the larger systemic response to domestic violence. Coordination can take place on a number of levels. The law enforcement and 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.

For instance, the police and criminal investigators must work closely with the medical personnel who prepare the medical certificates indicating the percentage of the infirmity rate. Inter-Circular (No. 12/1995) sets out a long and complex table of what infirmity rates is attributed to what injury and long term consequences of injuries. This assessment requires the expertise of the medical professionals. However the police and People's Committee members who are primarily the first responders to scenes of domestic violence need to be aware of how to do a correct first assessment of the injuries to ensure the appropriate referrals are made to the forensic examiners.

The law enforcement and justice sectors also need to coordinate with each other in order to be effective in meeting the needs of victims, offenders and communities. In Viet Nam, the law enforcement and justice sector broadly includes not only the police, criminal investigators, procurators and judges, but also members of the People's Committee and judicial officers who provide advice on family issues at the grass root level to assist in the prevention and control of domestic violence. They can ensure the effectiveness of each other by sharing information and coordinating resources. For example, the People's Committee, in coordination with the Vietnam Fatherland Front provides emergency support to victims and counselling, as well as involved in social measures such as community criticisms and reconciliation. Police need to cooperate with People's Committees and community leaders at the commune level to manage and maintain records on domestic violence in order to ensure that persistent and repeated acts are taken into account when determining the appropriate response.

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.

### **Good practice**

Countries have developed special inter-agency guidelines, protocols and referral mechanisms on how to handle domestic violence cases which involve health care workers, counsellors, mediators, police, prosecutors and judges. Many countries have also set up inter-agency coordinating committees.

## ANNEXES

### 1. The Law on Domestic Violence Prevention and Control, 2007

NATIONAL ASSEMBLY

SOCIALIST REPUBLIC OF VIET NAM  
Independence - Freedom - Happiness

Law No.: 02/2007/QH12

#### LAW ON DOMESTIC VIOLENCE PREVENTION AND CONTROL

Persuant to the 1992 Constitution of the Socialist Republic of Viet Nam, a number of Articles of which had been amended and added in line with the Resolution No. 51/2001/QH10;  
The National Assembly, hereby, promulgates this Law on Domestic Violence Prevention and Control.

#### Chapter 1 GENERAL PROVISION

##### Article 1. Scope of Regulation

1. This Law regulates the prevention and control of domestic violence, protecting and assisting the victims of domestic violence; the responsibilities of individuals, families, organizations, institutions in domestic violence prevention and control and dealing with the breach of the Law on Domestic Violence Prevention and Cotrol.
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. Domestic violence acts

1. The acts of domestic violence consist of:
  - 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, honor 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 obligations in the relationship between grandparents and grand children, between parents and children, between husbands and wives as well as among brothers and sisters.
  - 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' incomes to make them financially dependent;
  - i. Conducting unlawful acts to turn other family members out of their domicile.
2. The violent acts stipulated in paragragh 1 of this Article shall also be applicable to family members in cases of divorcees or living together as husband and wife without marriage registration.

##### Article 3. Principles of domestic violence prevention and control

1. Taking combined and integrated measures to prevent and fight domestic violence with preventive measures as key and special attention paid to communication and education on family values, counselling and reconciliation in line with the fine traditional and cultural practices of Viet Nam.
2. Domestic violence acts must be timely discovered, stopped and dealt with in accordance with laws.
3. Victims of domestic violence must be timely protected and assisted in accordance with their actual conditions and situation, and the national socio-economic situation; giving priority in protecting the legal rights and benefits of children, elderly people, disabled people and women.
4. Promoting the role and responsibility of individuals, families, communities, institutions and organizations in preventing and controlling domestic violence.

#### **Article 4. Obligations of persons committing domestic violence**

1. Respecting lawful community interference, stopping immediately violent acts against family members.
2. Complying with decisions of the authorized institutions and organizations.
3. Timely sending the victims for first aid and medical treatments; taking care of the victims of domestic violence unless the victims refuse these offers.
4. Compensating for the damages and losses caused to the domestic violence victims when required in accordance with the Law.

#### **Article 5. Rights and obligations of domestic violence victims**

1. Victims of domestic violence shall have the following rights:
  - a. To request the authorized institutions, organizations and individuals to protect their lives, dignity and other rights and legitimate benefits
  - b. To request the authorized institutions and individuals to apply measures to prevent, protect and forbid contact as stipulated by this Law.
  - c. To be provided with medical services as well as psychological and legal advice;
  - d. To be provided with temporary domicile which shall be kept confidential as well as with other information that is regulated by this Law;
  - e. Other rights stipulated by laws.
2. Victims shall be obliged to provide information relating to the domestic violence to the authorized individuals, institutions and organizations when required

#### **Article 6. State policies on domestic violence prevention and control**

1. The State shall allocate an appropriate budget for domestic violence prevention and control activities.
2. Encouraging institutions/organizations and individuals to provide financial support for domestic violence prevention and control; developing the domestic violence prevention models and assisting the victims.
3. Encouraging research and production of literature and art works on the domestic violence prevention and control.
4. Organizing and assisting the training of officials involved in domestic violence prevention and control.
5. Persons directly involved in the fight against domestic violence shall be rewarded for their good contributions and given proper entitlements in accordance with laws in return to resulting losses/damages to their health, lives and properties.

#### **Article 7. International cooperation in domestic violence prevention and control**

1. The State encourages international cooperation in domestic violence prevention and control on the basis of equality, respect for sovereignty and compliance with national and international laws.
2. International cooperation activities include:
  - a. Developing and implementing programmes/projects and activities to prevent and fight domestic violence;
  - b. Joining international organizations; signing, acceding to and implementing the related international treaties and agreements on domestic violence prevention and control;
  - c. Exchanging information and experiences in domestic violence prevention and control.

#### **Article 8. Acts strictly forbidden**

1. Domestic violence acts defined in Article 2 of this Law.
2. Forcing, provoking, urging and enabling other persons to commit domestic violence acts
3. Using and diffusing information, images and sounds to provoke domestic violence acts
4. Revenging or threatening to revenge the people who help the victims of domestic violence, discover, report and prevent the domestic violence acts.
5. Obstructing the discovery, reporting and settlement of domestic violence acts.
6. Making use of domestic violence prevention and control to make profits or to carry out other illegal activities.
7. Complicity, covering up, avoiding settlement and mis-settlement of domestic violence acts and non-compliance with the Law.

## **Chapter II** **PREVENTION OF DOMESTIC VIOLENCE**

### **Part 1**

#### **INFORMATION AND COMMUNICATION ON DOMESTIC VIOLENCE PREVENTION AND CONTROL**

##### **Article 9. Objectives and requirements of information and communication on domestic violence prevention and control**

1. Information and communication on domestic violence prevention and control, are meant to change perception and behaviour related to domestic violence acts in order to gradually eliminate domestic violence as well as to raise awareness of good traditions and morality of the Vietnamese people and families.
2. Information and communication on domestic violence prevention and control must meet the following requirements:
  - a. Accurate, specific, simple and realistic;
  - b. Suitable to specific cases, qualification, age, gender, tradition, culture, religion and ethnic identity;
  - c. No impact on the gender equality, pride and honor of the victims and other family members.

##### **Article 10. Contents of information and communication on domestic violence prevention and control**

1. Policies and laws on domestic violence prevention and control, gender equality, rights and obligations of family members.
2. Good traditions and moral standards of the Vietnamese people and families
3. Negative impacts of domestic violence.
4. Measures, models and experiences in domestic violence prevention and control.
5. Knowledge of marriage and family issues; behavioural skills, cultural family building.
6. Other elements related to domestic violence prevention and control.

##### **Article 11. Forms of information and communication on domestic violence prevention and control**

1. Direct implementation
2. Through the mass media
3. Mainstreaming this issue into the teaching and learning programmes at training institutions of the national education system.
4. Through art, literature and community life or other popular cultural activities.

### **Part 2**

#### **RECONCILIATION OF CONFLICTS AND DISPUTES AMONG FAMILY MEMBERS**

##### **Article 12. Principles of reconciliating 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 and 15 of this Law, in the following cases:
  - a. Incidents of criminal nature, unless the victims request for an exemption from Criminal proceeding
  - 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 reconciliating 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 teams**

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.

### **Part 3**

#### **COUNSELLING, COMMENTS AND CRITICISM OF COMMUNITIES ON DOMESTIC VIOLENCE PREVENTION**

#### **Article 16. Counselling about family issues at the grassroots level**

1. The State shall facilitate and encourage organizations and individuals to provide counselling services on family issues at the grassroots level to help local inhabitants prevent and fight domestic violence.
2. Counselling on family issues at the grassroots level shall include the following:
  - a. Provision of information, knowledge, laws and regulations about marriage, family and domestic violence prevention and control;
  - b. Guidance on behavioural skills in the family and on dealing with conflicts and disputes among family members.
3. Counselling on family issues shall target at the following cases:
  - a. Persons committing domestic violence acts;
  - b. Victims of domestic violence;
  - c. Alcholic and drug addicts, gamblers;
  - d. Fiancees and fiances.
4. The commune People's Committee shall play the lead role and collaborate with the Committee of Viet Nam Fatherland Front at the same level and its members in providing counselling services on family issues.

#### **Article 17. Comments and criticizm of communities**

1. Comments and criticizm of a community shall be targeted at persons aged 16 and above committing family violence acts and continuing to do so after reconciliation by the grassroots reconciliation teams.
2. The head of a village, hamlet, township or group of local inhabitants or a head of a similar body (referred to following as community leader) shall decide and organize communal meetings to collect comments and criticism of community. The participants in such events shall include family reprentatives, nextdoor neighbours and other concerned people shall be invited by the community leader.
3. The commune People's Committee shall be responsible for supporting the community leader in organizing communal meetings to collect comments and criticism of the community on the person(s) committing domestic violence.

### **Chapter III**

#### **PROTECTING AND ASSISTING VICTIMS OF DOMESTIC VIOLENCE**

### **Part 1**

#### **MEASURES TAKEN TO PROTECT AND ASSIST VICTIMS OF DOMESTIC VIOLENCE**

### **Article 18. Discovering and reporting domestic violence acts**

1. The person who discovers domestic violence acts shall report these to the nearest police station or to the commune People's Committee or the community leader at the scene of violence, except for the cases referred to in paragraph 3 of Article 23 and paragraph 4 of Article 29.
2. The Police station, the commune People's Committee and the community leader, that have discovered or been informed of domestic violence acts shall be responsible for timely dealing with the case or requesting the relevant authorities or individuals to do it and keep the identity of the reporter confidential, and as/if necessary, protect the person reporting domestic violence acts.

### **Article 19. Prevention and protection measures**

1. Prevention and protection measures shall be applied to protect the victim of domestic violence, stop violent acts and minimize the consequences of domestic violence, including:
  2. The person present at the scene of violence, depending on the severity of the violent acts and their ability, shall be responsible for taking measures referred to in points a and b, paragraph 1 of this Article:
    - a. Stopping domestic violence acts;
    - b. Making first aid arrangements for the victim of domestic violence;
    - c. Taking preventive measures in accordance with the Law in dealing with the violations of civil and criminal nature applicable to the person committing domestic violence;
    - d. The person committing violent acts shall not be allowed to approach the victim and not to use telephone or other medium to get in touch with the victim in order to commit violence (hereinafter referred to as a measure of forbidden contact);
3. Authority and conditions for the application, change and cancellation of measures referred to in point c, paragraph 1 of this Article shall be in accordance with the legislation on dealing with violations of civil or criminal nature;
4. The application of measures stipulated in point d, paragraph 1 of this Article shall comply with Articles 20 and 21 of this Law.

### **Article 20. Contact forbidden upon decision of the Chairperson of the commune People's Committee**

1. The commune People's Committee at the site of domestic violence can decide to apply the measure of forbidding contact for no longer than three days when meeting the following conditions:
  - a. There is a written request from the victim of domestic violence, the custodian or the legal representative of the relevant organization/agency. In case of the institution, organization of authority request, it must be agreed by the victim of domestic violence,
  - b. Domestic violence acts cause or threaten to cause serious physical injury to health or life of the victim of domestic violence
  - c. The domestic violence victim and the violence committing person are living at different domiciles at the time of contact
2. By the latest of 12 hours from the receipt of the request, Chairperson of communal People's Committee shall decide to apply the forbidden contact measure with the victim of domestic violence; In case no decision shall be made, a written notice with specific reasons shall be sent to the requesting person.  
Decision forbidding contact with the victim of violence shall be in force right after its issuance, and sent to the person conducting violence, the victim of violence, the community leader at the victim's domicile.
3. The chairperson of communal People's Committee deciding to forbid contact with the victim, shall cancel that decision when the victim of violence request this cancellation, or when the measure is found not necessary any more
4. In case there happen the wedding or funeral, or some special events in their families that require the violence victims and the violence committed persons to contact each other, the violence committed person has to inform the victim's community leader.
5. The violence committing person breaching the forbidden contact decision can be seized for civil breach of Law and fined
6. The Government shall stipulates specifically the application, cancellation of the measure to forbid contact with the victim of violence, the person of supervising authority , and the treatment of the person who commits domestic violence and breach the forbidden contact rule in this Article.

### **Article 21. Forbidding contact upon decision of the court**

1. In collecting evidence or processing civil case between the victim of domestic violence and the person conducting violent acts, the courts shall have the authority to forbid the person committing violent acts to contact the victim of domestic violence for no longer than 4 months when having sufficient conditions as following:
  - a. Written request from the victims of domestic violence, the custodian or the legal representative or the authorized institution/organization. In case the authorized institution/organization requests, they must be agreed to by the victim of domestic violence,
  - b. The domestic violence causing physical damages or threatening to cause serious injury to the health and life of the victim of domestic violence.
  - c. The violence committing person and the victim are not living in the same domicile during the forbidden contact duration.
2. The decision of forbidden contact with the victim of domestic violence shall be effective after signing and shall be notified to the violence committed person, the victim of violence and the community leader at the victim's domicile and the people's Inspecting Institute at the same level.
3. The people's court that decided on the forbidden contact measure, shall cancel that decision when receiving the written request for cancellation from the violence victim or when it sees that this measure is no longer needed
4. In case there is a wedding or funeral, or some special events in their families that require the victim of violence and the violence committing person to contact each other, the violence committing person must inform the victim's community leader.
5. Authority, sequence of steps and procedures, changes, cancelation of forbidden contact measure with the domestic violence victim referred to in this Article shall be similarly applied in accordance with the Law on Civil Proceedings for temporary emergency measures.

### **Article 22. Supervising the implementation of the forbidden contact decision**

1. Upon receipt of the decision on forbidden contact with the domestic violence victim from the chairperson of communal People's Committee or from the authorized court, the community leader shall cooperate with the concerned organization at the grass-roots level to assign people to supervise the implementation of the forbidden contact Decision.
2. The assigned supervisor shall have following duties:
  - a. following up the carry-out of the forbidden contact decision between the violence committed persons and the violence victims; in case the violence committed persons are found meeting with the violence victims , requesting that person to strictly comply with the no-contact Decision
  - b. In case the violence committed person attempt to contact with the violence victims, the assigned supervisor shall report to the community leader to stop that from occurring.
3. Should the violence committed person be allowed to meet with the violence victims in accordance with the regulation at paragragh 4, article 20 and paragragh 4 of Article 21 of this Law, the family members are required to supervize the meeting to make sure no domestic violence taking place

### **Article 23. Taking care of domestic violence victim at health stations**

1. Domestic violence victims, after taking medical care and treatment, can be granted with the certificate of injury at their request.
2. Expenses of medical care and treatment for domestic violence victims shall be covered by the medical insurance funds if they hold medical insurance cards.
3. Medical staff, in doing their jobs, shall be reponsible for keeping the violence victim's private information confidential; in case the domestic violence acts are found with criminal signs, the medical staff shall have to inform the case to the Head of the health station, who shall report it to the police at the nearest station

### **Article 24. Counselling for domestic violence victims**

1. Victims shall be given advice on health care, family, domestic behaviour, law and psychological issues to deal with the domestic violence acts
2. Health stations, social protection centers, domestic violence counselling centres, domestic violence victim supporting facilities, individuals or organizations as stipulated in Articles 27, 28, 29 and 30 of this Law,

depending on their functions and duties, shall be obliged to provide suitable advice to domestic violence victims.

#### **Article 25. Emergency support of essential provisions**

The commune People's Committee shall play the lead role and collaborate with the Committee of Viet Nam Fatherland Front of the same level and its members and other local social organizations and domestic violence victim supporting facilities in providing emergency support to meet essential needs of domestic violence victims when necessary.

### **Part 2**

## **DOMESTIC VIOLENCE VICTIM SUPPORT FACILITIES**

#### **Article 26. Domestic violence victim supporting facilities**

1. Domestic violence victims supporting facilities shall provide domestic violence victims with care, advice and temporary domicile and other essential support.
2. The domestic violence victim support facilities shall includes:
  - a. Health stations;
  - b. Social Protection and Assisting Centers;
  - c. The domestic violence victim supporting centres;
  - d. Counselling centres for prevention and control of domestic violence;
  - e. Reliable addresses in community.

#### **Article 27. Health stations**

1. Health stations shall provide medical services in line with Article 23 of this Law and also provide advice on health issues.
2. Public health stations, apart from performing as mentioned in paragraph 1 of this Article, depending on their actual capacity and conditions, shall provide temporary domicile to the domestic violence victims for no longer than one day at the request of the victims.

#### **Article 28. Social protection centres**

Social protection centres shall provide assistance, psychological advice, temporary domicile and other necessities to domestic violence victims.

#### **Article 29. Domestic violence victim assistance as well as domestic violence prevention and control counsellng centres**

1. The State shall encourage and facilitate individuals and organizations to establish domestic violence victim supporting and counselling facilities; provide financial support to some supporting and counselling facilities under the domestic violence prevention and control programs/plans as well as to target beneficiaries defined by the government
2. Depending on their operational policies and functions, domestic violence victim supporting and counsellng centres shall provide health care, legal and psychological advice, temporary domiciles and other essential support to domestic violence victims
3. The domestic violence victim supporting and counselling facilities must meet the following conditions:
  - a. Having sufficient physical resources and qualified human resources suitable to carry out domestic violence victim supporting activities
  - b. Being financially viable to maintain violence victim supporting activities.
4. The counsellors must have good ethics and good expertise in their field in accordance with regulations on counselling services. They must keep the victim's privacy confidential except for the case that they find some criminal signs out of domestic violence acts. In such a case, they should report to the Head of their counselling centre, who must report to the police immediately.

#### **Article 30. Reliable addresses in the community**

1. Reliable addresses in community are: prestigious individuals and organizations that are capable volunteers ready to help domestic violence victims in the community
2. Individuals and organizations shall inform the commune People's Committee of their willingness and

readiness to be reliable addresses and their locations.

3. The reliable addresses in the community, depending on their actual situation and capacity, shall admit violence victims and provide them with assistance, advice and temporary domicile and keep the relevant authorities informed.
4. The commune People's Committee shall list reliable addresses in the community; provide guidance and conduct training on prevention and control of domestic violence and protect the reliable addresses when necessary.
5. The commune/ward/township Committee of Fatherland Front and its members shall be obliged to work with the People's Committee at the same level, to carry out communication/advocacy and establish reliable addresses in the community.

#### **Chapter IV**

#### **RESPONSIBILITIES OF INDIVIDUALS, FAMILIES, INSTITUTIONS/ORGANIZATIONS IN PREVENTION AND CONTROL OF DOMESTIC VIOLENCE**

##### **Article 31. Individual responsibility**

1. Complying with the Laws on Domestic Violence Prevention and Control; on Marriage and Family; on Gender Equality; on Drug, Sex and Other Social Evil Prevention and Control.
2. Timely preventing domestic violence acts; reporting domestic violence acts to relevant authorities.

##### **Article 32. Responsibility of families**

1. Educating and urging family members to comply with the Laws on Domestic violence Prevention and Control; on Marriage and Family; on Gender Equality; on Drug, Sex and Other Social Evil Prevention and Control.
2. Conciliating conflicts and disputes among family members; preventing people from committing violent acts; nursing and taking care of domestic violence victims who are family members.
3. Cooperating with the institutions/organizations and the community to prevent and fight domestic violence acts.
4. Taking other measures to prevent and fight domestic violence acts in accordance with this Law.

##### **Article 33. Responsibility of the Viet Nam Fatherland Front Committee and its member organizations**

1. Conducting communication and education activities, encouraging the members and people to comply with the Laws on Domestic Violence Prevention and Control; on Marriage and Family; on Gender equality; on Drug, Sex and other Social Evil Prevention and Control.
2. Proposing necessary measures to the State Agencies to enact the Regulations of the Laws on Prevention and control of domestic violent acts; Marriage and Family, Gender equality; Prevention, anti-drug, sex and other social illnesses, preventing and fighting the domestic violent acts; nursing and protecting the domestic violence victims.
3. Jointly supervising the enforcement of the Law on Domestic Violence Prevention and Control.

##### **Article 34. Responsibility of the Viet Nam's Women Union**

1. Bearing responsibilities as stipulated in Article 33 of this Law.
2. Organizing domestic violence prevention and control counselling centres and victim supporting centres.
3. Organizing vocational training, credit and saving activities to support victims.
4. To cooperate with the concerning institutions, organizations to protect and assist victims.

##### **Article 35. The state management agency on domestic violence prevention and control**

1. The Government shall unify state management of domestic violence prevention and control;
2. The Ministry of Culture, Sports and Tourism shall be responsible to Government for exercising the state management of domestic violence prevention and control;
3. Ministries and ministerial-level agencies, within their designated functions and authority, shall be obliged to cooperate with the Ministry of Culture, Sports and Tourism, in exercising state management of domestic violence prevention and control;
4. People's Committees at all levels, within their designated functions and authority, shall be obliged to perform the state management of domestic violence prevention and control;

5. Annual reports on socio-economic situation submitted by Commune People's Committees to the Commune People's Councils shall include details of domestic violence prevention and control situation and results.

#### **Article 36. Responsibility of the Ministry of Culture, Sports and Tourism**

1. Preparing normative legal documents and action plans and programs on prevention and control of domestic violence acts and submitting them to the relevant authorities for their promulgation or it can promulgate these by itself within its authority.
2. Actively cooperating with other ministries, ministerial level agencies, Government offices and provincial People's Committees in enforcing the legal documents and action plans and programs on prevention and control of domestic violence acts.
3. Providing guidance on counseling on family issues as well as on the establishment and dismissal of counseling centers for domestic violence prevention and control and domestic violence victim assistance centers.
4. Actively cooperating with the concerned institutions/organizations to issue and organizing the implementation of the regulations on training the staff involved in domestic violence prevention and control.
5. Inspecting and checking the enforcement of the Law on Domestic Violence Prevention and Control.
6. Conducting international cooperation on prevention and control of domestic violence acts in line with the laws.
7. Actively guiding review, analysis and consolidation of domestic violence prevention and control activities, guiding the preparation of statistical reports on domestic violence prevention and control as well as guiding the review of practical experiences and replication of good models on domestic violence prevention and control.
8. Actively cooperating with the concerned institutions in editing and providing information on prevention and control of domestic violence acts.

#### **Article 37. Responsibility of the Ministry of Health**

1. Promulgating and enacting the regulations on taking in patients who are domestic violence victims and providing medical treatment to them at all medical institutions.
2. Guiding the Health Care Facilities to provide statistical reports on patients who are domestic violence victims
3. Promulgating the procedures of curing the alcoholic addicted symptoms.

#### **Article 38. Responsibility of the Ministry of Labour, War Invalids and Social Affairs**

1. Instructing the prevention and control of domestic violence to be integrated into the programs of poverty reduction and hunger elimination, training and employment.
2. Giving guidance on assisting domestic violence victims at the Social Protection and Assistance Centres.

#### **Article 39. Responsibility of the Ministry of Education and Training and other education institutions in the national education system**

1. The Ministry of Education and Training shall instruct the measures to prevent and control domestic violence acts to be integrated into the academic curriculum appropriate to the requirement from the disciplines, subjects being taught at each educational level.
2. Schools and other training institutions in the national education system shall be obliged to integrate the knowledge of domestic violence prevention and control into their curricula.

#### **Article 40. Responsibility of the Ministry of Information and Communication and mass media agencies**

1. The Ministry of Information and Communication shall instruct the media and press agencies to diffuse and popularize the policies and Law on Domestic Violence Prevention and Control.
2. The press and media agencies shall disseminate timely and accurate information on the policies and Law on Domestic Violence Prevention and Control..

#### **Article 41. Responsibility of the police, courts and investigating bodies**

Police, courts and inspectors, within their duties and authority, shall be obliged to cooperate with the concerned

organizations in protecting the rights and legitimate interests of domestic violence victims; actively preventing, timely discovering, stopping and dealing with any violations of the Law on Domestic Violence Prevention and Control; coordinating and facilitating the State management agencies on domestic violence prevention and control to do statistical work on domestic violence cases.

## **Chapter V** **DEALING WITH THE BREACH OF THE LAW** **ON DOMESTIC VIOLENCE PREVENTION AND CONTROL** **AND LAW ON COMPLAINTS AND DENOUNCEMENTS**

### **Article 42. Dealing with the domestic violence committing person**

1. The domestic violence committing person, depending on the severity of the violation, shall either be fined as an civil violation, disciplined or charged for criminal penalty and have to compensate for any damages caused.
2. Staff, officers, civil servants and employees in the people's armed forces committing domestic violence and supposedly being charged for civil violations according to paragraph 1 of this Article, shall be reported to the Heads of their institutions for education.
3. The Government shall stipulate specific civil violations concerning domestic violence prevention and control, the levels of penalties and the measures to address the consequences applicable to the persons who breach the Law on Domestic Violence Prevention and Control.

### **Article 43. Applying re-education measures in communes, wards and townships or sending to re-education schools**

1. 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.
2. 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.
3. 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.

### **Article 44. Complaints, denouncements and settlement thereof**

Complaining, denouncing and settling such complaints and denouncements about violations of the Law on Domestic Violence Prevention and Control shall comply with the Law on Complaints and Denouncements.

## **Chapter VI** **ENFORCEMENT AND IMPLEMENTATION**

### **Article 45. Enforcement**

This Law shall come into effect from the 1st of July 2008.

### **Article 46: Guidance on implementation**

The Government shall provide specific stipulations and guidance on implementing this Law.

This Law was passed by the XII National Assembly of the Socialist Republic of Viet Nam at its 2nd plenary session on November 21st 2007.

*Chairman of the national assembly  
Nguyen Phu Trong*

## **2. 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 VND 100,000 to VND 100,000.
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. Forceable restoration of the initial state altered due to the administrative violations;
  - b. Forceable application of measures to overcome the environmental pollution, epidemic spreads, caused by the administrative violations;
  - c. Forceable destruction of articles which cause harms to human health, domestic animals and cultivated plants, and harmful cultural products;
  - d. Forceably 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 walk 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:
  - a. Regularly threatening to use violence in an attempt to force other family members to get out of their legal domicile;
  - b. Forcing other family members to get out of their legal domicile at night or when it is raining, stormy, windy and cold;
  - c. 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:
- Impose warning;
  - Impose fines of up to VND 30,000,000
  - Strip off the right to use licenses, professional practice certificates under their jurisdiction;
  - Confiscate exhibits and/or means used for administrative violations;
  - 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**

- 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.
- Where a person is sanctioned for many acts of administrative violation, the sanctioning competence shall be determined on the following principles:
  - 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;
  - 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**

- This Decree takes effect as from 27 January 2010.
- 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**

- 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.
- 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 Tân Dũng

### 3. Selected provisions from the Penal Code

#### Articles in Penal code related to DV

<b>Article 93.- Murder</b>	<b>Điều 93. Tội giết người</b> Người nào giết người thuộc một trong các trường hợp sau đây, thì bị phạt tù từ mười hai năm đến hai mươi năm, tù chung thân hoặc tử hình...
<b>Article 94.- Murdering one's new-borns</b>	<b>Điều 94. Tội giết con mới đẻ</b> Người mẹ nào do ảnh hưởng nặng nề của tư tưởng lạc hậu hoặc trong hoàn cảnh khách quan đặc biệt mà giết con mới đẻ hoặc vứt bỏ đứa trẻ đó dẫn đến hậu quả đứa trẻ chết, thì bị phạt cải tạo không giam giữ đến hai năm hoặc phạt tù từ ba tháng đến hai năm.
<b>Article 95.- Murdering people under provocation</b>	<b>Điều 95. Tội giết người trong trạng thái tinh thần bị kích động mạnh</b> Người nào giết người trong trạng thái tinh thần bị kích động mạnh do hành vi trái pháp luật nghiêm trọng của nạn nhân đối với người đó hoặc đối với người thân thích của người đó, thì bị phạt tù từ sáu tháng đến ba năm.
<b>Article 96.- Murder beyond the limit of legitimate defense</b>	<b>Điều 96. Tội giết người do vượt quá giới hạn phòng vệ chính đáng</b> Người nào giết người trong trường hợp vượt quá giới hạn phòng vệ chính đáng, thì bị phạt cải tạo không giam giữ đến hai năm hoặc phạt tù từ ba tháng đến hai năm.
<b>Article 100.- Forced suicide</b>	<b>Điều 100. Tội bức tử</b> Người nào đối xử tàn ác, thường xuyên ức hiếp, ngược đãi hoặc làm nhục người lệ thuộc mình làm người đó tự sát, thì bị phạt tù từ hai năm đến bảy năm.
<b>Article 103.- Threatening to murder</b>	<b>Điều 103. Tội đe dọa giết người</b> Người nào đe dọa giết người, nếu có căn cứ làm cho người bị đe dọa lo sợ rằng việc đe dọa này sẽ được thực hiện, thì bị phạt cải tạo không giam giữ đến hai năm hoặc phạt tù từ ba tháng đến ba năm.

<b>Article 104.- Intentionally inflicting injury on or causing harm to the health of other persons</b>  Those who intentionally injure or causes harm to the health of other persons with an infirmity rate of between 11% and 30%, or under 11% but in one of the following circumstances, shall be sentenced to non-custodial reform for up to three years or between six months and three years of imprisonment...	<b>Điều 104. Tội cố ý gây thương tích hoặc gây tổn hại cho sức khỏe của người khác</b>  Người nào cố ý gây thương tích hoặc gây tổn hại cho sức khỏe của người khác mà tỷ lệ thương tật từ 11% đến 30% hoặc dưới 11% nhưng thuộc một trong các trường hợp sau đây, thì bị phạt cải tạo không giam giữ đến ba năm hoặc phạt tù từ sáu tháng đến ba năm...
<b>Article 105.- Intentionally inflicting injury on or causing harm to the health of other persons due to strong provocation</b>  Those who intentionally injure or cause harm to the health of other persons with an infirmity rate of from 31% to 60% whilst provoked as a result of serious illegal acts of the victims towards such persons or their next of kin, shall be sentenced to warning, non-custodial reform for up to one year or between six months and two years of imprisonment.	<b>Điều 105. Tội cố ý gây thương tích hoặc gây tổn hại cho sức khỏe của người khác trong trạng thái tinh thần bị kích động mạnh</b>  Người nào cố ý gây thương tích hoặc gây tổn hại cho sức khỏe của người khác mà tỷ lệ thương tật từ 31% đến 60% trong trạng thái tinh thần bị kích động mạnh do hành vi trái pháp luật nghiêm trọng của nạn nhân đối với người đó hoặc đối với người thân thích của người đó, thì bị phạt cảnh cáo, cải tạo không giam giữ đến một năm hoặc phạt tù từ sáu tháng đến hai năm.
<b>Article 106.- Intentionally inflicting injury on or causing harm to the health of, other persons due to an excess of legitimate defense limit</b>  Those who intentionally inflict injury on or cause harms to the health of other persons with an infirmity rate of 31% or higher or leading to human death due to the excess of legitimate defense limit shall be subject to warning, non-custodial reform for up to two years or to prison term of between three months and one year.	<b>Điều 106. Tội cố ý gây thương tích hoặc gây tổn hại cho sức khỏe của người khác do vượt quá giới hạn phòng vệ chính đáng</b>  Người nào cố ý gây thương tích hoặc gây tổn hại cho sức khỏe của người khác mà tỷ lệ thương tật từ 31% trở lên hoặc dẫn đến chết người do vượt quá giới hạn phòng vệ chính đáng, thì bị phạt cảnh cáo, cải tạo không giam giữ đến hai năm hoặc phạt tù từ ba tháng đến một năm.
<b>Article 111.- Rape</b>  Those who use violence, threaten to use violence or take advantage of the victims state of being unable for self-defense or resort to other tricks in order to have sexual intercourse with the victims against the latter's will shall be sentenced to between two and seven years of imprisonment.	<b>Điều 111. Tội hiếp dâm</b>  Người nào dùng vũ lực, đe doạ dùng vũ lực hoặc lợi dụng tình trạng không thể tự vệ được của nạn nhân hoặc thủ đoạn khác giao cấu với nạn nhân trái với ý muốn của họ, thì bị phạt tù từ hai năm đến bảy năm.
<b>Article 112.- Rape against children</b>  Those who rape children aged between full 13 years and under 16 years shall be sentenced to between seven and fifteen years of imprisonment.	<b>Điều 112. Tội hiếp dâm trẻ em</b>  Người nào hiếp dâm trẻ em từ đủ mười ba tuổi đến dưới mươi sáu tuổi, thì bị phạt tù từ bảy năm đến mươi lăm năm.

<b>Article 113.- Forcible sexual intercourse</b>  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 six months and five years of imprisonment.	<b>Điều 113. Tội cưỡng dâm</b>  Người nào dùng mọi thủ đoạn khiến người lệ thuộc mình hoặc người đang ở trong tình trạng quẫn bách phải miễn cưỡng giao cấu, thì bị phạt tù từ sáu tháng đến năm năm.
<b>Article 114.- Forcible sexual intercourse with children</b>  Those who have forcible sexual intercourse with children aged from full 13 years to under 16 years shall be sentenced to between five and ten years of imprisonment.	<b>Điều 114. Tội cưỡng dâm trẻ em</b>  Người nào cưỡng dâm trẻ em từ đủ mười ba tuổi đến dưới mười sáu tuổi, thì bị phạt tù từ năm năm đến mười năm.
<b>Article 115.- Having sexual intercourse with children</b>  Any adults having sexual intercourse with children aged from full 13 to under 16 shall be sentenced to between one and five years of imprisonment.	<b>Điều 115. Tội giao cấu với trẻ em</b>  Người nào đã thành niên mà giao cấu với trẻ em từ đủ mười ba tuổi đến dưới mười sáu tuổi, thì bị phạt tù từ một năm đến năm năm
<b>Article 116.- Obscenity against children</b>  Those adults who commit obscene acts against children shall be sentenced to between six months and three years of imprisonment.	<b>Điều 116. Tội dâm ô đối với trẻ em</b>  Người nào đã thành niên mà có hành vi dâm ô đối với trẻ em, thì bị phạt tù từ sáu tháng đến ba năm.
<b>Article 121.- Humiliating other persons</b>  Those who seriously infringe upon the dignity or honor of other persons shall be subject to warning, non-custodial reform for up to two years or a prison term of between three months and two years.	<b>Điều 121. Tội làm nhục người khác</b>  Người nào xúc phạm nghiêm trọng nhân phẩm, danh dự của người khác, thì bị phạt cảnh cáo, cải tạo không giam giữ đến hai năm hoặc phạt tù từ ba tháng đến hai năm.
<b>Article 123.- Illegal arrest, custody or detention of people</b>  Those who illegally arrest, hold in custody or detain other persons shall be subject to warning, non-custodial reform for up to two years or a prison term of between three months and two years.	<b>Điều 123. Tội bắt, giữ hoặc giam người trái pháp luật</b>  Người nào bắt, giữ hoặc giam người trái pháp luật, thì bị phạt cảnh cáo, cải tạo không giam giữ đến hai năm hoặc phạt tù từ ba tháng đến hai năm.
<b>Article 130.- Infringement upon women's rights to equality</b>  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 one year or a prison term of between three months and one year.	<b>Điều 130. Tội xâm phạm quyền bình đẳng của phụ nữ</b>  Người nào dùng vũ lực hoặc có hành vi nghiêm trọng khác cản trở phụ nữ tham gia hoạt động chính trị, kinh tế, khoa học, văn hóa, xã hội, thì bị phạt cảnh cáo, cải tạo không giam giữ đến một năm hoặc phạt tù từ ba tháng đến một năm.

<b>Article 143.- Destroying or deliberately damaging property</b>	<b>Điều 143. Tội hủy hoại hoặc cố ý làm hư hỏng tài sản</b>  Người nào hủy hoại hoặc cố ý làm hư hỏng tài sản của người khác gây thiệt hại từ năm trăm nghìn đồng đến dưới năm mươi triệu đồng hoặc dưới năm trăm nghìn đồng nhưng gây hậu quả nghiêm trọng hoặc đã bị xử phạt hành chính về hành vi này hoặc đã bị kết án về tội này, chưa được xoá án tích mà còn vi phạm, thì bị phạt cải tạo không giam giữ đến ba năm hoặc phạt tù từ sáu tháng đến ba năm.
<b>Article 146.- Forcible marriage or prevention of voluntary and progressive marriage</b>	<b>Điều 146. Tội cưỡng ép kết hôn hoặc cản trở hôn nhân tự nguyện, tiến bộ</b>  Người nào cưỡng ép người khác kết hôn trái với sự tự nguyện của họ, cản trở người khác kết hôn hoặc duy trì quan hệ hôn nhân tự nguyện, tiến bộ bằng cách hành hạ, ngược đãi, uy hiếp tinh thần, yêu sách của cải hoặc bằng thủ đoạn khác, đã bị xử phạt hành chính về hành vi này mà còn vi phạm, thì bị phạt cảnh cáo, cải tạo không giam giữ đến ba năm hoặc phạt tù từ ba tháng đến ba năm.
<b>Article 147.- Bigamy</b>	<b>Điều 147. Tội vi phạm chế độ một vợ, một chồng</b>  Người nào đang có vợ, có chồng mà kết hôn hoặc chung sống như vợ chồng với người khác hoặc người chưa có vợ, chưa có chồng mà kết hôn hoặc chung sống như vợ chồng với người mà mình biết rõ là đang có chồng, có vợ gây hậu quả nghiêm trọng hoặc đã bị xử phạt hành chính về hành vi này mà còn vi phạm, thì bị phạt cảnh cáo, cải tạo không giam giữ đến một năm hoặc phạt tù từ ba tháng đến một năm.
<b>Article 151.- Ill-treating or persecuting grand-parents, parents, spouses, children, grandchildren and/or fosterers</b>	<b>Điều 151. Tội ngược đãi hoặc hành hạ ông bà, cha mẹ, vợ chồng, con, cháu, người có công nuôi dưỡng mình</b>  Người nào ngược đãi hoặc hành hạ ông bà, cha mẹ, vợ, chồng, con, cháu hoặc người có công nuôi dưỡng mình gây hậu quả nghiêm trọng hoặc đã bị xử phạt hành chính về hành vi này mà còn vi phạm, thì bị phạt cảnh cáo, cải tạo không giam giữ đến ba năm hoặc phạt tù từ ba tháng đến ba năm.

<p><b>Article 152.- Refusing or evading the obligation to provide financial support</b></p> <p>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 two years or a prison term of between three months and two years.</p>	<p><b>Điều 152. Tội từ chối hoặc trốn tránh nghĩa vụ cấp dưỡng</b></p> <p>Người nào có nghĩa vụ cấp dưỡng và có khả năng thực tế để thực hiện việc cấp dưỡng đối với người mà mình có nghĩa vụ cấp dưỡng theo quy định của pháp luật mà cố ý từ chối hoặc trốn tránh nghĩa vụ cấp dưỡng gây hậu quả nghiêm trọng hoặc đã bị xử lý hành chính thì bị phạt cảnh cáo, cải tạo không giam giữ đến hai năm hoặc phạt tù từ ba tháng đến hai năm.</p>
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**MODULE 4**  
**FIRST RESPONDERS TO DOMESTIC VIOLENCE CASES**



**UNODC**  
United Nations Office on Drugs and Crime



## Module 4

### First Responders to Domestic Violence Cases

#### Purpose:

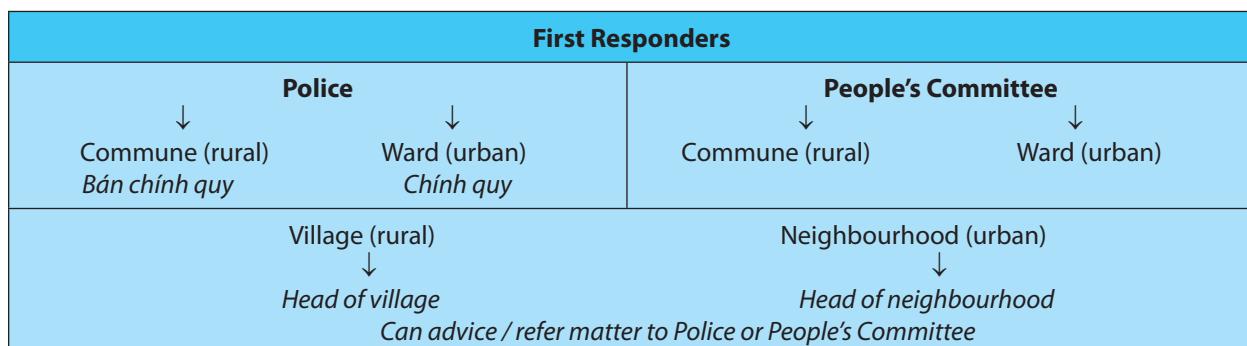
By the end of this session, participants will be able to:

- Understand the need to respect the rights and needs of each woman
- Take action to ensure the protection and safety of victims
- Interview victims with sensitivity
- Conduct basic threat and risk assessments and assist victims in designing safety plans
- Be familiar with the types of evidence in domestic violence cases
- Conduct initial assessments of cases and options for enforcement and protection
- Understand the need to record each case and the necessity of file management

#### Section 1: Responding to Domestic Violence as a First Responder – Overview

In Viet Nam, the first response to domestic violence cases often happens at the village, commune or ward level. Many individuals and agencies might get involved during a domestic violence incident, including other family members, the head of the village, the ward or commune level police, the ward or commune level People's Committees, members of the Women's Unions or other local mass organizations or local health workers at the clinics or hospitals.

Given that this training is for law enforcement and justice sector officials, this module focuses on those first responders who have authority to conduct inquiries and impose sanctions: local police officers and the People's Committee representatives.



The Police and People's Committee are at the frontline of the justice system. It is their duty to prevent and combat crime and other law-breaking acts at the commune level; maintain social security and public order; and enforce laws. They are often called upon to intervene when an act of violence is in progress, or shortly after it has taken place. It is their duty to effectively investigate all alleged incidents of violence and conduct all investigations in a manner that respects the rights and needs of all the parties involved.

Traditionally, however, in many countries, police officers have been reluctant to intervene in domestic violence situations. In the past, police culture and training discouraged arrests in domestic violence incidents, with police officers preferring to merely mediate and defuse the situation. Domestic violence calls were, and still are, often ignored or assigned low priority. The police force, which is predominately staffed by male officers, might reflect the traditional attitudes towards women. They might believe it is okay for a husband to beat his wife and that domestic violence is a private family matter. UNODC research involving interviews with 900 women victims of domestic violence, found that when the police visited the home, 34% were told to solve their problems within their family and 15% were told to ask another local agency, such as the Women's Union or reconciliation team, for support.<sup>1</sup>

<sup>1</sup> "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.

Any training for law enforcement and justice officers should acknowledge that domestic violence interventions are some of the most challenging interventions for them. The emotional and intimate relationship between the abuser and the victim adds complexities for the police response that is often not the case in violent situations involving strangers. Many victims call the police or People's Committee for the sole purpose of stopping the violence and not to have the perpetrator held administratively or criminally liable. Some victims might not be cooperative. They might not provide the information required for the police or People's Committee to make a full assessment of the situation. Some victims might minimize the extent of the violence perpetrated against them or they might have difficulty providing information to police or People's Committee because of the trauma suffered or from fear of the abuser.

Greater knowledge about the dynamics of domestic violence may assist first responders to respond in ways that are most useful and supportive to the victim. It should also help them understand why even with their best attempts to intervene; they might be met with resistance by the victim and be required to make repetitive interventions in one family. This knowledge will also hopefully create an understanding of the potential benefits of intervening; that police and People's Committee's attitudes and responses can have a dramatic impact on ensuing developments, including the prevention of future violent acts and protection of victims. For example, in situations of recurring acts of domestic violence, the police or People's Committee's response can help victims leave a violent relationship, or conversely, the victim, believing that nothing and no one can assist them, may remain in an abusive, violent setting. The police or People's Committee, by their response to domestic violence situations, have a significant role to play in bettering the lives of all women. One part of this is in how they respond to incidents and what measures are taken to protect the woman in the immediate aftermath, before and at trial, and afterwards. They can ensure greater access to services such as shelters, counselling, and legal assistance, treat female victims with dignity and sensitivity, improve collection and presentation of evidence, and apply effective measures to protect victims.

## **Section 2: Responding to Domestic Violence – Receiving Initial Information**

### **2.1 Potential Sources of Information about Domestic Violence**

Like in many other countries, domestic violence in Viet Nam is rarely reported to the police. UNODC research found that 43% of the violence had been reported to the police, while 57% had not.<sup>2</sup> Given that most of the incidents disclosed in this study were serious, the reporting rates to the police seem rather low. Module 3 sets out the various reasons for lack of reporting domestic violence to law enforcement officials. However the victims may reveal their problems to others. The UNODC research found that they 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%).

Police and People Committee representatives (collectively called the first responder or officers) may receive information about domestic violence situation from a number of sources, including:

- Officers on duty might receive a telephone call from the victim or a witness about an on-going incident taking place in the home;
- The victim might also call the emergency number 113;
- Officers on duty might receive the victim at the police station reporting an incident that has already occurred;
- Officers might have to see the victim at the hospital, shelter or the office of the People's Committee;
- Officers might receive postage letter or through the crime-reporting letter box system;
- Officers might receive a report of domestic violence from other government agencies, including People's Committee, as well as receiving information from village leaders, or Women's Union, Youth Union or Farmer's Union.
- Officers might also receive information from other police agencies, such as at the ward or commune level;
- Officers may receive information from family members or neighbours of the victim;
- Officers might receive information of domestic violence from means of public communications.
- Officers might receive direct information of domestic violence when they are investigating other cases. (For example, when an officer is investigating a case of theft in a family, they may come across evidence of domestic violence in that family.)

2 "Research in the Quality of Criminal Justice Services Available for Victims of Domestic Violence in Viet Nam", ibid

For the police, the officer on duty should record all incoming reports of domestic violence in the on-duty logbook. For the People's Committee representative, they too should make a record of all incoming reports of domestic violence.

## 2.2 Prompt Response

All domestic violence calls should be responded to promptly, irrespective of the caller, and an officer should be sent to the place where the violence is reportedly on-going or to the location of the victim.

In Viet Nam, research shows that almost all domestic violence survivors do not seek support from the police or the court system unless in very serious cases of abuse.<sup>3</sup> While many women have suffered a combination of physical, psychological, sexual or financial 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 police rarely happens after the first or even the second domestic violence incident. They often become involved only after the pattern of abuse is well established and the level of physical injury has become serious. This means that all reports of domestic violence to the police and People's Committee should be taken seriously.

In responding to domestic violence, all actions of these first responders should be guided by two main principles: ensuring the safety of victims and holding perpetrators accountable for their actions.

*Ensuring the safety of victims while holding perpetrators accountable for their actions*

A number of countries have developed policies providing that all domestic violence calls should be assigned a priority response. Research has shown that there is a relationship between the quality of information recorded at the time of call is made and the priority attached to the call on the incident log.

## [\*\*Section 3: Arrival at the Scene of Domestic Violence\*\*](#)

### **3.1 Arrival at the scene –stabilization of the situation**

#### **Arrival on the scene –entering premises**

The police or People's Committee may be called to a home where the victim has telephoned to report on-going violence, or neighbours may have called the authorities and confirmed to them that they have heard shouts and noises indicating violence is in progress.

Upon arrival at the scene:

- The police or People's Committee need to identify themselves and talk to the resident who opens the door.
- It is possible that this is the abuser since he needs to control who will or will not enter his home.
- The first responders need to explain why they are there and request permission to enter the residence and check that all is in order. They should be careful in making this explanation, avoid identifying the individual who reported the incident since that fact could put that person at risk and discourage neighbours from cooperating as witnesses.
- They should also ask to speak to any other residents on the premises to ensure their safety.
- If there is resistance, they need to make a report on the incident, containing description of the premises and details of the conversation with the resident. Important that they make it clear to the possible abuser that the incident has been noted by the local authorities and that legal measures may be taken against him.
- The first responders should also gather information from neighbours. They need to be careful, to avoid further exposure of risk.
- Where the first responders can enter the residents, they need to make a general assessment of the risk

<sup>3</sup> Minh 2007, Mai et al, 2004 as cited in "Gender Based Violence: Issue Paper" Prepared for the UN Gender Programme Coordination Group, Final Draft, 17 May 2010.

to the victim's physical safety and conduct further assessment, as described below, in order to determine how to proceed.

- A forced entry is permissible without a search warrant for the police to stop the violence. However, if they want to search the residence and gather evidence, they will need the consent of the residents or a search warrant from the head of the investigating body (article 140 and 143 of the Criminal Procedure Code).
- If the first responders are from the People's Committee and they have suspicion that the violence is ongoing, they should contact the local police who have authority to enter premises without a search warrant pursuant to Article 140 of the Criminal Procedure Code.
- According to 82 of the Criminal Procedure Act, the police can arrest offenders if caught red handed while committing offences.

### **Arrival on the scene – first steps**

Once the first responders are there at the scene: they are advised to:

- Quickly separate the parties. Because it is often a power and control situation, it is important that the officers ensure that the parties are out of sight and hearing of each other.
- Take steps to ensure the safety of the victim, including any children who may be present. This may include:
  - identifying and securing any weapons that may be on hand;
  - isolating, searching and securing the abuser if he is present and removing him from the scene, if necessary;
  - assisting any party in obtaining medical assistance, if necessary.

### **Overall responsibilities of first responders**

The overall responsibilities of a first responder include conducting a number of activities, which will be discussed in further detail throughout this module, and are summarized here:

- Obtain a comprehensive account of the events from all parties (victim, suspect and witnesses).
- Ascertain if language is a barrier, and arrange to provide a translator when necessary. Children or family should not be used as interpreters.
- Protect the scene and begin to identify all potential evidence and get a list of potential witnesses.
- Ensure that any children at the scene are provided with appropriate support / assistance as required, including referrals to appropriate agencies.
- Assess the nature of the incident - whether criminal offence or administrative punishment.
- Explain fully the legal options to the victim. Where the victim's consent is required to proceed with investigation and /or with obtaining a medical certificate, encourage and support the victim in making this decision.
- Assess whether circumstances require detention or arrest of suspect.
- Call in the investigative unit, where necessary.
- Assist the victim with a personal safety plan, including assisting her in obtaining a forbidden contact order where appropriate.

## **Section 4: Evidentiary Issues**

### **4.1 Conducting the On-Scene Investigation: An Overview**

The Vietnamese legal framework provides a range of responses, depending on the specific circumstances of the case. In making a determination of which response is appropriate, and given the dynamics and complexities of domestic violence situations, the first responders should conduct a comprehensive inquiry before making such a determination. Every incident should be documented. This ensures that full and accurate records are kept of every incident no matter which response is taken by the local authorities. Recording the incident has two goals: firstly it reiterates the message that all incidents of violence are taken seriously by the local authorities; and secondly, it ensures a record of the history of abuse.

## **On-Scene Investigation and Checklist**

The first responding officers should conduct an on-scene investigation:

- Gather and preserve evidence in accordance with the police service's investigative procedures.
- Make detailed notes, including the actions and utterance of all parties involved.
- Conduct detailed interviews with all victims and witnesses.
- Interrogate the suspect.
- Complete a detailed incident report for every domestic violence occurrence, regardless of whether any charges will be laid, and that information entered on the police service's information system and People's Committee information system for future reference.

The initial investigation is a methodical exercise in problem-solving that involves identifying the unlawful activity by examining facts or circumstances of an incident, and identifying the enforcement option appropriate to the facts or circumstances.

**Every response to a domestic violence call should include a substantive investigation of the incident. This demonstrates to the abuser and the community that the government takes all incidents of domestic violence seriously. Furthermore it ensures that the police and the People's Committee have a comprehensive understanding of the circumstances before determining which enforcement option is appropriate.**

First Responders must seek and find the material which constitutes evidence and recognise the potential of the evidence found. Evidence can be either physical, such as a weapon, document or photograph, or verbal, such as a statement from a witness. A variety of evidence can be gathered that can corroborate the evidence of the victim and which can be used by the first responders when doing the initial assessment as to what enforcement and protection measures should be applied.

## **4.2 Interviewing Techniques: Victims, Witnesses and Suspects**

Police conduct interviews of victims to ascertain what happened, collect evidence, and help formulate measures designed to prevent further acts and ensure victim protection. The verbal statements from the victim and witnesses are often the most important pieces of evidence in domestic violence cases.

### **Victim Interviewing / Statements**

A sensitive response towards victims by police and the People's Committee is essential in every case due to the complex nature of domestic violence. The way in which local authorities respond to the victim can have significant impact on whether she pursues legal remedies for the violence she has suffered. However no matter what the following legal process will be, whether administrative or criminal sanctions will be pursued, the first responders should treat the victims sensitively in all cases and ensure their safety.

Victims of domestic violence may not behave like victims of other violent crimes or unlawful behaviour. They can display a variety of behaviours. First responders should understand and be prepared for a range of possible responses. The ambivalence, denial and helplessness that often characterize abused victims may be learned messages that have allowed the victim to survive the abuse.

### **Range of possible responses by victim**

- Victims may be passive. They may be quiet and reserved; reluctant to answer questions about the abuse.
- Victims may be in denial. They may refuse to acknowledge the abusive incident or minimize the level of abuse or recant their account later. They may defend the perpetrator and be aggressive towards the police.
- Victims may be angry. They may be angry because prior reports of abuse did not lead to any punishment of the husband; be angry that they have not been protected from on-going abuse from the husband.
- Victims may be afraid. They may fear retaliation from the abuser for police responding; they may be afraid that the police will not take action to stop the violence; afraid police will believe the abuser and not them; afraid that authorities will take their children as abuser has threatened.

It is important for the first responders to be aware that some responses, though frustrating, may allow victims and their families to feel safer once law enforcement has left the scene or the perpetrator is released from custody.

The interview of victims may occur in the home, at a shelter, in a hospital, at a police station or the offices of the People's Committee. Regardless of the location, the police or People's Committee should conduct all such interviews in a manner that respects the privacy and confidentiality of the victim. 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 interview of the victim should always be conducted in the absence of the abuser.

Interviewing women who have been victims of violence requires care, patience 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 relating a narrative with a beginning, middle and end. The first responders need to assist them by asking relevant and factual questions. The victims might be afraid of law enforcement officers and unwilling to cooperate with them for a number of reasons. They are often ashamed or embarrassed of what they have experienced, especially in cases of sexual abuse or rape. They might also fear that their perpetrators will find out about the reporting and kill them or that their families and communities will humiliate them if they find out.

#### **Key points in taking the victim's statement**

- In all incidents where local officials are involved, they should take a detailed statement from the victim, regardless of their initial assessment of whether an administrative or criminal offence occurred.
- First responders should create a friendly and supportive atmosphere to ensure that statements are taken in a sensitive, respectful and confidential manner.
- First responders should verbally ask the victim questions and should write the statement. The onus is on the authorities to ensure that all essential elements are covered.
- The victim should have the opportunity to review the statement before signing it.
- In situations where the victim has made a written letter/statement already, the first responders have the responsibility to review the statement to ensure that all essential elements are described and if not, to assist the victim in ensuring her statement covers the essential elements.
- While explaining the law and the victim's rights, the authorities should encourage the victim to cooperate and assure her that she is protected by law.

First responding officials need to be aware that they are there to help, not to judge, and that the woman should at all times be treated without prejudice or discrimination. Interviews of victims should only be conducted once the immediate safety of the woman has been assured, and any injuries have been treated. The first responders should explain the law as well as the victim's rights, including her right to refuse to give a statement, or provide one at a later date.

Ideally, wherever the interview takes place, the location should be private, quiet areas where victim interviews can be conducted. Interrogation rooms in police stations are not appropriate places for such interviews. Areas should be close to the front reception area and removed from public view.

**It is important to remember that the women is a victim, not a suspect, and is therefore not subjected to methods police might use in an interrogation.**

#### **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

Important to determine how the specific incident of violence relates to the overall history and context of violence in the relationship.

#### **Interviewing Witnesses, Particularly Children**

Interviewing children requires great care and sensitivity. They may have endured victimization as witnesses to violence. Children are not small adults. They experience events, think, speak and behave in their own manner, in a way that reflects their age and evolving capacities. If we want children to be able to participate in a meaningful manner in justice processes and be protected from further harm, we need to adapt our language and behaviour when communicating with them.

The main issues to consider when interviewing children as witnesses:

- Interview the child away from victim and suspect, in a place comfortable for children;
- Crouch or sit to the child's level;
- Befriend the child at first;
- Explain why you are there and why you took whatever action you did; assure them that they are not in trouble;
- Use simple language and short sentences, taking into consideration the age, apparent maturity and intellectual development of the child;
- Be sure not to indicate a response as the child may comply;
- Note if the child indicates fear of one or both parents;
- Be aware of the child's feeling responsible or guilty; reassure the child;
- Be aware that if the child is also a victim of abuse, he or she may be distrustful of adults or may have been warned not to talk to outsiders.

#### **Interviewing Suspects**

Offenders, as do victims, are guaranteed certain rights. These include the right to be treated with respect and dignity by police and other authorities, to be told forthwith of the reason for arrest or detention, to be presumed innocent, to be protected from undue violence perpetrated by the state, not to incriminate themselves, to have access to legal counsel and the right to a fair trial.

The main issues to consider when interviewing suspects:

- Separate from victim;
- Ask the suspect to be seated, try to calm him;
- Do not make accusatory statements that put the suspect on the defensive;
- Acknowledge the suspect's frustrations, concern, anger;
- Document statements like, "I hardly pushed her", or "she bruises easily", or "I was trying to get her to listen, so I just grabbed her";
- Do not say you understand; be clear that anger or verbal confrontations do not cause violence;
- If asked, don't tell the suspect that the victim called the police.

### **4.3 Other Types of Evidence**

In addition to taking statements from the victim, witnesses and possibly from the suspect, the first responders should examine and preserve evidence of any kind that may be relevant. They should make thorough and complete notes of physical evidence, as they may have to pass along their notes to the criminal investigation agency, if the case meets the threshold of instituting a criminal investigation.

#### **Possible evidence in domestic violence cases**

- Verbal statements of victim and witnesses;
- Signs of injury (cuts, scrapes, bruises, fractures, choking, pulled out hair) which may be able to be photographed, or attested to by an examining physician);
- Torn clothing;
- Broken fingernails;
- Voice messaging;
- Diaries, notes, letters – either from the suspect or written by the victim and detailing past acts of abuse and violence;
- Weapons;
- Broken household items, indicating a violent incident;
- Observations of neighbours, friends, family;
- Statements from service providers involved in past incidents of violence;
- Prior police incident reports / People's Committee reports;
- Medical files detailing past injuries (used only with the permission of the victim);
- Evidence of orders, such as restraining orders;
- Evidence of alcohol and / or drug abuse by the offender;
- Criminal record / history of the alleged offender;
- DNA;
- Computer, internet, text messages, and other forms of electronic evidence.

#### **UN Model Strategies**

Investigative techniques should not degrade women subjected to violence and should minimize intrusion into their lives, while maintaining standards for the collection of the best evidence. Practices must be sensitive to the unique nature of both the crime and the victim.

Some suggestions for gathering evidence:

- Document the victim's injuries (physical, sexual, threats) using photographs and diagram, with victim's consent. Note: photographs of victim's injuries should be taken again within 24-48 hours of the initial occurrence when the injuries are more visible.
- Photograph the scene (ie. overturn furniture or destroyed property).
- Seize weapons.
- Gather any other evidence, including answering machine tapes, medical records, torn and/or blood stained clothes or fingerprints, if relevant.

## Physical Evidence

Document	Photograph	Other evidence	Medical information
<ul style="list-style-type: none"> <li>Victim's, suspect's and child's condition and demeanour</li> <li>Torn clothing</li> <li>Smeared make-up</li> <li>Whether victim is pregnant</li> <li>Disarray in house</li> <li>Suspect's symptoms of alcohol or controlled substance abuse</li> <li>Ascertain victim's injuries (physical, sexual, internal) using diagram, with victim's consent</li> </ul> <p>Look for on the victim:</p> <ul style="list-style-type: none"> <li>Signs / symptoms of strangulation / choking</li> <li>Injuries under hair</li> <li>Injuries behind ears</li> </ul> <p>Look for on suspect:</p> <ul style="list-style-type: none"> <li>Offensive injuries (i.e. scraped knuckles)</li> <li>Injuries inflicted in self-defence by victim</li> <li>Document the size of the victim and the suspect in relation to each other</li> </ul>	<ul style="list-style-type: none"> <li>Crime scene (overturned furniture or destroyed property, blood stains)</li> <li>With the victim's consent, the victim's injuries at the time of the occurrence</li> <li>With the victim's consent, the victim's injuries within 24-48 hours of the initial occurrence when the injuries are more visibly apparent</li> <li>Suspect's injuries, if any</li> </ul>	<ul style="list-style-type: none"> <li>Voice message tapes</li> <li>Torn and/or blood stained clothing from suspect and victim</li> <li>Damage to telephone</li> <li>Weapons</li> <li>Fingerprint evidence if the suspect has broken into victim's residence◊ letters, notes, documents, diaries and other records</li> </ul>	<ul style="list-style-type: none"> <li>Victim's consent to release of medical information</li> <li>Hospital / emergency room records</li> <li>Sexual assault response report</li> <li>Victim's spontaneous utterances made to medical staff</li> </ul>

Seize all physical evidence; do not leave this evidence with the victim.

## Evidence of Sexual Violence / Rape

Acts of sexual violence, including rape, are a traumatic event for anyone to endure. All women have the right to say "no" to any sexual encounter, including when it involves a husband and takes place in the privacy of a home. Many victims of sexual violence within the family remain silent about their experience. In Viet Nam, the term "marital rape" appears to be unknown. There has been no noted case of marital rape being brought before the Vietnamese courts. However there is evidence that "forced sex" in the context of marriage does occur.<sup>4</sup> Under-reporting of sexual violence might be due to a number of reasons. Sex is seen as a private matter and not discussed openly in Vietnamese society. There also appears to be a widely held belief that wives must obey their husbands and are therefore not entitled to refuse their demands for sex.

When first responders are called to the scene of a domestic violence situation, they should cross screen for sexual assault. As previously mentioned, recent studies indicate that when one form of domestic violence is occurring, there is greater likelihood that other forms occur as well. Investigations of sexual violence, and the collection of related evidence, require a great deal of sensitivity from law enforcement. Steps must be taken to respect the victim, her privacy, and the trauma she has undergone, while minimizing the intrusion into her life.

Sexual violence can leave behind evidence for law enforcement officers, such as bite marks, saliva, blood, semen, tissue under fingernails, unique ligatures, hairs and fibres. A forensic examination of evidence means that scientific processes and knowledge have been used to examine something for a legal purpose. Thus, forensic evidence is usually understood as some form of physical evidence of a crime that will undergo a scientific examination – such as blood, semen or fibres.

<sup>4</sup> Dr. Vu Manh Loi et al cited in OMCT "Violence against Women in Vietnam: Report prepared for the Committee on the Elimination of Discrimination against Women" (OMCT: 2001).

### **Good practices**

A number of countries have established multi-disciplinary teams: investigators work cooperatively with counsellors, social service workers, psychologists, victim legal representatives or others who can provide specialised assistance to aid both the victim and the investigator.

A number of countries have also developed within the police force, specialized units that made up of specifically trained police investigators to deal with domestic violence and sexual violence.

### **Assessing injuries**

One of the primary duties of the first responder is to assess possible injuries sustained during the domestic violence incident. Most often law enforcement officers respond to domestic violence situations which involved physical violence resulting in injury. Determining the infirmity rate in these cases is crucial to making an assessment as to the appropriate legal response. In Viet Nam, a medical certificate indicating the percentage of the infirmity rate is a vital piece of evidence in violence cases. The certificate must be prepared by a medical examination committee and not by the police if it is to be submitted as evidence in court.

However, it is the responsibility of the first responders to do a correct first assessment of injuries, especially if they are the ones to be first on the scene assisting the victim. They should inquire about injuries that are either concealed by clothing or not readily visible, as well as any signs of strangulation. Visual inspection and photographs may require a female police officer, depending on the location of the injuries.

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. Some initial signs of strangulation: change in the voice, ranging from hoarseness to complete voice loss; 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. First responders should cross screen for sexual assault and strangulation.

The first responders should be familiar with Inter-Circular No 12/1995 of the Ministry of Health as it provides injury standards that are used by the medical examination teams who prepare the medical certificate. Given the complexities of assessing injuries, the first responders should err on the side of caution and encourage the victim to seek medical assistance, not only for treatment, but also to ensure a proper assessment of her injuries is conducted.

### **Sample of some of the more common domestic violence injuries**

<b>Injury</b>	<b>Infirmity Rate</b>
Scarring in lower parts of throat, causing difficulties to speak, 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%
More than 6 broken ribs with serious consequences on respiration	41-45%
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 elbows, limiting movement	26-30%
Burn scars in hands and fingers, leading to dysfunction	41-45%
Burn scars on feet, leading to difficulties in moving	21-25%

First responder should also be aware that not every legal response requires a medical certificate or the consent of

the victim. For psychological violence, the harm is more difficult to assess. The first responders need to conduct thorough interviews of the victim and not merely respond to cases where the victim has been in psychological treatment due to her abuse, as these are the most extreme cases.

It is the responsibility of the first responders to assist the victim to seek medical assistance, irrespective of the need of the need for a medical certificate for evidentiary purposes. This requires a sensitive approach towards the victim, explaining that receiving medical assistance does not automatically mean that the victim consents to an investigation and that she can still decide how to proceed later. It is extremely important that the medical and law enforcement sectors work closely and effectively together in order to make sure that the injuries of every victim are assessed, the offence is appropriately addressed but also to make sure that the victim receives sufficient medical treatment.

It is not uncommon for law enforcement officers to receive reports of domestic violence after the incident has occurred. The victim might be afraid, or not sought help right away. This might mean that the medical evidence might be compromised or might not be available. The victim might lack the knowledge of the importance of such evidence and not have gone for the examination. The hospital or health clinic might be far away and she might not have the means to go. She might have unintentionally compromised the evidence. For example, in situations of sexual violence, the victim might have bathed after the assault, or might not have sought assistance until after a few days. The lack of a medical certificate should not preclude the police in continuing their investigation.

#### **Medical treatment and assessment**

Medical and forensic services should be provided to victims in a safe manner, free of charge, even if they choose not to proceed with a criminal or other investigation or otherwise cooperate with the criminal justice system. The collection of medical and forensic evidence should be done in a confidential manner.

***See Annex 2 for a sample diagram for investigators and medical professionals to chart injury location.***

#### **4.4 Useful Checklists**

##### **Domestic Violence Checklist - (Primary Investigation Guidelines)<sup>5</sup>**

###### **1. Upon Arrival at scene**

- ❖ Determine location and condition of victim
- ❖ Determine if suspect is still at scene
- ❖ Check well-being, physical condition of all parties
- ❖ Summon first aid if injuries require

###### **2. Preliminary Investigation**

- ❖ Interview victim and suspect separately
- ❖ Ask victim if there is history of abuse
- ❖ If children at scene, interview them separately
- ❖ If other witnesses at scene, interview them separately
- ❖ Distinguish primary aggressor from victim, if both injured
- ❖ Note and document emotional and physical condition of parties involved
- ❖ Note demeanour of suspect
- ❖ Note torn clothing by both parties
- ❖ For female victims, note if make-up smeared
- ❖ Note signs of injury on victim
- ❖ Note any excited utterances by any parties present
- ❖ Note any evidence of substance / chemical abuse
- ❖ Advise victim of her options – initiating a criminal investigation; forensic examination, etc
- ❖ Write the victim's statement for her signature
- ❖ Advise victim of available resources (shelter, counselling)
- ❖ Assist victim in obtaining a temporary forbidden contact order
- ❖ Determine what, if any, criminal offence or administrative penalty offence has occurred

<sup>5</sup> Adopted from New Jersey Division of Criminal Justice Check List for Law Enforcement Officers.

### 3. Forbidden Contact Order

- ❖ Determine if victim has a forbidden contact order against suspect
- ❖ Determine if suspect has violated the forbidden contact order

### 4. Temporary Administrative Detention or Arrest

- ❖ Determine if circumstance meet criteria for arrest and if so, arrest suspect
- ❖ Determine if circumstance meet criteria for temporary detention, and if so, remove suspect to police station for temporary detention
- ❖ Record spontaneous statement of suspect
- ❖ Advise suspect of his rights
- ❖ Record all statements

### 5. Evidence

- ❖ Record condition of crime scene
- ❖ Photograph damaged property
- ❖ Photograph crime scene
- ❖ Identify weapons / firearms
- ❖ Photograph and diagram injuries of
  - victim
  - suspect
- ❖ Obtain statements of
  - victim
  - children
  - witnesses

### 6. Medical Treatment

- ❖ Transport victim to hospital, for injuries, if necessary and for forensic examination for medical certificate
- ❖ Obtain copy of medical certificate

### 7. Completing Incident Report

[maintain objectivity in reporting; avoid personal opinions; report details, not conclusions]

- ❖ Ensure that elements of all involved criminal offences or administrative offences are included in report
- ❖ Describe in detail nature of criminal or administrative offence involved
- ❖ Document any injuries that victim suffered
- ❖ Document any injuries that suspect suffered
- ❖ Document past history of violence
- ❖ Record spontaneous statements as stated by parties – do not paraphrase

## Domestic Violence Investigation Checklist<sup>6</sup>

### 1. Victim

- Describe the victim's location upon arrival;
- Administer first aid to the victim
- Document statements made by the victim
- Describe the victim's emotional condition
- Describe the victim's physical condition
- Document the victim's injuries
- Physically separate the victim and suspect in different rooms and interview
- Document the victim's injuries in detail
- Make note of the victim's relationship to the suspect
- Document history of abuse
- Note any temporary restraining or other court orders
- Give victim required written information on local resources for victims of domestic violence and explain what will happen to the police's report
- Document any temporary address or telephone number of the victim

<sup>6</sup> From Law Enforcement Responses and Procedures, Chapter 10 in Criminal Domestic Violence Investigations Manual, South Carolina Department of Public Safety, Criminal Justice Academy Division.

2. Suspect
- Describe the suspect's location upon arrival
  - Administer first aid to the suspect
  - Document any statements or admissions made by the suspect
  - Describe the suspect's emotional condition
  - Describe the suspect's physical condition
  - Document the suspect's injuries in detail
  - Document evidence of substance or chemical abuse by suspect
  - Interview the suspect
  - Obtain a photograph of the suspect if not present for identification and arrest purposes
3. Witness
- Interview the reporting party
  - Identify all witnesses and interview separately
  - List name and ages of children present
  - Interview children
  - Document names and address of emergency personnel
  - Document name of treating physician in emergency room
4. Evidence
- Photograph the crime scene
  - Take "full body" photograph of the suspect
  - Photograph the victim's injuries
  - Retake photos 48-72 hours later
  - Photograph the suspect's injuries
  - Seize all weapons used
  - Obtain copy of emergency call tape
  - Attach related reports, photographs and evidence to investigation copy
  - Obtain medical history

## **Section 5: Initial Assessment of Domestic Violence Cases**

### **5.1 Enforcement and Protection Options – Overview of Options**

As already indicated in the previous module, the term "domestic violence" is used to refer to a range of behaviours, not all of which are criminal or amount to administrative sanction. In attending the scene of an incident, the first responders not only have to consider whether they should call in the criminal investigation agency, whether to detain the suspect, whether or not a crime or administrative violation has been committed, but also how to ensure immediate protection and safety of the victim.

**After the preliminary investigation is completed and fully documented, the first responders determine the enforcement and protection options available to them.**

Ensuring victim safety	Holding perpetrators accountable
<ul style="list-style-type: none"> <li>• Stopping immediate violence.</li> <li>• Ensuring immediate protection [<i>possibilities include: removal of perpetrator through administrative detention (24-48 hours); or arrest of the perpetrator.</i>]</li> <li>• Protecting the victim from additional acts of violence by the abuser [<i>possibilities include assisting victim to shelter or safe residence; or to obtain forbidden contact order.</i>]</li> <li>• Conducting a risk and safety assessment.</li> <li>• Assist victim in developing a safety plan.</li> <li>• Deterring future violence [<i>through holding offender accountable for actions and assisting in rehabilitating the abuser.</i>]</li> </ul>	<ul style="list-style-type: none"> <li>• Criminal law sanctions – call in the criminal investigative agency.</li> <li>• Administrative penalties; both the local police and People's Committee have authority to impose.</li> <li>• Community advice and criticism –People's Committee has authority, local police can assist the People's Committee.</li> <li>• Reconciliation agreements [<i>important to emphasize that violence is never justified by non-violent behaviour of victim and should always include a warning to the abuser that if violent again, more serious sanctions will apply.</i>]</li> </ul>

Offender accountability means appropriate and consistent sanctioning of the abuse, including holding abusers accountable for any breaches or violations of bail conditions or forbidden contact orders and not making excuses for violent behaviour. Offender accountability should also include access to treatment for the abuser.

## **5.2 Conducting the Initial Assessment – What Steps to Take**

### **Enforcement options – hold the perpetrator accountable**

#### **Criminal sanctions**

Where the first responders believe that a criminal offence has occurred, they should contact the criminal investigation unit and proceed with preserving all relevant evidence even without the initial consent of the victim. The victim might be traumatized or intimidated at the initial contact with the police or People's Committee. She may require support and counselling before being in a position to decide whether to request for the criminal investigation.

- For the police to proceed investigating certain criminal offences, such as article 104 where the infirmity rate is under 31%, the victim's consent is required. Ensuring sensitive questioning of the victim by police and providing full information on their legal rights and options, can contribute to whether the victim's consent is given.
- Police should ensure, where necessary that the medical certificate is obtained from the forensic examiner, and allow time for the victim to decide whether or not to proceed with a criminal investigation at a later date.

► ***See Module 6 for further information on proceeding with a criminal investigation***

#### **Administrative sanctions**

The police or People's Committee can proceed by administrative punishment in cases where the nature of the incident is less than criminal but required by law to be administratively sanctioned.

- In determining whether to proceed against the abuser through administrative punishment, the first responders should assess the following: physical injury; threats of violence, menacing actions; and extenuating circumstances, such as prior domestic violence, police officer's belief that violence may occur in the future, or any other circumstances that requires additional attention or documentation.
- The first responders should consider administrative punishment where the husband frequently abuses his wife but the individual act is not considered to amount to a crime. Hence the importance of questioning the victim about the history of abuse and documenting all past police involvement.
- Administrative punishment can be used in situations:
  - Where the abuser violates a forbidden contact order.
  - Ill-treating, persecuting or hurting the honour and dignity of their wife which does not amount to article 151 offence.
  - Treating the wife unequally because of gender bias.
  - Making brutal gestures, speeches to provoke, annoy, or infringe upon the honour of other person.
- The police and People's Committee can temporarily detain the suspect on violations of administration regulations. During administrative custody, the police might conduct further investigation to determine whether to proceed with an administrative regulation penalty or perhaps determine whether the suspect should be charged with a criminal offence. Only where there is evidence of a criminal offence can the suspect be arrested. In these situations, the police can remove the abuser from the home for questioning and/or for administrative detention. Police decisions relating to detention and terms of release of the abuser need to take into account the safety of the victim and others related through family, socially or otherwise and that these procedures also prevent further acts of violence.

► ***See Module 5 for further information on proceeding with an administrative sanction***

### **Informal police mediation and cautioning at the scene**

The police are not specifically trained to mediate between the parties themselves in domestic violence situations. In certain situations, police may caution the perpetrator. Cautioning is usually recommended for minor and/or isolated incidents.

Police should consider the following:

- Research indicates that the majority of domestic violence incidents are not isolated and there will usually have been numerous incidents before the police are involved. Therefore it is important for the police to have a comprehensive understanding of the circumstances before deciding on what action to take.
- A concern about cautioning at the scene is that it could be seen as minimizing the seriousness of domestic violence and consequently undermine public confidence.
- Cautioning does not allow for the sophisticated risk assessment required in domestic violence cases.
- In some countries, the fact that family members are involved is considered as an aggravating factor that takes even minor assaults into the criminal threshold. In Viet Nam, article 151 can apply to cases that do not meet the 104 infirmity rate threshold.

### **Reconciliation**

When police are called to the scene of domestic violence situations, referring the matter to the local reconciliation team might be one option they consider. The police may or may not be involved in the reconciliation process itself.

The police should keep the following in mind:

- The law clearly provides that if the incident is of a criminal or administrative nature, reconciliation is not the appropriate option.
- If the incident does not meet the threshold of administrative or criminal nature, and the police determine that the victim is not in a position to exercise free will due to feeling threatened or intimidated by her husband, then they should not refer the matter to reconciliation.
- If the police are involved in this process, it is important to understand that some abusive husbands extend their controlling tactics to situations within the reconciliation room, before, during and after the reconciliation process.
- The controlling tactics can include:
  - Physical assaults or threats of violence.
  - Threats to take the children through custody.
  - 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 do 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.

The Ministry of Justice and UNODC conducted a small survey regarding the use of reconciliation teams in domestic violence cases.<sup>7</sup> Victim interviews revealed that all victims said that they had been subject to violence at least ten times a year and almost half of them considered the occurrence to be regular. Half of the victims claimed that after reconciliation the violence continued.

### **Protection options – keeping the victim safe**

#### **Protection – Forbidden Contact Orders**

A forbidden contact order can be requested at any time, whether or not a criminal investigation is proceeding. The police should assist the victim, first in informing her or this protection option and secondly in making the request on her behalf.

- A forbidden contact order allows the victim time to determine what her options might be.

<sup>7</sup> 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).

► ***See Module 5 for further information on Forbidden Contact Orders***

**Temporarily detaining the suspect**

When the first responders are at the scene, the victim might not be in a position to formally request initiating criminal charges, so the police should proceed with conducting the investigation and providing information and support to the victim to allow her time to decide whether she wants to proceed or not. The power of detention takes away any control or power the abuser may have over the victim in the short term and limits the abuser's power of intimidation over the victim.

In determining whether deterrent measures should be made, the police should consider the following factors:

- Potential for an escalation of violence;
- Physical evidence that leads to the conclusion a crime has been committed;
- Any offence occurring in the presence of the police.

The police should not consider the following:

- Marital status;
- Ownership or tenancy rights;
- Verbal assurances that the violence will stop;
- Claims by the suspect that the victim provoked or perpetuated the violence;
- Emotional status of victim;
- Visible or non-visible injuries;
- Denial of domestic violence by either party;
- Parties indicating it is a private matter;
- Belief that the arrest may not lead to a conviction;
- Financial consequences of an arrest to either party;
- Racial, cultural, social, political or professional status of either the victim or suspect;
- The use of alcohol or drugs or both by either or both parties;
- The perception of the willingness of the victim to cooperate with criminal prosecution.

► ***See Module 5 for further information on Human Custody and Body Search according to administrative procedures***

**Victim Services – Support to the Victims**

Research shows that the more women victims are psychologically supported the more cooperative they are with the police and the justice system. Many women do not know their legal rights, or the legal options available to them or the services that could assist them. Police should be aware of the support services that might be available for the victims and make the appropriate referrals or provide information.

This could include:

- Assisting the victim in obtaining medical assistance, if necessary. This is different than the formal legal requirement of obtaining a forensic medical certificate for a criminal matter.
- Arranging for transportation to a shelter or place of safety (safe residence), if necessary, with the location remaining confidential to the suspect.
- If the victim wants to remain in the home, the police should remain at the scene until they are satisfied there is no further immediate threat to the victim.
- Providing information to the victim on services that are available, such as counselling, legal aid, and offer immediate contact with victim services.
- Assist in accessing any financial assistance, if appropriate.

**Section 6: Documentation and File Management**

**6.1 Tips for Documentation**

A good practice for local police and other first responders is to maintain a daily notebook that thoroughly documents each and every investigation.

When conducting an initial investigation, officers may need to make notes of:<sup>8</sup>

<b>Category</b>	<b>Sample questions</b>
Who ...	<ul style="list-style-type: none"> <li>• was the complainant/victim?</li> <li>• made the report?</li> <li>• discovered the offense?</li> <li>• saw or heard something of importance?</li> <li>• had a motive for committing the offense?</li> <li>• committed the offense?</li> <li>• helped the offender?</li> <li>• was interviewed?</li> <li>• worked on the case?</li> <li>• marked the evidence?</li> <li>• received the evidence?</li> </ul>
What ...	<ul style="list-style-type: none"> <li>• type of offense was committed?</li> <li>• actions were taken by the suspect and using what methods?</li> <li>• do the witnesses know about it?</li> <li>• evidence was obtained?</li> <li>• was done with the evidence?</li> <li>• tools or weapons were used?</li> <li>• actions did you take?</li> <li>• further action is needed?</li> <li>• other agencies were notified?</li> </ul>
Where ...	<ul style="list-style-type: none"> <li>• was the offense committed?</li> <li>• were the tools or weapons found?</li> <li>• was the suspect seen?</li> <li>• were the witnesses?</li> <li>• was the offense discovered?</li> <li>• does the offender live or frequently go?</li> <li>• is the offender?</li> <li>• would the offender be most likely to go?</li> <li>• was the offender located/apprehended?</li> <li>• was the evidence marked?</li> <li>• was the evidence stored?</li> </ul>
When ...	<ul style="list-style-type: none"> <li>• was the offense committed?</li> <li>• was the offense reported?</li> <li>• did you arrive?</li> <li>• did you contact witnesses?</li> <li>• was the offender located/apprehended?</li> <li>• did help arrive?</li> </ul>
How ...	<ul style="list-style-type: none"> <li>• was the offense committed?</li> <li>• did the offender get to and from the scene?</li> <li>• did the offender obtain information needed to commit the offense?</li> <li>• were the tools or weapons obtained?</li> <li>• did you get your information regarding the offense?</li> </ul>
Why ...	<ul style="list-style-type: none"> <li>• was the offense committed?</li> <li>• were particular tools or weapons used?</li> <li>• was the offense reported?</li> <li>• were witnesses reluctant to talk?</li> <li>• was the witness eager to point out the offender?</li> <li>• was there a delay in reporting the offense?</li> </ul>

<sup>8</sup> Taken from the UNODC manual "Effective Police Responses to Violence Against Women".

With whom ...	<ul style="list-style-type: none"> <li>• does the offender associate?</li> <li>• are the witnesses connected?</li> <li>• do you expect to locate the suspect?</li> </ul>
How much ...	<ul style="list-style-type: none"> <li>• knowledge was necessary to commit the offense?</li> <li>• damage was done?</li> <li>• property was taken, if any?</li> <li>• trouble was it to carry the property away?</li> <li>• information are the witnesses not giving out?</li> <li>• is the complainant/victim withholding?</li> <li>• additional information do you need to help clear the offense?</li> </ul>

Note taking should be a constant activity throughout the process of the initial response; everything learned during its course should be written down. The inexperienced officers will have a tendency simply to record the basic facts of the case and indicate those steps that yielded positive results. However, even those elements of the investigation that were examined but failed to yield useful information should be recorded. The purpose of this is to establish the completeness of the investigation, which, in turn, may reveal that additional investigation in a particular area may not be profitable. Notes can be supported by sketches, where appropriate, of the crime scene. In crime scenes, there are two forms of sketches used to document a scene:

1. A rough sketch made in an investigators note book
2. A formal scale diagram that includes accurate measurements

Benefits of a well done formal crime scene sketch include:

1. Presenting an accurate description of the crime scene
2. Acts as a witness memory aid (enhances investigators professionalism)
3. Makes a favourable impression upon the court

A rough sketch in an officer's notebook should illustrate the scene (ie.: a room, a series or rooms, or an outdoor area, where a weapon was located). One page can be a diagram of the scene, with numbers used to identify key items (ie.: a body or physical evidence). Another page in the investigators notebook can list the numbers and give corresponding item descriptions/titles. Similar to a map, this second page is the "legend" for the diagram.

A formal scale diagram includes accurate measurements that are done with a tape measure to ensure accuracy. A formal scale diagram will resemble a set of builder's plans, or architectural plan.

Similarly, photographs can be used to document the scene, as well as any injuries the victim may have suffered. Crime scene photographs serve two purposes:

1. The first purpose is to record the overall crime scene which includes photographs of the exterior and interior of the building and/or scene; the entry, passage and exit routes taken by the suspect, and physical evidence found within the crime scene.
2. The second purpose of crime scene photographs is to record forensic evidence which can be used to reconstruct the crime and establish the identity of the suspect(s). Evidence such as magnified images of weapons, fingerprints and tool marks are examples of these types of photographs.

When documenting a scene with photographs, investigators must remember that they are in essence telling a story with images, and that these images will be viewed by persons who did not attend the scene. Thus, images must not only document the scene and related evidence, but also provide the larger context. Investigators documenting a scene with photographs should take pictures from three distances:

1. Far away, and from multiple angles (sets the scene, provides scale and larger context, places the scene into context)
2. Middle distance
3. Close-up (illustrates evidence, where it is found, the form of it, and condition found in)

Distances for each of these will vary, depending on the scene and the crime. Close-up photographs should have something, such as a ruler, included in order to provide scale

## **6.2 Making a report for the file**

For each domestic violence incident, no matter which enforcement option is taken, a written report should be prepared. The written report should clearly and thoroughly document:

- What happened.
- Who was involved (suspect, victim, witnesses, investigators).
- When it happened.
- Where it happened.
- Why it happened. Note: the police should be careful when documenting "why" the incident happened. The police should be careful as this can be construed as an attempt to blame the victim for the violence that took place.
- How it happened.
- What evidence was collected, by whom, how, and what was done with it.

In a report detailing an incident of domestic violence, the report may contain:

- Transcripts of all oral statements of the victim, witness, and suspect.
- Copies attached of all written statements of the victim, witness and suspect.
- Details of all evidence collected and by whom.
- Copies of all photographs taken or diagrams made.
- Details of the suspect's history and copies of any related court orders or forbidden contact order.
- If one was conducted, a copy of the risk/ threat assessment form

## **Section 7: Protection of Victims and Victim Support**

### **7.1 Ensuring the Victim Safety – Threat Assessment and Risk Management**

Victim protection begins when the police and the People's Committee become involved in the situation, and continues through all stages of their involvement. This goes hand in hand with ensuring victim support and assistance. The police and People's Committee are not the only ones that have a role to play in ensuring victim services and protection, but they have an important role.

There are many things the first responders can do to address the safety needs of women who are victims of domestic violence. In making decisions on arrest, detention and terms of any form of release of the abuser, they should take into account the need for the safety of the victim. 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.
- Requesting, as necessary, strict release conditions for offenders, including curfews, no-contact orders, abstinence from alcohol, prohibition from weapons, seek and attend counselling.
- Notification of victims prior to an offender being released.
- Investigating reports of threat received by women.

### **7.2 Assessing Lethal and Extremely Dangerous Behaviour**

Every first responder's interview with a women victimized by domestic violence should include at some point the discussion and creation of a personal safety plan for the victim. Violent relationships often become more violent over time. While it is impossible to predict with any degree of certainty when relationships will escalate to lethal violence, researchers have identified some common factors. Absence of the following circumstances does not necessarily indicate that violence will not become lethal.

### **Remember!**

Each situation is unique and each threat requires an individualized response that best meets the need of the woman involved.

### **Lethal and Extremely Dangerous Behaviour<sup>9</sup>**

Threats of suicide or murder: In the vast majority of cases where women are killed, the perpetrator has first threatened her life or his own. A suicide threat should be taken very seriously. In many cases, men murder their wives and children, and then commit suicide. The more specific a threat, the more seriously it should be viewed.

Availability of weapons: A risk of lethal violence has also been associated with the batterer's possession of or access to weapons, the use of weapons or threats of such use in prior incidents, and escalation of the violence in frequency or severity.

Controlling and jealous behaviour: A risk of lethal violence is associated with an increase in controlling or jealous behaviour. Such behaviour can include following her, demanding to know where she is at all times, or restricting her movement.

Use of drugs and alcohol: Alcohol may reduce inhibitions to use lethal violence or prevent a batterer from adequately understanding the lethal nature of the force he is using.

Depression: The mental health of the man can indicate his propensity for lethal violence. If a man has lost hope and "given up" he is more likely to cause serious injury or death.

Batterer's isolation: Studies indicate that the isolation of the batterer and the extent to which he is dependent on the battered woman correlates with the use of lethal violence.

Escalation of violence: Studies also indicate that escalation of the violence in frequency or severity can also indicate increased dangerousness.

End of relationship: Research indicates that the most dangerous time for a battered woman is after she ends the relationship. In the US, research indicates that women who leave their batterers are at a 75% greater risk of being killed by their batterers than those who stay. It is very important for a battered woman to make her own decision to leave a relationship because she is in the best position to assess the potential danger.

Choking or strangling: legal professionals have identified the abuser's prior "choking" or "strangling" of the victim as an indicator of extreme danger.

First responders can help the victim assess the risk the abuser poses to her and develop a practical plan to keep safe. It is important to keep in mind that even if there is an absence of lethality indicators, the victim should rely on her own instincts to assess the appropriate responses to violent situations. The first responders 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.

### **7.3 Developing a Safety Plan**

The first responders can assist the victim in developing a safety plan for herself. It is the women victim herself who is the expert on her life and her risks. This can be done with the assistance of victim service workers, shelter staff, and counsellors.

<sup>9</sup> Adopted from IACP National Law Enforcement Policy Centre "Domestic Violence Concept and Issues Paper, revised June 2006).

Suggested steps an officer can take in discussing the development of such a plan with the woman victim:

- Initial discussion of the purpose and role of the plan, including its limitations.
- Gather information, such as risk factors from the lethal assessment questionnaire above, as well as information about possible resources and assistance available, such as the level of personal support available to the women; her personal living situation; barriers to safety; employment; child-related concerns, etc.
- Create the safety plan, including specific strategies, such as the possibility of relocating to shelter or safe address; including steps such as criminal investigation; [discuss how to leave safely; where to go to be safe; where to keep important papers and documents; which neighbours to tell about the violence so they can call police if necessary; teach children how to call the police; hot to protect self and children in dangerous situations; local phone numbers for shelter, safe residence, possible safety measures at home, such as locks, lights, inform family and friends who can support].

The initial time of crisis or when a woman first enters a shelter might not be the time to develop the personal safety plan. The women might need time before anxiety, fear and stress levels are sufficiently reduced.

**Remember!**

First responders should check-in with the victim on an on-going basis to ensure her ongoing safety and determine if there has been any fundamental change in her circumstances, or those of the perpetrator, that may in some way impact her safety and the mitigation of future violence

**Remember!**

Safety plans are preventative, not predictive tools, designed to reduce danger and enhance safety rather than forecast the likelihood o future violence

## ANNEXES

### Annex 1: Tips for Interviewing Victims

Suggested approach to interviewing victims is one that follows a specific plan:<sup>10</sup>

<b>Choose an appropriate location</b>	Depending on the situation, victims and witnesses may be more forthcoming with information if interviewed in their home as opposed to a police station. Some women may be too afraid to speak in their home, and some interviews might be conducted in a hospital or a women's shelter. Ask the women where she feels most comfortable to provide a statement
<b>Determine if others will be present</b>	Ideally, an experienced and trained police officer will interview the victim. A second officer may be present, as might be a person to support the victim. In cases where violence has resulted in serious injuries, police should consider recording the interview with either audio or video. Interviews of victims should never be conducted in the presence of the attacker, or in a police room designed for interrogations.
<b>Plan the questions to be asked</b>	Before the interview, the investigator needs to plan which key questions to ask (ie who, what, where, when, how)
<b>Introduction</b>	If the interview is being recorded, state the time, date and location for the record. Otherwise, the investigator introduces themselves to the victim by name.
<b>Interview rules</b>	The investigator may consider discussing the following to help put the woman at ease: <ul style="list-style-type: none"> <li>• I am here to help, not judge or accuse</li> <li>• If I misunderstand something you say, please tell me. I want to know, and I want to get it right.</li> <li>• If you don't understand something I say, please tell me and I will try again</li> <li>• 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)</li> <li>• Even if you think I already know something, tell me anyway</li> <li>• If you are not sure about an answer, please do not guess, tell me you are not sure before you say it</li> <li>• 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</li> <li>• Please remember that I will not get angry or upset with you</li> <li>• Only talk about things that are true and really happened</li> </ul>
<b>Free Narrative</b>	This can be the most detailed and important part of the interview where the victim discloses the most detailed information. Ask the women to tell what they experience, saw, and heard in their own words. They should verbally reconstruct, in as much detail as possible, the circumstances of the incident. <i>"I'd like you to tell me everything you remember about what happened, starting from the beginning"</i> . Do not interrupt.  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".  The investigator 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?") Investigators listen, is patient and takes detailed notes.

<sup>10</sup> Taken from the Draft UNODC manual "Effective Police Responses to Violence Against Women".

	Remember that some victims of violence or abuse may be reluctant to talk about what happened. They may have been threatened with harm, or death, by the offender.
<b>Open questions</b>	<p>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.</p> <p>Here, the investigator asks specific open questions (ones that cannot be answered "yes" or "no". For example:</p> <ul style="list-style-type: none"> <li>• Tell me about.....</li> <li>• What happened next?</li> <li>• And then what did you see?</li> <li>• Tell me what else you remember.</li> </ul> <p>Investigators uses these questions to clarify points covered in the free narrative, while continuing to take detailed notes of what is said.</p> <p>To avoid any confusion, and get the best possible recall, the investigator should only ask one question at a time.</p>
<b>Specific questions</b>	<p>The purpose of this stage is to clarify and extend previous answers in a non-suggestive manner. Here the investigator asks direct, closed questions to elicit missing details or clarify key points. Ensure the key points of who, what. Where, when, how, why are covered. Investigator continues to take notes.</p> <p>Avoid multiple choice questions, but if you must, limit the questions to two possible answers. At a later time, repeat the question but slightly re-phrase it and rearrange the questions.</p> <p>If there are inconsistencies in the woman's statement, they should be addressed at the end of the interview.</p>
<b>Safety plan</b>	See the last section of this module for more details. This should be part of the interview. As a part of safety planning (which includes physical and psychological safety), police can use this phase of the interview to refer the women to additional services and assistance, such as healthcare, counselling or some form of social assistance.
<b>Conclusion</b>	<p>At the conclusion of the interview, when the investigator believes they have obtained all possible information, they should ask questions such as "Is there anything else about this incident that you think I should know?" or "what else do you know that I didn't ask about?"</p> <p>Ask if they have any questions. If so, answer them to the best of your ability. Advise them that they might be re-interviewed at a later date.</p> <p>Explain what will happen next, but don't make any promises.</p> <p>Thank the woman for her assistance and cooperation.</p>

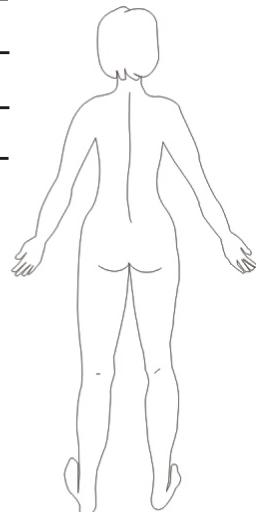
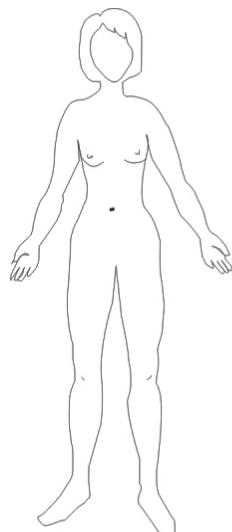
## Annex 2: Sample Injury Diagram for Investigators and Medical Professionals

### Example of an injury location chart (or body map)

Indicate, with an arrow from the description to the body image, where any injury was observed. Indicate the number of injuries of each type in the space provided. Mark and describe all bruises, scratches, laceration, bite marks, etc.

Encounters:

Cuts	_____	Punches	_____
Bites	_____	Abrasions	_____
Bruises	_____	Bleeding	_____
Burns	_____	Dislocations	_____
Bone fractures			_____



Source: Adapted from Improving the Health Care Response to Domestic Violence: A Resource Manual for Health Care Providers, by Carole Warshaw, Anne L. Ganley, and Patricia R. Salter, San Francisco: The Family Violence Prevention Fund, 1995. Used with permission of the Family Violence Prevention Fund.

This diagram should be accompanied by a more thorough report detailing the nature and extent of all injuries, how they were caused, what if any weapons were used.

## **Module 5**

### **The Administrative Sanction System and Domestic Violence**



# **UNODC**

**United Nations Office on Drugs and Crime**



## **Module 5**

### **The Administrative Sanction System and Domestic Violence**

#### **Purpose**

By the end of this session, participants will:

- Be familiar with the legal framework of administrative sanction.
- Understand their roles as commune-level People's Committees and the commune-level police force in applying the legal regulations of administrative sanction in the field of domestic violence prevention and control.
- Be able to process a case of domestic violence under the system of administrative sanction.

#### **Section 1: Overview of the administrative sanction system in responding to domestic violence.**

##### **1.1 Introduction to the system of handling administrative violations**

The law on administrative punishment is an effective tool for the government in dealing with domestic violence. The quick and timely handling of domestic violence cases in a consistent manner restores the violated order in state management as well as increases public awareness for preventing domestic violence. The law on administrative punishment requires compulsory intervention to correct bad behaviour of individuals where the nature of the incident does not meet the threshold of criminal liability but required by law to be administratively sanctioned. All consequences caused by administrative violations, including both physical and spiritual, must be handled strictly and quickly according to the legal provisions.

Administrative violations in the field of domestic violence prevention and control should contain the following elements:

1. The action must be an illegal act violating the regulations of state management in the field of domestic violence prevention and control. Therefore the "violation" must be stipulated in a legal normative document such as a Decree. Furthermore, its harmful effects (danger) by both community/society and individuals is considered low and therefore does not warrant a criminal prosecution.
2. The action must be an objective act which occurred in the past.
3. The action must be done by an individual (or an organization)<sup>1</sup>.
4. The action must contain intentional fault, or in other words, the offender must be aware of the illegality of the act and the consequences, both expected and unexpected.

##### **1.2 The laws on administrative punishment**

There are a number of normative documents which contain general provisions on administrative punishment. These include the following:

- The Ordinance on handling of administrative violations (amended and supplemented in 2007 and 2008) is the primary legal instrument dealing with administrative punishment, having the highest legal effect in Vietnam in this area of the law. This ordinance provides for general provisions on handling administrative violations.
- The Decree No.128/2008/NĐ-CP dated December 16, 2008 is subordinate legislation which provides guidance for the implementation of some of the provisions in the above mentioned Ordinance.

There are other decrees that provide guidance for the implementation of certain provisions of the above mentioned ordinance:

- Decree No. 37/2005/NĐ-CP dated March 18, 2005 stipulates the procedures for the application of coercive measures for the execution of administrative violation-sanctioning decisions;
- Decree No. 70/2006/NĐ-CP dated July 24, 2006 sets out the management of material evidence and/or means of administrative violations according to the administrative procedures;
- Decree No. 62/2004/NĐ-CP dated September 07, 2004 provides the regulation on custody of individuals according to the administrative procedures.

<sup>1</sup> Organization is generally not relevant when discussing domestic violence cases; however might apply in some situations, for example, where a victim support organization takes unfair advantage to seek profit.

There are also other legal normative documents developed by the Ministries and Ministerial Agencies which guide the implementation of the above mentioned decrees. In addition to the nearly 100 decrees of the Government dealing with the handling of administrative violations in the field of state management, there are also legal normative documents of the Ministries and Ministerial Agencies which guide the implementation of the above Decrees.

As discussed in more detail in Module 4, the specific normative documents on administrative punishment that deal with domestic violence prevention and control are:

- The Law on Domestic Violence Prevention and Control;
- The Decree No.110/2009/NĐ-CP dated December 10, 2009 stipulates how to handle administrative violation in the field of domestic violence prevention and control.

When a violating act in the field of domestic violence prevention and control is detected, the competent person must follow the above legal documents, especially Decree No.110/2009/NĐ-CP, which can guide him or her in the determination as to whether the act is an administrative violation, a crime or a family argument that does not amount to a crime or administrative violation.

### **1.3. Distinguishing administrative violations with crimes**

We can distinguish administrative violations from crime by the following fundamental signs:

<b>Sign</b>	<b>Administrative violation</b>	<b>Crime</b>
Danger level	Lower danger level to society	Higher danger level to society
Promulgating bodies	<ul style="list-style-type: none"> <li>■ Law promulgated by Parliament</li> <li>■ Ordinance promulgated by the Standing Committee of the Socialist Republic of Việt Nam National Assembly</li> <li>■ The Government prescribes violating acts in the fields of state management (The Decree No.110)</li> </ul>	<ul style="list-style-type: none"> <li>■ The Criminal Code promulgated by Parliament</li> </ul>
Applied subject	Individual, organization	Individual
Persons who have competence to deal with the cases	Competent Government officials <sup>2</sup>	Judges, criminal investigative agencies, police
Procedure	Administrative procedure as set out in the Ordinance on handling of administrative violations of 2002	Judicial procedure as stipulated in the Law on Criminal Procedure.

### **1.4. Subjects handled by administrative violations**

According to the 2002 Ordinance and Decree No.110, both organizations and individuals can be subjected to administrative punishment. One of the main purposes of administrative punishment is to educate the perpetrator of domestic violence in order to improve his behaviour and prevent further violence. Administrative punishment also ensures that the violator is held accountable for his actions, and establishes an official record of all violations which may affect the type of future administrative sanction that is applied if he continues this behavior. The educational component of administrative sanctions in domestic violence cases is important because domestic violence cases often have the following characteristics:

- Close links between the violator and the victim, as in domestic violence, they will be related through marriage or by blood.
- As discussed in Module 3, the fact is that in the majority of cases, the perpetrator is male. There are also a few cases where the violator is juvenile or female.

<sup>2</sup> For example, the president of the commune level People's Committee, commune level police officers.

- The social psychology and opinion on gender equality remains severely low. In other words, gender stereotypes continue which contributes to unequal power relationships between women and men.
- In some cases, the perpetrator / violator is the main or only source of income for his family.

### **1.5. Sanctioning form**

The 2002 Ordinance prescribes various forms of sanctions for administrative violations. These include:

a) The principal forms of sanction:

- Warning;
- Fines (for an administrative violation in the field of domestic violence, the fine can range from VND 100,000 to VND 30,000,000).

b) Depending on the nature and seriousness of the violation, the perpetrator may also be subject to the application of one or both of the following additional forms of sanction:

- Stripping of the right to use permits, professional practice certificates;
- Confiscating material evidence and/or the means used to commit the administrative violation.

c) Apart from the above sanctioning forms, the violator may also be subject to a public apology when the victim demands.

d) Foreigners who commit administrative violations 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.

The Decree provides that victim support and consultative organizations that commit acts of administrative law violation in the field of domestic violence prevention and control, such as taking unfair advantage of domestic violence prevention and control to seek profit, can be fined to the maximum level of the fine bracket, which is VND 30 million.

The Decree No.110/2009/NĐ-CP provides for relatively low fines when dealing with a first violation (up to VND 1.5 million). This takes into account the special relationship between the violator and the victim. However, the authorities must remember that if there is a history of domestic violence, this should influence their decision regarding which form of sanction should apply.

### **1.6. The authority to sanction administrative violations**

Authority to sanction administrative violations

The authority to sanction administrative violations is determined by the law and assigned to the relevant Government agencies officials. The authority to sanction administrative violations is prescribed in Chapter IV of the Ordinance and further detailed in Chapter III of Decree No.110. There are four bodies that have the authority to sanction administrative violations. These include:

1. People's Committee presidents who are entitled to common state management in their local areas;
2. Branches of public security;
3. Border guards; and
4. Specialized Inspectorates within the Ministry of Culture, Sport and Tourism.

Commune/district People's Committee presidents, ward police chiefs, and people's police officers play the most important role in registering a case/file and making the sanction decision at the local level.

Border guards and specialized Inspectors in the Ministry of Culture, Sport and Tourism will likely only handle specific types of violations such as spreading information and images to instigate domestic violence or respond to domestic violence occurring in border areas.

### **Method to determine the authority to handle administrative violation**

When a violating act has occurred, based on provisions of Decree No.110/2009, the commune/district town People's Committee presidents, the ward police chiefs, and the People's police officers are responsible for identifying specific violating acts, and to determine whether according to the fine levels, they have sanctioning authority or whether they have to transfer the case to a higher level of authority.

The rules provided in Article 1(17) of the Ordinance and Decree No.128/2008 help to determine accurately the sanctioning competence of commune/district town People's Committee presidents, the ward police chiefs, and People's Police officers.

For example:

The presidents of the People' Committees at the commune level are competent to sanction administrative violations in the field of state management in their respective localities, and can impose the particular sanctions specifically related to domestic violence as follows:

1. Impose a warning;
2. Impose fines of up to VND 2,000,000;
3. Confiscate material evidences and/or means used for administrative violations, with value of up to VND 2,000,000;

In cases where a person commits many acts of administrative violation, the competent persons at the commune-level need to determine:

- If the sanctioning form and level prescribed for each act are under the authority of the commune/district town People's Committee presidents, the ward police chiefs, people's Police officers, the sanctioning competency also belongs to such persons.
- If the sanctioning form and level prescribed for one of the acts are beyond the authority of the above persons, he/she shall have to transfer the case of violation to the authority with sanctioning competency;

If acts fall within the sanctioning authority of many persons in different branches such as inspectors and border guards, the sanctioning authority shall belong to the sanctioning authority of commune-level People's Committee president in the localities where the violations are committed.

## **Section 2: Administrative Punishment in Domestic Violence Cases**

### **2.1. Receiving and processing a case**

#### **Discovering the domestic violence act**

Domestic violence can be discovered by the relevant authorities through a number of different sources as described in Module 5. Once discovered, the competent authority will consider if the domestic violence should be dealt with as an administrative violation and if so, whether they have competent authority to deal with it.

Article 18 of the Law on Domestic Violence Prevention and Control provides that *a person who discovers domestic violence shall report to the nearest police station or to the commune People's Committee or the community leader at the scene of violence. An exception is for the cases Medical staff and counsellors, in doing their jobs, they are responsible for keeping the victim's private information confidential* (Article 23(3) and Article 26(4) respectively).

Article 5(1)(a) of the Law on Domestic Violence stipulates that victims of domestic violence shall have the right to request the authorized agencies, organizations and individuals to protect their lives, dignity and other legal rights and legitimate benefits. This provides the commune-level People's Committee presidents and other concerning persons the authority to determine whether there is any administrative violation or not.

In addition, the commune-level People's Committee presidents can consider any other demands made by the victims (Article 5(1)) when making the determination as to whether to proceed with administrative sanction. As discussed in Module 5, a sensitive response towards victims by the authorities is essential in every case due to

the complex nature of domestic violence. The way the authorities treat the victims can have significant impact on whether she cooperates with authorities and what "demands" she might have. While the victim's input is important, the authorities must remember that the actions that come before them are violations against the state and should not be considered private family matters.

There might be situations where a domestic violence case has been proceeding through the criminal justice system, but might be suspended during the investigation or prosecution stage. In the cases where the violence meets the threshold of administrative violations, they shall be transferred to the competent agency for a decision pursuant to Article 63 of the Ordinance on handling of administrative violations.

### **Recording and consolidating evidence**

As stipulated in Article 55 of the Ordinance on handling of administrative violations, upon notice of an alleged administrative violation, the competent authority must promptly record the incident. The record must ensure the full necessary details of the incident and confirmation of the name of the offenders, victims, and witnesses. The record is not only important for defining the statutory time limitations for making sanctioning decisions but also the first and important foundation in determining whether an administrative violation has occurred and what might be the possible sanctions to apply.

However, to ensure a full review and correct decision, the competent agencies often need to collect further documents and other relevant evidence. Evidence might include the documentation of the victim's injuries and psychological damage as well as the negative impact on relatives and society<sup>3</sup> as a result of these violent acts. Evidence can be documents such as injury assessment reports, minutes, testimony, exhibits and weapons or other means used to commit the violence. Evidence can be gathered from multiple sources such as family members, neighbors, and health facilities.

Evidence must be gathered quickly, promptly and carefully preserved. Module 5 provides further details regarding preserving evidence at the scene of the violence. If the evidence is not collected in a timely manner, this may lead to the offenders not being held accountable for their violence. If the evidence is destroyed, lost or damaged this might result in the inability to prove the violent acts. Physical and corroborating evidence is important in domestic violence cases as in many cases, the victims might not be cooperative with the authorities. Module 5 provides further details of the psychological behaviors of the victims. Also in Viet Nam, the evidentiary rules provide that the competent authorities cannot rely only on the sole testimony of the victim when determining whether domestic violence has occurred, therefore it is important to ensure comprehensive collection of all other evidence.

Evidence which relates to acts of domestic violence should be classified and scientifically evaluated. After the initial assessment of the evidence, it might be necessary to determine and plan the collection of further evidence.

Domestic violence is a sensitive issue. For many reasons, victims and their relatives, friends or neighbours do not want to denounce acts of domestic violence. They might be ashamed or embarrassed or they might be afraid of the authorities or they might fear the perpetrator. Therefore in speaking with the victims, the authorities need to have a good understanding of the dynamics of domestic violence and be patient and sensitive. Furthermore, the material physical evidence, such as documentation to prove the victim's injuries, is very important. This should be one of the first priorities in evidence collection. When detecting acts of violence, the competent authorities must promptly identify and seize the material evidence.

When collecting evidence, the competent authorities must keep in mind the safety of the victim as well as ensuring that there is a legal basis to hold the offender accountable for his actions. In many cases, there has been a history of domestic violence that has gone on for a long time without being detected. Violent relationships often become more violent over time. While it is impossible to predict with any degree of certainty when relationships will escalate to lethal violence, the competent authorities should conduct an assessment, as described in Module 5, section 7.2. Such an assessment requires a thorough and comprehensive gathering of all evidence. Therefore, the competent agencies need to collect evidence and record each incident that they become aware of to ensure that the records reflect the reality of the pattern of the domestic violence so that they can apply suitable measures to prevent future violence effectively.

<sup>3</sup> Negative impact on society is defined as spreading negative social opinion.

Where a competent agency receives a file pursuant to Article 63 of the Ordinance, evidence and documents will have to be reviewed to determine whether the threshold of an administrative violation has been met. The competent authority can consider whether it is necessary to collect further evidence before making the sanctioning decision.

### **Determining whether the authority has the competence to sanction administrative violations**

After detecting and recording alleged violations, and collecting the initial evidence to determine whether there has been an act of administrative violation in the field of domestic violence, the person who has received and processed the case needs to identify the particular administrative sanction that would apply to the situation in order to determine whether he or she has competent authority.

If the domestic violence act shows elements of a crime, the first responder shall immediately transfer the dossier to the competent criminal investigating body for their investigation and prosecution in accordance with Article 62 of the Ordinance on handling administrative violations.

### **2.2. Measures to stop and prevent future administrative violations**

After determining that the domestic violence case is an administrative violation, the competent authority can apply one or more measures to stop the violence and to prevent future violence. These measures are set out in the Ordinance on handling of administrative violations and the Law on Domestic Violence Prevention and Control. These measures are meant to protect victims in a timely manner, to stop the violence and/or to reduce the damage caused by the violence.

The Ordinance on handling administrative violations set out a number of measures to stop and prevent future administrative violations:

- Custody of the violator according to the administrative procedure;
- Body search according to administrative procedures;
- Search of transport means and objects according to administrative procedures;
- Search of places where there might be material evidence according to administrative violations.

The Law on Domestic Violence Prevention and Control sets out the following measures to stop and prevent future administrative violations:

- Forbidden contact order, meaning that the offender shall not be allowed to approach the victim or to use telephone or other medium to get in touch with the victim;
- Arrange for first aid for the victim of domestic violence.

The Law sets out the procedures that need to be followed for forbidden contact orders. The requests for these orders must come from the victim and can be used in situations where the domestic violence acts "cause or threaten to cause serious physical injury to health or life of the victim". The victim 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;
2. The Court can issue a Decision, during civil proceedings, to prohibit contact for up to four months.

Article 9 of Decree 08 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 proving the use of threats to harm the health or life of the victim.

The above measures do not include the ones which are prescribed by the Law on Criminal Procedure. The criminal justice system procedures are described in Module 6.

### **Supervising court ordered forbidden contact orders**

The commune/district town People's Committee presidents, the ward police chiefs, and police officers play an important role in supervising or organizing for the supervision of the court ordered forbidden contact orders (Articles 21(2) of the Law on Domestic Violence). Further, these authorities can impose measures when these forbidden contact orders are breached. Breach of the forbidden contact ordered by the People's Committee is a civil breach and subject to a fine or, according to Decree 08, subject to custodial measures.

### **Custody of the perpetrator**

The commune/district town People's Committee presidents and the ward police chiefs are entitled to make the following decisions as to whether to place the perpetrator in custody according to administrative procedures. Decree No 19<sup>4</sup> 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.

The decisions relating to detention and terms of release of the violator need to take into account the safety of the victim and others related through family, socially or otherwise and that these procedures also prevent further acts of violence.

Where there are grounds to believe that the material evidence and/or the means of the administrative violation may be dispersed or destroyed, the People's police officers, border guards, customs officials on official duty are entitled to decide on the custody of material evidences and/or the means of administrative violation, as well as searches of the body search, transport means and places (Articles 46(2), 47(2) and 48(2) of the Ordinance on handling of administrative violation).

Unlike the ward police chiefs, the commune-level police chiefs are not entitled to apply prevention and protection measures. When the commune-level police chiefs discover administrative violations in the field of domestic violence, he or she should immediately inform the commune/district town People's Committee presidents unless there are grounds to believe that the material evidence or the means of the administrative violation might be dispersed or destroyed.

### **2.3. Sanctioning procedures**

The Law on Domestic Violence Prevention and Control does not provide detailed regulations regarding the sanctioning procedure for administrative violation in the field of domestic violence. Therefore, the sanctioning procedures as set out in the Ordinance on handling of administrative violation apply.

The competent person has to issue sanctioning decisions within the time-limit prescribed in Article 56 of the Ordinance. If the said time limits have past, the competent person will be found at fault in failing in their responsibility to issue sanctioning decisions.

For cases where the sanctioning decisions have already been issued but later it is determined that the violating act shows criminal elements or signs, the person who issued the sanctioning decision shall have to disregard such decision and transfer the dossiers of the case to the competent criminal investigating agency.

<sup>4</sup> 19/2009/ND-CP dated 19/02/2009

If there is more than one person who has committed the administrative violation, each violator shall be sanctioned for the act. The competent authority is to make the sanctioning decision based on the nature and extent of the violation, the personal identity of the violators, and any aggravating and attenuating circumstances. However in domestic violence situations, the competent authority might have to determine who the predominating person or primary aggressor was in some situations. Individuals who defend themselves against violence and abuse or who are determined to not be the predominating person or primary aggressor should not be sanctioned. When both individuals are sanctioned in domestic violence situations, this can further victimize the victim, decrease the chances of the victim seeking future assistance, increases the possibility of a more serious offence, including homicide. A person who commits several administrative violations shall be sanctioned for each violation.

The competent authority may decide to impose sanctions according to a simple procedure for minor violations. These simple procedures should only apply to clear cases where there are no complex circumstances requiring further verification or where the appropriate sanction for the violation would be a warning or fine not exceeding VND 200,000. However, according to the fines prescribed in Decree No. 110/2009/NĐ-CP, there is no act of administrative violation in the field of prevention of domestic violence which will apply the above simple procedure.

(Article 54 of the Ordinance and Article 19 of the Decree No. 128/2008/NĐ-CP)

## 2.4. Fines

Along with warnings, fines are the most common form of administrative sanctions for first time administrative offences.

Legal references: Chapter VI of the Ordinance on handling of administrative violations; Chapter IV of No.128/2008/NĐ-CP dated December 16, 2008 on guiding implementation of some articles of the above Ordinance; Chapter III of Decree No.110/2009/NĐ-CP dated December 10, 2009 stipulating handling of administrative violations in the field of domestic violence prevention and control.

### Sanctioning procedure

If the violations attract a fine not exceeding VND 200,000, the competent authority may follow a simple procedure.

If the violations attract a fine that could exceed VND 200,000, the competent authority may sanction with the procedure of making a record. According to Article 55 of the Ordinance on handling of administrative violations, the competent person on official duty must promptly make a record of the administrative sanction. The completed record must be handed to the violating individual or organization, one copy each. If the case is beyond the sanctioning competence of the recorder, he or she must send the records to the appropriate competent authority.

The offender has to perform the sanctioning decision within ten days of receipt except if otherwise provided by law. If the offender fails to do so voluntarily, coercive measures shall be applied.

### Forced execution of sanctioning decisions

The Ordinance on handling of administrative violations provides for coercive measures (Article 66) and which authorities have the competence to apply such measures (Article 67). The procedure to apply such coercive measures is set out in Decree No. 37/2005/NĐ-CP dated March 18, 2005.

It is important to remember that the law on administrative violations provides for a policy to reduce or dispense from imposing a fine of money to those violators who are considered indigent whether they live in urban or remote areas. This policy also extends to administrative violations in the field of domestic violence prevention and control.

For offenders who are in default of the fine, there are a number of coercive measures that the competent person can apply, including temporary detention of the individual.

### **Section 3: Other measures related to administrative violations**

In the field of domestic violence prevention and control, there are other administrative handling measures that might be relevant in certain cases where the extent of the violence does not reach the threshold of penal liability. These measures include:

- (i) Education at communes, wards, district towns;
- (ii) Sending to reformatories;
- (iii) Sending to education establishments.

These measures are prescribed in Articles 23, 24, 25 of Ordinance on handling of administrative violations and Article 43 of Law on Domestic Violence Prevention and Control.

#### **3.1 Determining other administrative handling measures for persons frequently committing domestic violence**

Persons who frequently commit domestic violence, having been warned, reprimanded and criticized by the community and within 6 months from the date of those measures, commit a further act of domestic violence which is not serious enough for criminal liability, shall be re-educated at their communes, townships or wards.

If the offender, having already been subject to re-education in their communes, wards and townships, commits a further act of domestic violence which is not serious enough for criminal liability, he or she shall be sent to compulsory re-education schools. Offenders under 18 years of age shall be sent to the youth custody school in accordance with the regulations on civil violations.

The authority, duration and procedures for taking such re-education measures at the wards, communes, townships, or sending the offender to compulsory re-education schools or youth custody schools, shall be in accordance with the regulations on civil violations.

#### **3.2 Applying these other administrative handling measures**

	<b>Education at communes, wards, district towns</b>	<b>Sending to approved schools</b>	<b>Sending to reformatory institutions</b>
<b>Legal basis</b>	Article 21 of the Ordinance sets out the measure and Articles 70 to 74 set out the duration and procedures.	Article 22 of the Ordinance sets out the authority and Articles 75 to 83 details the duration and procedures to follow.	Article 23 of the Ordinance sets out the authority and Articles 84 to 92 details the duration and procedures.
<b>Authority</b>	Presidents of the People's Committees of communes, wards or district towns - authority to order as well as to manage the offenders at their places of residence.	Presidents of the People's Committee of rural districts, urban districts, provincial capitals or towns.	Presidents of the provincial-level People's Committee presidents.

5 Approved schools are institutions where juveniles receive general education, vocational training, as well as to work and live under the supervision of the school.

<b>Applied subjects that are relevant in domestic violence cases</b>	<p>1. Persons aged between full 12 and under 16, who have intentionally committed acts with signs of serious crimes, as defined in the Penal Code;</p> <p>2. Persons aged full 12 or older, who have repeatedly committed acts, including causing public disorder from domestic violence actions</p> <p>3. Women over 55 years and men over 60 years old who have committed acts of domestic violence causing damage to other's persons health, honour and dignity or have continuously committed acts against the social order but not reaching the threshold of penal liability (Clause 2, Article 25)</p>	<p>1. Persons aged between full 12 and under 14, who have committed acts with signs of very serious crimes or particularly serious crimes, as prescribed in the Penal Code;</p> <p>2. Persons aged between full 12 and under 16, who have committed acts with signs of less serious crimes or serious crimes, as prescribed in the Penal Code, and had previously been subject to the application of education at communes, wards or district towns or have no residency;</p> <p>3. Persons aged between full 14 and under 18 who have repeatedly committed such acts, including causing public disorder and had previously been subject to the application of measures of education at communes, wards or district towns or have no residency.</p>	Persons who have committed acts of infringing upon the properties, health, honor and/or dignity of citizens or foreigners, breaking social order and safety regularly (including domestic violence) but not to the extent of meeting the threshold of penal liability, and who have already been subject to the application of measure of education at communes, wards or district towns or have no residency.
<b>Limitations for applications</b>	Three to six months	Six months to two years	Six months to two years

### The Procedures and Order

#### a) Education at communes, wards, district towns

The commune-level People's Committee presidents shall decide the education at communes, wards or district townships on their own or at the request of one of the following agencies or organizations:

- The commune-level police chiefs;
- The commune-level Fatherland Front Committee presidents; and
- The representatives of agencies, organizations or population quarters in localities.

The commune-level People's Committee presidents may also decide on the education at communes, wards or district townships on the basis of the dossiers and records on law-breaking acts committed by subjects, which are supplied by the district- and/or provincial-level police offices.

Before making the decision, the commune-level People's Committee presidents shall organize a meeting with the participation of the commune-level police chiefs, the representatives of the Legal Section, Fatherland Front Committee, the relevant social organizations of the same level, the local population and of the families of the persons proposed for education for consideration and application of this measure.

Within three days after the end of this meeting, the commune-level People's Committee presidents shall consider and decide on the education in the communes, wards or district townships. Depending on each type of act, the commune-level People's Committee presidents shall decide to hand the offender to which agencies, organizations or families for management and education.

These decisions take effect as from the date of the signing of the decision and must be sent immediately to the offenders, their families, the commune-level People's Councils as well as relevant agencies and organizations.

Within seven days as from the date the decision is taken, the agencies or organizations assigned to manage and educate the offender must organize meetings with such person for the execution of the decision. Depending on the kind of education subject, the meeting shall include participation by representatives of the Fatherland Front Committee, the police office, the Women's Union, the Peasants' Association, the Youth Union in the locality, the

school and the family of the person subject to education.

After such meetings, the managing agency or organization shall have to assist and encourage the offender in his life, help them find employment or propose to the commune-level People's Committees to facilitate the search for work.

Once a month, the managing agency or organization shall report to the commune-level People's Committee presidents on the execution of the decision and the progress, if any, being made by the offender. The commune-level People's Committee presidents shall, at the requests of the managing agency or organization and based on their written comments, decide to exempt the offender from serving his remaining time.

When the person has completely served the time in education, the commune-level People's Committee presidents shall issue certificates for him/her.

**b) Sending to approved schools**

The commune-level People's Committee presidents of the localities where such persons resides shall compile dossiers for submission to the district-level People's Committee presidents. The police offices shall have to assist the presidents of the People's Committees of the same level in gathering documents and compiling dossiers.

Where these cases have been handled directly by the district- and/or provincial-level police officers, and it has been determined that these acts do not meet the threshold of penal liability but are serious enough to warrant the administrative punishment of being sent to reformatories, the police officers who are processing the cases must verify, gather documents and compile a dossier for submission to the district-level People's Committee president.

An Advisory Council is to be set up by the district-level People's Committee presidents. This Council shall comprise of the district police chief, the head of the district Legal Section, and the head of the district-level Population, Family and Children Board. The district police chief shall act as a standing member of Advisory Council. Within seven days after the receipt of the dossier, the Advisory Council shall examine the dossier and organize a meeting to scrutinize and approve the dossier. The Advisory Council shall work according to the collective regime and make conclusions by majority. Divergent opinions shall be recorded in the minutes of the meetings and enclosed in the report to be submitted to the district-level People's Committee president.

The district-level People's Committee presidents must consider and decide as to whether to send the offender to the reformatory within five days after the receipt of the report from the Advisory Council. The decision shall take effect after their signing and must be sent immediately to the offender being sent to the reformatories, the parents or guardians of such person, the district-level police offices, the district-level People's Councils and the commune-level People's Committees of the localities where such person reside.

Within five days from the date of issuing the decision, the district-level police offices shall have to coordinate with the families or guardians of the person serving the decision. The duration of serving the decision shall be calculated from the date the person is sent to the reformatory.

When the person sent to the reformatory has completely served the time, the director of the reformatory shall issue them certificates and send copies to the directors of the Detention Camp Management Department, education establishments, reformatories, the district-level People's Committee presidents who issued the decision, the commune-level People's Committee of the localities where such person reside as well as their families.

**c) Sending to reformatory institutions**

For persons who have committed domestic violence and need to be sent to education establishments, the commune-level People's Committee presidents of the localities where such person resides shall consider and compile a dossier for the submission to the district-level People's Committee president. The police offices shall have to assist the presidents of the People's Committees of the same level in gathering documents for compilation of dossiers.

Where the offenders have been handled by the district-and/or provincial-level police offices, and there has been a determination that the offenses do not meet the threshold of penal liability but are serious enough to be liable to be sent to education establishments, the police offices which is processing the case shall have to verify, gather documents and compile a dossier for submission to the president of the People's Committees of the same level.

An Advisory Council shall be set up by the provincial-level People's Committee presidents. The Council shall comprise of the provincial-level Police Department director, the director of the provincial-level Justice Service, the director of the provincial-level Service of Labor, War Invalids and Social Affairs, and the president of the provincial-level Fatherland Front Committee. The Police Department director shall act as standing member of the Advisory Council. Within fifteen days after the receipt of the dossiers, the Advisory Council shall examine the dossiers and organize meetings to scrutinize the dossiers. The Advisory Council shall work according to the collective regime and make conclusions by majority. Divergent opinions must be recorded in the minutes of the meetings, enclosed to the report to be submitted to the provincial-level People's Committee presidents.

The provincial-level People's Committee president shall consider and decide on whether to send the offender to an educational establishment within seven days after the receipt of the report of the Advisory Council. The decision takes effect from the date of the signing and must be sent immediately to the offender, the provincial-level police offices, the provincial-level People's Councils and the commune-level People's Committees of the places where such person resides.

Within five days after the issuance of the decision, the provincial-level police officer shall take the offender to the designated educational establishment. The time limit for serving the decision shall be counted from the date the offender is sent to the educational establishment.

When the person sent to the educational establishment has completed the terms of the decision thereon, the director of the educational establishment shall grant them certificates and send copies to the directors of the Detention Camp Management Department, the education establishments and the reformatories, the provincial-level People's Committee presidents who have issued the decisions and the commune-level People's Committees of the places where such person resides.

### **Considerations when dealing with domestic violence cases**

The police and the People's Committee officials who have the competency prescribed by law to determine whether to apply administrative sanctions must follow the legal structure, as described in this Module. It is their duty to effectively investigate all alleged incidents of domestic violence and ensure comprehensive collection of the evidence before making their determination as to whether administrative law applies, and if so, what sanction is appropriate in the circumstances.

The emotional and intimate relationship between the violator and the victim adds complexities for the authorities' response that is often not the case in other administrative violation situations. The authorities must take a principled analysis and decision making which is in line with the legal framework. It is important for them to avoid taking the expedient path of least resistance.

Given the complexities of domestic violence, the competent authorities should bear in mind the following when determining the appropriate action to take:

- Make sure that they understand whether there is a history of violence. As discussed in Module 1, domestic violence is often a cyclic pattern of behavior which escalates in severity. Hence the importance of questioning the victim about the history of abuse, checking the past files on the abuser, and documenting all incidents of domestic violence when reported.
- Domestic violence can often involve both physical and psychological coercion, so do not focus only on the physical injuries of the victim. Ask more questions.
- Domestic violence needs to be taken seriously and dealt with aggressively by the authorities. If the root of the violence is not addressed, then the violence will likely continue. Research demonstrates that without intervention, domestic violence increases in both frequency and severity.
- It is important to remember to treat female victims sensitively. More women will likely report the violence

to the authorities if they know they will be treated with respect and dignity and have their complaints listened to in confidence.

- Accountability for violence means appropriate and consistent sanctioning of the abuse. The sanction should be commensurate with the severity of the violation and should recognize that violence committed by a husband towards his wife is a serious problem in society and the authorities have an opportunity to denounce wife beating in clear terms. Repeated domestic violence behavior should result in harsher sanctions. Accountability also means holding the perpetrator accountable for any breaches or violations of the sanction decision or forbidden contact orders and not making excuses for violent behavior. Accountability also includes education for the violator to correct bad behavior.
- No matter which administrative sanction is applied, you should ensure support to the victim throughout the process. Safety of the victim is of paramount importance.



## **MODULE 6**

### **THE CRIMINAL JUSTICE SYSTEM IN RESPONDING TO DOMESTIC VIOLENCE**



# **UNODC**

**United Nations Office on Drugs and Crime**



## **Module 6**

### **The Criminal Justice System in Responding to Domestic Violence**

#### **Purpose:**

By the end of this session, participants will be able to:

- Understand the need to respect the rights and needs of each woman throughout the criminal justice process.
- Identify barriers in the criminal justice system that impact women's ability to access or achieve justice in domestic violence cases.
- Understand the role of the Investigating Bodies, the Procuracy and the Courts in protecting victims and witnesses prior to and during the trial process.
- Develop strategies and methods to overcome barriers in the criminal justice system, become motivated to remove barriers and coordinate with other professionals when possible.

*Note: The purpose of this module is NOT to provide a detailed explanation of the complexities and intricacies of the criminal justice system in Viet Nam. Rather it is meant to highlight some specific issues and challenges that the criminal justice professionals may experience in dealing with domestic violence cases and provide some ideas and techniques as to how to deal to those challenges.*

#### **Section 1: Overview of the Criminal Justice System in Responding to Domestic Violence**

##### **1.1 The Criminal Justice Process**

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.

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.<sup>1</sup> 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. The study showed that the percentage of perpetrators against whom charges were brought by the police after reporting were low, just 12%.<sup>2</sup> 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.

Domestic violence criminal cases are challenging for criminal justice professionals for a number of reasons. There is the emotional and intimate relationship between the abuser and the victim that adds complexities for the investigation and prosecution that is often not the case in violent situations involving strangers. Many victims call the police for the sole purpose of stopping the violence and not to have the perpetrator held administratively or criminally liable. Some victims might not be cooperative when the investigator arrives at the scene or as the cases goes through the criminal courts.

<sup>1</sup> Johnson, Holly, Ollus, Natalia, Nevala, Sami, "Violence Against Women: An International Perspective" (Research Centre for Gender and Development (RCGAD) in Hanoi and the European Institute for Crime Prevention and Control (HEUNI), 2008).

<sup>2</sup> "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.

An understanding of the cyclic pattern of domestic violence and the escalation in severity can help the criminal investigative agency, procuracy and courts understand the strategic role they can play in preventing future violence. In describing the role of the criminal justice system in domestic violence cases, one American prosecutor noted: "We must realize that true success is not prosecuting a murderer, it is preventing the murder. It is not locking up offenders for decades; it is stopping the violence so that escalating violence does not require prison beds for most domestic violence offenders".<sup>3</sup> Even cases which result in low level physical injuries must be taken seriously.

There are two key principles that should guide actions in the criminal justice system:

1. Ensuring the safety of victims;
2. While holding perpetrators accountable for their actions.

Offender accountability means appropriate and consistent sanctioning of the abuse, including holding abusers accountable for any breaches or violations of bail conditions or forbidden contact orders and not making excuses for violent behaviour.

## **1.2 The Roles of the Criminal Justice Institutions in Responding to Domestic Violence**

### **The Criminal Investigative Agency**

The Criminal Investigative Agency is at the frontline of the criminal justice system. It is their duty to prevent and respond to crime, maintain public order and enforce laws. The Criminal Investigation Agency is separated into three parts (investigating agencies of the People's Police, the People's Army, and the Supreme People's Procuracy). Usually, investigating police agencies of the district-level Police Sections of the People's Police are responsible for domestic violence cases. The Police Criminal Investigation Agency includes three levels: national, provincial and district. It is the duty of the Criminal Investigation Agency to effectively investigate all alleged incidents of violence and conduct all investigations in a manner that respects the rights and needs of all the parties involved.

The criminal investigators, by their response to domestic violence situations, have a significant role to play in enhancing the lives of all women. One part of this is in how they respond to incidents and what measures are taken to protect the woman in the immediate aftermath, before and at trial, and afterwards. The criminal investigators can ensure greater access to services such as shelters, counselling, and legal assistance, treat female victims with dignity and sensitivity, improve collection and presentation of evidence, and apply effective measures to protect victims.

#### **Good practice examples - multi-disciplinary investigative teams**

A number of countries have established multi-disciplinary teams: investigators work cooperatively with counsellors, social service workers, psychologists, victim legal representatives or others who can provide specialised assistance to aid both the victim and the investigator.

A number of countries have developed within the police force, specialized units that made up of specifically trained police investigators to deal with domestic violence and sexual violence.

### **The Procuracy**

Procurators play a crucial role in the administration of justice. They are the nexus between the police and the courts. Promoting respect for and compliance with the rule of law, they contribute to a fair and equitable criminal justice system which protects citizens.

The Chief and Deputy Chief Procurators assign a procurator to a specific case. The Chief and Deputy are responsible for supervising the entire proceedings, including reviewing decisions made by the case procurator to ensure compliance with the law. The case procurators will supervise the institution of legal proceedings; supervise the investigation and compile the case dossier made by the Investigating Body. In performing these duties, the procurator can summon and interrogate the accused; summon and obtain testimonies from victims, witnesses

<sup>3</sup> From Casey Gwinn, Making Misdemeanors Matter, 3 Homefront (1998) as cited on the Stop Violence website (UNIFEM, The Advocates for Human Rights and Network Women's program) at [www.stopvaw.org](http://www.stopvaw.org).

and other persons of interest; supervise the decision of arrest, detention or custody of the accused. At trial, the procurator reads the bill of indictment, presents evidence and offers legal arguments as well as recommendations to the court as to possible disposition or judgment. The frontline procurators can seek advice and guidance from the Chief and Deputy Chief Procurators.

Prosecutors, like other criminal justice professionals, may reflect the cultural attitudes of their community. As such, they might consider domestic violence as a private family matter and should not be dealt with by the criminal justice system unless in cases involving very serious injury. Some countries have introduced prosecution policies such as "no drop" policies as one strategy to combat long standing prevalent prosecutor attitudes that certain forms of domestic violence against women are not crimes. While such policies serve the purpose of communicating to the abuser and the community that such violence is not acceptable, a concern is that such a policy might be independent of the victim's wishes or requests.

Procurators handling domestic violence cases have the difficult task of balancing the safety of the victim with their traditional goal of conviction. Participation in prosecution, in some cases, can increase the risk of endangering the women's physical or emotional well-being. The victims might face more abuse from their husbands when acting as witnesses in criminal case against them. Victims of sexual violence may be more traumatized by being questioned in court. Procurators face difficult decisions when dealing with the complexities of domestic violence.

#### **Good practice – Specialised Prosecutors Units**

The UN Good Practices in Legislation on Violence Against Women Expert Group Meeting in May 2008 highlighted as a good practice the establishment of specialized prosecution units. Prosecutors in these units are specifically trained on domestic violence and develop expertise in prosecuting these cases. These units could include other professionals such as victim support workers and health professionals. Sometimes these units also assist victims in obtaining civil protection orders in addition to the criminal prosecution. Another good practice mentioned is to provide the option for the victim to communicate with female prosecutors.

#### **Judges**

Judges have an essential role in addressing domestic violence. Judges make decisions that affect the lives of the victim, the abuser, the children and potentially, other family members. In conducting criminal trials, judges can ensure protection and respect for the victims, ensure due process to the accused and impose effective sanctions on those found guilty. Through their judgments, judges can send a clear message to the community that domestic violence against women will not be tolerated.

The president of the court will assign a judge to the case. In the exercise of this duty, the president of the court could ensure that the judges presiding over domestic violence cases are well informed and trained on how to deal with domestic violence cases. The presiding judge is then responsible to study the case file. After studying the case file, the judge can issue one of the following decisions: bring the case for trial; return the case files for additional investigation; or cancel or suspend the case.

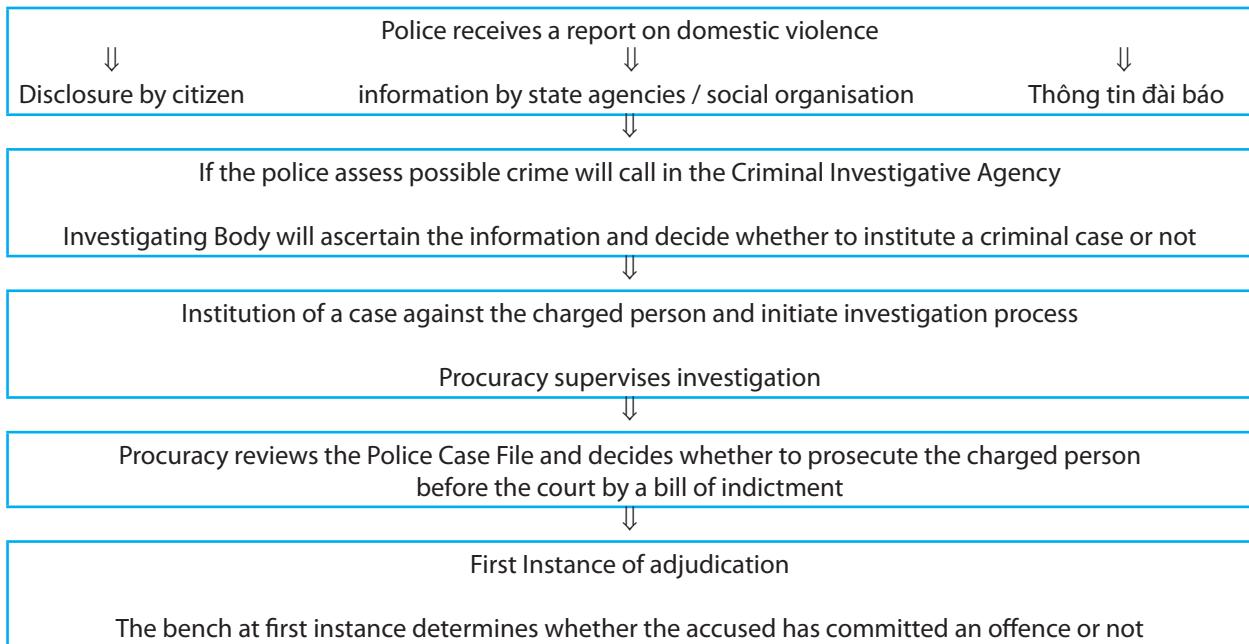
In making these decisions, understanding the complexities and dynamics of domestic violence and the effects on the victim and her response to the criminal justice process is important. For instance, where the presiding judge makes decisions to cancel or suspend the case, particularly on the ground of the withdrawal of the victim's request, understanding the reasons why the victim might wish to withdraw her request and the support she might require to continue to proceed might encourage her to continue her participation in the criminal justice system. Decisions of the court should be made promptly. Delays may increase the risk to the victim, particularly in situations where the accused is released pending trial. Furthermore, delays may affect the victim's willingness to participate in the criminal proceedings. Timely decisions of the judges can reduce unnecessary delay.

#### **The Courts**

The court staff also has an important role in building court capacity to support victims in participating in the criminal justice process. Their efforts can increase the accessibility of court services, facilitate communications among different branches of the court, enhance the efficiency of court procedures and create a safe environment for victims and witnesses.

Criminal Justice System – Overview of the Institutions		
Investigation	Supervision / Prosecution	Adjudication
Criminal investigating bodies	People's Procuracy	People's Courts
<p><b>In the National Police Force</b> shall investigate particularly serious and complicated crimes which fall under the investigating competence of the investigating police agencies of the provincial-level Police Departments when deeming it necessary to directly conduct the investigation ↓</p> <p><b>In Province Police</b> shall investigate criminal cases related to the crimes prescribed in Clause 1 of this Article when such crimes fall under the trial jurisdiction of the provincial-level people's courts or the crimes which fall under the investigating competence of the investigating police agencies of the district-level Police Sections when deeming it necessary to directly conduct the investigations ↓</p> <p><b>In District Police</b> shall investigate criminal cases related to the crimes prescribed in Chapter XII thru Chapter XXII of the Penal Code when such crimes fall under the trial jurisdiction of the district-level people's courts, except for the crimes which fall under the investigating competence of the investigating agency of the Supreme People's Procuracy and the investigating security agency in the People's Police</p>	<p><b>Supreme People's Procuracy</b> shall exercise their right to prosecute and supervise the law observance in the criminal procedure of the Supreme People's Court ↓</p> <p><b>Province People's Procuracy</b> shall exercise their right to prosecute and supervise the law observance in the criminal procedure of criminal cases falling under Province People's Court ↓</p> <p><b>District People's Procuracy</b> shall exercise their right to prosecute and supervise the law observance in the criminal procedure of criminal cases falling under District People's Court</p>	<p><b>Supreme People's Court</b> The Criminal Tribunal of the Supreme People's Court shall review according to cassation procedures legally valid judgments or decisions of the provincial-level people's courts ↓</p> <p><b>Province People's Court</b> shall conduct first-instance trial of criminal cases involving offenses not falling under the jurisdiction of the district-level people's courts or cases falling under the subordinate courts, which they take for trial ↓</p> <p><b>District People's Court</b> shall conduct first-instance trial of criminal cases involving less serious offenses, serious offenses and very serious offenses, excluding the following offenses: a/ Offenses of infringing upon national security; b/ Offenses of undermining peace, against humanity, and war crimes; c/ Offenses prescribed in Articles 93, 95, 96, 172, 216, 217, 218, 219, 221, 222, 223, 224, 225, 226, 263, 293, 294, 295, 296, 322 and 323 of the Penal Code</p>

### 1.3 Overview of the Criminal Justice Process in Responding to Domestic Violence



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, investigators, procurators and judges need to have an understanding of the barriers in the criminal justice system that impedes victim's ability to access justice.

## Section 2: Proceeding with the Criminal Investigation

### 2.1 Involvement of the Criminal Investigation Agency

The Criminal Investigation Agency becomes involved in domestic violence cases through four ways:

1. They can receive information directly about a case of domestic violence and are the first police officers on the scene. These are usually involved in the most serious cases.
2. They can receive the case file from the local police. These are the cases where the first responders are the local police and where the local police assess whether the criminal offence threshold has been met or whether the husband continues to be a threat.
3. They can receive information about a case of domestic violence from victims, individuals, bodies, agencies or organizations, such as the Women's Union or non-governmental organisations (NGOs).
4. They can receive information about a case of domestic violence from mass media.

The procuracy might receive information directly about domestic violence offences from a variety of sources other than the police. This could include information from victims, individuals, bodies, agencies or organizations, such as the Women's Unions or NGOs. The procurators are to promptly send all received reports of domestic violence to the authorized police investigating body.

Upon arrival at the scene or involvement in the case, the investigative unit should:

- Determine whether an offence was committed or disprove an allegation.
- Identify victims and witnesses.
- Gather and preserve evidence of any kind that may be relevant.
- Discover the cause, manner and location of an offence.
- Prove the identity of the suspect or person(s) responsible.

- Where appropriate, formulate the ground to lay a charge.
- Document the investigation and evidence in order to prepare a report to the procurator.
- Prevent further victimization (including both the victim and others who may be impacted, such as children).

## **2.2 The Investigation: Considerations in Domestic Violence Cases**

The procurators and the criminal investigating bodies both have a role to play in the investigation of criminal matters. The procurator can make specific investigation requests to the police, can conduct some investigative activities directly, and even request the investigating body to replace investigators in certain cases. The procurators also supervise various decisions made by the police's investigative body.

During the investigation phase, the procurators and criminal investigation bodies can make a number of decisions:

- To institute a criminal case in general.
- To institute a case against the charged person. The procurator can approve or rescind decision on institution of a case against the charged person which has been made by the police investigative body.
- To decide on taking, amending or abolishing deterrent measures, such as arrest, remand in custody or detention.
- To approve or disapprove arrest warrants, warrants of urgent arrest and warrants of detention which have been made by the police investigating body, before these warrants have been executed.
- To decide on the prosecution of the charged person.
- To decide on suspension or temporary suspension of a case.

The handling of domestic violence investigations and the institution of criminal cases as well as the supervision by the procurator must always be in line with the legal framework as set out in the Penal Code and the Criminal Procedure Code. However the criminal investigators and the procurator must keep in mind that violence in an intimate relationship is different from other acts or threats of violence. More than just a legal definition, such violence involves elements of control, domination and manipulation as primary goals. Physical, verbal, emotional and other forms of abuse are simply tools to accomplish these primary goals. Recurring domestic violence is not an uncontrolled outburst of anger, although it may appear so to a person untrained in the dynamics of such violence.

Domestic violence is not only a crime against the individual victim but a crime against the state, and a concern of the whole community. Criminal investigators and procurators have a responsibility to respond carefully and proactively to domestic violence crimes in order to ensure safety for victims and accountability for abusers. They have a unique opportunity, through effective early intervention, to prevent future incidences of domestic violence, including homicides.

There are a number of points the criminal investigator and procurator should consider when investigating and supervising domestic violence cases:

- **Actively pursue all criminal matters.**

Ensure that all incidents involving criminal offences are actively pursued as such in order to prevent future violence.

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 may have 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.

- **Ensure that all available evidence has been gathered.**

Often, domestic violence involves a pattern of behaviour rather than a single isolated event. Investigators and Procurators should ensure that all information regarding the history of abuse is before them.

Investigators and Procurators should not assume that the victim's statement is the only way to prove the matter in court. Instead consider whether there is other material that can support the prosecution case, independent of the victim or corroborates the victim's statement.

Ensure the comprehensive investigation and collection of all evidence, including witness statements, photographs of injuries and scene of the crime. By relying primarily on the evidence collected by the police's investigating body rather than solely on the victim's testimony, the procurator may be able to reduce the risk of retaliation by the abuser against the victim and increase the likelihood of a successful investigation and prosecution.

- **Consider whether summary procedures are really appropriate in domestic violence cases.**

Violence in intimate relationships has a distinctive dynamic not found in other violent crimes. As previously mentioned, domestic violence is often not merely the single isolated incident that the police have been called in to stop, but rather part of a pattern. Even what is considered by police upon first assessment as minor violence, should be taken seriously. Domestic violence has been traditionally discounted due to mistakenly being considered a "private matter".

- **Ensure support to the victim throughout this process.**

Dynamics of domestic violence and the power and control the abusive husband has over the victim often affects the level of cooperation by the victim in furthering criminal proceedings. Procurators should ensure that the police have made the relevant referrals to support services, or should do so themselves.

- **Safety of the victim and her children are paramount considerations.**

Procurators should ensure that risk assessment has been done by the police's investigating bodies.

- **Consider whether there are any other legal proceedings.**

Investigators and Procurators should find out whether there are any concurrent or imminent family law proceedings or other proceedings, such as forbidden contact orders.

## 2.3 Collection of Evidence by the Criminal Investigation Agency

► *See Module 5, Section 4 for an overview and checklists regarding the types and sources of evidence in typical domestic violence cases.*

Some additional notes regarding evidentiary matters:

- Many of the procedures recommended for domestic violence cases are procedures officers may already follow when investigating crimes such as burglary or assault. The same investigative process used in these crimes should be used to collect evidence in domestic violence cases.
- Investigation can be particularly critical if the jurisdiction allows procurator to go forward with a case even after a victim seeks to withdraw the complaint or refuses to testify. Without the victim's testimony, other evidence is critical to the success of the prosecution.
- Taking photographs can be an important part of investigation. Officers should take photographs of the room, particularly if there is property damage or the room is otherwise in disarray because of the fight. It can also be important to take photographs of the victim's injuries. At least one photograph of the injuries should include the victim's face for identification purposes.
- Injuries in domestic violence cases may not be immediately apparent. First, some injuries take days before they are externally visible. Bruises and strangulation marks, for example, may not be visible until three to four days after the assault. If possible, police may want to schedule follow-up visits to photograph injuries three to four days after the incident. Second, abusers may deliberately hurt their victims in places that are normally covered by clothing, or in places that would be embarrassing to reveal to strangers. Third, victims may not reveal the cause of some of their injuries, potentially out of fear of retaliation by the abuser. Officers should watch for injuries that would appear to be inconsistent with the explanation offered.

### **UN Model Strategies**

7(b) Primary responsibility for initiating prosecutions lies with prosecution authorities and does not rest with women subjected to violence.

7(f) Evidence of prior acts of violence, abuse, stalking and exploitation by the perpetrator is considered during court proceedings, in accordance with the principles of national criminal law..

### **Section 3: Making the Decision to Proceed with a Criminal Charge**

#### **3.1 The Decision of the Criminal Investigating Body to Proceed with Laying a Charge**

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 investigation and prosecution. An understanding of why some victims may be reluctant can assist the investigators in providing a response that can alleviate some of the victim's concerns. Some victims may be reluctant to proceed for 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. In these cases, the investigators will need to pay special attention to relieving the fears of the victim, and take concrete steps to protect 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 co-operation.

#### **Good practice**

Diana Group in Spain is a specialist unit created within the local police force to deal with gender-based violence. To avoid secondary victimization, this unit provides victims with ongoing specialist care so that, rather than having to deal with many different officials who are unaware of their overall situation, they are seen by a specially trained group who know about the specific issues facing them. Recognition of the specific dynamics that exist with crimes of this type and the impact they can have on the lives of victims has determined the criteria on which intervention is based: immediacy, proximity and continuity.

The Vietnamese Criminal Procedure Code requires the consent of the victim in laying a charge in certain offences, particularly intentionally inflicting injury on or causing harm to the health of other persons (article 104(1)) where the infirmity rate is assessed to be not over 30%. 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 investigators should conduct a professional evidence based investigation and allow the victim time to decide whether to proceed or not. Furthermore, they should determine whether the circumstances meet the elements of other Penal Code offences that do not require the victim's consent, such as article 151. The police investigating body should also 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 those cases where consent of the victim is not required (for example, article 151 of the Penal Code), the investigator should explain to both the victim and the suspect that it is the officer's duty to lay a charge (or initiate a criminal investigation) when the threshold has been met (such as reasonable grounds to believe that an offence has been committed), and that only the investigator or procurator can withdraw the charge. This addresses the concern that the abuser will retaliate against the victim if he believes it is the action of the victim that results in criminal charges or administrative sanctions.

### **Good practice**

Some States have taken the decision out of the victim's hands as to whether or not charges are laid, and have adopted a policy of mandatory charging where evidence supports a charge. In such cases, police are required to conduct a thorough investigation all alleged cases of domestic violence and arrest the perpetrator. States who have adopted such policies believe this is in the best interests of the victim and that it will help enhance her future safety.

### **3.2 Case Report by the Criminal Investigation Body to the Procuracy**

Similar to the investigator's notes, the written report from the criminal investigation body to the procurator should clearly and thoroughly document:

- What happened
- Who was involved (suspect, victim, witnesses, investigators).
- When it happened.
- Where it happened.
- Why it happened. Note: the investigator should be careful when documenting "why" the incident happened. They should be careful as this can be construed as an attempt to blame the victim for the violence that took place.
- How it happened.
- What evidence was collected, by whom, how, and what was done with it.

In a report detailing an incident of domestic violence, the report may contain:

- Transcripts of all oral statements of the victim, witness, and suspect.
- Copies attached of all written statements of the victim, witness and suspect.
- Details of all evidence collected and by whom.
- Copies of all photographs taken or diagrams made.
- Details of the suspect's criminal history and copies of any related court orders or forbidden contact order.
- If one was conducted, a copy of the risk/ threat assessment form

The procurators will review the case file given by the investigating bodies to determine whether there is enough evidence to prosecute. They work closely with the investigators to make sure that all available evidence from all sources has been gathered and brought to the procurator's attention. The procurators then consider the evidence carefully and make their decisions as quickly as possible and to ensure that the cases progress through the courts without avoidable delay.

A number of countries report high attrition rates in domestic violence against women cases, meaning that a number of cases drop out of the criminal justice system at various stages. Research shows that poor investigations can lead to a lack of corroboration evidence which leads to an over-reliance on the victim's statement and the victim's willingness to pursue the complaint. The procurator should make sure all available evidence has been gathered.

After thoroughly studying the case files, the procurators can make one of the following decisions:

- If the evidence indicates enough grounds to bring the case to trial, the procurator shall prepare an indictment and submit the indictment and transfer the case file to the competent court.
- The procurators can return the case file for additional investigation for a number of reasons. (If important evidence is lacking which the procuracy is unable to add to the file itself; or there exists reasonable grounds to charge the accused with other offences; or grave violations of the criminal procedure were made, such as the accused's statement is without a signature).
- The procurator can conduct additional investigations themselves, if required, without returning the file to the police's investigating body. This might include taking more testimonies from the witnesses.
- The procurator might suspend or temporarily suspend the case. This could happen in the case where the

criminal case was instituted upon a request by the victim and the victim has withdrawn the request prior to trial. The procurator must ensure that the victim is not withdrawing their request due to coercion or intimidation.

### 3.3 Case Report – a Review of the Evidence

#### Evidence – Victim’s Evidence and Corroborating Evidence

In order to ensure a strong case in court, even if the victim might be uncooperative, the procurator should consider the evidence which is independent of the victim’s account or corroborates the victim’s account. The procurator should ask whether they can try the case without the victim being present. This might be possible if sufficient additional corroborative evidence is available.

While the victim’s account to the investigator of what happened is evidence, it is not the only evidence that can be used to prove a case. The procurator should actively consider what other evidence may be available. It is possible, for example, that a friend, neighbour or child may have been nearby and may be able to give direct evidence of what they saw or hear. In certain circumstances, a friend, neighbour or child may be able to give evidence of something that someone else told them (this is called hearsay evidence). This direct or indirect information may also be important background information that will enable the procurator to put the offence into context. In other cases, there may be medical evidence (such as from the local doctor or emergency hospital notes) or photographs of the victim’s injuries that can be used as evidence. In some limited circumstances, procurators may also be able to use evidence of the suspect’s previous bad character, for example, convictions, administrative sanctions, community criticism or cautions, to help prove a case.

#### Good practice

A UN Expert Group Meeting identified as a good practice legislation that specifically provides for the possibility of prosecution in the absence of the victim in cases of violence against women, where the victim is not able or does not wish to give evidence.

#### What is corroborated evidence?

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

Domestic violence often takes place in private and, at times, the victim may be the only witness. This can mean that, unless the abuser pleads guilty or there is strong supporting evidence, it will be necessary for the victim to give evidence. The victim might be uncooperative, due to fear, or an emotional attachment or out of loyalty to the abuser. Treating the victim sensitively and with respect can encourage her to participate in the criminal justice system and is dealt with in more detail in section 5 of this module.

In reviewing the victim’s statement in the case file, procurators should bear in mind that some complaints of domestic violence are not made straight away for fear of reprisals or intimidation or a number of other factors. No adverse inference should be drawn from this and should not influence the assessment of credibility of the victim’s statement.

### **The Accused's Conduct and Credibility**

The procurator needs to review all evidence and possible defences when reviewing the case file. The procurator should not focus solely on the behaviour of the victim. Instead, find out details of the accused's previous misconduct, if any, at the earliest opportunity so that the procurator can assess whether this evidence could be used as part of the case.

- Does the accused have any related previous convictions or acquittals?
- What was the accused's conduct and demeanour like when arrested?
- Has the accused made any admissions?
- Are there previous reports of domestic violence that were not pursued? Including administrative penalties, criticism by the community and reconciliation reports?
- Bad character evidence?

The procurator, in reviewing the evidence needs to explore the credibility of the accused's account as part of the review and assessment of the charge. The procurator should bear in mind:

- 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?

### **Medical Certificate**

Evidence of injuries from medical records or forensic certificates can be significant pieces of evidence to confirm the victim's statement. However procurators should bear in mind that studies show that one of the most difficult hurdles victims of domestic violence face in seeking access to justice is the procedural or evidentiary requirement of obtaining a medical legal certificate issued by government forensic examiners. Many countries impose the requirement of a medical certificate to document the injuries of a victim before the victim can proceed in court. Other countries that might not have this legal requirement have a practice where the courts heavily depend on formal forensic medical certificates to prove the domestic violence incident.

#### **Good practice**

A UN Expert Group Meeting identified as a good practice legislation that specifically provides that medical and forensic evidence is not required in order to convict a perpetrator.

In Viet Nam, in order to proceed with the charge of intentionally causing injury (article 104 Penal Code), a medical certificate is required. Article 104 lists four categories of injury defined by the percentage of infirmity rate and provides for corresponding penalty brackets: (i) under 11%; (ii) between 11% and 30%; (iii) between 31% and 60% and (iv) 61% and over. A medical certificate prepared after the medical examination indicates the percentage of infirmity rates and is then reviewed by the procurator and the courts to determine which subsection of article 104 would apply.

A concern of using medical certificates to assess the seriousness of the injury is that the certificate 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. Furthermore, 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 discolouration 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.

Another concern regarding medical certificates is that they 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 that were discussed in module 3. 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.

In Viet Nam, not all penal code offences that might apply in domestic violence cases require a medical certificate as an evidentiary requirement. For instance:

- Article 151 - ill-treating or persecuting grandparents, parents, spouses, children, grandchildren and / or fosterers - requires proof of "serious consequences". Serious consequences not only refer to physical injuries but also psychological / emotional injuries.
- Article 103 – threatening to kill someone - requires that the victim believed that such threats shall be realized;
- Article 121 – humiliating other persons – requires evidence of "serious infringement" on the dignity or honour of other persons.

There is no mandatory requirement in the law to have a medical certificate from a mental institution to prove psychological injuries. However the practice has been to obtain either a psychological treatment certificate or medical treatment certificate. The file of hospitalization might be enough to show the need for medical treatment for a situation which also would have psychological consequences. For example, if the wife was not given enough food or water. In some cases, public opinion might be enough to proceed with a case, such as the case where the woman was put in a dog cage by the husband to humiliate her and the public was outraged.

### **Expert Testimony**

Procurators might be able to promote the use of expert testimony in cases involving domestic violence. 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.

Procurators 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.

### **Evidence and Issues Checklist**

<b>Issues to be considered</b>	<b>Decisions / comment</b>	<b>Information dated</b>
<b>1. Information needed from the police</b>		
History of relationship		
Previous incidents		
Availability / willingness of victim to give evidence		
Effect of proceedings on any children		
Whereabouts of children during the incident		
Current domestic arrangements and information or police view on future relationship		
Likelihood of recurrence		
Views on safety of victim and any children		
Formal risk assessment, if any		

Information from other agencies, such as shelter		
Need for special measures		
No-contact (forbidden contact) order		
<b>2. Evidence</b>		
Any photos of scene, photos of injuries, follow-up photos of injuries		
Medical records, forensic certificate		
Statements by victims, written as well as documented verbal statements		
Statements by witnesses		
Statement by accused, whether any spontaneous utterances documented by police		
Any weapons removed		
Collected torn or bloodied clothing		
Prior police or incident reports		
Criminal history		
Administrative penalty records		
Reconciliation agreements		
113 / emergency call tape		
Letters or notes from abuser, if relevant		

### **3.4 Determining the Relevant Possible Criminal Charges**

In Viet Nam, the procuracy, in principle, has a duty to bring charges that are supported by evidence developed by the police's investigating body or presented by citizens. The procurator does have some discretion in exercising this duty, with respect to whether there is evidence to justify charges and what criminal charges to bring. In exercising his or her discretion, the procurator must take a principled analysis and decision making which is in line with the legal framework as set out in the Penal Code and the Criminal Procedural Code. In domestic violence cases, which involve complex social issues, it is important for procurators to avoid "knee jerk" decisions and avoid taking the expedient path of least resistance.

Domestic abuse takes many forms, but only behaviour which is defined as criminal under the Penal Code can trigger prosecution. For example, when the abuser used physical force or threatens to use such force, and it is clear that he can carry out the threats, the abuse is likely a crime. On the other hand, the emotional or financial abuse frequent in most abusive relationships will often not be prosecuted because it usually does not rise to the level of a defined crime.

Effectively prosecuting all behaviours that are defined as criminal is an important contribution to a community's effort to end domestic violence. Requiring abusers to face consequences for their criminal acts of violence forces them to be accountable. It shifts the perspective of the community that such acts are indeed crimes and are unacceptable and not to be tolerated.

Procurators must balance between creating an intolerance for domestic violence in the community and doing what best protects an individual abused woman. Participating in the criminal justice system might result in retaliation and more violence for the woman. If the procurator can prove the case by using evidence other than the victim's testimony, then the abuser cannot blame her for the criminal proceeding.

The procuracy is responsible for preparing the indictment. The procurator should consider all available charges and record full reasons for the decisions, illustrating which elements were considered. The charges in domestic violence cases should reflect the seriousness of what took place, any elements of premeditation or persistence in the abuser's behaviour, the provable intent of the abuser and the severity of any injury suffered by the victim. The charges selected should enable the case to be presented in a simple and clear way.

### **Bill of Indictment**

A bill of indictment must clearly specify the date, the hour and place of occurrence of the offences; means, purpose and motives of the commission of the offences; their consequences and other important circumstances; evidence for determining criminality of the accused; circumstances aggravating and extenuating the penal liability, personal details of the accused, and all other circumstances of significance to the case.

The conclusion of the bill of indictment must clearly state the title of the offence committed and the specific articles and sub-articles of the Penal Code that should be applied.

Here are some examples of types of behaviour that can occur in cases of domestic violence and which might amount to criminal offences or offences that attract administrative penalties. Whether any particular behaviour does amount to an administrative or criminal offence will always depend on the circumstances of the particular case. These examples should be treated only as guidelines.

<b>Examples of behaviour</b>	<b>Possible Criminal Charges</b>	<b>Elements to consider</b>
Physical violence, with or without weapon, punching, slapping, pushing, kicking, headbutting and hair pulling	Article 104 Article 151	<p><b>Article 104 intentionally causing injury or harm to the health of other persons</b>  Subparagraph (1) includes two types of situations:  (i) where the infirmity rate is between 11-30%; and  (ii) where the infirmity rate is under 11% and an aggravating factor is present, such as causing minor permanent injury to the victims; committing the crime more than once against the same person; being of hooligan character or dangerous recidivism.</p> <p>(2) where infirmity rate is between 31-60% or 11% and 30% with an aggravating factor as listed above.</p> <p>(3) where infirmity rate is 61% and above or between 31% - 60% with an aggravating factor as listed above.</p> <p><i>Note: Procurators should not consider abuser's excuses of violence of wife being "too talkative", "lazy" or "jealousy" as provocation which would reduce the crime as per article 105.</i></p> <p><b>Article 151 ill-treating or persecuting grandparents, parents, spouses, children, grandchildren and/or fosterers</b>  Need to prove ill treatment or persecution either causing serious consequences or who have already been administratively sanction for acts but repeat their violations</p>

Murder	Article 93	<b>Article 93(1) - murder</b> (b) murder of women who are known by the offender to be pregnant (o) murder of people for despicable motivation (power and control of one's wife)  <i>Note: Procurators should not consider abuser's excuses of violence of wife being "too talkative", "lazy" or "jealousy" as provocation which would reduce the murder charge as per article 95</i>
Threatening to kill someone	Article 103	<b>Article 103 – threatening to kill someone</b> Threats made by 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".
Forced suicide	Article 100	<b>Article 100 – forced suicide</b> The pattern of repeated domestic violence likely meets the threshold of "cruelly treats, constantly intimidates, ill-treats or humiliates a persons dependent on him"
Violence resulting in death	Article 104(4) Article 98	<b>Article 104(4) – intentionally causing injury or harm to the health of other persons</b> This covers situations where the abuser intentionally inflicts injury that results in death.  <b>Article 98 – accidentally causing human death</b> In this situation, the abuser unintentionally causes the death of his wife after beating her.
Violence resulting in miscarriage	Article 151 Article 104	<b>Article 151 - ill-treating or persecuting grandparents, parents, spouses, children, grandchildren and/or fosterers</b> A miscarriage would be considered as meeting the threshold of "serious consequences".  <b>Article 104- intentionally causing injury or harm to the health of other persons</b> Procurator should consider the percentage of infirmity rate that a miscarriage would result in.
Choking, strangling, suffocating	Article 104 Article 151	<b>Article 104 intentionally causing injury or harm to the health of other persons</b> Subparagraph (1) includes two types of situations: (i) where the infirmity rate is between 11-30%; and (ii) where the infirmity rate is under 11% and an aggravating factor is present, such as causing minor permanent main to the victims; committing the crime more than once against the same person; being of hooligan character or dangerous recidivism.  <b>Article 151 ill-treating or persecuting grandparents, parents, spouses, children, grandchildren and/or fosterers</b> Need to proof ill treatment or persecution either causing serious consequences or who have already been administratively sanction for acts but repeat their violations.

Throwing articles, such as dishes	Article 143	<b>Article 143 - destroying or deliberately damaging property</b>
Enforced sexual activity, rape	Article 111, 112 Article 113, 114 Article 104 Article 151	<p><b>Article 111 and 112 – rape</b> The offender uses violence, threatens to use violence or takes advantage of the victim being unable to defend herself or the offender resorts to other tricks in order to have sexual intercourse with the victim against the latter's will.</p> <p><b>Article 113 and 114 – enforced sexual intercourse</b> The offender employs trickery to induce persons dependent on them or persons in dire straits to have unwilling sexual intercourse with them.</p> <p><b>Article 104 and 151</b> Sexual violence could be covered under intentionally causing injury and ill-treatment.</p>
Forced marriage	Article 146	<p><b>Article 146 – forcible marriage</b> 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.</p>
Locking someone in room or house or preventing her from leaving or prevent her from working	Article 130 Article 123	<p><b>Article 130 - infringement upon women's rights to equality</b></p> <p><b>Article 123 - illegal custody or detention of people</b></p>
Pressuring a victim / witness to "drop the case" or not give evidence	Article 132	<p><b>Article 132 - infringement upon the rights to complain and/or denounce</b> Subparagraph (2) covers those who take revenge on the complainants.</p>
Psychological abuse, persistent belittling and name calling	Article 121	<p><b>Article 121 - humiliating other persons</b> The threshold is "serious infringe" on the "dignity or honour of other persons". A serious infringement could include humiliating the wife in public such as stripping her naked or slandering her in public.</p>

#### Determination of Primary Aggressor When Determining Criminal Charges

The procurator might have to determine who the predominating person or primary aggressor was in some situations. 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.

### **Defensive injury tips**

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. Remember that the basic human survival is based on the premise of "fight or flight"

Look for 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

The procurator should consider the following when reviewing the case file:

- 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 the statements of the parties, does the story fit the evidence.
- Evidence and statement of others.
- Whose things are broken
- General violence.

The procurator should also ask the police's investigating body to provide information on:

- Body language – who displayed an aggressive stance and consider the size of the parties.
- History of abuse.
- Neighbour and witnesses statements.
- Excited utterances and spontaneous statements.

## **Section 4: Available Deterrent Measures**

### **4.1 Types of deterrent measures**

Investigating Agencies, Procuracy and Courts can apply various deterrent measures in criminal proceedings. The Viet Nam Criminal Procedure Code describes them as following:

- Arresting the accused, including arresting the accused for temporary detention; arresting persons in urgent cases; arresting offenders caught red-handed;
- Keeping the arrested person in custody;
- Detaining the arrested person temporarily;
- Imposing a ban from travelling outside the accused's place of residence;
- Imposing a guarantee;
- Releasing on bail (when the accused person deposits money or valuable property as bail).

The criminal investigation agencies have the responsibility to determine if probable cause exists to make an arrest and that the person to be arrested committed the offence. The procuracy has power to make decisions to adopt, alter, or abolish deterrent measures and to extend time limits for detention; and to supervise the arrest, detention and custody of the accused person.

### **4.2 Factors to consider**

In determining whether deterrent measures should be made the investigators, procurators and judges should consider the following factors:

- Potential for an escalation of violence;
- Physical evidence that leads to the conclusion a crime has been committed;
- Any offence occurring in the presence of the police or investigators;
- Whether there are grounds for believing that the accused might cause difficulties to the investigation, prosecution or adjudication;
- Whether there is a history of violence;
- Whether the victim fears further violence and the basis of that fear;
- The victim's opinion on the likelihood that the suspect will obey a term of release especially a no contact order;
- Whether the suspect has a history of alcohol or drug problems, or mental illness;
- Obtain the details of all periods domestic violence charges, convictions, administrative sanctions, reconciliation hearings and agreements;
- Whether there have been any previous breaches of bail or other types of orders, such as forbidden contact orders;
- The risk assessment, which the police should complete;
- The investigators or procurators' view on victim's and children's safety.

They should not consider the following:

- Marital status;
- Ownership or tenancy rights;
- Verbal assurances that the violence will stop;
- Claims by the suspect that the victim provoked or perpetuated the violence;
- Emotional status of victim;
- Visible or non-visible injuries;
- Denial of domestic violence by either party;
- Parties indicating it is a private matter;
- Belief that the arrest may not lead to a conviction;
- Financial consequences of an arrest to either party;
- Racial, cultural, social, political or professional status of either the victim or suspect;
- The use of alcohol or drugs or both by either or both parties;
- The perception of the willingness of the victim to cooperate with criminal prosecution.

At the investigation stage, the victim might not be in a position to formally request initiating criminal charges, so the investigators should proceed with conducting the investigation and providing information and support to the victim to allow her time to decide whether she wants to proceed or not. The power of arrest and detention takes away any control or power the abuser may have over the victim and limits the abuser's power of intimidation over the victim.

Prior to trial, the prosecutor and courts 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.

## **Section 5: Proceeding to Trial**

### **5.1 Pre-Trial Matters**

If there are enough grounds to bring the cases to court for trial, the procuracy shall prepare the bill of indictment and transfer the case files to the competent court for trial. This shall include all documents on the legal proceedings of the case, the minutes of the statements, exhibits, evidence, investigative conclusions, with the indictment.

In studying the case file, the judge considers the criminal proceedings to date, whether deterrent measures have applied, whether there has been a settlement of the complaints or requests of any persons participating in the criminal proceedings. The judge also carefully reviews the evidence, the indictment, and the elements of the offence to be proved. This includes a review of all the statements made by the accused, victims and witnesses as well as the physical evidence gathered and exhibited.

In reviewing the file, the presiding judge should bear in mind that violence in an intimate relationship differs from other types of violence. The dynamics of domestic violence involving power and control and the cyclical patterns of abuse may affect what judges' view as "typical" evidence normally seen in criminal cases. For instance, victims of violence by strangers are usually cooperative and desire justice for the illegal conduct perpetrated against them. In domestic violence situations, the female victim might be uncooperative or minimize the violence. These different reactions to violence will likely produce very different victim statements.

#### **Review of the evidence by the judge**

Judges have the opportunity to ensure that the investigation and collection of evidence have been conducted 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. Like the procurator, the judge should keep in mind that the victims of domestic violence can exhibit a range of emotions at the time of providing their statement. The judge should review the file for any corroborating evidence and whether there is evidence of prior acts of violence, abuse or exploitation by the abuser.

In reviewing the victim's statement, the judge should keep in mind that there might be a delay between the violence and the reporting of the incident by the victim. 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. The courts should not draw any adverse inference if the victim delays in making a report of domestic violence. This means that the judge, in assessing the credibility of the victim, should not hold any delay in reporting against the victim.

In reviewing the statements of the accused and the victims, the judge should bear in mind that it is not the only evidence that can be used to prove a case. The judge should actively consider what other evidence may be available.

- Statement from other sources. For example, it is possible that a friend, neighbour or child may have been nearby and may be able to give direct evidence of what they saw or hear. In certain circumstances, a friend, neighbour or child may be able to give evidence of something that some else told them (this is called hearsay evidence). This direct or indirect information may also be important background information that will enable the judge to put the offence into context.
- There may also be evidence of the accused's previous bad character, for example, convictions or cautions, whether there is a history of violence in the relationship and reported previous incidents.
- There may be information from other agencies, such as shelters.
- There may be other court or People's Committee decisions or orders, such as forbidden contact orders.
- There may be police notes of spontaneous utterances or verbal statements made by the victim and accused at the scene.
- The police notes might also indicate whether there were any weapons removed at the scene, whether

clothing was torn or bloodied, or any property damaged.

- There may be photographs of the victim's injuries or scene of the crime that can be used as evidence.

### **Review of the Indictment by the Judge**

The judge will review the bill of indictment and review the relevant Penal Code offence. Some issues to consider in this review:

- 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 file notes a request made by the victim to withdraw her consent to initiate criminal proceedings, the judge should review whether the victim's consent is required. 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), the judge could determine whether to amend the indictment to include offences 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.

### **Review of Other Issues from Case File**

In reviewing the case file, the judge might be informed that the case has been settled, and the record of settlement will be included in the file. The judge should review the settlement carefully to ensure that the parties entered into the settlement voluntarily. Judges 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. Judges should also question whether reconciliation is appropriate where there is a history of persistent domestic violence.

The case file might also include various requests from any persons participating in the criminal proceedings. This could include a request from the victim to withdraw the criminal case or from the procurator to discontinue the case if the victim has recanted. If this happens, the presiding judge should ensure that he or she has a comprehensive understanding of the reasons why the victim might be recanting before considering what is his or her options are. The Judge needs to determine whether the victim might be pressured or frightened into retracting or withdrawing her consent. The judge should analyze all the information before them to assist in determining the genuineness of the recantation or withdrawal.

### **Returning the File for Additional Investigation**

The presiding judge can return the case file to the procuracy where important evidence in the case needs to be further examined, which cannot be supplemented at the court session; where there are grounds to believe that the accused has committed another offence or there is another accomplice; or where serious violations of the procedure are detected.

Where the judge decides to return the case file to the procuracy for additional investigation, they must inform the procuracy what specifically is required and the reasons it is required. The procuracy or courts may only return the case files for additional investigation no more than twice. Therefore, the decision to do so must set out carefully and comprehensively the additional investigation required.

This procedure reflects the responsibility of the judge to ensure that all incidents of domestic violence have been effectively investigated and that the conduct in the investigation respected the rights and needs of all the parties involved.

## **5.2 Trial Matters**

### **Procuracy Presenting the Case at Trial**

The procurator assigned to the case presents the bill of indictment in court and then has the opportunity to inter-

rogate persons participating in the court session after the judge has put questions to each person. The procurator must respond to each point of view and request of the accused, the defence counsel or others participating in the proceedings, as well as answering questions posed by the judge.

### **Questioning of the Accused at Trial**

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. The inquiry is to be objective, respecting the rights of the defence and the dignity of all participants in the trial. The trial panel should never justify or excuse the abusive behaviour by the accused towards his wife nor express sympathy with his explanation for the violence.

The trial panel should examine all other evidence carefully, including statements and physical evidence in the case file, as well as any notes of spontaneous utterances or statements made by the accused and noted by the police at the scene.

In interrogating the accused, the procurator 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.

### **Questioning the Victim at Trial**

It is important for 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.

The victim may believe:

- The criminal justice system will not hold the abuser accountable;
- The violence will end on its own or through counselling;
- That no one will believe them;
- The children are better off with both parents;
- The violence and abuse is their fault;
- Their family might be shattered if the abuser is convicted of a crime;
- They are unable to survive financially without the abuser.

The victim may be reconciled with the abuser or have concerns about being responsible for the abuser possibly receiving a criminal record or going to prison.

Victims may fear:

- The abuser will further harm or kill them if they participate in the prosecution.
- The abuser will harm other family members or children or other close relatives.
- The abuser will retaliate against them.

Abusers may:

- Interfere with the victim's ability to appear in court (physical restraint, discarding mailed notices, erasing voice messages regarding the case, etc).
- Intimidate the victim directly or indirectly.
- Pressure friends and family to convince the victim not to participate.

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.

## **Expert Testimony**

The judge might be asked by the procurator to allow for expert testimony in domestic violence cases. 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.

## **5.3 Sentencing Considerations**

The deliberation of judgments shall be conducted fully and comprehensively. The evidence is examined and the trial panel determines if a criminal offence has been committed and by whom and what sanctions should apply. The deliberation of the judgment minutes should record all ideas and opinions presented and discussed on each matter.

Sentences in domestic violence against women cases should be commensurate with the severity of the crime committed. Sentencing should recognise that violence committed by a husband towards his wife is a serious problem in society and that the courts have an opportunity, by their sentencing policy, to denounce wife beating in clear terms and to attempt to deter its recurrence on the part of the offender as well as other men. Repeated incidents of domestic violence are common and many countries have introduced sentencing provisions that abusing a family member is considered to be an aggravating factor and increases the sentence accordingly.

Sentencing hearings should disclose history of abuse, dynamics of relationship and impact on victims and children. The judge should hear the history of abuse as well as past orders and dispositions and the response to such orders and dispositions in the past. Some of the considerations the courts might take when considering sentence disposition:

- The court should examine the circumstances peculiar to the relationship between the parties and that when a man assaults his wife or other female partner, his violence towards her constitutes a breach of a position of trust and is an aggravating factor.
- Such an assault constitutes an abuse of power and control and the vulnerability of women is increased by the financial and emotional situation in which they find themselves, which makes it difficult for them to escape.
- The paramount considerations must be general deterrence and denunciation.
- Rehabilitation and individual deterrence are of secondary importance.

The court could consider whether:

- The assault is relatively minor in nature.
- The assault is an isolated incident.
- There are circumstances that make it desirable that the sentence is not counterproductive to the possibility that the family relationship will be preserved.
- Criminal record for violence or related convictions.
- Planned or pre-meditated.
- Whether a weapon was used.
- Whether children witnessed the assault or were present when the assault occurred.
- If offence occurred in the sanctity of the home.
- No remorse.
- Intoxication at the time of offence.

If fines can be imposed as part of the sentence, judges should consider the following:

- Whether imposing a fine on the offender would cause financial hardship to the victim and her children.
- When fines are imposed they should be combined with treatment and supervision of the abuser.

The court should also consider whether the law allows them to require the offender to pay compensation to the victim.

## **Section 6: Techniques for Dealing with the Victims**

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.

### **6.1 Issues for consideration by procurators**

Early contact with the victim

An effective approach that a prosecutor can take is to have early contact with the victim. The prosecutor should also avoid blaming the victim for the violence and give her information about the criminal court process and her role as a witness. These actions can contribute to breaking the feeling of isolation by the victim and communicates to her that the procuracy can help to end the violence in her life. The procurators should protect the victim from intrusive or embarrassing questions at trial, unless the questions are necessary and the reasons for asking them are explained.

#### **Effective Approaches**

- Meet with the victim early on in the case
- Take the time to explain the steps of the criminal system process to victim
- Explain her role as a witness in the process
- Provide information about community resources which can provide her protection and support, such as shelter or legal aid
- Assist the victim in connecting with these resources
- Do not judge or blame the victim, rather explain that their goals are the same – to end the violence to the woman

While, of course, allowing victim input is important, the ultimate decision regarding whether to prosecute and what charges to lay are that of the procurator. Procurators must remember that the actions that come before them are crimes and should not be considered private family matters. However they should be mindful that the victim might have legitimate concerns regarding her safety. Procurators should request whatever measures may be necessary to protect victims in these cases.

#### **Dealing with a Recanting Victim**

What if the victim wants to recant or withdraw her statement after the investigating bodies have submitted the case file to the procurator or after the procurator has submitted the case file and indictment to the court but before the trial? Sometimes, victims will ask the police and/or the procurator not to proceed any further with the case and say they no longer wish to give evidence. The victim might recant her statement prior to the trial. If this happens, the procurator should interview the victim to understand the reasons for recanting or withdrawing her statement, before deciding what action to take. The procurator needs to determine whether the victim might be pressured or frightened into retracting.

In order to get a better understanding of this case and the reasons behind the recanting, the procurator could also obtain information from the police's investigating bodies, including the following:

- Whether there is a history of an abusive relationship;
- Whether there has been a recent separation;
- Whether there is a history of harassment;
- Whether there are divorce proceedings in progress;
- Whether the accused has a psychiatric history;
- Whether the accused has ever threatened the victim or the victim's children in any manner;
- Whether there are serious financial difficulties facing the family unit;
- Whether the accused is employed;

- Whether the victim is financially dependent on the accused;
- Whether the accused has a related criminal record;
- Whether the accused has an alcohol or drug dependency;
- Why the victim is recanting;
- When and what circumstances was the recantation made;
- Whether the accused has used, or threatened to use a weapon against the victim and/or her children;
- Whether the accused has access to weapons.

The purpose of the interview and information gathering is to:

- Assist in determining the genuineness of the recantation;
- Provide insight into the motivation for the recantation;
- Assess the victim's reliability as a witness;
- Reassure and encourage the victim to continue to proceed with the criminal charge;
- Inform the victim about any relevant bail conditions imposed on the accused;
- Confirm that the victim have been made aware of available community services;
- Inform victim of the prosecutor's position with respect to the prosecution and recommendation of sentence of the offender.

Procurators should also be aware of the dynamics of domestic violence and power and control of the abuser over the victim and should do all they can to support the victim through the criminal justice process and to encourage them to participate in the prosecution and to give their best evidence.

- Ask the victim what support she needs through the prosecution process.
- How does the victim feel if forced to face the accused during the trial? What measures can minimize this encounter?

If even after the procurator's encouragement, the victim resolutely refuses to proceed, the procurator has a number of options available at this point. They can 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 is there enough other evidence to proceed without victim's statement. It is always a difficult decision for the procurator regarding whether to compel the victim to attend court, as one does not want to criminalize the behaviour of the victim and re-victimize her through the process.

In determining the next steps, the procurator should consider:

- The seriousness of the offence;
- The injuries of the victim, including psychological and emotional;
- Whether a weapon was used;
- Any subsequent threats by the accused;
- Whether the attack was planned;
- Whether the incident was witnessed (seen or heard) by children;
- Effect (including psychological and emotional) on any children living in the household;
- Chances of recurrence;
- Current state of victim's relationship with accused and assessment of its stability;
- Effect on that relationship of continuing with the prosecution against the victim's wishes;
- History of relationship (particularly if previous violence);
- Accused's criminal history (particularly if previous violence).

Background information is crucial in helping the procurator to make the best decision about how to proceed with a case where the victim has withdrawn their support for the prosecution. In the situation where the victim's request to initiate a criminal case is required pursuant to article 105 of the Criminal Procedure Code, the procurator should consider whether other penal offences can apply, such as article 151, which does not require victim's request to proceed.

The procurator might also need to consider in these cases whether there is need or available any witness protection measures, particularly if the victim is unwilling to continue with the criminal hearing due to fear and threats

by the accused. If the procurator suspects that the victim is being pressured or frightened into withdrawing the complaint, they could also ask the police to investigate further. The investigation may reveal new offences, for example, harassment or witness intimidation, or may reveal bail conditions have been breached. If so, then the procurator needs to consider the evidence and decide whether further charges should be brought.

### **Information Provided to the Victim**

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. For example, if the abuser is released on bail without her being informed, the victim might not be able to keep herself and her children safe.

One of the major contributors to case attrition in domestic violence cases is the lack of communication between procurator and the victim. Early, consistent contact with the victim and immediate referral to support services, if available, are critical for victim safety and successful prosecutions. The procuracy should keep the victim informed of all proceedings, ideally creating a dialogue to fully advise the victim on the alternatives available at each stage of the proceedings. Contact should be maintained with the victim until the case is finally resolved. Keeping victims informed is relevant to the safety of the victim. The procurator should meet the victim at an early stage in the criminal process where the procurator considers this to be appropriate. This can enable the procurator to reach a better informed decision about any aspect of the case and keep the victim informed throughout the process.

### **Protection and Issues of Confidentiality**

Before trial, 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 temporary detain the accused, pursuant to article 80 of the Criminal Procedure Code. If the procurator is aware of such circumstances, they should ensure bring the matter to the attention of the court.

Procurators should protect the confidentiality of victim information. 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. The procuracy should keep secret all information related to the investigation of cases when applying measures to protect the victim. This includes not leaking to the press, the public, the identity and life history of the victim.

### **6.1 Issues for Consideration by the Courts**

Judges, like procurators, must understand the complexities of the victim's behaviour in domestic violence cases. Judges who understand victims of domestic violence are more likely to develop a positive dialogue with the victims in the court trial. Victims who are put at ease in court provide better quality of evidence.

The presiding Judge in planning his or her inquiry will include the questioning of the victim, as well as other witnesses and prepare what questions to ask the victim during the court trial. Considerations to bear in mind during the questioning of domestic violence victims include:

- Avoid developing an antagonistic relationship with the victims. Victims are more likely to respond positively to empathetic and proactive questioning that address the specific concerns of individual victims.
- The treatment of victims by the Judge can help to restore the power and respect that the victim lost as a result of the abuse. Victims often feel isolated after the violence, by the abuser, her family and the community.

It is also important to be mindful that the judge's actions may contribute to the feeling of re-victimization by the abused woman. If the judge blames the woman for the violence or asks her embarrassing questions that are not relevant and private, and make her feel like the criminal, she might then not seek assistance in the future if the violence happens again. The judge should avoid penalizing victims for refusing to testify or participate in criminal cases.

### **Measures to Facilitate the Evidence of Victims**

Being present at the court house for trial, being required to answer questions and having to confront the abuser can be a particularly 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 victims 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 can ensure 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.

### **Dealing with Absences of the Victim**

The vulnerabilities of the victim may result in the failure to appear at trial and this must be taken into account. The Criminal Procedure Code stipulates that attendance at court session when summoned is compulsory, so in case there are absences, the trial panel shall discuss whether or not to cancel the session. The trial panel can determine to start the court session if they consider that the absence does not affect the trial. The trial panel can also decide to postpone the trial if they determine that the victim is absent due to reasonable causes.

### **Protection Issues**

Before trial, the presiding judge must prepare plans to protect the court session. The courts are to pay due attention to the victim protection and 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 temporary 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. Where possible and appropriate, victims can be referred by the court staff to a counsellor or legal aid office in order to provide support to the victim during the trial. 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.





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