

Domestic Violence Legislation and its Implementation

AN ANALYSIS FOR ASEAN COUNTRIES
BASED ON INTERNATIONAL STANDARDS
AND GOOD PRACTICES



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FOREWORD

Violence against Women, whether in the public sphere or the private space, is a human rights violation. In its General Recommendation 19 the CEDAW Committee identifies gender-based violence as an expression of sex discrimination because it is disproportionately directed against a woman because she is a woman or because it that affects women disproportionately. The Committee defines it as *including “acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence”*.

Much normative progress has been made in responding to violence against women. The United Nations and the ASEAN have adopted Declarations on the elimination of violence against women and eight of ten ASEAN countries have legislation on domestic violence. Yet, this violence is prevalent in Asia as in other parts of the world. And women’s access to justice is impeded by a number of factors including deficits in the definition of domestic violence, inadequate sanctions coupled with provisions for reconciliation that undermine perpetrator accountability and inadequate enforcement because of cultural of tolerance, including in the administration of justice.

Ending violence against women is one of the thematic priorities of the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) and we have partnered with states and civil society organizations in East and Southeast Asia to on policy and legislative development and implementation to prevent, protect and punish all forms of violence against women.

These research papers - ***International Standards on Domestic Violence Legislation and Overview of Global Good Practices on Domestic Violence Response Systems***, prepared in partnership with the Lawyers Collective Women’s Rights Initiative, India, contribute strongly to the enhancement of domestic legislation in the ASEAN region. Drawing on international standards and good practice globally, they not only provide a rich analysis of existing legislation, but a robust framework to enhance the gender responsiveness of legislation and its implementation.



Roberta Clarke

Regional Director

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Note on authors

The Lawyers Collective is a group of lawyers, law students and social activists in India committed to the use of law as an instrument of social change to further the constitutional and human rights of marginalized groups. The Women's Rights Initiative of the Lawyers Collective (LCWRI) works for empowerment of women through the law. Towards this, the LCWRI has undertaken extensive research and advocacy aimed at policy and law reform. Focus areas of the LCWRI include domestic violence, sexual harassment at the workplace, matrimonial and family issues, personal laws, reproductive rights and crimes against women, and trafficking in persons. The LCWRI has been at the forefront of the campaign for a civil legislation on domestic violence in India.

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EXECUTIVE SUMMARY

Background

1. This publication is a collation of two research papers that UN Women commissioned for the ASEAN regional workshop on domestic violence legislation held in Hanoi on 20-21 October 2008. The papers, *International Standards on Domestic Violence Legislation and a Review of ASEAN Laws* and *Overview of Global Good Practices on Domestic Violence Response Systems*, were prepared by the Lawyers Collective Women's Rights Initiative, India.
2. The papers aim to analyse relevant legislation on domestic violence in ASEAN countries and global good practices. They were prepared mainly through a desk review of domestic laws in ASEAN countries as well as existing research and knowledge of international standards and good practices at the national, regional and international levels.

International standards on domestic violence legislation

3. Domestic violence has been a persistent problem throughout recorded history and is regarded as one of the primary public policy concerns worldwide. The Universal Declaration of Human Rights (UDHR), adopted in 1948, specifically recognizes the right to equality in its Articles 1, 2 and 7. The UDHR has acquired, over the years, the status of a *jus cogens*, or a norm of customary international law binding all States. The right to equality is also recognised in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (Article 3).
4. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is the most important international instrument on women's human rights. It establishes the norms and standards on discrimination against women, substantive equality, and state obligation.
5. CEDAW obligates States to undertake measures to respect, protect and fulfil the equal rights of women. States are obliged to ensure that there is no direct or indirect discrimination against women in their laws, and that women are protected against discrimination. States are obligated to improve the *de facto* position of women through concrete and effective policies and programmes, and to address prevailing gender inequality and persistent gender stereotypes that are perpetuated in law, societal structures, institutions, and by individual actors.
6. Although CEDAW does not include an explicit reference to violence against women, subsequent developments in international law and in interpreting CEDAW have recognized violence as a violation of human rights. The General Recommendation 19 of the CEDAW Committee of 1992 interpreted the term "discrimination" in Article 1 of the Convention to include gender based violence on the basis that it is "*violence that is disproportionately directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.*"

7. The UN Declaration on the Elimination of Violence Against Women of 1993 also states that *“violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms, and concerned about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women”*. ASEAN countries adopted the Declaration on the Elimination of Violence in the ASEAN region in 2004. This instrument recognizes *“that violence against women both violates and impairs their human rights and fundamental freedoms, limits their access to and control of resources and activities and impedes the full development of their potential”*.
8. Under CEDAW obligations, States parties should take legal (criminal and civil remedies) and other measures to prevent further acts of violence and provide services to survivors (such as refuge, counselling and medical assistance). States may also implement broader preventive measures, such as public information and education programmes, to eliminate domestic violence. The civil remedies adopted by different countries include injunctive orders, such as ‘stop violence’ or ‘non-molestation’ orders aimed to prevent future acts of violence; remedial orders, which take into account medical expenses, damages to property, impact on mental health; and, among others, custody orders and orders for maintenance or financial support. The criminal remedies that recognise domestic violence as an offence include mandatory arrest and ‘no drop’ prosecution policies, and measures to encourage survivor participation in criminal proceedings, such as the implementation of witness protection programmes. In addition to civil and criminal remedies, some countries have introduced other legal devices, such as tort action and judicial decisions on Battered Women’s Syndrome.
9. As demonstrated in General Recommendation 19, the notion of discrimination under CEDAW is not restricted to States’ action, but also includes gender-based violence perpetrated by non-State actors.
10. The UN Special Rapporteur on Violence against Women recommended “A Framework for Model Legislation on Domestic Violence”, 1996 (UN Model Code), which provides valuable guidance on the provisions that should be included in domestic violence legislation. These laws should: 1) comply with international standards sanctioning domestic violence; 2) recognize domestic violence as gender-specific violence directed against women, occurring within the family and within interpersonal relationships; 3) recognize that domestic violence constitutes a serious crime against the individual and society; 4) create a wide range of flexible and speedy remedies; 5) assure survivors the maximum protection; 6) establish departments, programmes, services, protocols and duties to aid survivors; 7) facilitate enforcement of the criminal laws by deterring and punishing violence against women; 8) enumerate and provide by law comprehensive support services; 9) expand the ability of law enforcement officers to assist complainants and to enforce the law effectively in cases of domestic violence and to prevent further abuses; 10) train judges to be aware of the issue; 11) provide for and train counsellors to support police, judges and the survivors of domestic violence and to rehabilitate perpetrators of domestic violence; and 12) develop greater understanding within the community of the incidence and causes of domestic violence and encourage community participation in eradicating domestic violence.

Analysis of domestic violence legislation in ASEAN countries

11. All countries in the ASEAN region have either acceded to or ratified CEDAW, hence they are obliged to treat domestic violence as a violation of human rights and to incorporate international standards into domestic legislation. Eight out of the ten countries in the ASEAN region have enacted special laws and provisions on domestic violence. The countries that do not have any laws on the issue are Brunei Darussalam and Myanmar. The first country to pass a law on this issue was Malaysia in 1994, and the most recent laws enacted were those of Thailand and Vietnam in 2007. Most countries have either enacted laws or effected amendments to existing laws in the period of 2004-2005.
12. Any analysis of domestic violence legislation must be made with reference to international standards. In this paper the following criteria have been used in reviewing the domestic violence legislations of the ASEAN member countries:
 - Does the country treat domestic violence as a violation of human rights, and in this respect does the law itself refer to international instruments like CEDAW? Is domestic violence regarded as a form of discrimination against women? Is the law gender specific?
 - How is domestic violence defined?
 - What is the coverage of the law, i.e. the nature of relationships covered?
 - What is the form of legislation adopted – civil or criminal law or a mix of both?
 - What mechanisms and procedures have been put in place to ensure access to reliefs and alternative dispute mechanisms?
 - Does the law facilitate access to support services that women may require at the pre- and post-litigation stages? And is a multi-agency response built into the law?
 - Does the law have specific provisions on counselling for either/or both parties toward prevention of future violence or is the emphasis on settlement/mediation/reconciliation?
 - Is the state mandated to provide training to implementing agencies, service providers and others and create public awareness?
 - Is monitoring and evaluating effectiveness/impact built into the law?
13. Most of the domestic violence laws in the ASEAN region have been enacted with the aim of providing legal protection to survivors of violence and preventing future acts of violence. Some of the laws provide specific recognition of violence as a violation of human rights standards. Some countries, such as Cambodia and Singapore, include a reference to the preservation of the family as a goal. Philippine and Indonesian laws refer explicitly to CEDAW and other international human rights instruments as the normative framework in its statement of objectives. Also, language in the Lao legislation clearly reflects the CEDAW commitments. However, no other ASEAN State makes a specific reference to CEDAW or other international human rights instrument.
14. A significant feature of the majority of the laws in the ASEAN region is that they are formulated in a gender neutral manner. The gender neutral formulation of these laws does not conform to international standards.
15. Definitions of domestic violence in the laws of some ASEAN countries exempt certain acts of violence. This leaves room for discretion and interpretation of the law. For example, the Cambodian law allows for disciplining if conducted with compassion, pity and sincerity. The Thai

law also includes in its definition of domestic violence “unethical dominance” compelling family members to commit any unlawful acts. This allows for tolerance for violence if certain conducts are not considered as amounting to “unethical dominance”.

16. The forms of domestic violence contained in the laws include a range of acts that result in physical, mental or sexual harm. Some laws, such as the Malaysian Domestic Violence Act, have adopted broad definitions that can be interpreted to take into account any illegal act that results in harm or injury. Others provide specific examples of acts that constitute domestic violence; this is the case in the Cambodian law. The Philippine law contains a comprehensive definition of domestic violence. In fact it separately defines acts that result in physical, sexual or psychological harm, battery, assault, coercion, harassment or arbitrary deprivation of liberty, stalking, etc. A detailed definition of domestic violence in the domestic law reduces the scope for judicial discretion and guards against the influence of patriarchal biases in judicial decision making.
17. All laws on domestic violence in ASEAN member countries cover matrimonial relationships. The Cambodian and Indonesian laws only cover existing matrimonial relationships, while the Malaysian and the Singaporean laws include former spouses within its ambit. The Philippine law also covers “sexual” or “dating” relationships or a relationship with a person with whom there is a common child. The widest coverage is provided by the Vietnamese law, which does not include any clause defining survivors or coverage and is gender neutral. It is advisable to include all forms of domestic relationships within the ambit of the law.
18. In relation to the form of legislation adopted, ASEAN States have mostly adopted special legislation on the issue of domestic violence. Exceptions are Singapore, which includes civil reliefs for domestic violence in a family law, and Lao PDR, which has a broader gender equality law. In terms of criminal and civil sanctions, in some countries criminal sanctions are included in the special legislation adopted, such as Indonesia, the Philippines and Thailand. In others the sanctions can be found in general criminal law, such as for Malaysia. Most of the laws, but not all, provide for the grant of civil orders for relief and allow simultaneous criminal proceedings in cases of serious acts of violence. The procedure to be adopted in criminal proceedings is provided for in general criminal laws.
19. A substantive right toward realizing the right to “equal protection” of laws is the right to access to justice. ASEAN member countries have adopted different mechanisms to give effect to the right recognized under their laws. Main mechanisms are: pre-litigation intervention; access to assisted alternative dispute mechanisms; and measures to ensure obtaining and compliance with orders. Essential interventions at the pre-litigation stage are: the provision of protection to complainants/survivors of violence on an urgent basis (emergency interventions); the duty to provide information to the survivors on rights and remedies available under the law; and the assistance to facilitate complainants’ access to immediate reliefs and court processes. Provisions for assisted alternative dispute resolution have been included at the pre-litigation stage or during court proceedings in ASEAN countries’ laws. In terms of measures to ensure obtaining and compliance with orders, most ASEAN countries, such as Indonesia, the Philippines and Vietnam, have included provisions on the grant of immediate interim or temporary reliefs. All the laws in the ASEAN region that allow for the provision of protection orders or other injunctive orders ensure enforcement primarily through treating the breach of such orders as a punishable offence, attracting immediate arrest either by the police or other competent authorities.

20. Women facing violence also need access to support services. The strategies adopted by ASEAN countries in this sense may be divided in three categories: 1) to recognize access to support services as a right; 2) to provide duties for enforcement officials and others to either provide support services or to facilitate access to support services; 3) to facilitate access to support services by issuing policies and developing action plans for implementation and coordinated response. Lao PDR, Philippines and Vietnam have been using the first strategy. In these countries women have the right to access support services such as medical care. Indonesia, Malaysia and Thailand have been using the second strategy. The Indonesian law enumerates duties of governments and public authorities, health care personnel and social workers in providing support to survivors of violence. The Philippine law is also a good example. In addition to recognizing a women's right to support services, it includes detailed duties for prosecutors, court personnel, law enforcers, etc. This norm also mandates the provision of funds to implement the law, which allows for effective implementation of the law. The Thai law does not have specific provision for support services, but the Ministry of Social Development and Human Security has the responsibility of setting up working systems to support operations and enforcement under law. This represents a step toward providing coordinated responses to survivors of violence.
21. Domestic violence law should also provide for counselling mechanisms to cope with the psychological impact of violence. Indonesian and Philippine laws provide counselling for survivors of domestic violence.
22. Often counselling is confused with mediation/settlement/reconciliation; this can negate the significance of the counselling mechanisms. This is the case of the Vietnamese law, which has an entire chapter on reconciliation of conflicts among family members, where the understanding of counselling under the law is that of reconciliation within the family. When provision for mediation/settlement/reconciliation is in the law, sufficient safeguards must also be included to ensure that the security and position of the survivor is not adversely affected.
23. Another important measure that should be included in the law is the provision of trainings aimed at increasing public awareness on the issue of domestic violence. Cambodian and Philippine laws require training for enforcement and other public officials.
24. Monitoring and evaluation of the implementation of domestic violence laws is critical to hold States accountable in adhering to legal obligations, to allow for the compilation of best practices, and the identification of gaps in the law. In the ASEAN region only Malaysia and Thailand include provisions in their laws that require the monitoring of implementation.

Overview of global good practices on domestic violence response systems

25. As a result of global awareness of the gravity of domestic violence, governments have adopted several approaches to address the problem. These include the adoption of internal reforms of different agencies and institutions aimed at creating a systemic response. In reality this approach has often not succeeded because these reforms were initiated separately within each agency or institution. Hence, there is an urgent need for one "official response" grounded in strong State–community partnership and broader coordination between the agencies involved in implementation and law enforcement. This approach is referred to as the "domestic violence response system". In this approach survivors of domestic violence are at the centre of the system.

26. Globally there are examples of some good practices with regard to implementation of domestic violence legislation and practices that together create a “domestic violence response system”. The good practices may be divided into six categories: 1) Inter-agency coordination; 2) Survivor-focused approach; 3) Strengthening the justice system; 4) Legislating the provision of funding; 5) Monitoring and evaluation of implementation of legislation or policies; 6) Initiatives focusing on needs of special groups.
27. Good practices in inter-agency coordination focus on developing a common vision and action plan, enabling better communication between agencies, and establishing a body to oversee the implementation. The Duluth Model (Duluth Domestic Abuse Intervention Programme), based on victim safety, represents a good practice. Its main goal is to bring together criminal and civil justice agencies in responding to women’s needs. Another example is the Australian Capital Territory Family Violence Intervention Programme, whose main goals are ensuring survivor safety and accountability and rehabilitation of offenders through coordination between the justice system and other service providers. The London Domestic Violence Forum should also be considered a good example due to the effective coordination between the individual components of the justice delivery system. The Indian Andhra Pradesh Public Model is also worth mentioning. This model involves various agencies (police, protection officers, legal aid services) and service providers, and introduces the Domestic Incident Report Index, which aids agencies in case-tracking and enables follow-up even after the actions of protection officers.
28. Survivor-focused practices aim to support and enable women’s specific needs in a situation of violence. A good example is the provision relating to federal public housing in the American Violence Against Women Act, which provides protection specifically to survivors of domestic violence. Another example is the system of 30-day mandatory court review of batterer compliance with intervention programmes, which is a suitable tool particularly in jurisdictions that provide for mandatory batterer counselling. The Indian “Dilassa” Model, which is a model of health service delivery, should also be mentioned. The Model is based on a preventive approach and aims to integrate violence against women in intimate relationships within health care services.
29. Strengthening the justice system is a fundamental goal. A women-friendly justice system can change the attitude of institutional intervention in domestic violence cases. For example, after the battered women’s movement campaign in the United States for a stronger criminal justice response on the issue of domestic violence, many states began to provide for “mandatory” arrest and prosecution of domestic violence offenders in their policies. Multi-Agency Risk Assessment Conference Model of coordinated response (MARAC) should also be mentioned. MARACs are regular conferences on particular cases of domestic violence, which bring together the agencies involved in the cases to discuss the actions taken, the problems, measures to be taken to improve safety and access to justice. Another good practice is the establishment of special domestic violence courts based on the principle of therapeutic jurisprudence, such as the Dade County Domestic Violence Court and the Vancouver Domestic Violence Court. Alternative Dispute Resolution models, where the survivor and offender meet at a safe and neutral setting in the presence of a mediator to discuss the abusive behaviour, also represent a good practice.
30. The USA Violence Against Women Act of 1994, subsequently reauthorized in 2000 and 2005, is a good practice in terms of a legislation providing funding to criminal law enforcement and various assistance programmes to survivors of domestic violence. Another example is the Women’s Safety Agenda, established in 2005 by the Australian government. This policy funds

innovative, preventive and responsive strategies implemented by civil society organizations and undertakes training of health care workers and members of the criminal justice system.

31. Periodic monitoring and evaluation is essential for effective implementation of domestic violence laws. In India, the civil society initiative to set up a system of monitoring the implementation of the law in collaboration with state agencies represents a good practice. The Lawyers Collective, along with departments and other stakeholders, evaluated the effectiveness of the infrastructure envisaged under the Domestic Violence Act and the performance of the implementing agencies in delivering services. They also examined the responsiveness of judiciary to the issue of domestic violence. This initiative has greatly contributed to the increased accountability of the state to civil society.
32. Some initiatives provide support to particularly vulnerable categories of people facing domestic violence. Examples of good practices are the guidelines to protect children who have experienced violence against their mothers, developed by the Canadian Ministry of Children and Family and the American Violence Against Women Act, which for the first time provided protection for battered immigrant women.
33. The good practices above discussed do not constitute an exhaustive list, but provide a template for implementation in the ASEAN region.

Conclusion

34. Many ASEAN countries, formally linked to tradition and structured on patriarchy, have made significant progress in adopting an official policy of zero tolerance for domestic violence. These countries have demonstrated a commitment to equality and non-discrimination on the grounds of sex; however, this guarantee is not necessarily reflected in legislation and special measures because the majority of the laws are not gender specific. The UN Framework for Model Legislation on Domestic Violence recommends the recognition of domestic violence as a “gender specific” form of violence *“directed against women, occurring within the family and within interpersonal relationships.”*
35. It is recommended that domestic violence laws include in the statement of objectives reference to international treaties and laws, which recognize explicitly that domestic violence constitutes a breach of human rights, particularly the right to equality and the right to life. Further, a comprehensive definition of “domestic violence” will provide a strong basis for the law. This will determine broader prevention and education programmes aimed at changing societal attitudes and behaviour of individuals, including state and non-state actors.
36. Also, it is recommended that the content of domestic violence legislation should include the following specific provisions:
 - Domestic violence laws should address specific cultural manifestations of violence.
 - All relationships in the shared residence should be included within the ambit of the domestic violence law with a clear listing of the nature of relationships covered, especially all relationships of dependency, including domestic workers, as well as a definition of the “shared residence”.

- Complaints mechanisms should be easily accessible, provide immediate protection to the complainant and ensure access to support services. Pre-litigation measures should aim to immediately stop violence.
 - Emergency orders should be available prior to the issuance of a court order to immediately prevent future acts of violence.
 - Access to information on rights and assistance to initiate legal processes are essential to facilitating access to justice.
 - Assisted alternative dispute resolutions at the pre- and post-litigation stages should be attempted only if there is a guarantee of non-violence.
 - Pre-litigation mediation should not impede access to the courts or court ordered remedies and, to avoid bias in the event of a settlement, should not be conducted by courts. Post-litigation mediation should be conducted by authorized professional bodies or individuals.
 - In court proceedings, it is advisable to elaborate on reliefs available under the law to aid to judges in deciding the nature of orders to be granted.
 - Providing timelines for disposing complaints and applications filed under the laws will ensure speedy processes.
 - Making the violation of court orders a punishable offence will aid their enforcement.
 - Laws should mandate institutionalized, regular training and education of police officers, prosecutors, judiciary, social workers and public officials in protecting survivors of domestic violence and preventing further acts of violence.
 - Public awareness campaigns on violence against women are an important measure to eliminate violence and change social attitudes.
 - Monitoring the implementation of domestic violence laws is essential to ensuring effective implementation. It is advisable for states to incorporate such provisions into the law.
37. While ASEAN countries have made progress in addressing domestic violence through their public policies, there is still an urgent need to implement Domestic Violence Response Systems in the region. The Domestic Violence Response System must be understood from the perspective that a woman facing violence in intimate relationships is in need, not only of legal remedies, but of a multiplicity of services that provide her a support system. A clear focus on the woman and her safety must be the foundation of any good practice initiative.
38. Various approaches and practices have been initiated and tested throughout the world. There is no one “most effective” approach, as all of them are effective in the specific contexts of the communities. The best strategy to address the issue of domestic violence is to combine two or more of the approaches on the basis of the country’s requirements and context. As the good practices discussed in this publication show, these coordinated response systems should be focused on the quality of the response provided to women survivors of domestic violence rather than focusing exclusively on coordination between agencies. It is also advisable to do periodic review and evaluation exercises so that the systems can be improved. Questions like whether the system is responding to the needs of women, how many women are using the system, and what are its crucial and perceived benefits need to be asked.

INTRODUCTION

The issue of domestic violence has emerged as one of the primary public policy concerns in countries around the world. Countries in the ASEAN region have embarked on important initiatives in order to address the issue of domestic violence. It is in this context that sharing “good practices” and discussing comparative perspectives from initiatives around the world has provided recommendations and a template for developing common regional standards, reiterating that there is no impunity for violence.

With the objective of comparing initiatives and good practices from around the world, the following research papers *International Standards on Domestic Violence Legislation* and *Overview of Global Good Practices on Domestic Violence Response Systems* were prepared by the Lawyers Collective Women’s Rights Initiative, India for UN Women Regional Office for Asia and the Pacific. These papers were presented at the ASEAN Regional Conference on Domestic Violence Legislation in Hanoi by International Expert Ms Indira Jaising, CEDAW Committee Member and Director of the Lawyers Collective Women’s Rights Initiative.

The ASEAN Regional Conference was organised by ASEAN and UN Women Regional Office for Asia and the Pacific and hosted by the Ministry of Labour, Invalids and Social Affairs of Vietnam on 20 - 21 October 2008. This regional conference brought together representatives from 10 ASEAN countries, from national women’s machineries, Ministries of Justice, Ministries of Health and civil society groups that provide services and advocate on issues of violence against women. The aim of the conference was to review ASEAN countries’ domestic violence legislation from the perspective of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW). Representatives shared experiences of government responses to domestic violence to learn from global good practices that are compliant with international human rights standards.

The first paper, *International Standards on Domestic Violence Legislation* examines the international legislative framework on domestic violence, looking into equality provisions in international law and standards of obligations for state parties in dealing with domestic violence as a human rights violation. It explains the CEDAW framework and the UN framework for model on domestic violence legislation as standards followed by all domestic laws on domestic violence. In its second part, it takes an in-depth look at domestic violence legislation in the ASEAN region, from commitment to equality, legal remedies and support services, training and monitoring of implementation.

The second paper, *Overview of Global Good Practices on Domestic Violence Response Systems* is based on the premise that there is a need for a coordinated response to domestic violence. It discusses various approaches to domestic violence and highlights the good practices from around the world - innovative approaches that have worked.

While this paper has been written from a legal perspective, there is much to learn for all gender advocates. Lawyers and judicial officials can learn about the international legal framework to which their countries have committed, and about their obligations. Judges and court officials in particular will benefit from this discourse as they are part of the state party and are duty-bearers by themselves. Moreover, gender advocates in governments and civil society, law makers and law drafters can use this analysis of existing domestic violence legislation, based on international standards, for further improvements.

The papers also provide a tool for gender advocates as shared good practices offer practical solutions to the challenges we all face in dealing with domestic violence. Communities still grapple with the notion that domestic violence is a “private matter”, something which should be resolved within the confines of the homes. The second paper shows that when the home ceases to be a sanctuary, there are many ways out.

These papers make neither prescriptions nor solutions, but present resource material for stakeholders to draw from and build upon to address the most pervasive of human rights violations, violence against women.

EQUALITY PROVISIONS IN INTERNATIONAL LAW

The principle of equality is a fundamental principle of the United Nations Charter (UN Charter), which states that human rights and fundamental freedoms should be available to all human beings “without discrimination on the basis of race, sex, language or religion”. The Universal Declaration of Human Rights (UDHR) adopted in 1948 is also premised on the guarantee of equality as stated in its opening comment, “...recognition of the inherent dignity and of all equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. The right to equality is specifically recognized in Articles 1, 2 and 7 of the UDHR. Article 1 states that “all human beings are born free and equal in dignity and rights”. Article 2 provides for non-discrimination based on *inter alia* grounds of sex. Article 7 recognizes that all humans are equal before the law and entitled to the equal protection of laws. Although declarations adopted by the UN are not regarded as binding, UDHR has acquired the status of *jus cogens*, universally recognized norm of customary international law that binds all states.¹ Equality rights of men and women therefore constitute the basic tenet of all international standards and norms.

The most significant international treaty on realising women’s rights is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted in 1979. CEDAW was a result of active lobbying by women’s groups at the international level. CEDAW codifies women’s rights to non-discrimination on the basis of sex and comprehensively addresses the rights of women in civil, political, social, economic and cultural fields. By bringing together all categories of rights, CEDAW mandates the realization of not only *de facto* equality but also *de jure* equality for women.

In so doing, CEDAW takes international jurisprudence beyond the formal equality model² contained in UDHR, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which together constitute the international Bill of Rights. CEDAW contains provisions that are directed towards the realization of substantive equality, obligating States to undertake measures to respect, protect, promote and fulfil the recognition of equality of rights for women.

1 A *jus cogens* is a norm of international law (in Latin means “compelling law” or “strong law”) that is so fundamental that no nation may ignore it or attempt to contract out of it through treaties. For example, genocide and participation in a slave trade are thought to be *jus cogens*. This norm applies to all states irrespective of their treaty obligations or whether the particular state has consented to follow the norm. <http://definitions.uslegal.com/j/jus-cogens/> Accessed on 21 June 2009.

2 The concept of ‘formal equality’ is based on the notion that the like must be treated alike; in other words equality is defined as same treatment to all in the eyes of the law. The primary limitation of the ‘formal equality’ approach is that it starts from the presumption that all are equal in the eyes of law and ignores the fact that some sections of the society, women for instance, have been historically disadvantaged.

Box 1: What are State Obligations?

1. It is the State's obligation to ensure that there is no direct or indirect discrimination against women in their laws and that women are protected against discrimination perpetrated by public and private actors,
2. It is the State's obligation to improve the position of women in reality (*de facto*) through concrete and effective policies and programmes, and
3. States are obligated to address prevailing gender relations and the persistence of gender stereotypes that affect women, not only through individual acts by individuals, but also in law, legal and societal structures, and institutions.

Source: Ms Indira Jaising, Presentation at the ASEAN Workshop on DV legislation, October 2008, Hanoi

CEDAW AND ASEAN COUNTRIES

All ASEAN countries have ratified CEDAW. Cambodia, Indonesia, Lao PDR, the Philippines, Vietnam and Myanmar have no reservations³ to any of the substantive articles of CEDAW. Three ASEAN countries have made reservations⁴ on substantive provisions⁵; as follows:

- Malaysia: Articles 5a, 7b, 9(2), 16(1[a][c][d]),(2) with a declaration that accession is “*subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Shariah law and the Federal Constitution of Malaysia*”,
- Singapore: Articles 2, 9 and 16, and
- Thailand: Article 16.

In Cambodia, Lao PDR, Indonesia and Vietnam, treaty law is recognized as part of domestic law. However, it is not clear to what extent treaty provisions have been effected in domestic laws. In Malaysia, Singapore and Thailand, a special legislation is required to make CEDAW applicable in domestic law. The Constitution of the Philippines recognises “generally accepted principles of international law” as part of the domestic law. It has been interpreted by the Supreme Court to mean generally accepted principles which are customary laws, and not treaty obligations. Those principles of customary law which are in the treaties are recognized as part of domestic law.⁶

3 “Reservation means a unilateral statement, however phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect or certain provisions of the treaty in their application to that state”. (Article 2(1d) of the Vienna Convention of the Law of Treaties 1969) Upon ratification of a treaty, a state may formulate a reservation. However, reservations that are incompatible with the object and purpose of the treaty are prohibited. (Article 19 of the Vienna Convention of the Law of Treaties 1969).

4 See United Nations Treaties Collection, Status of Treaties http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en#57 Accessed on 22 May 2009.

5 The reservations to substantive articles are serious because they may compromise a core principle of CEDAW as well as call into question the good faith of the state with regard to its acceptance of its obligations to women under the Convention. IWRAP Asia Pacific. *Occasional Papers. Series No 1 The Status of CEDAW Implementation in ASEAN countries and Selected Muslim Countries.* 2004, pp 2-4.

6 Peer review by Atty Rowena Guanzon, LLB, MPA, University of Philippines, February 2009.

All ASEAN countries have incorporated guarantee for equality under law and equal protection of laws in their constitutions; however, reading the Constitutions, Basic Laws and domestic violence legislations clearly shows that all countries in the ASEAN region with the exception of the Philippines⁷ require specific incorporation of their obligations under international conventions into the domestic law. According to the study by International Women's Rights Action Watch Asia Pacific (IWRAP AP), the constitutions of ASEAN countries do not provide clear guidance on what prevails if domestic law is in conflict with international treaty law⁸, nor how CEDAW norms could be used as an "actionable source of right". Furthermore, there are varying opinions among legal experts with regard to the applicability of CEDAW at the domestic level.⁹

DOMESTIC VIOLENCE AS A VIOLATION OF HUMAN RIGHTS

Although CEDAW does not include specific provisions on violence against women, subsequent developments in international law and in interpreting CEDAW have recognized violence as constituting a violation of women's human rights. General Recommendation 19 of the CEDAW Committee in 1992 interpreted the term "discrimination" in Article 1 of CEDAW to include violence "...that is disproportionately directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence".¹⁰

The UN Declaration on Violence against Women, 1993 (DEVAW) affirms "*that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms*" and describes concerns "*about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women*".

It further recognises "*that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men*".

ASEAN countries have recognised this pervasive inequality by adopting the "Declaration on the Elimination of Violence Against Women in the ASEAN Region", (ASEAN DEVAW) in 2004. Referring to DEVAW, the ASEAN DEVAW states "*that violence against women both violates and impairs their human rights and fundamental freedoms, limits their access to and control of resources and activities and impedes the full development of their potential*".

7 There are different opinions on the status of CEDAW in Philippine law. *IWRAP Asia Pacific Occasional Papers Series No 1. The Status of CEDAW Implementation in ASEAN countries and selected Muslim Countries*. 2004, pp 7.

8 *IWRAP Asia Pacific Occasional Papers Series No 1. The Status of CEDAW Implementation in ASEAN countries and selected Muslim Countries*. 2004, pp 7-8.

9 *IWRAP Asia Pacific. Occasional Papers. Series No 1 The Status of CEDAW Implementation in ASEAN countries and Selected Muslim Countries*. 2004, pp 7-8.

10 General Recommendation No. 19 (11th session, 1992) Violence Against Women <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>.

Domestic violence (or family violence¹¹) is a form of violence against women that is perpetrated by intimate partners and family members. It often occurs in private spaces and is often tacitly condoned by society as a “private” or “family” matter. In General Recommendation 19, the CEDAW Committee makes the following observation:

“Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence and coercion. These forms of violence put women’s health at risk and impairs their ability to participate in family life and public life on a basis of equality.”

According to General Recommendation 19, the rights impaired by domestic violence include:

- a. The right to life,
- b. The right not to be subjected to torture or to cruel, inhuman or degrading treatment,
- c. The right to equal protection according to humanitarian norms in the time of international or internal armed conflict,
- d. The right to liberty and security of person,
- e. The right to equal protection under the law,
- f. The right to equality within the family,
- g. The right to the highest attainable standard of physical and mental health, and
- h. The right to just and favourable conditions of work.

Special Rapporteur on Torture, Manfred Nowak, presented the 2nd Report of the Special Rapporteur on Torture before the UN General Assembly in 2008. In this report, domestic violence was, for the first time, recognized as a form of torture.¹² Although this argument is in the process of being developed, its significance lies in the fact that prohibition against torture is recognized as a *jus cogens* norm, which all states have an obligation to legislate on and implement.

¹¹ Defining domestic violence has been subject of debate, in particular on the scope of persons protected by the law. At earlier stages of the debate (1990s) the definition of domestic violence was limited mainly to married couples, thus the CEDAW GR 19 (1992) talks about family violence. Since then the definition has evolved to include individuals who are or have been in an intimate relationship, including marital, non-marital, same sex, non-cohabiting relationships, individuals with family relationships to one another and members of the same household. See report of the Expert Group Meeting on good practice legislation May 2008, page 27.

¹² Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak. A/HRC/7/3 15 Jan 2008.

STANDARDS OF STATE OBLIGATIONS TO PREVENT AND REMEDY DOMESTIC VIOLENCE

The recognition of domestic violence as a human rights violation gives rise to state obligations to address it. First, states are obligated to put in place zero-tolerance policies on domestic violence, thereby ensuring no impunity for perpetrators of violence. Second, states should revoke laws and policies that either perpetuate or condone domestic violence. Furthermore, they should enforce equality standards in all spheres, particularly with regard to equal entitlements within the family to reduce vulnerability to violence. Third, states are obligated to take special measures to prevent and respond to incidents of domestic violence. This should also include measures to increase access to speedy and effective justice as well as access to support services. Access to support services is crucial in creating an enabling environment that sustains survivors of violence when navigating the justice system.

CEDAW allows the state's obligation to address domestic violence to be imposed based on the actions of both state and non-state actors. The CEDAW Committee in General Recommendation 19 provides an interpretation of Article 2(e) which states that *"discrimination under the Convention is not restricted to action by or on behalf of the Governments (see articles 2 (e), (f) and 5). For example, under Article 2(e) the Convention calls on State parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, **States may also be responsible for any private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation**".*

According to General Recommendation 19, the requirements for complying with standards of due diligence in relation to domestic violence include:

- (i) Effective legal measures, including criminal and civil remedies and compensatory provisions to protect women from all kinds of violence, including violence and abuse in the family,
- (ii) Protective measures, including refuge, counselling, rehabilitation action and support services for women who are at risk of violence, and
- (iii) Preventive measures, including public information and education programs, to change attitudes concerning the roles and status of men and women.

1. Legal frameworks

It is important that legal frameworks incorporate constitutional, civil, criminal and administrative law to mandate a variety of legal and non-legal measures to address prevention of violence, protection and support to survivors, as well as punishment of perpetrators.

UN Special Rapporteur on violence against women, its causes and consequences, has developed guidance for comprehensive legislation on domestic violence. Known as the UN Framework for Model Legislation, it includes essential elements for such legislation including the purpose, definitions, complaints mechanisms, duties of judicial officers, criminal and civil proceedings, and the provision of services.

Box 2: The Purpose of Domestic Violence Legislation as per the UN Framework for Model Legislation

- a) Comply with international standards sanctioning domestic violence,
- b) Recognise that domestic violence is gender-specific violence directed against women,
- c) Recognise that domestic violence constitutes a serious crime against the individual and society, which will not be excused or tolerated,
- d) Establish specific legislation prohibiting violence against women within interpersonal and family relationships, protecting victims of such violence and preventing further violence,
- e) Create a wide range of flexible and speedy remedies (including remedies under special domestic violence legislation, penal and civil remedies) to discourage domestic violence and harassment of women within interpersonal relationships and within the family and protect women where such violence has taken place,
- f) Assure survivors of domestic violence the maximum protection in cases ranging from physical and sexual to psychological violence,
- g) Establish departments, programmes, services, protocols and duties, including but not limited to shelters, counselling programmes and job training programmes to aid victims of domestic violence,
- h) Facilitate enforcement of the criminal laws by deterring and punishing perpetrators of domestic violence,
- i) Enumerate and provide by law comprehensive support services, including but not limited to:
 - (i) Emergency services for victims of abuse and their families,
 - (ii) Support programmes that meet the specific needs of victims of abuse and their families
 - (iii) Education, counselling and therapeutic programmes for the abuser and the victim
 - (iv) Programmes to assist in the prevention and elimination of domestic violence which includes raising public awareness and public education on the subject.
- j) Expand the ability of law enforcement officers to assist survivors, to enforce the law effectively in cases of domestic violence and to prevent further incidents of violence,
- k) Train judges to be aware of the issues relating to child custody, economic support and security for survivors in cases of domestic violence by establishing guidelines for protection orders and sentencing guidelines which do not trivialize domestic violence,

Box 2: The Purpose of Domestic Violence Legislation as per the UN Framework for Model Legislation

- l) Provide for and train counsellors to support police, judges and the victims of domestic violence and to rehabilitate perpetrators of domestic violence,
- m) Develop a greater understanding within the community of the incidence and causes of domestic violence and encourage community participation in eradicating domestic violence.

Source: E/CN.4/1996/53/Add.2 A framework for model legislation on domestic violence. Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1995/85

The above mentioned international standards are reiterated in the framework for laws on violence against women, including specific recommendations on domestic violence and sexual violence, that was developed by the Expert Group Meeting on Good Practices in Legislation on Violence Against Women in 2008 convened by the United Nations Division for the Advancement of Women and the United Nations Office on Drugs and Crime. The framework emphasises adherence to international standards of human rights and criminal justice. It lays out the following as the guiding principles for domestic legislation:

- Address violence against women as a form of gender based discrimination and violation of women's human rights,
- Make clear that violence against women is unacceptable and that eliminating it is a public responsibility,
- Ensure that survivors of violence are not "re-victimized" through the legal process,
- Promote women's agency and empower individual survivors of violence,
- Promote women's safety in public places,
- Take into account the differential impact of measures on women according to their race, class, ethnicity, religion, disability, culture, indigenous or migrant status, legal status, age or sexual orientation,
- Create mechanisms for monitoring implementation of legal reform to assess how well they are working in practice, and
- Keep legislation under constant review and continue to reform it in light of new information and understanding".¹³

¹³ Report of the expert group meeting Good Practices in Legislation on Violence Against Women, 2008, pp 6-7, available at http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/vaw_legislation_2008.htm. Accessed on 22 May 2009.

2. Legal measures

The following are civil and criminal legal measures most often employed to protect women from violence:

2.1 Civil remedies

The kinds of civil remedies adopted by different countries can be categorized into three groups:

- a. Injunctive orders,
- b. Remedial orders, and
- c. Other affiliated orders.

The advantage of pursuing civil law remedies is complainant participation in the proceedings; hence, reliefs granted are in accordance with the needs of the woman.

a. Injunctive orders

Protection orders

The most common form of injunctive or preventive order granted is a protection order also known as a stop violence or non-molestation order. A protection order is to prevent future acts of violence. A protection order may be granted to the survivor (the complainant) or any other person who is interested in her welfare, such as other family members or even service providers, such as shelter homes or medical facilities who apply on the complainant's behalf.

Residence orders

As the physical security of the woman is of primary concern, protection orders are often complemented with residence orders, ouster orders or occupation orders that guard against the complainant losing her housing, or force the perpetrator to leave the shared household to prevent further acts of violence. Residence orders or ouster orders do not create any property rights over the shared household but are based on the complainant or other dependent members' entitlement to housing that is maintained by the perpetrator.

b. Remedial orders

Other than the obvious physical injuries sustained by survivors of violence, there are other costs incurred, such as medical expenses, damages to property, impact on mental health, loss of earnings, etc. Remedial orders require that the complainant be compensated for her loss. Remedial orders are also important in achieving goals of retributive justice and deterrence.

c. Other orders

Other orders that may be provided for in special legislation include custody orders and orders for maintenance or financial support. In most cases, such orders are temporary in nature, requiring final resolution under relevant family law.

2.2 Criminal remedies

a. Criminal provisions deeming domestic violence as an offence

Due to its gendered nature and prevalence, domestic violence constitutes a human rights violation, which differentiates it from other crimes. This calls for stricter standards for state agencies to investigate complaints of domestic violence and bring perpetrators of violence to justice. If this responsibility is not met, the State fails to meet the guarantee of equal protection of rights.

b. Mandatory arrest and “no drop” prosecution policies

In addition to penal provisions recognising domestic violence as a criminal offence, some countries have adopted further measures to prevent and deter further acts of violence. Such strategies include mandatory arrest and no drop prosecution policies; policies for controlling assailants; mandatory counselling of perpetrators of violence; and criminal sanctions for the violation of civil orders, etc.

c. Measures to encourage complainant participation in criminal proceedings

A first step toward encouraging complainants to participate in criminal proceedings is to put in place witness protection measures to reduce retaliatory attacks by the accused. Witness protection programmes can also be extended to ensure that civil orders are enforced. Other rights of complainants should also be recognized, including the right to obtain copies of complaints, investigative reports and record notes of proceedings. This should also include notices for hearings, information on court dates and the right to be present in court while the matter is being heard. In view of the fact that in a criminal case, it is the State that initiates and conducts the proceedings on behalf of the complainant, it has been a common experience that complainants feel more empowered and are more involved in the proceedings if they are also given the opportunity to participate through their own counsels, in addition to the legal representation provided by the State. Finally, the complainant should be informed of the outcome of the case and, if the case is closed, be given an opportunity to file protest petitions should the decision adversely affect her rights. Complainants should also be notified of orders of discharge/acquittal or grant of bail to the accused. Legal counsel and legal aid should also be available for the complainant to facilitate her participation in proceedings.

To ensure the effective working of the criminal justice system investigative functions of the police force should be separate from law and order duties.¹⁴ Finally, creating a separate directorate for prosecutions will ensure effective prosecution and implementation of witness protection programs.

¹⁴ Discharging investigative functions require a different kind of training and commitment which, if combined with the additional responsibility of maintaining law and order, leads to overburdening of the police force. Hence, an argument that has gathered a lot of support is the need to separate these two equally necessary functions of the police forces.

2.3 Other legal devices

In addition to the civil and criminal legal remedies mentioned above, some countries have additional laws and legal devices that can be used to address domestic violence. Some examples of such legal devices include:

- Allowing **tort action** to claim compensation and damages from perpetrators of violence or, conversely, removing tort immunity from cases of inter-spousal violence
- Provisions on **sexual abuse** in criminal law,
- Statutes **prohibiting stalking** of women litigants,
- **Battered Women's Defence**. Battered Women's Syndrome has been explained as "a series of common characteristics that appear in women who are abused physically and psychologically over an extended period of time by the dominant male figure in their lives", by the US Supreme Court in *US. v Kelly*.¹⁵ This phenomenon has been used as a valid defence in cases where survivors of domestic violence have killed the perpetrators.

3. Non-legal measures

The following are protective and preventive non-legal measures that are required to comply with the obligation of the state to address violence against women.

3.1 Provision of services

Protection, support and assistance to survivors should be offered in a comprehensive and integrated manner, in coordination and cooperation with public and private, state and local services and programmes.¹⁶ These services must be provided by the law and can include emergency services; support programmes to survivors; education, counselling and therapeutic programmes for the perpetrator and the survivor; and public awareness raising and education programmes on the prevention and elimination of domestic violence. Training and capacity building of law enforcers, judges, counsellors and others involved in the implementation of law will also develop a greater understanding of the incidence and cause of domestic violence and encourage community participation in eradicating domestic violence.¹⁷

According to the UN Framework for Model Legislation on Domestic Violence, the provision of services to survivors can be categorized into emergency and non-emergency services.

¹⁵ State v. Kelly, 478 A2d 364 (1985).

¹⁶ Report of the expert group meeting Good Practices in Legislation on Violence Against Women, 2008, pp 34-38, available at http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/vaw_legislation_2008.htm. Accessed on 22 May 2009.

¹⁷ E/CN.4/1996/53/Add.2 A framework for model legislation on domestic violence. Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1995/85. A Framework for model legislation on domestic violence.

In emergency situations, 72 hour crisis intervention services include immediate transportation to a medical centre or shelter, immediate medical attention, legal counselling and referrals, crisis counselling and assurance of safety. Non-emergency services aiming at the long-term rehabilitation of survivors must include counselling, job training and referrals. It is important to note that the counselling for survivors of violence must aim to empower them, be provided free of charge and should not be mandatory. Counselling for perpetrators must be mandated as supplementary to the criminal justice sanction.

3.2 Training and capacity building

Training and capacity building of public officials such as police, prosecutors, judges, counsellors, and social workers must be mandated by the law. The training must equip those who have duties to implement the domestic violence laws with “in-depth understanding of such legislation” and the ability to implement it “in an appropriate and gender sensitive manner”.¹⁸ The training must be institutionalized and carried out on a regular or ongoing basis.

Institutions are obliged to develop regulations, protocols, guidelines, instructions, directives and standards for the comprehensive and timely implementation of legislation. The training curricula for staff and officers must also include these guidelines and other documents on how to handle cases of domestic violence within the scope of their duties.

3.3 Awareness raising and education

Public awareness raising programmes on the root causes of violence against women, women’s human rights, gender equality and the right to a life free from violence are an important part of effective prevention. Such programmes can be carried out through general campaigns targeting the population at large or campaigns designed for targeted audiences on the specific laws addressing domestic violence. Compulsory education on the human rights of women and girls at all levels of school is also important. Media personnel and journalists must be also sensitized on gender equality so that they avoid derogatory stereotypes and promote women’s rights to be free from violence. Laws on domestic violence should include provisions on awareness raising and education.

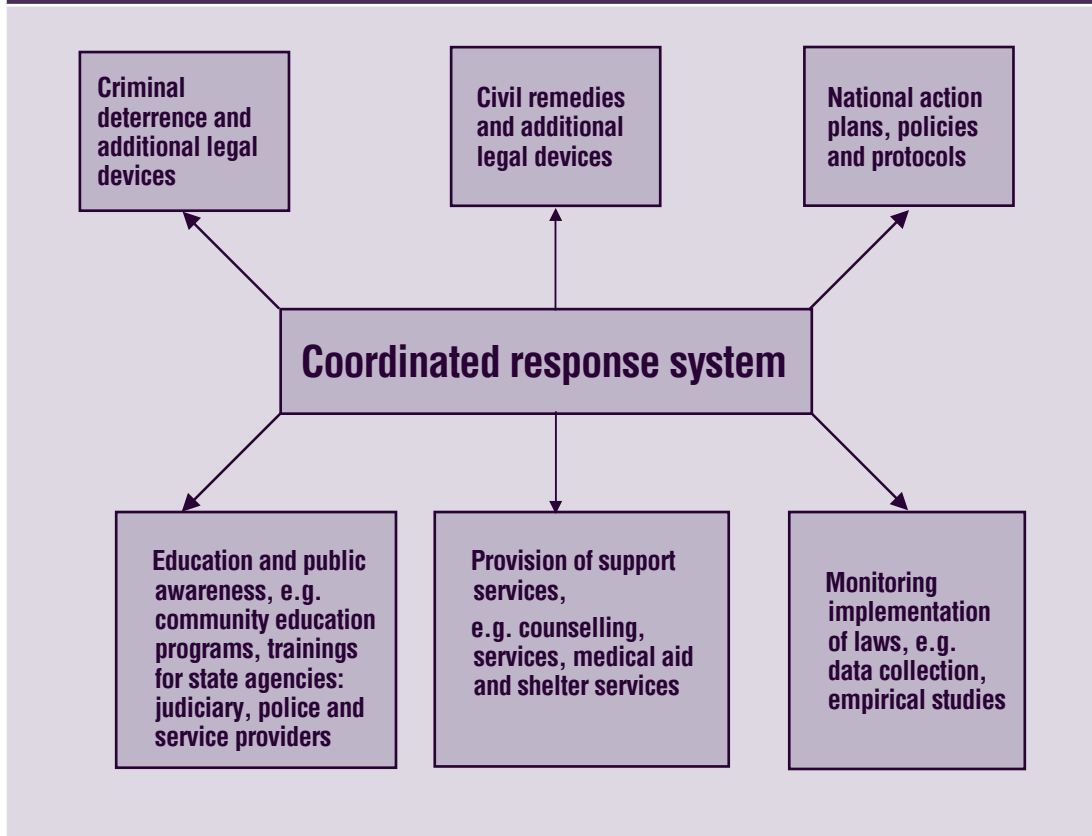
3.4 Need for a comprehensive response to domestic violence

Domestic violence raises broader issues of equality. Therefore, implementing domestic violence legislation alone will not eliminate violence. There must be simultaneous efforts to promote women’s equality in all spheres. In order to ensure the effective implementation of laws relating to domestic violence there should be a coordinated response from all agencies that targets the root causes of domestic violence.

¹⁸ Report of the expert group meeting Good Practices in Legislation on Violence Against Women, 2008, pp 18-21, available at http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/vaw_legislation_2008.htm. Accessed on 22 May 2009.

Equally important is the regular monitoring and review of the manner in which the law is being implemented. Monitoring should be done through data collection and empirical studies to assess whether systems and laws put in place effectively comply with objectives of prevention and control. Domestic violence legislation must designate an agency for the coordination of implementation as well an agency for effective monitoring of implementation.

Box 3: Coordinated response system to domestic violence



A detailed description of the elements of a comprehensive response to domestic violence is explained in Paper 2, *Overview of Global Good Practices in Domestic Violence Response Systems*. Paper 2 will provide examples of good practices that have sought to actualise the response system outlined in the box above.

ANALYSIS OF DOMESTIC VIOLENCE LEGISLATION IN THE ASEAN REGION

The recommended Framework for Model Legislation on Domestic Violence 1996 (UN Model Code) from the UN Special Rapporteur on violence against women, its causes and consequences, provides valuable guidance on the provisions that should be included in domestic violence legislation (see Box 2: The Purpose of Domestic Violence Legislation as per the UN Framework for Model Legislation). Any analysis of domestic violence legislation should therefore be made with reference to these international standards. In this paper the following

criteria based on these standards have been used to analyse domestic violence legislation in ASEAN countries:

1. Does the country treat domestic violence as a violation of human rights, and in this respect does the law itself refer to international instruments like CEDAW? Is domestic violence regarded as a form of discrimination against women? Is the law gender-specific?
2. How is domestic violence defined?
3. What is the coverage of the law (i.e. the nature of relationships covered)?
4. What form of legislation has been adopted – civil or criminal law or a mix of both?
5. What mechanisms and procedures have been implemented to ensure access to reliefs and alternative dispute mechanisms?
6. Does the law facilitate access to support services that women may require at the pre and post-litigation stages? Is a multi-agency response built into the law?
7. Does the law have specific provisions for counselling for either or both parties towards prevention of future violence or is the emphasis on settlement/mediation/reconciliation?
8. Is the state mandated to provide training to implementing agencies, service providers and others and create public awareness?
9. Is monitoring and evaluation of effectiveness/impact built into the law?

A COMMITMENT TO EQUALITY

All countries in ASEAN have either acceded to or ratified CEDAW; hence, they are obligated to treat domestic violence as a violation of human rights. The ASEAN DEVAW also recognizes violence against women as violating and impairing human rights, and mandates states to “*enact and, where necessary, reinforce or amend domestic legislation to prevent violence against women, to enhance the protection, healing, recovery and reintegration of victims/survivors, including measures to investigate, prosecute, punish and where appropriate rehabilitate perpetrators, and prevent re-victimization of women and girls subjected to any form of violence, whether in the home, the workplace, the community or society or in custody*”.¹⁹ To that extent, they can be said be approaching domestic violence as a violation of the right to equality. The challenge is to translate these international standards and goals into domestic legislation.

In this context, eight out of the ten ASEAN countries have enacted special laws and provisions on domestic violence.²⁰ The countries that do not have any specific domestic violence laws are Brunei Darussalam and Myanmar. The first country to legislate on this issue

¹⁹ Article 4.

²⁰ Cambodia- “Law on the Prevention of Domestic Violence and the Protection of Victims” 2005; Indonesia- “Law of the Republic of Indonesia Number 23 of Year 2004 regarding Elimination of Violence in Household” 2004; Lao PDR- “Law on Development and Protection of Women”, 2004; Malaysia “Domestic Violence Act 1994 (Act 521)”; Philippines- “Anti-Violence Against Women and Their Children Act”, 2004; Singapore Women’s Charter; Thailand- “Act on Protection of Victims of Domestic Violence”, 2007; Vietnam- “Law on Domestic Violence Prevention and Control”, 2007.

was Malaysia in 1994. However, the Malaysian domestic violence law was enacted prior to the UN Model Code and before the ratification of CEDAW by Malaysia. In this context, it might be prudent to revisit the existing law in light of these developments. The most recent laws to be enacted were that of Thailand and Vietnam in 2007. The remaining ASEAN countries have either enacted laws or effected amendments to existing laws in the period 2004-2005.²¹

1. Intent of domestic violence laws

While it may be premature to assess the implementation of newly enacted legislation, state policies on domestic violence can be discerned through an examination of the aims and objectives and the interpretive provisions contained in the laws adopted.

Most of the laws in this region have been enacted with the aim of providing legal protection to survivors of violence and to prevent future acts of violence. Several countries' laws mention this aim in the preamble while others mention this goal in interpretative clauses. Some of the laws provide specific recognition of violence as a violation of human rights. Some countries mention the preservation of the family as a goal in addition to the aim of providing protection to survivors of violence.

Cambodia has a clause that defines the purpose of the law, in addition to preventing violence, as preserving "the harmony within the households in line with the nation's good custom and tradition".²² While not underestimating the need for harmony within the household, the need for a law on domestic violence arises when the harmony of the family is already disturbed. Therefore, **it must be recognized that a law on domestic violence which seeks to address the disharmony must be directed at restoring a woman's autonomy and position of equality.** This formulation in the Cambodian law indicates an insufficient emphasis on domestic violence as a human rights violation. Clauses in the Preamble are used to interpret the law; hence, even if the law is radical in its objectives, inclusion of such clauses may lead to incorrect judicial interpretation.

Similarly, legal provisions on domestic violence in Singapore form part of a comprehensive law aimed at providing for monogamous marriages and, among other things, punishments for offences against women and children.²³ Provisions on domestic violence are contained under the chapter entitled "Protection of Family". This classification may allow judicial interpretation geared towards the preservation of families instead of women's human rights. This again may defeat the intent of the law. **While the preservation of family may be a desirable goal, it is the non-violent family that needs preservation.**

²¹ Cambodia, Indonesia, Lao PDR and Philippines.

²² Article 1, Para 2 Cambodian law.

²³ Part VII "Protection of Family"; Singapore Charter.

In contrast to the Singaporean model, the Lao legislation is based on the stated objective of gender equality and, toward that end, eliminating violence against women. Provisions on trafficking against women and children and domestic violence are included within this law.²⁴ Although this law does not make specific reference either to domestic violence as a breach of equality or to CEDAW, the location of these provisions within broader equality legislation allows judges to rely on the overall objectives of the law in deciding matters relating to domestic violence. Moreover, the language used in the Lao legislation's objective clearly reflects CEDAW language and commitments. However, **the best example of a clear statement of objectives is the Philippine law which makes specific references to CEDAW and other international human rights instruments, allowing judges the use of broader international principles and norms while dealing with the issue of domestic violence.** The Indonesian law also makes a specific reference to CEDAW in its statement of objectives clearly reiterating CEDAW as the normative framework. No other ASEAN country refers to CEDAW or other international instruments in its domestic violence laws.

2. Gender-neutrality and its implications

A significant feature of all the laws in the ASEAN region, with the exception of Lao and the Philippines, is that they are formulated in a gender-neutral manner. The enactment of "special" laws is to advance international goals of equality and to recognise violence against *women* as an impediment to women's human rights, as stated in the ASEAN DEVAW. Therefore, **the gender-neutral formulations of laws in ASEAN states do not reflect the understanding reiterated in the international and ASEAN standards.** One would need to analyze this divergence to gain a clearer picture of the reasons for it. Perhaps the reasons are located in broader cultural and societal patterns and ways of thinking that go beyond the law.

The adoption of gender-neutral language is particularly surprising in the Indonesian legislation. The detailed list of objectives in the legislation reflects a clear understanding of international norms. In the law, domestic violence is specifically recognised as a violation of human rights, a crime against human dignity as well as a form of discrimination.²⁵ Elimination of domestic violence is therefore essential to respecting human rights, justice and gender equality, non-discrimination and survivor protection.²⁶ Further, the provision on the law's intent includes prevention of domestic violence, protection of survivors and actions against the perpetrator, as well as "maintain[ing] the intactness of harmonious and prosperous households" as one of the intentions.²⁷ The law also recognizes that survivors of violence are mostly women who require protection,²⁸ yet the law does not cover only women, as would be expected. Hence, the formulation of this law, despite its progressive intent and provisions, remains ambiguous and could lend itself to interpretations that are not based on an understanding of rights. An

24 Chapter IV on "Protection of Women and Children against Trafficking and Domestic Violence" has 2 sections- Section 1 "Prevention and Combat against Trafficking in Women and Children"(Articles 24-28) and Section 2 "Combating against Domestic Violence to Women and Children" (Articles 29-38).

25 Para (b) of the Preamble to the Indonesian law.

26 Article 3 of the Indonesian law.

27 Article 4 of the Indonesian law.

28 Para (c) of the Preamble in the Indonesian law.

example of a special law that is gender-specific can be found in the newly enacted Protection of Women from Domestic Violence Act (PWDVA) in India which as evident from its title, has been specifically formulated in acknowledgment of the comparative vulnerability of women to violence within the home.

In any case, it may be recommended that even if gender-neutral legislation is considered a viable option for a country, there must be a provision against dual protection orders that put restrictions on both parties because these could be used by male perpetrator to take legal action in retaliation against a female survivor.

3. Influence of culture and religion

Some domestic violence laws make specific mention of protection of women consistent with religious or cultural codes. The Cambodian law, while defining domestic violence, exempts acts of disciplining if conducted with compassion, pity and sincerity.²⁹ The inclusion of this clause appears to accept hierarchies within the family. Another example is the Thai law; the definition of domestic violence³⁰ includes intentional conduct that results in harm to physical or mental health, or coercion or “unethical dominance” compelling family members to commit any unlawful acts. **The inclusion of a clause of this nature may be a double-edged sword as it allows scope for discretion of the judge as to whether or not the dominance was “ethical”.** A human rights standard, on the other hand, would demand that **all dominance is unethical and hence must be avoided. A human rights standard would also require that there is zero tolerance of violence against women, hence cultural practices which go contrary to this mandate must be altered** by appropriate means. Therefore, such clauses allowing discretion in interpretation of domestic violence legislation must be removed to ensure compatibility with CEDAW.

In countries where the constitution requires a religion to be the governing law of the land, domestic violence laws may present problems of interpretation. Judges must harmonize respect for religious codes with constitutional and State obligations to equality. If only judges and other stakeholders understand that all religions preach principles of non-violence then there will be no problem of incompatibility between religious codes and international standards for human rights.

The influence of religion is apparent in the Indonesian law. It states that “*The Republic of Indonesia is a country that is based on belief in God Almighty... therefore, anyone within the scope of household in exercising rights and fulfilling obligations must be based on religion*”. This is an example of a law which could end up using religious practice as a justification for tolerating the inferior position of women in society.

29 Article 8 para 2 of the Cambodian law.

30 Article 3 of the Thai law.

Religious influences are also evident in the Malaysian law that allows the court to refer parties for counselling during the course of legal proceedings for protection orders.³¹ If the parties are Muslim they are referred to counselling services set up under the Islamic Religious Affairs Department.³² This raises the issue of whether such counselling will be conducted in accordance with human rights standards or with standards laid down under Islamic law.

DEFINITION OF DOMESTIC VIOLENCE

The definitions of domestic violence contained in the laws include a range of acts that result in physical, mental or sexual injury. Some laws have adopted broad definitions that can be interpreted to take into account any illegal act that results in harm or injury. For example, the Malaysian law includes in its definition of domestic violence threats of physical injury, intentional causing of injuries, coercion to engage in any conduct or act that is sexual or otherwise, confining and detaining the survivor against his/her will, and causing destruction or damage to property.³³ Others provide specific examples of acts that constitute domestic violence. The Cambodian law has a general clause on acts that constitute violence³⁴ and specific clauses³⁵ that elaborate on each of the elements contained in the general clause. Hence, “acts affecting life” have been elaborated to include “premeditated homicide, intentional homicide, unintentional homicide resulting from intentional acts of the perpetrator and unintentional homicide.”³⁶ In this regard, the most comprehensive definition of domestic violence is contained in the Philippine law that separately defines acts that result in physical, sexual, and psychological harm, battery, assault, coercion, harassment or arbitrary deprivation of liberty, stalking, etc.³⁷ **It is advisable to have a detailed definition in the law that captures women’s experience of violence in all its manifestations.** This reduces the scope for judicial discretion, thereby guarding against the influence of patriarchal biases in judicial decision making. By and large most countries in the region have covered all forms of domestic violence including, in particular, psychological, sexual and economic abuse. The inclusion of sexual violence is particularly significant as it rules out any tolerance of rape within marriage.

It is also a good practice to domesticate the definitions by outlawing specific cultural manifestations of violence. A good example is to be found in the Vietnamese law that includes forced child marriages in its definition of domestic violence.³⁸

In the context of resource scarcity and inadequate state sponsored support schemes, some of the laws in the ASEAN region include neglecting to meet lawful entitlements or prohibiting the survivor from developing financial independence as a form of violence. However, as most of the laws are gender-neutral it may lead to men claiming economic support from women.

31 Section 11 of the Malaysian law.

32 Section 11 (4) of the Malaysian law.

33 Section 2 of the Malaysian law.

34 Article 3 of the Cambodian law.

35 Articles 4-8 of the Cambodian law.

36 Article 4 of the Cambodian law.

37 Section 3 of the Philippine law.

38 Article 2 (f) of the Vietnamese law.

This again challenges the spirit of gender specific legislation as women generally hold an unequal position within the family and in society. This consequence may be avoided if the law is gender specific. The Lao law is a good example in this regard as it has a provision on “impact on assets” caused by domestic violence, which includes aspects such as the non-performance of alimony obligations, causing women to lose inheritance rights and the destruction of house and property.³⁹

COVERAGE OF THE LAW

The significance of gender-neutral legislation is also evident in “self-defence” exemptions contained in domestic violence legislation. The only country to exempt violence committed in self defence from other acts of violence is Singapore.⁴⁰ While the inclusion of this clause may protect women who perpetrate acts of violence in self defence, it may provide a justification to men committing domestic violence. Instead, the Philippine law provides a definition of “battered women’s syndrome” that can be used by women perpetrating acts of violence in self defence.⁴¹

All the laws in the ASEAN region cover matrimonial relationships. Some, such as Cambodia and Indonesia, cover only existing matrimonial relationships. Others, such as Malaysia and Singapore, include former spouses within the definition. The Philippine law adopts a broader coverage by bringing within its ambit sexual⁴² or dating⁴³ relationships or a relationship with a person with whom there is a common child.⁴⁴ A dating relationship refers to a situation wherein “the parties live as husband and wife without the benefit of marriage or are romantically involved over time and on a continuing basis during the course of the relationship.”⁴⁵

The Philippine law includes within its ambit, not only common children of the woman survivor and perpetrator, but also “her children”, whether they are the children of the perpetrator or not. Hence, the Philippine law may be said to have a broad coverage as far as children are concerned. Other countries have included children and other dependents in the household. Significantly, the Indonesian law includes domestic workers, in keeping with international standards.⁴⁶ The Indonesian law extends to relationships through marriage, guardians and others. This is followed by Singapore, which also includes parents, in-laws, siblings and any other relatives or incapacitated persons of the family. However, the widest coverage is found in the Vietnamese law which does not contain any clause defining survivors or coverage and is gender-neutral.

39 Article 32 of Lao law.

40 Section 64(d) of the Singapore law.

41 Section 3(c) of the Philippine law that defines “battered woman syndrome” as “...a scientifically defined pattern of psychological and behavioural symptoms found in women living in battering relationships as a result of cumulative abuse.”

42 Section 3 (f) of the Philippine law.

43 Section 3 (e) of the Philippine law.

44 Section 3 (a) of the Philippine law.

45 *Supra* N-40.

46 Article 2 (1) (c) of the Indonesian law.

It is advisable to include all forms of domestic relationships in the law. The broadly defined relationships of dependency mentioned in some of the laws allow for a broad interpretation of the law. A **recommended formulation is to supplement provisions on individuals covered under the law with a definition of a “shared residence” to include all family members within it.** This has been done in the Malaysian,⁴⁷ Cambodian,⁴⁸ and Singaporean⁴⁹ laws.

PROVISION OF CRIMINAL AND CIVIL REMEDIES

Most domestic violence legislation in ASEAN countries is special single-issue legislation. Singapore and Lao PDR demonstrate exceptions to this rule: Singapore provides civil reliefs for domestic violence within a family law and Lao PDR includes provisions on domestic violence in a broader gender equality law. Most of the laws provide for the grant of civil orders for relief and allow simultaneous criminal proceedings in cases of serious acts of violence. The breach of civil orders is recognised as a punishable offence.

The laws of Cambodia, Indonesia, Singapore and Vietnam provide for injunctive civil orders such as protection orders/instructions or “forbidden contact measures”.⁵⁰ The laws of Cambodia⁵¹ and Indonesia⁵² also allow the grant of additional orders. While the Cambodian law specifies the additional orders that may be granted, such as custody of children and financial assistance, the Indonesian law does not provide any details. The Singaporean⁵³ and Malaysian⁵⁴ laws also make special mention of the “balance of probabilities” standard in granting injunctive or other reliefs.⁵⁵

In some countries criminal sanctions for domestic violence are included in special legislation, such as Indonesia,⁵⁶ the Philippines,⁵⁷ and Thailand.⁵⁸ In others, such as Malaysia,⁵⁹ these sanctions form part of general criminal law. A protection order to prevent domestic violence may be applied for either independently or in pending criminal proceedings.⁶⁰ The general criminal law provides the procedure for criminal proceedings.

47 Section 2 of the Malaysian law.

48 Article 2 (3) of the Cambodian law.

49 Section 64(d) of the Singaporean law.

50 Article 20 of the Vietnam law.

51 Article 25 of the Cambodia law.

52 Article 33 of the Indonesia law.

53 Section 65 (5) of the Singapore law.

54 Section 6 (1) of the Malaysian law.

55 Balance of probability standard is used in most civil cases when the standard of proof is satisfied when it is proven to be more likely to be true than not true, in other words, judge makes a decision on the basis of whether the evidence was more probable than not.

56 Chapter VIII of the Indonesian law.

57 Section 5 of the Philippine law.

58 Article 4 of the Thai law.

59 Ref Section 3 of the Malaysian law.

60 For e.g. Section 11 of the Philippine law provides that a protection order may be applied for “as an independent action or as an incidental relief in any civil or criminal case the subject matter or issues thereof partakes of a violence as described in this Act.”

The Lao law recognizes a woman's right to seek assistance from family members and others and deems domestic violence as constituting a criminal offence.⁶¹ This is the only law in the region that does not provide for civil orders. Instead, it divides domestic violence into serious and non serious categories. Minor cases may result in a settlement,⁶² and serious cases of violence may result in criminal proceedings.⁶³ To initiate criminal proceedings there has to be reliable evidence to launch an investigation. The investigation report is sent to the prosecutor and after due consideration of the report, the prosecutor will send it to the court for trial. This lengthy procedure limits access to immediate support and protection.

Not all laws provide specifications on the kind of orders that may be granted by courts. This gives wide discretion to those with the power to grant orders. **It is better to include more specific provisions as it would assist the judiciary in making decisions.**

In contrast, the Vietnamese law provides for measures forbidding contact only.⁶⁴ There appears to be an emphasis on reconciliation in this law.⁶⁵ In addition, the law allows for community criticism before and after reconciliation by grassroots reconciliation teams. Hence comments and criticisms may be collected from family representatives, neighbours and other concerned people by the community leader.⁶⁶ While this method may be useful in preventing violence in the long term, it is not clear how this law allows for the provision of immediate reliefs to survivors of violence. On the other hand, Malaysia specifies a range of orders extending from stop violence⁶⁷ and no-contact⁶⁸ orders to ouster orders⁶⁹ and compensation orders.⁷⁰ Singapore allows for the grant of protection orders and residence orders over the shared household.⁷¹

The Philippine law contains elaborate and detailed provisions on the kinds of orders that can be granted by the courts that correspond to the definition of domestic violence. In addition, the Philippine law clearly defines the objectives of a protection order by stating the purpose of "safeguarding the survivor from further harm, minimizing any disruption in the survivor's daily life and facilitating the opportunity and ability of the survivor to independently regain control over her life."⁷² Following from this, the Philippine law allows for various other orders, such as temporary custody orders, orders for maintenance, restitution for damages, etc. **This formulation is highly recommended as it seeks to remedy possible consequences of violence, in order to provide comprehensive reliefs to women.**

61 Section 33 of the Lao law.

62 Article 35 of the Lao law.

63 Article 36 of the Lao law.

64 In the Vietnam law, Article 20 allows the Commune People's Committee to issue such orders. Article 21 allows the court to grant such orders.

65 For further analysis refer to portion on "Assisted alternative dispute mechanisms" *Infra* P-44.

66 Article 17 of the Vietnam law.

67 Section 5 of the Malaysian law.

68 Section 6 (d) of the Malaysian law.

69 Section 6 (a) of the Malaysian law.

70 Section 10 of the Malaysian law.

71 Section 65 (1)-(5) of the Singapore law.

72 Section 8 of the Philippine law.

ACCESS TO RELIEFS

“Equal protection”, guaranteed under most constitutions and international instruments, includes the guarantee of the right to access to justice. This is a substantive right towards realizing the right to equal protection of laws. This interpretation is borne out by Article 2 of the ICCPR, which mandates state parties to “*take the necessary steps, in accordance with its constitutional processes and with the provisions of the (ICCPR), to adopt such laws or other measures as may be necessary to give effect to the rights recognized...*”

ASEAN countries have adopted different mechanisms to guarantee the right to access to justice. This can be broadly divided into:

- 1) Pre-litigation intervention;
- 2) Access to assisted alternative dispute processes and litigation proceedings; and
- 3) Measures to ensure obtaining orders and compliance.

1. Pre-litigation intervention

At the pre-litigation stage, **it is essential to take immediate steps to prevent further acts of violence, inform complainants of their rights and remedies available under the law, and facilitate the complainant’s access to immediate reliefs and court processes.** In appropriate cases, mediation between the parties may be undertaken to resolve the dispute.

Emergency intervention

Some ASEAN countries include provisions in their laws that allow authorities to intervene on an urgent basis to provide protection to survivors of violence. This intervention can take place before initiating court proceedings to obtain protection orders. Cambodia designates legally qualified judicial officers from the Ministry of Women Affairs.⁷³ Judicial Officers and other competent authorities can intervene and take measures to secure the safety of the survivor.⁷⁴ These measures include seizing of weapons, moving perpetrators from the scene or offering appropriate assistance to the survivors, such as temporary shelter or urgent medical attention. Malaysia appoints Enforcement Officers⁷⁵ who have the duty of assisting survivors by removing them to alternate accommodation, arranging transportation to access medical assistance or shelter, or retrieving personal belongings from the residence.⁷⁶ In Vietnam the police, the Commune People’s Committee and community leaders are given the responsibility of taking prevention and protection measures as soon as they receive information of a complaint.⁷⁷

⁷³ Article 10 of the Cambodian law.

⁷⁴ Article 13 of the Cambodian law.

⁷⁵ Section 2 of the Malaysian law.

⁷⁶ Section 19 of the Malaysian law.

⁷⁷ Article 18 of the Vietnam law.

In Indonesia, the police are responsible for immediate investigation and further action on complaints of domestic violence.⁷⁸ The police are duty bound under the law to provide immediate protection to complainants.

This form of **pre-litigation intervention is extremely useful in preventing future acts of violence and providing much needed emergency reliefs to survivors. However, pre-litigation intervention should not impede a survivor's access to justice through court mandated civil and criminal orders.**

Duty to provide information on rights

The first step in accessing reliefs is the need for information on rights and remedies available under the law. Information on rights empowers complainants in negotiating settlements and also allows them to make informed decisions on the legal options that they may want to pursue. Many of the laws in the ASEAN region stipulate that agencies have a duty to provide information on rights and remedies, such as in Cambodia and Malaysia. The Indonesian law states that this responsibility lies not only with public authorities but also social workers, companion volunteers and spiritual mentors. The Philippine law states that the responsibility lies with prosecutors and court personnel, among others, and specifically on health care providers who are most likely to be the first port of call for women facing violence.

Access to immediate reliefs and court processes

In situations of violence women often lack the access to legal action. **If the aims of the laws are to be realised it is necessary to facilitate a woman's access to the court and other forums.** Obtaining an order for relief not only provides immediate protection for women but also allows equalisation of relations within the family, providing a violence-free space for women to make future decisions and negotiate their claims.

Assistance in initiating legal processes

In the ASEAN region some laws **mandate authorities to assist access to protection orders or initiate criminal proceedings, as required by the complainant.** For instance, the Indonesian law mandates police assistance in facilitating the complainant's access to a protection order if required.⁷⁹ Applications for protection instructions may also be filed by friends or family of the complainant, a companion volunteer or a spiritual mentor.⁸⁰ Similarly, the Philippine law allows petitions for protection orders to be filed on behalf of the women by a wide range of individuals such as officers and social workers of government units, police,

78 Section 16 of the Indonesian law.

79 Article 16 (4) of the Indonesian law.

80 Article 29 of the Indonesian law.

Punong Barangay (village officials), as well as private entities such as family members, lawyers, therapists, etc.⁸¹ Cambodia,⁸² Lao PDR⁸³ and Singapore⁸⁴ include special provisions for bringing complaints on behalf of children in particular.

In Malaysia, Enforcement Officers are meant to assist women in filing criminal complaints. The police may also seek interim protection orders on receipt of information relating to acts of domestic violence.⁸⁵ Competent authorities appointed under the Thai law may initiate criminal proceedings by filing a criminal complaint if the complainant desires.⁸⁶ Once the complaint is filed, an investigator conducts investigations and submits a report to the public prosecutor who has to initiate prosecution within 48 hours of the apprehension of the perpetrator.⁸⁷ Stipulating timelines in the law guards against delays and helps move cases forward.

In addition to assistance to legal proceedings, women may also require legal aid in pursuing legal remedies. The Cambodian law recognizes the parties' right to legal counsel of their choice⁸⁸ but does not mention how this is to be accessed. In contrast, the Philippine law is more specific in that it includes the right to legal assistance from the Department of Justice or any public legal assistant as being part of complainants' rights.⁸⁹ Indonesia includes a provision specifying the duties of advocates in providing legal consultation and other forms of assistance to the woman.⁹⁰

Obtaining reliefs from other forums

The primary need of survivors of domestic violence is immediate relief orders. **In addition to court orders, some countries allow administrative bodies the power to issue temporary protection orders before the matter reaches the court.** The Philippine law gives Panang Barangay (village officials) the power to grant "Barangay Protection Orders" with a validity period of 15 days.⁹¹ The Commune People's Committee in Vietnam may grant a "forbidden contact measure" that is effective for three days on receipt of a complaint.⁹² In Thailand, a senior competent officer, during the course of criminal investigations, may issue an order for temporary relief to prevent further acts of violence, including orders for medical examinations and orders granting compensation.⁹³ In Indonesia, the police may grant temporary

81 Section 9 of the Philippine law.

82 Section 22 (2) and Section 28 of the Cambodian law.

83 Article 28 of the Lao law.

84 Section 65 (10) of the Singapore law.

85 Section 12 of the Malaysian law.

86 Article 6 of the Thai law.

87 Article 8 of the Thai law.

88 Article 31 of the Cambodian law.

89 Section 13 read with Section 35(b) of the Philippine law.

90 Article 25 of the Indonesian law.

91 Section 14 of the Philippine law.

92 Article 20 of the Vietnam law.

93 Article 10 of the Thai law.

protection orders within 24 hours of receiving a complaint. The order remains valid for seven days and can be granted prior to the court issuing a protection instruction.⁹⁴ The provision of such orders ensures effective protections for survivors of violence.

2. Assisted alternative dispute mechanisms

At the pre-litigation stage

Provisions for assisted alternative dispute resolution at the pre-litigation stage have been included in the laws of Cambodia, Lao PDR and Vietnam. Judicial officers and other competent authorities in Cambodia may try to mediate between the parties,⁹⁵ although the complainant can simultaneously approach the court for protection orders.⁹⁶ The mediation is to be conducted in addition to informing complainants of their rights under the law. Family members, individuals or organizations, or ‘village mediation units’ may attempt mediation in Lao PDR if domestic violence is not serious in nature.⁹⁷

The Vietnamese law includes detailed provisions for reconciling conflicts and disputes within the family by family members, institutions/organizations and grassroots reconciliation teams. The principles to be kept in mind in while conducting reconciliations are listed as being a) timely, proactive and patient; b) in harmony with the policy of the Communist Party, the Law of the State, the social morality and good customs of the people; c) respectful for the free will of all conflicting parties to come to reconciliation; d) impartial, fair, and sensible; e) able to maintain one’s privacy; and f) respectful of the rights and legitimate interests of other people with no encroachment on the State and public interests. The same clause also mentions instances in which reconciliation should not be attempted, which include incidents of a criminal nature (unless the complainant requests an exemption from criminal proceedings) and violations of administrative laws (subject to civil fines).

The provision of assisted alternative dispute resolutions at the pre-litigation stage may however, cause diversion from court or criminal procedures. This may remove the recognition of domestic violence as a human rights violation. This concern is somewhat mitigated by the observation that pre-litigation counselling is allowed only in cases where the domestic violence is not considered serious in nature. However, in the absence of specific guidelines on what constitutes serious forms of domestic violence, there is scope for patriarchal attitudes influencing the determination of what constitutes a serious offence. **It is, therefore, important to respect the agency of the woman, and understand her requirements prior to initiating any reconciliation process.** The formulation contained in the Vietnamese law allows this by including “respect for the free will of all conflicting parties to come to

94 Article 16 (2) of the Indonesian law.

95 Article 13 sub para 1 sub-sub para 4 of the Cambodian law. Note- Article 17 of this law states that authorities in charge cannot intervene to reconcile or mediate criminal offences that are characterized as felonies or severe misdemeanours.

96 Article 16 of the Cambodian law.

97 Article 35 of the Lao law.

reconciliation”⁹⁸ as a principle to be kept in mind while attempting reconciliation. However, including provisions on “reconciliation of conflicts and disputes among family members” in the chapter on prevention of domestic violence may divert focus from the recognition of domestic violence as a violation of human rights. Hence it is suggested that reconciliation measures be attempted only after the perpetrator demonstrates to the satisfaction of decision-makers that no further acts of violence would be committed. The guarantee of non-violence may be supplied either by filing an undertaking or a declaration to stop future acts of violence and adhere to the terms of settlement if a settlement is reached.

During court proceedings

In other countries, assisted alternative dispute resolution methods may be ordered by the court. For instance, in Cambodia the court may order mediation by family members and elders if the violence is psychological or economic or considered minor in nature.⁹⁹ Such reconciliation or mediation may be attempted if all parties agree. The court may also attempt reconciliation itself but such reconciliations cannot be forced.¹⁰⁰ The latter option may lead to bias in decision making in cases where attempts at reconciliation fail. In a similar vein, the Thai law allows parties to attempt settlements at any stage of court proceedings by a court appointed “reconciliator”.¹⁰¹ The matter may be withdrawn with the permission of the court if the settlement is reached and the accused has fully complied with the settlement record and conditions.¹⁰² In attempting reconciliations, the reconciliator must bear in mind certain principles, including protecting the rights of the survivor, preserving the marriage and assistance for the family.¹⁰³ **While the recognition of survivors’ rights is crucial, the inclusion of the other principles may allow for the erosion of such rights.** Hence, the provision requiring the permission of the court to withdraw a criminal case is an important safeguard. It is, however, advisable that reconciliation be attempted by non-judicial bodies such as in Malaysia where the court may refer parties to a conciliatory body set up under the Department of Social Welfare or Islamic Religious Affairs Department (applicable if the parties are Muslim).¹⁰⁴

3. Accessing injunctive orders, and measures to ensure enforcement of the orders

Accessibility of orders during the course of litigation

To ensure effective protection for women requires the provision of immediate relief. The most crucial relief that a woman may access is from court mandated orders. The laws may therefore provide for interim or temporary reliefs and put time limits on the proceedings initiated to obtain reliefs.

98 Article 12(3) of the Vietnam law.

99 Article 26 of the Cambodian law.

100 Article 27 of the Cambodian law.

101 Article 16 of the Thai law.

102 Article 12 Para 2 of the Thai law.

103 Article 15 (1) and (2) of the Thai law.

104 Section 11(4) of the Malaysian law.

Most ASEAN countries have included provisions on granting immediate interim or temporary reliefs. In some countries, such as Indonesia and Vietnam as seen above, administrative authorities may grant interim or temporary protection orders. In Indonesia, protection instructions may be granted on oral applications.¹⁰⁵ In all other countries, the courts have the power to grant temporary orders while proceedings are pending. Powers of the court to grant *ex parte*¹⁰⁶ orders has been included in the Cambodian¹⁰⁷ and Singaporean¹⁰⁸ laws. The most detailed provisions are to be found in the Philippine law that allows for the grant of temporary¹⁰⁹ and permanent¹¹⁰ protection orders in addition to the Barangay protection order that is granted by village officials. Most of the laws include stipulations for the period of the protection order, whether temporary or permanent. Some allow for the extension of such orders or the issuance of fresh orders on an application made by the complainant.

Judicial delays and backlog constitute a significant impediment to women's access to court mandated orders. **In order to reduce delays some laws include specific stipulations on the time period within which protection orders are to be granted.** Significant in this regard is Indonesia, where the courts are mandated to issue protection instructions within seven days.¹¹¹ The Philippine law takes this a step further by specifying that hearings for permanent protection orders are to be completed within one day. In situations where case hearings are not completed within the stipulated time period temporary protection orders are immediately extended.¹¹² To ensure compliance with timelines the Philippine law also provides for administrative liabilities to be incurred by judicial and other officers upon failing to meet with prescribed timelines without a valid reason.¹¹³ In addition, the Philippine law also includes a provision that states that applications for protection orders shall have priority over all other proceedings.¹¹⁴

Measures to ensure compliance with protection orders

It is insufficient for courts to issue orders to prevent violence. There is a need to ensure that such orders are enforced. All laws in ASEAN countries that allow for the provision of protection orders or other injunctive orders ensure enforcement primarily through treating the breach of such orders as a punishable offence, attracting immediate arrest either by the police or other competent authorities. The law in Vietnam requires that a forbidden

105 Article 30 of the Indonesia law.

106 Refers to situations in which only one party appears before a judge when the judge is allowed to meet with one side (*ex parte*) due to the circumstances. Sometimes judges will issue temporary orders *ex parte* (that is, based on one party's request without hearing from the other side) when time is limited or it would do no apparent good to hear the other side of the dispute. For example, if a wife claims domestic violence, a court may immediately issue an *ex parte* order telling her husband to stay away. Once he's out of the house, the court holds a hearing, where he can tell his side and the court can decide whether the *ex parte* order should be made permanent. <http://www.lectlaw.com/def/e051.htm> Accessed on 2 June 2009.

107 Article 24 of the Cambodian law.

108 Section 66 of the Singapore law.

109 Section 15 of the Philippine law.

110 Section 16 of the Philippine law.

111 Article 28 of the Indonesian law.

112 Section 16 of the Philippine law.

113 Section 18 of the Philippine law.

114 Section 20 of the Philippine law.

contact measure be supervised by a community leader.¹¹⁵ The Philippine law gives the duty of enforcement of court and other orders to Barangay Officials and law enforcers.¹¹⁶ It also allows **for the institution of contempt of court proceedings** in addition to procedures prescribed under its domestic violence law.¹¹⁷

Some countries such as Malaysia and Indonesia provide measures to guard against the possibility of breach. Courts in Malaysia may attach a power of arrest to a protection order if there is a possibility of it being violated.¹¹⁸ In Indonesia, courts may direct the perpetrator to make a declaration to comply with the protection instruction. If the perpetrator fails to do so the court may detain him.¹¹⁹

Other measures may also be adopted to ensure compliance with orders of the court. Courts in Thailand, on finding an accused guilty in criminal proceedings may, instead of ordering incarceration, issue orders for rehabilitating the accused. This may include orders for treatment, probation orders, or orders directing financial assistance to the complainant or to undertake public work.¹²⁰

These innovative strategies have the potential of ensuring enforceability of court directed orders. **The law that does not mention enforcement mechanisms is incomplete and does not meet the goal of providing effective protection for survivors of violence.**

FACILITATING ACCESS TO SUPPORT SERVICES

1. Access to support services

A woman facing violence needs more than legal protection. **Access to support services is essential not only for dealing with emergency situations but also to sustain a woman in her struggle for justice.** This also calls for coordinated responses from various state departments and others.

The strategies adopted by the countries in facilitating access to support services may be broadly divided into three categories. The first is **to recognize access to support services as a right. The second is to provide duties for enforcement officials and others to either provide support services or to facilitate access to support services.** The third is to facilitate access to support services **by issuing policies and developing action plans for implementation and coordinated response.**

115 Article 22 of the Vietnam law.

116 Section 30 (f) of the Philippine law.

117 Section 21 of the Philippine law.

118 Section 7 (2) and (3) of the Malaysian law.

119 Article 38 of the Indonesian law.

120 Article 12 of the Thai law.

Countries that fall into the first category are Lao PDR, the Philippines and Vietnam. In these countries, women have the right to access support services such as medical care, including treatment for psychological injury shelter and legal counsel. Interestingly, the Vietnamese law mandates that the state shall encourage individuals and organizations to establish domestic violence support and counselling facilities and other services such as health care, legal advice, provision of shelter, etc.¹²¹ This law also provides for recording reliable addresses in the community that will render assistance to survivors as well as provide guidance and training on the prevention and control of domestic violence.¹²² Finally, this law also obligates the state to allocate budgets to ensure implementation.¹²³

Countries that fall in the second category are Indonesia, Malaysia, Thailand and again the Philippines. The Philippine law, in addition to recognizing a woman's right to support services, also includes detailed duties for prosecutors, court personnel, Barangay officials, health care providers and law enforcers to provide assistance to survivors.¹²⁴ Similarly, the Indonesian law stipulates the duties of governments and public authorities,¹²⁵ health care personnel, social workers, companion workers, spiritual mentors and advocates in providing support of various forms to survivors of violence.¹²⁶ Though the Thai law does not have specific provisions on access to support service, the Ministry of Social Development and Human Security has the responsibility of setting up working systems to support operations and enforcement under the law.¹²⁷ This marks a step towards providing coordinated responses to survivors of violence.

Significantly, the Philippine law contains detailed provisions on how support is to be accessed and other measures, such as mandatory services and programs for survivors,¹²⁸ and innovative provisions like the entitlement of the survivor to take additional leave from work to give effect to the protection order.¹²⁹ It also mandates the provision of funds to implement the law.¹³⁰ **Provisions for the allocation of funds, if contained in the law, allows for effective implementation.**

2. Counselling versus mediation/settlement/reconciliation in the law

Counselling for the survivor to help her address the situation of violence and for the perpetrator to prevent him from committing violence in the future is an important feature of any domestic violence law. Such a provision in the law recognises the emotional and psychological impact of domestic violence. However, **very often, counselling is confused and its significance**

¹²¹ Article 29 of the Vietnam law.

¹²² Article 30 of the Vietnam law.

¹²³ Article 6(1) of the Vietnam law.

¹²⁴ Sections 29-32 of the Philippine law.

¹²⁵ Chapter V of the Indonesian law.

¹²⁶ Articles 21-25 of the Indonesian law.

¹²⁷ Article 18 of the Thai law.

¹²⁸ Section 40 of the Philippine law.

¹²⁹ Section 43 of the Philippine law.

¹³⁰ Section 45 of the Philippine law.

negated by incorporating provisions on mediation/settlement/reconciliation in the law. It must therefore be noted that even when a provision for mediation/settlement is retained in the law,¹³¹ it must be followed with sufficient safeguards to ensure that the security and position of the complainant is not adversely affected.

The Indonesian and Philippine laws make it clear that there ought to be counselling for the complainant, not mediation, in order to provide her a sense of security. Again, the law in Philippines also provides for counselling and treatment of offenders. On the other hand, Vietnamese law has an entire chapter on “reconciliation of conflicts among family members”, where the emphasis is on counselling and reconciliation in view of the tradition and culture of the land. Hence, the understanding of counselling under the law is that of reconciliation within the family, except in a few cases where the incident is criminal in nature or where there is a violation of administrative laws. The laws in Cambodia and Lao PDR appear to assign a grade to the acts of violence and provide for reconciliation/mediation according to violence that is economic or psychological or not serious. Thai law makes compliance with settlement terms mandatory before prosecution can be withdrawn. Singaporean law is completely silent on the issue of counselling and mediation/settlement/reconciliation.

TRAINING AND PUBLIC AWARENESS RAISING

An important measure to prevent domestic violence is to initiate public awareness campaigns aimed at creating an environment of zero tolerance for violence.

The spreading of public awareness on rights recognised under the law is also crucial for empowering women and preventing future acts of violence. In this regard Cambodia, Lao PDR, Philippines and Vietnam have specific provisions on using education as the means to create public awareness. These countries identify government ministries, departments and agencies which take on the responsibility of spreading public awareness.

A crucial element in ensuring efficient implementation is the presence of a highly trained and sensitized cadre of enforcement officials and judiciary. The Cambodian¹³² and Philippine¹³³ law include training of enforcement officials and others within the law. The Philippine law also provides details on the method of training to be adopted.¹³⁴ The reason behind the non-inclusion of specific provisions on training and creation of public awareness on the issue of domestic violence may be that they are provided for in policies and other non-legal programs adopted by the state. However, **incorporation of training of public officials and public awareness raising programmes in the domestic violence law is the better option as the law has more power.** The responsibility for training and public awareness raising campaigns should also be incorporated into the law and be subject to the supervision of the central agency vested with the duty of coordinating implementation.

131 It must be noted that the Expert Group Meeting on Global Good Practices on Domestic Violence Legislation held in May 2008 recommended that mediation in all cases of violence against women should be explicitly prohibited both before and during legal proceedings. Report of the EGM, 2008, p 43, available at http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/vaw_legislation_2008.htm. Accessed on 22 May 2009.

132 Chapter 6 of the Cambodian law.

133 Section 42 of the Philippine law.

134 Ibid.

MONITORING AND EVALUATING THE IMPLEMENTATION OF DOMESTIC VIOLENCE LAWS

Monitoring the implementation of laws serves two purposes. First, it holds states accountable in adhering to legal obligations. Second, it allows for the compilation of best practices and the identification of gaps in the law that arise when the law is being implemented. Information gathered through monitoring and evaluation assists future policy formulation and law reform strategies. The function of monitoring laws is to examine whether the measures for the implementation are in agreement with constitutional rights and whether they are effective in reducing the incidence of violence.

Only two of the domestic violence laws in the ASEAN region include provisions that allow for monitoring. The first is the Malaysian law that mandates that the court registry maintain records of all complaints filed under the domestic violence law.¹³⁵ The second is the Thai law that obligates the Ministry of Social Development and Human Security to prepare annual reports on the number of domestic violence cases that are filed, relief measures granted, the number of reported violations, etc.¹³⁶ **Monitoring is a significant aspect to ensure effective implementation; hence, it is advisable for states to incorporate such provisions into the law.**

The primary goal of any monitoring exercise is to examine whether the incidence of domestic violence has decreased with the effective enforcement of laws. This information can be gathered through surveys and social science research. In this regard, it should be kept in mind that an increase in the number of complaints filed under domestic violence laws may not necessarily indicate an increase in the incidence of violence. Instead this may indicate higher levels of awareness of the law and better access to legal processes. Increase in the number of complaints may, therefore, indicate the successful implementation of the law. Insofar as the monitoring of the law is concerned, Box 4 includes questions that need to be answered against the indicators for successful monitoring:

Box 4: Questions to ask when monitoring the law

Question 1. Does the law provide effective redress?

Indicators:

- a. The number of complaints filed under the law,
- b. In countries where the law provides for protection orders, the number of protection orders that have been granted,
- c. The number of complaints received on the violation of protection orders,
- d. The number of cases that have been settled satisfactorily and whether the terms of the settlement are being adhered to,
- e. The number of criminal complaints received and outcomes of criminal proceedings,
- f. The disposal time for all forms of legal proceedings used in addressing domestic violence,
- g. The correlation between civil and criminal proceedings such as whether complaints under criminal law decrease with a corresponding increase in the number of applications filed for civil orders.

¹³⁵ Section 16 of the Malaysian law.

¹³⁶ Article 17 of the Thai law.

Box 4: Questions to ask when monitoring the law

Question 2. Are the mechanisms effective in facilitating access to legal and other remedies?

Indicators:

- a. The number of authorities competent to receive complaints, take protective measures, and ensure enforcement,
- b. The qualifications, experience, and training of competent authorities in dealing with complaints of violence,
- c. Infrastructure provided to the authorities to enable them to discharge their obligations and responsibilities in an effective manner,
- d. Availability and nature of services made accessible to women, particularly medical aid, shelter, counselling, etc.,
- e. Efforts undertaken to forge a multi-agency response for survivors of violence,
- f. The budget and funds allocated for the implementation of the law.

The functions of implementation and monitoring are separate functions and should be maintained as such. Ensuring effective implementation requires the availability of services and measures to facilitate access to legal and other remedies. In this regard, **the roles and responsibilities of each of the government agencies should be clearly stated to avoid any overlaps.** This in turn requires coordination between different agencies of the State as well as private entities and service providers. Coordination of the various agencies can be done either through **formulation of policies and protocols or by appointing a central agency to supervise and coordinate implementation efforts.**

CONCLUSION

While most countries in the ASEAN region have demonstrated a commitment to equality and non-discrimination on the grounds of sex, this guarantee is not necessarily reflected in special measures because the majority of the laws are not gender-specific. The colonial and political history of a country is bound to influence its legal and administrative system, which can account for some of the differences in the form of legislation adopted. Several countries have successfully used a combination of administrative and judicial remedies, depending on administrative structures in place. Despite reservations to CEDAW on the grounds of respecting diversity of their cultures and religions, these countries have still been able to pursue public policies outlawing domestic violence.

What distinguishes domestic violence laws from other laws is that these laws contain provisions of multiple social services such as counselling, shelter and medical help. The level of the service will depend on the socioeconomic development of society, but commitments made in law are encouraging nonetheless. In conclusion, it must be said that ASEAN countries have come a long way in adopting an official policy of zero tolerance for domestic violence which represents significant progress for societies which have been bound by patriarchal traditions.

Specific recommendations

Aims and Objectives of the Law

- It is advisable that a law on domestic violence clearly recognizes it as a breach of human rights, particularly the right to equality and the right to life. The UN Model Code recommends the recognition of domestic violence as a “gender-specific” form of violence “*directed against women, occurring within the family and within interpersonal relationships*”. Referring to international treaties and law in the statement of objectives and purposes will allow for the incorporation of principles contained therein at the time of judicial decision making.

Definition of “Domestic Violence”

- The inclusion of an elaborate and comprehensive definition of “domestic violence” will take into account the various forms of violence faced by women and its impact on physical and mental health as well as economic status. It will also limit the scope of judicial discretion when deciding whether domestic violence has taken place. The most comprehensive definition of domestic violence can be found in the Philippine law.
- Inclusion of specific cultural manifestations of violence is highly recommended.
- It is advisable that guidelines are issued to aid competent authorities in determining whether violence is serious/grave or non-serious/minor in nature. Such guidelines should conform to international standards and norms. Adoption of such guidelines shall guard against individual biases and patriarchal norms influencing judicial as well as quasi-judicial decision making processes.

Coverage of the Law

- All relationships in the shared residence should be included within the ambit of the domestic violence law. This requires a clear listing of the nature of relationships covered, including all relationships of dependency as well as a definition of the shared residence to provide a reference for such relationships.
- The inclusion of domestic workers within the ambit of the law has been recommended by the UN Model Code. Only the Indonesian law has specifically included this.

Complaints Mechanism

- The complaints mechanisms adopted by countries should be easily accessible to survivors of violence. The mechanisms that have been put in place should allow for the provision of immediate protection to the complainant as well as ensuring their access to other support services. The objective of pre-litigation measures should be to immediately put an end to the violence and assess the needs of the complainant before initiating any further actions.

- Many countries in the ASEAN region have put in place innovative mechanisms to allow emergency intervention. The provision of emergency orders by administrative and other authorities, prior to the issuance of a court order is recommended. This will have the effect of preventing future acts of violence on an immediate basis.
- Information on rights and assistance in initiating legal processes are crucial in facilitating access to justice.
- The provision of assisted alternative dispute resolutions at the pre- and post-litigation stages, included in some of the laws, should be attempted only if there is a guarantee of non-violence. This guarantee may be supplied either by filing an undertaking or a declaration to stop future acts of violence and adhere to the terms of settlement if a settlement is reached. The use of assisted alternative dispute mechanisms must be conducted by respecting the rights and free will of the parties to the dispute.
- Insofar as pre-litigation mediation is concerned, it should be ensured that such processes do not impede access to the courts or court ordered remedies. Furthermore, post-litigation mediation should not be conducted by courts as there may be bias in the event that a settlement is not reached. It is advisable that post-litigation mediation is conducted by authorized professional bodies or individuals.

Accessing Court Mandated Orders for Relief

- The Philippine law provides elaborate provisions on the reliefs available under the law. These reliefs correspond to the elaborate definition of domestic violence contained in the law with a clear statement of aims of providing such orders. It is advisable to follow this example as it provides guidance to judges in deciding the nature of orders to be granted.
- Most of the countries provide timelines to be adhered to in disposing complaints and applications filed under the laws. This aspect is significant in ensuring speedy justice.
- The enforcement of court orders is aided by making the violation of court orders a punishable offence. In addition, the laws in the region deem domestic violence as a stand-alone offence either in general laws or within the specific domestic violence legislation.

Training, Education and Public Awareness Campaigns for Prevention of Domestic Violence

- It is recommended that laws should mandate institutionalized, regular training and education of police officers, prosecutors, judiciary, social workers and public officials in protecting survivors of domestic violence and preventing further acts of violence. The Philippine and Cambodian laws provide for such regular training of enforcement officials and judiciary.
- Public awareness campaigns on violence against women are an important measure to eliminate violence and change social attitudes. Cambodia, Lao PDR, the Philippines and Vietnam all utilise public awareness campaigns to address domestic violence.

Monitoring and Evaluation of Implementation

- Monitoring and evaluation of the implementation of domestic violence laws is essential to ensuring effective implementation, therefore it is advisable for states to incorporate such provisions into the law. Malaysia and Thailand include provisions in their laws that place specific responsibility on agencies to compile documentation of complaints, cases of domestic violence and relief measures.

NEED FOR A COORDINATED RESPONSE TO DOMESTIC VIOLENCE

In recent times, governments around the world have adopted various approaches to tackle domestic violence, as a result of the recognition that domestic violence is a problem requiring urgent intervention. One of the most common approaches has been internal reform of different agencies and institutions, including law enforcement, judiciary, health care, shelter agencies and others with the objective of creating a systemic response. However, because these reforms are often initiated within each individual implementing agency, in reality the cohesion between agencies is not optimal. This does not solve the problem for survivors of domestic violence who still have to approach multiple forums to get support and justice. Therefore, women who face domestic violence must then continue to face extreme difficulties when seeking redress and support.

Hence, the need for one “official response” grounded on strong State-community partnership has been reiterated time and again. Under this approach, while each agency provides a different service to a survivor of domestic violence, a system of communication and coordination established between the agencies will ensure that each is aware of what kind of service the other is providing. This coordinated, but not necessarily uniform, approach to dealing with domestic violence by the State is referred to here as the “Domestic Violence Response System”. This paper will attempt to outline the various kinds of systems that have been initiated by governments to provide such a coordinated response and will also map certain “good practices” drawn from countries around the world.

A brief examination of the history of the reform process that led to the evolution of Domestic Violence Response Systems tells us that this initiative was the contribution of the women’s movement to the campaign against domestic violence. In the earliest stages, community-based shelters and counselling centres run by women’s organisations and survivors of domestic violence were linked and streamlined. The success of these initiatives gradually led governments and state institutions to recognise the need for broader coordination between various agencies, both state and community-based, involved in implementation and law enforcement. As part of this larger strategy of intervention, the first sector to be targeted was the justice system, or rather, the individual components of the justice system.¹ The mode of intervention focused on developing protocols and guidelines for each component of the justice system, and providing trainings and sensitization on dealing with cases of domestic violence. Gradually, however, other agencies and sectors, the health sector in particular, were linked to this response system. Coordinating bodies were formed to ensure proper communication between the justice system and other essential service providers.²

1 The individual components of the justice system would include reforms initiated within the police, prosecution services, the court, and in certain countries, special measures like batterer-intervention programmes. These reform initiatives were internal and institution specific, for instance, protocols and guidelines developed by the police, prosecution services and the courts.

2 In the countries which followed this approach, educational institutions, income-generating services, housing policies, and batterer-intervention programmes were brought within the domestic violence response system. In the United States, faith groups and initiatives of the church played an important role. The evolution of the “One-Stop Centre” attached to health settings is an important example of building linkages between agents which are supposed to be traditionally involved in domestic violence work and usually recalcitrant institutions like health services.

THE “DOMESTIC VIOLENCE RESPONSE SYSTEM” – FORMS AND APPROACHES

The coordinated institutional approach to domestic violence is sometimes referred to as “multi-agency coordination” and “inter-agency response system”, but in this paper it will be referred to as the Domestic Violence Response System for the following reasons:

First, the paper explores various “good practices” in implementation undertaken by a cross-section of actors, not limited to government or public agencies but also those at private and community levels.

Second, in referring to the Domestic Violence Response System, our focus purposefully shifts from “coordination” between the agencies as the chief characteristic of the system to the quality of “response” that this coordinated system provides to a survivor of domestic violence. **Therefore, the survivor of domestic violence becomes the centre of this coordinated system.**

Finally, also noteworthy is the fact that these responses must be tailored not only to provide preventive, but also protective and restorative measures. In the majority of instances, laws, and criminal laws in particular, are designed to prevent further crimes from taking place. However, a truly coordinated response system must not only prevent further acts of domestic violence but ensure that protection as well as restoration to a situation of stability is provided to the woman. One instance of such a response is combining provisions for immediate arrest of the abuser with police protection, safe shelter and compensation for the woman.

Therefore, in this paper, the approach towards identification of initiatives/policies/practices as “good practice” will distinctly focus on the survivor, and will be evaluated on the basis of the quality of “response” that the initiative provides to her.

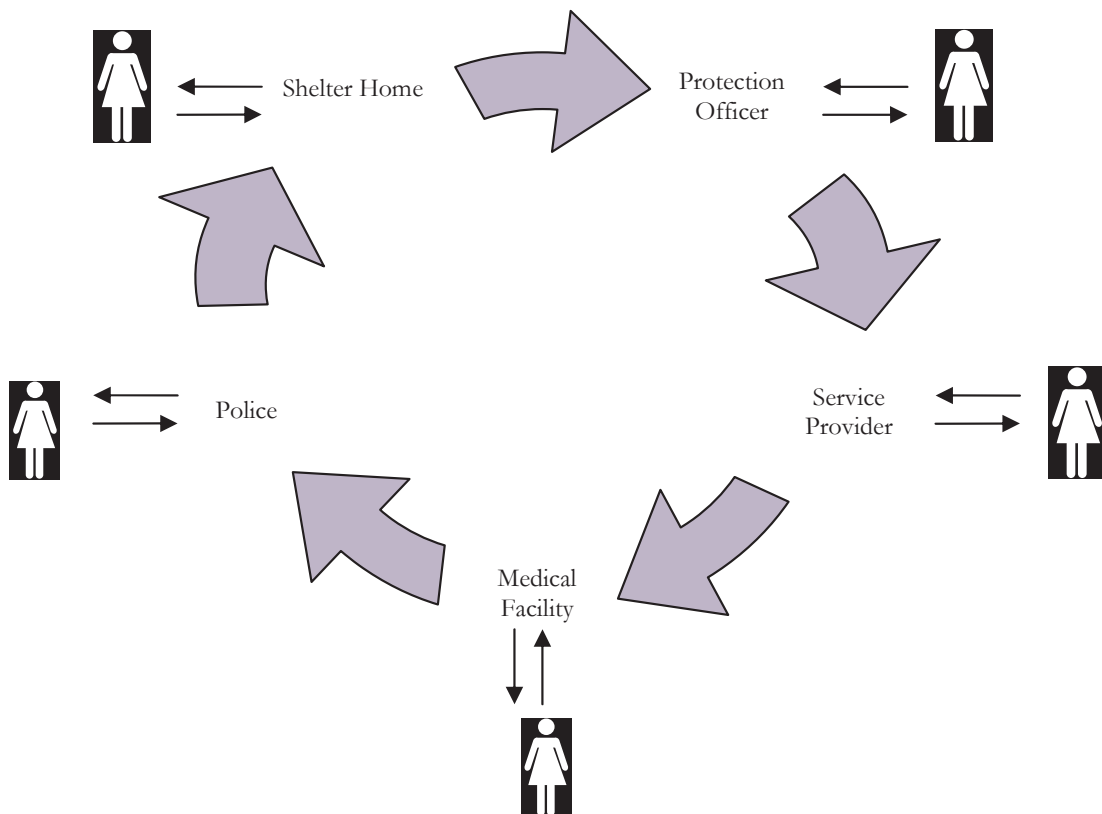
Box 5: Understanding the domestic violence response system: Guidelines

- The **priority is the survivor of domestic violence**. Hence there is a need to understand her particular circumstance and needs in this context,
- Attend to all women irrespective of race or caste, class and ethnicity,
- There must be **recognition of her rights and entitlements**. Her self-worth and dignity must be respected,
- It must be recognized that while she might be confused when she approaches the actor she can overcome her problems with some support,
- **Non-judgmental attitude** towards her behaviour and the choices made by her,
- **Confidentiality and shared confidentiality**,
- The woman facing domestic violence determines the time, space and pace of how she can be assisted and how she wants to proceed. **Immediate crisis intervention** is essential. There is need to create **documentation** by all stake holders and agencies.

Source: Excerpted from Lawyers Collective Women’s Rights Initiative; Ending Domestic Violence Through Non-Violence: Manual for PWDVA Protection Officers (2008)

OVERVIEW OF GLOBAL GOOD PRACTICES ON DOMESTIC VIOLENCE RESPONSE SYSTEMS

The Domestic Violence Response System can be described as a wheel or a chain; the abused woman may enter the chain at any point and gain access to the relevant agency. She will be referred to other agencies in accordance with her particular needs; she is free to exit the system at any point in time provided the legal provisions or policies have not created an exception.³



³ For instance, many states in the U.S. have adopted a “No Drop” prosecution policy for domestic violence cases. This means that the onus of prosecution is completely on the State, and once the law and legal system is triggered, the prosecution cannot be “dropped” even if the complainant herself wants to withdraw the case. This policy was premised on the acknowledgment that women who face domestic violence face tremendous pressure, whether directly or because of the nature of the relationship and/or her emotional, social and financial dependency to withdraw the case. In order to address the issue of high attrition rates in domestic violence cases and to remove the heavy burden placed on the complainant, the “No Drop” prosecution evolved. However, this policy has been variously critiqued, particularly by women’s rights advocates, for negating the woman’s agency.

INTERNATIONAL STANDARDS AND NORMS ON DOMESTIC VIOLENCE RESPONSE SYSTEMS

The UN Model Legislation on Domestic Violence (E/CN.4/1996/53/Add.2, 2 February 1996), which provides a template and guidelines for states seeking to enact domestic violence legislations, provides specific reference to a comprehensive support system, training of law enforcement and judicial officers, creation of inter-agency protocols, departments and services, special domestic violence courts and police units, etc. as constituting an essential element of the law.

Box 6: Standards and Norms in International Law

A coordinated institutional response system has been recognised and incorporated into the framework of international law, particularly CEDAW, DEVAW, UN Model Legislation on Domestic Violence and reports of the Secretary General.

- Article 2(e) of CEDAW imposes an obligation on State parties to “take all appropriate measures to eliminate discrimination...by any person, organization or enterprise”, i.e. even in the private sphere,
- General Recommendation 19 of the CEDAW Committee specifically focuses on violence against women as discrimination under the Convention and reiterates the need for due diligence by state parties, even in the private sphere,
- Article 2(a) of DEVAW defines domestic violence to include “physical, sexual and psychological violence occurring in the family”,
- Article 4 of DEVAW requires States to pursue all appropriate means to develop penal and civil sanctions, provide access to mechanisms of justice for women, prevent re-victimisation of women through insensitive laws or enforcement practices, and to create support structures towards elimination of violence against women.

The significance of building a coordinated response system was also reiterated in the Report of the Expert Group Meeting on “Good Practices in Combating and Eliminating Violence Against Women” organized by United Nations Division for the Advancement of Women and United Nations Office on Drugs and Crime in 2005.⁴ The subsequent Expert Group Meeting on Good Practices in Legislation on Violence Against Women held in 2008 also pointed out that provisions for the implementation of laws by various sectors (relevant Ministries in collaboration with police, prosecutors, judges, the health sector, and the education sector) should require them to develop regulations, protocols, guidelines, instructions, directives and standards, including standardized forms, for **comprehensive and timely implementation** of the legislation.⁵

It is on the basis of these standards and norms that this paper attempts to identify good practices in implementation of domestic violence legislations.

⁴ Report available at <http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/index.html>.

⁵ Report is available at http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/vaw_legislation_2008.htm.

INNOVATIVE APPROACHES – MAPPING THE GOOD PRACTICES

Before we explore good practices it is important to understand that templates of coordinated response systems have generally evolved in the context of local needs. Therefore, it is impossible to provide a comprehensive list of standards on which diverse practices from different parts of the world should be judged. Rather, the attempt in this paper is to provide instances of policies, practices and strategies that may be considered to be good practices given their proven effectiveness. Yet, it must be understood that these policies may not always be successful in another location without being adapted to suit the specific needs of that community. For the sake of convenience, however, the following is a set of general and often used standards/indicators, which were included in the Background Study to examine “promising practices” for the UN Secretary General’s Study on Violence against Women:⁶

1. Effectiveness,
2. Replicability,
3. Sustainability,
4. Responsiveness,
5. Innovativeness,
6. Strategic alliance and collaboration in implementation of the practice, between the State and civil society or between agencies.

The former Special Rapporteur on violence against women also described “best” or “good” practices as those *“that led to actual change, contributed to a policy environment more conducive to gender equality and/or have broken new ground in non-traditional areas for women”*.⁷

In this paper, an overview of some of the good practices with regard to implementation of domestic violence legislations, particularly practices that combine to create an effective Domestic Violence Response System, have been provided. The countries selected for this exercise are the United Kingdom, the United States of America, India, South Africa, Canada and Australia. These jurisdictions have been chosen for the impact that their legislations, policies, and approaches have had as models for replication all over the world. Moreover, the concept of a coordinated response system was, to a large extent, pioneered and developed into a successful strategy in the US,⁸ the UK and Australia. The South African law is noteworthy for having comprehensively defined domestic violence and envisaged an innovative preventive role for law enforcement, and the newly enacted Protection of Women from Domestic Violence Act 2005 (“the Act”) in India is a multi-option law,⁹ which can be triggered by the complainant even in a pending litigation. The Act also provides for a comprehensive Domestic Violence Response

6 Background Documentation for UN Secretary General’s Report on Violence against Women, A/61/122/Add. 1.

7 E/CN.4 /2003/75/Add.1, para. 2147; Quoted in Ibid.

8 In particular, reforms in the justice system in order to ensure a more proactive response to women facing domestic violence were initiated in the United States, which will be dealt with in some detail in the following sections of this paper.

9 The remarkable aspect of the Indian law on domestic violence is that it was demanded and thereafter, drafted in collaboration with women’s organizations and civil society groups. This is perhaps an important reason why the law itself envisages a strong support system for women as a concomitant of protection orders and other civil support services.

System. At the same time, however, it must be reiterated that the good practices listed in this paper do not indicate an exhaustive list within the jurisdictions discussed. There are numerous other practices which have successfully implemented a coordinated response system but could not be referred to due to the limited scope of this paper.

For the purpose of this paper, good practices implemented in the aforementioned countries will be divided under the following broad categories:

1. Inter-Agency Coordination,
2. Survivor-Focused Approaches,
3. Strengthening the Justice System,
4. Legislating the Provision of Funding,
5. Monitoring and Evaluation of Implementation of Legislation or Policy,
6. Initiatives Focusing on Needs of Special Groups.

1. Inter-Agency Coordination

The good practices under this heading constitute initiatives that focus on developing common visions and action plans, enabling better communication and linkages between agencies, and establishing a body or task force which oversees the implementation.

While there are good practices to share, inter-agency coordination has its own limitations. One of the major obstacles is the need to agree on a common understanding of domestic violence and approaches to survivors of domestic violence that must be developed between the agencies. This issue may be particularly illuminated in cases of survivor service providers working in coordination with police or prosecution services. Again, several practice barriers may arise with regard to implementation and working of an inter-agency response model, starting from differences in resource allocation, or problems with case tracking and follow-up, to name a few. Hence, **it is essential that protocols for coordination be formulated and clear mandates provided to each agency within the coordinated response system.**

1.1 Community Partnering Approach

In this approach, the domestic violence programme is based on a strategic plan developed for the entire community. The roles and responsibilities are decentralized at the outset by assigning each agency or community body with a particular task. A coordinating body enables and oversees the work that is undertaken but the programme is based on a collaborative approach, from the time of planning through its execution. This approach does not require creation of formal management structures, and is primarily used in grassroots level initiatives.

Duluth Model (Duluth Domestic Abuse Intervention Programme or DAIP): The Duluth Model is considered to have set a benchmark in coordinated multi-agency intervention in cases of domestic violence. This model was conceived and implemented in a small city of Minnesota in 1980-81, with 11 agencies forming the initiative.¹⁰ The Duluth Model, which has since been replicated in almost every country, was initiated with the intention of bringing together criminal and civil justice agencies to work together in responding to women's needs.

Although the Duluth Model is usually described as a batterer intervention programme, a "no drop prosecution" programme or a "mandatory arrest" scheme, in reality, all of these form part of the key undertakings of the initiative. In fact, as Ellen Pence¹¹ and Martha McMahon point out, "the Duluth project should be seen as a system of networks, agreements, processes and applied principles created by the local shelter movement, criminal justice agencies, and human service programs that were developed in a small northern Minnesota city over a fifteen year period. It is still a project in the making".¹² **The guiding principle of the programme is 'victim safety', and the various initiatives are conceived to ensure this goal.** An evaluation of the programme shows that 'victim safety' is combined with transforming the criminal justice system response, which is traditionally not centred on the principle of 'victim safety'.¹³ Hence, evolving a common understanding of 'victim safety' forms a major part of the coordinated response of Duluth.¹⁴

The Duluth Model is based on four primary strategies of intervention:¹⁵

- **Reform at the basic infrastructural levels** of the multiple agencies involved, ensuring that workers are coordinated to enhance effectiveness in service delivery and adhere to inter-agency agreements. Standardization of practices takes place by laying down certain core principles to be followed by workers, including protocols, systems to ensure accountability, etc,
- The overall strategy should have a **survivor focus**, with independent survivor advocacy and rehabilitation programmes for perpetrators,
- The agencies must be involved as **collaborating partners**. Small ad hoc problem solving groups, training committees, evaluation projects, and regular meetings are used to coordinate interventions,
- Swift initiatives that hold the **perpetrator accountable** for violence is crucial to the Duluth Model's success. It is here that the model uses initiatives like mandatory arrest, tracking of offenders through DAIP, evidence-based prosecution, emergency housing for women, etc.

10 These included 911 emergency services of police, fire and ambulance; police, sheriff's and prosecutors' offices, probation, the criminal and civil court benches, the local battered women's shelter, three mental health agencies and a newly created coordinating organization called the Domestic Abuse Intervention Project (DAIP). <<http://www.theduluthmodel.org/duluthmodel.php>>.

11 Ellen Pence heads the National Training Project, Duluth and has extensively written and advocated about the Duluth Project.

12 Ellen Pence and Martha McMahon; A Coordinated Community Response to Domestic Violence; January, 1997.

13 Criminal laws and mechanisms are meant to arrest perpetrators, conduct investigation and prosecute; hence, it is correct to say that criminal justice response focuses on the perpetrator rather than the complainant.

14 The Duluth project is based on the agreement that those who intervene, whether they be police officers, therapists, judges, or clergy, must intervene in ways that take the context of the violence and how it is experienced by the survivor into account.

15 <http://www.theduluthmodel.org/duluthmodel.php>.

A commitment to survivor safety as the core philosophy, however, means that the programme does not hold the woman responsible for the violence. “The DAIP organizers stress that women’s safety depends on having intervention practices which are rooted in how women experience violence and not simply in how the legal system abstractly defines violence”.¹⁶

As monitoring and evaluation is essential to increasing accountability, the Duluth DAIP has an inter-agency tracking system to provide its participating agencies with information. The tracking system shares information, can follow a case from inception to closure, and can show trends in how cases are handled. The Creation of protocols and the involvement of the community in its projects also forms part of the Duluth strategy. Finally, the DAIP has been conducting audits of every aspect of “case processing”, and provides a comprehensive list of changes required to fulfil the goal of survivor safety in a coordinated response system.¹⁷

Similar multi-agency coordination programmes, implementing provincial action plans or strategies, have also achieved significant success in Canada under the British Columbia Initiative. Because these initiatives are to a large extent based on the Duluth Model and undertake a similar approach, they are not being referred to separately in this paper.

1.2 Community Intervention Model

This model is also a grassroots initiative but its aim is to strengthen the accountability of the justice system and to ensure coordination with other service providers like health services. The methods used are trainings, outreach to perpetrators and survivors of violence, information and referrals, and awareness-raising and sensitization for the society at large. In most cases, the community intervention programmes also undertake independent monitoring and evaluation. Unlike the Community Partnering Approach, it does not provide any direct services to women but works to build the capacity of various implementing agencies.

The Australian Capital Territory (ACT) Family Violence Intervention Programme: The primary policy addressing domestic violence in Australia is the **Women’s Safety Agenda 2005**.¹⁸ The Women’s Safety Agenda also supports the Australian Domestic and Family Violence Clearinghouse. The ACT Family Violence Intervention Programme (FVIP) provides a benchmark for coordinated response, and aims to enhance inter-agency case management of criminal domestic violence cases. **The two major objectives of the programme are ensuring survivor safety, and accountability and rehabilitation of offenders.** The pilot FVIP was undertaken in 1998-99, and successive programmes¹⁹ have focused on building coordinated responses between the police, prosecution, and correctional services, along

¹⁶ Ellen Pence & Martha McMahon, supra note 42.

¹⁷ For detailed understanding of the Duluth Model and criticisms against it, visit the official website. <http://www.theduluthmodel.org/> Strategic papers on the issue may be accessed through the website.

¹⁸ Women’s Safety Agenda has been discussed in detail in a subsequent segment of this paper.

¹⁹ The programme is currently in its fifth phase, having been renewed in 2008.

with comprehensive support mechanisms for women.²⁰ A **Coordinating Committee of FVIP**, an independent statutory body, oversees the implementation and management of the programme, and consists of representatives from the key agencies. A crucial strategy for better communication between agencies has been the development of protocols and guidelines, weekly meetings for case tracking, an exhaustive data system, and periodic review and evaluation of the programme. Some of the successful initiatives of the FVIP have been the development of a *'Family Violence Investigators Kit'* and the establishment of a *Special Family Violence Magistrate* to deal with domestic violence and other family matters.

Also, the **ACT Domestic Violence Prevention Council** was formed as a statutory body in 1997, to “reduce the incidence of domestic violence offences in the Australian Capital Territory.”²¹ The chief functions of the Council is to promote collaboration and establish linkages between governmental and non-governmental agencies, provide advice and inputs to the government on laws and policies, and plan action points for implementing community strategies to assist women facing violence.

1.3 Community Organising Model

The Community Organising Model has proved to be highly effective in several communities in the U.S.. Under this model, each individual member of the community is encouraged to actively engage in the effort to prevent domestic violence. An unambiguous message is combined with greater awareness-raising on the manner in which the entire community can adopt practices and undertake tasks on an individual basis to further the goal.

1.4 Formulation of Task Forces/Coordinating Councils

Task Forces/Coordinating Councils are designed to ensure effective coordination between the individual components of the justice delivery system. They usually formulate the blueprint or plan of action for inter-agency response, and thereafter, monitor the system to ensure its proper functioning.

London Domestic Violence Forum: Domestic violence in the UK is addressed through the criminal justice system.²² An important step from the previous complainant-centred criminal justice approach to a cross-Government “Domestic Violence Response System” was taken with the *National Domestic Violence Delivery Plan of 2005*²³ (reviewed in 2007). The Greater

20 The FVIP relies on coordination and cooperation between 12 key agencies including ACT Police, Office of the Director of Public Prosecutions, Magistrates Court, Corrective Services, Domestic Violence Crisis Service, Office of the Victims of Crime Coordinator, Legal Aid (ACT), Dept of Justice & Community Safety, and the Office of Family Youth and Children's Services. The ACT Law Society and Victims Services Scheme are also invited to participate in the coordination committee. Australian Domestic & Family Violence Clearinghouse; Family Violence Intervention Programme (ACT); Record No. 102; 2008.

21 ACT Domestic Violence Prevention Council Annual Plan 2005–November 2006; <http://www.jcs.act.gov.au/dvpc/documents/pdf/Annual_plan_2005-2006.pdf>.

22 Although there is no separate offence of “domestic violence” under the law, the Domestic Violence, Crime and Victims Act (2004) puts survivors in the centre of the criminal justice system and provide tougher powers for the police and courts to protect victims and prosecute abusers. Again, the Gender Equality Duty (2007) as part of its obligations under the European Union, has an obligation of ‘due diligence’ on public authorities.

23 For details on what constitutes the National Delivery Plan, see Annexure A, Domestic Violence: National Report, March 2005; <www.crimereduction.homeoffice.gov.uk/domesticviolence/domesticviolence61.pdf>.

London Domestic Violence Programme, started in 1997, is a groundbreaking instance of a multi-agency initiative to develop strategies, identify common goals, minimum standards and good practices in order to raise awareness and increase effectiveness of domestic violence responses. The Project coordinates **Domestic Violence Forums** (consisting of representatives of every governmental and voluntary agency dealing with domestic violence) in each Borough.

The **London Domestic Violence Forum**, operating in the Borough of London, has become a model for other boroughs working in the area of inter-agency cooperation in tackling domestic violence. The London Domestic Violence Forum consists of various other significant initiatives within its mandate,²⁴ and implements the **Mayor's Second London Domestic Violence Strategy**, launched in 2005. The programme is currently implementing several on-going initiatives including Independent Domestic Violence Advocates, whose role is to provide individual advocacy to survivors and perpetrators, creating a Coordinated Community Response Model (CCRM), holding Multi-Agency Risk Assessment Conferences (MARACs, see more under section 3: Strengthening the Justice System) and special domestic violence courts in every London borough. The London Domestic Violence Forum works as the coordinating body, ensuring that the progress in implementation is communicated to each agency. Membership to the forum is open to all service providers and policy staff within the area of London.²⁵ As part of the Second Strategy, a smaller steering group known as the London Domestic Violence Forum Steering Group comprises only agencies with specific duties.

1.5 Institutional Partnering Model

This model entails participation of various agencies providing services on domestic violence based on institutional tools, guidelines and circulars.

A Public Model – the Andhra Pradesh Experience: The strategy developed by the state of Andhra Pradesh²⁶ in implementing the Indian domestic violence law²⁷ by involving various agencies like the police, protection officers, legal aid services, and service providers represents one of the emerging good practices in multi-agency coordination. The guiding principle of this integrated system is to provide comprehensive support to survivors and facilitate access to justice. It is an acknowledgment of women's social and economic vulnerability combined with the adverse effects of pursuing litigation. Under this system, which has been initiated by an extraordinarily vigilant police force, when a woman approaches the police, she is referred to the Protection Officer²⁸ in appropriate cases. Protection Officers then may refer the woman to counsellors and service providers depending on the services requested. A panel of legal aid lawyers has been appointed to provide free legal aid to deal with domestic violence cases.

²⁴ Project Umbra in collaboration with Metropolitan Police Service. See <www.gldvp.org.uk> for details.

²⁵ Greater London Authority, Mayor of London, Annual Report of London Domestic Violence Forum 2007; <www.london.gov.uk>.

²⁶ Andhra Pradesh is one of the 28 states within the Union of India. While the Indian legislation is a federal one, in keeping with the division of power between the Federal and state governments, it is the states that are required to implement the federal law.

²⁷ The Indian law is titled as the Protection of Women from Domestic Violence Act 2005 (PWDVA).

²⁸ Protection Officer is the newly appointed statutory authority to implement the law and act as facilitators of support services and the courts for women.

In order to ensure a clear understanding of the role played by each agency in this response system, the respective departments have issued guidelines and circulars for multi-agency coordination. The **Domestic Incident Report Index** is another innovation of this model, which aids the agencies in case tracking and enables follow-up even after the role of the Protection Officer ends.

This model may be described as a “Public Model” as the complainant usually approaches State agencies for assistance and intervention. However, this only indicates a general practice and there are a significant number of women who still approach the courts directly through private lawyers.

The Andhra Model illustrates an innovation, particularly in the Indian context, as this kind of a systemic response is not the norm in the implementation of laws. In fact, through advocacy with other state governments, an effort to replicate this model wherever appropriate is being attempted.

2. Survivor-Focused Approaches

Approaches that focus on supporting and enabling women and their specific needs in a situation of violence may be characterized as survivor-focused good practices. In this paper, some of the practices discussed relate to housing, batterer-intervention and counselling programmes, and health service response to domestic violence.

Federal Public Housing and Domestic Violence: The implementation of the Violence Against Women Act (VAWA, Reauthorized in 2005) in the United States requires comprehensive strategies and coordinated efforts of various agencies (See more under section 4. Legislating the Provision of Funding). One such area identified as part of this coordinated strategy has been the provision relating to federal public housing, based on the recognition that women facing violence need to be empowered in multiple ways. Title VI of VAWA therefore extends the protection provided to vulnerable sections under the Public Housing scheme by providing protection specifically to survivors of domestic violence who utilise such public housing and emergency shelters. The Title says that a survivor of domestic violence cannot be evicted from her shelter provided by housing programmes on the basis that she is facing domestic violence. This step aims to counter the problem of women being evicted from housing on the grounds of a crime being committed by an occupant or ‘guest’, even though that crime may constitute an act of domestic violence. More crucially, Section 606 of this Title amended Section 8 of the United States Housing Act of 1937, to ensure that:

- a person is not denied public housing assistance on the basis that she is a survivor of domestic violence.
- an incident of violence is no longer a “good cause” for terminating the lease.
- the owner of the premises can now divide the lease to maintain the survivor’s tenancy while evicting the perpetrator, if the lease is held jointly.
- the owner is, however, entitled to take appropriate action if there is an actual and imminent threat to other tenants in the same housing.

The tenancy rights of a survivor of domestic violence are protected under the law because of recognition of her vulnerable situation. This is similar to the Indian law. The specific provision of “right to reside in the shared household”, irrespective of whether the house is owned or tenanted was drafted in the newly enacted Indian law to prevent similar instances of vulnerability and disempowerment for women facing domestic violence. The major difference between the United States policy and the “right to residence” guaranteed under Indian law is that while the former protects the tenancy rights of the survivor to emergency housing services, the latter provides protection to the *de jure* right of a woman²⁹ to residence based on the nature of relationship that she shares with the perpetrator and/or his family.

Court Review of Batterer Intervention Programme Compliance: Batterer intervention programmes form a crucial component of coordinated response to assist survivors of domestic violence. The thirty-day mandatory court review of batterer compliance with intervention programmes is an innovation to ensure effectiveness of batterer intervention programmes. This mandatory review is being implemented in several places in the United States, particularly where special domestic violence courts refer cases to the programmes. One such instance is the Pittsburgh Municipal Courts and the Domestic Abuse Counselling Centre. Thirty days after the date of the initial court hearing³⁰ the court reviews evidence of whether the batterer is complying with counselling. If this evidence is not presented to the court at that time or if the court receives evidence of non-compliance, a warrant for arrest is issued immediately.³¹ It has been suggested that a mandatory court review significantly reduces non-compliance with intervention programmes, as compared to referrals that are made after the trial is over. At the very least, this strategy may be considered a suitable tool particularly in jurisdictions that provide for mandatory batterer counselling.

Health System’s Response/‘Dilassa’ Model in India: The ‘Dilassa’ model of health service delivery is based on the understanding that domestic violence is a public health issue, and proves to be effective in countries like India where the majority of people receive health care from the public health system.

The ‘Dilassa’ project (which means “reassurance”) was jointly initiated by the Bombay Municipal Corporation and CEHAT (a non-governmental organisation working on health issues) as a one-stop crisis centre attached to health care institutions in the city of Mumbai. The first one-stop centre was established in 2001 in K.B. Bhabha Hospital, Bandra. The project encourages a preventive approach by devising ‘safety plans’, counselling and emotional support, shelter, etc. in addition to providing support and referrals to other service providers. Dilassa also works on the principle of early detection of domestic violence in women who approach the hospitals to be treated, particularly for burn injuries, attempted suicides, and other physical injuries.³²

29 Please note that because the Indian law is gender-specific, the aggrieved person is a woman but the respondent can be a male, and a female who is related to the husband or male partner of the aggrieved person. The male respondent can be a husband, partner, father, brother etc.

30 This system applies only to pre-trial hearings, leading to what is called a ‘deferred adjudication’. The referral is generally made as a stipulation of bond in the preliminary court hearing, and the court proceedings deferred. A program liaison notifies the court if a referred man does not appear for his scheduled intake and a warrant for his arrest is issued. Edward W. Gondolf; The Impact of Mandatory Court Review on Batterer Program Compliance: An evaluation of the Pittsburgh Municipal Courts and Domestic Abuse Counselling Centre (DACC); Sourced from: <www.mincava.umn.edu/documents/gondolf/pccd/pccd.html> (last accessed 10th October 2008).

31 Ibid.

32 Please note that “accidental burning” of the bride, for not bringing sufficient dowry, constitutes one of the major forms of violence against women in India. Although prohibited by law, this practice continues in most parts of the country.

The success of this initiative lies in the fact that, from the very beginning, the role of the hospitals/Municipal Corporation and CEHAT has been clear, with the hospitals providing a strategic location that women can approach easily, and the hospital staff constituting the backbone of service delivery. Furthermore, in its initial phase, the NGO provided training of hospital staff and counsellors on gender perspectives and helped in streamlining hospital procedures.³³ However, the objective is to ensure self-sufficiency of the crisis centres, with the NGO retaining only a monitoring role.

In setting up the crisis centres, linkages with existing shelters, legal aid services and other women's support groups were established. Referrals to the centres are made by the in-patient departments, casualty/emergency departments, outpatient departments, other hospital staff, other service providers, and community workers/organisations. One of the first tasks of the project was to develop an **"Intake Form"**, containing demographic details of the victim, history of violence, and more crucially, developing a Safety Plan by detailed safety assessment, and an action plan for intervention. This Intake Form has been replicated since then by various other service providers and interventions dealing with domestic violence. Another important reform initiated addressed that whereas previously a woman needing counselling for domestic violence was referred to psychiatry departments, the project helped modify procedures so that such cases are now referred directly to the crisis centres.

The success of the 'Dilassa' model lies in the fact that a number of additional centres have been established in Mumbai, and the model is being replicated in other states. This project has emerged as a model for integrating services for survivors of domestic violence within health care services.

It is important to reiterate here that many ASEAN countries have an existing effective system of hospital-based "one stop crisis centres". In fact, Malaysia, Indonesia, Philippines and Thailand have focused on establishing "One Stop Crisis Centres" as a major strategy in addressing domestic and sexual violence. The Malaysian "one stop centres" are considered to be extremely successful in combining clinical therapeutic response with secondary preventive measures.

3. Strengthening the Justice System

The justice system constitutes a pivotal link in the Domestic Violence Response System. A judge who is sensitive to the needs of survivors of domestic violence is aware of the complexities of the phenomenon and may change institutional interventions in domestic violence cases. Alternative dispute resolution (ADR) models have also emerged in various jurisdictions like the United States, Canada, and South Africa. Some of these ADR models will be explored in this section.

Policies on Arrest and Prosecution – Critiquing "Mandatory" arrest and prosecution: The attitude of the police and prosecution in most jurisdictions has generally been that of hesitant enforcement, based on the notion that domestic violence is a "private matter" where the State has no role to play. It was the battered women's movement in the United States

³³ A comprehensive study of hospital records, the procedure and need for registering such medico-legal cases, and study of casualty procedures was undertaken to suggest reforms that would lead to responsive service.

which initiated and campaigned for a stronger criminal justice response as part of systemic reforms on the issue of domestic violence. The result was a change in official policy in most states, providing for mandatory arrest³⁴ and prosecution of domestic violence offenders.

In 1977, Oregon became the first state to pass the mandatory arrest policy. As of June 2003, 21 states and the District of Columbia had enacted mandatory arrest policies.³⁵ Advocates of this policy have emphasized several long and short term benefits to the survivor. A mandatory arrest policy clearly states that, as far as the State and the society are concerned, there is zero-tolerance for domestic violence. Removing police discretion also means that the pressure placed by abusers to prevent survivors of violence from pursuing charges will also be automatically countered. Some advocates have also pointed to the fact that an arrest provides an entry point for other support service providers, like batterer and family intervention programmes, shelters etc. to reach survivors of violence. Often, however, survivors of violence seek assistance from law enforcement not necessarily to get the offender arrested but in the belief that this will serve as a warning and a deterrent for future violence. Critics of such policies have pointed out that mandatory arrest policies do not leave room for discretion with law enforcement officers which may prove detrimental to the very interests of the survivor which the policy aims to protect.³⁶ Another concern that has emerged as a consequence of this policy is further victimization of the woman by the criminal justice system through “dual arrests”.³⁷

Mandatory prosecution or what is better known as “no drop” prosecution also evolved as part of the same reform initiative. The battered women’s movement focused on improving bad prosecution records in domestic violence cases by minimizing the discretion of the prosecutor. This led to development of “hard” no-drop policy and “soft” no-drop policy. While the former requires prosecutors to pursue cases regardless of the complainant’s reluctance to approach the court, jurisdictions with “soft” no-drop policies allow prosecutors some discretion in determining the extent to which the complainant’s participation is required.³⁸ This means that the moment the charge is filed, the complainant’s role in the prosecution ends for all purposes, except appearing as a witness.

Mandatory prosecution is considered to be essential in a society where domestic violence is a public policy concern and where women face severe barriers in access to justice. However, as Nichole Miras Mordini points out, “forcing victims to participate in the prosecution of their abusive partners violates their privacy and their right to autonomy and may place them

34 The movement to strengthen arrest policies was helped in 1984 by publication of the results of a study on mandatory arrest in domestic violence cases that had been conducted in Minneapolis. In this study, police handled randomly assigned domestic violence offenders by using one of three different responses: arresting the offender, mediating, or asking him to leave the house for eight hours. The study concluded that in comparison with the other two responses, arrest had a significantly greater impact on reducing domestic violence reoccurrence. Findings from the Minneapolis study were used by the U.S. Attorney General in a report issued in 1984 that recommended, among other things, arrest in domestic violence cases as the standard law enforcement response. Cited in Emily J. Sack, *Battered Women and the State: The Struggle for the future of Domestic Violence Policy*; 2004 Wis. L. Rev. 1657; Sourced from: <www.westlaw.com>.

35 Ibid.

36 It is a reality that most women do not want to hurt or destroy their relationships; they could be financially dependent on the batterer, have children with him and not be ready to leave the relationship, they may fear that their immigrant status will get jeopardized, or simply know that such a step is not socially or culturally sanctioned.

37 Under the policy of “dual arrests”, police have started arresting both the victim as well as the offender immediately on reaching the scene of domestic violence. This is to make sure that police don’t have to take an immediate decision on who is guilty or started the dispute in cases of domestic violence.

38 Nichole Miras Mordini; *Mandatory State Interventions For Domestic Abuse Cases: An Examination Of The Effects On Victim Safety and Autonomy*; 52 Drake L. Rev. 295; Sourced from: <www.westlaw.com> Supra note 62.

in danger of further assault”.³⁹ Also, Emily Sack has said that “no-drop prosecutions may have the unintended consequence of discouraging victims from reporting domestic violence incidents, and may endanger victims by proceeding despite victims’ fears of increased risk if the prosecution continues”.⁴⁰

Although there is no argument with the effectiveness of the mandatory model of arrest and prosecution in increasing rates of prosecution, it however needs to be recognized that the consent of the woman is a critical factor as the ultimate goal is to both prevent violence as well as empower her to deal with situations of violence. Hence, instead of a mandatory requirement of arrest, a “pro-arrest” policy as well as responsible prosecution is being increasingly advocated for.

Multi-Agency Risk Assessment Conference (MARAC) Model of coordinated response: The MARAC model is an innovation in improving multi-agency coordination, with service delivery and risk management as its goal. Initiated by the Cardiff Women’s Safety Unit in 2003,⁴¹ MARACs are regular conferences on a case of domestic violence. They bring together all agencies, including criminal justice organisations and other agencies involved in the case and providing support services. They discuss the actions taken and the problems and decide on measures to improve safety and better access to justice for the complainant. The significant aspect of the MARAC is that the conference involves “high-risk” cases of domestic violence⁴² and is intended to reduce the possibility of repeat victimization. “By sharing information and working together through the MARAC process the outcomes for the survivors of domestic violence incidents can be improved. The conference is usually held on the complainant’s behalf and they will not usually attend but there may be some cases where the complainant’s attendance becomes necessary”.⁴³ The decision to take a case to a MARAC lies with the agencies involved. While the complainant has the right of refusal, she will have to provide sufficient reason. However, even in such a case, the agency may still decide to refer it to the MARAC. The woman is updated as to the course of action decided upon by the agencies, and the case is given priority within the system. Hence, the MARAC is an innovative tool to ensure coordinated handling and improved risk management of a case by agencies. The meetings “**yielded substantial improvements both to the practice of professionals and to the safety of victims and their children**”.

Special Domestic Violence Courts and Therapeutic Justice – Dade County Domestic Violence Court and Vancouver Domestic Violence Court: These specialized domestic violence courts were developed as part of the coordinated response of the justice

39 Ibid.

40 Supra note 60.

41 It was in April 2003 that the first multi-agency risk assessment conference (MARAC) was held in the Welsh capital bringing together 16 agencies, including police, probation, local authority, health, housing, refuge and the Women’s Safety Unit (WSU). The evaluation of Cardiff MARACs showed that they were successful at improving the safety of victims, as measured by the decrease in the number of police complaints and police call-outs and telephone interviews with victims. Jan Pickles & Amanda Robinson; *Risk assessment and domestic violence: the multi-agency MARAC model of intervention*; <www.communitycare.co.uk/Articles/2007/04/19/104205/risk-assessment-and-domestic-violence-the-multi-agency-marac-model-of.html>.

42 Whether a case is “high risk” is usually determined by an assessment of the facts and circumstances surrounding it. The risk factors may include nature of the abuse, previous behaviour or criminal record of offender, threats issued or access to weapons, the woman’s perception of risk she is facing, and abusive habits of the perpetrator. In fact, section 115 of the Crime and Disorder Act 1998 provides that there must be “substantial chance” rather than a mere risk. North Lincolnshire Council; Safe Neighbourhoods; Multi-agency Risk Assessment Conference (Frequently Asked Questions).

43 North Lincolnshire Council; Ibid.

system to the issue of domestic violence. Based on the principles of therapeutic jurisprudence, preventive law and restorative justice, the two model courts have both criminal and civil jurisdictions with the express purpose of ensuring victim safety and holding the perpetrator accountable.⁴⁴ Hence, a “one-stop shop” approach is followed, with emphasis on treatment of perpetrators rather than punishment. Batterer intervention programmes assume significance under this approach, although survivor safety is not allowed to be compromised in the process. However, while the Dade County court works with a number of judges who preside over criminal and other family matters as well as domestic violence matters, the Vancouver court propagates the “One Court – One Judge” system. The judge in the latter case is assisted by advocates for survivors who are part of the coordinated response system.⁴⁵ Mandatory counselling and intervention programmes, particularly where civil protection orders are granted or the perpetrator is on probation, are undertaken. The Dade County initiative also pays particular attention to potential psychological trauma of children who witness domestic violence and requires them to attend counselling. The judges also form part of the larger community initiatives and provide sensitization training. Hence, both the initiatives utilize an integrated community approach to domestic violence cases that comprises support and advocacy services for survivors, and form a comprehensive response in providing a single forum where women facing domestic violence can seek access to justice.

It must, however, be noted that batterer intervention programmes like mandatory counselling have their limitations. At no point should such initiatives be allowed to substitute the criminal or civil law processes. Similarly, policy makers and courts must bear in mind the fact that batterer intervention may fail, and hence, protective orders must be granted and survivor safety ensured.

Alternative Dispute Resolution models – Victim-Offender Conferencing (VOC) or Victim-Offender Mediation (VOM): This refers to an alternative dispute resolution approach where the survivor and offender meet at a safe and neutral setting in the presence of a trained mediator to discuss the abusive behaviour. “The mediator facilitates the meeting, guiding the participants through the process. The mediator does not impose a solution on the participants but helps them reach a satisfactory agreement to make reparation for the offence”.⁴⁶ **The key principles are that mediation should not be attempted in any event unless the survivor is specifically requesting it.** It should be undertaken only if her safety concerns have been properly dealt with.⁴⁷ An important note of caution for policy makers and advocates of this alternative dispute resolution model is that it might not be prudent or practical to replicate this model in ASEAN countries without a proper needs-assessment, as well as an understanding of how effective restorative justice models may prove in societies which are fundamentally different

44 The combining of traditionally separate systems into a single integrated approach contributes to the comprehensive provision of services by supplying a single forum within which both criminal and civil matters can be addressed. Betsy Tsai; *The Trend Toward Specialized Domestic Violence Courts: Improvements On An Effective Innovation*; 68 Fordham L. Rev. 1285; <www.westlaw.com>.

45 Randal B. Fritzier & Leonore M.J. Simon; *Creating a Domestic Violence Court: Combat in the Trenches*; Court Review 28 (2000); <<http://aja.ncsc.dni.us/courtrv/cr37/cr37-1/CR9FrtzierSimon.pdf>>.

46 Angela Cameron; *Restorative Justice – A Literature Review*; British Columbia Institute against Family Violence; April, 2005. Please note that the term “reparation for the victim” is used in the sense of repairing the harm done, through a consultative process during the conference between the parties. Reparation will therefore, depend on the facts and circumstances of the particular case.

47 Amanda Dissel & Kindiza Ngubeni; *Giving Women their Voice: Domestic Violence and Restorative Justice in South Africa*; Centre for Study of Violence and Reconciliation; <www.csvr.org.za/wits/papers/papadk3.htm>.

in character. Moreover, it must also be noted that VOC/VOM models focusing on reintegration of survivor, offender and the community, in the countries mentioned below have chiefly been used in the context of indigenous communities.

In **South Africa**, the pilot VOC projects were developed in three areas in Gauteng, and one in North West Province by the **Restorative Justice Initiative (RJI)**. The model has since been replicated in other areas by RJI.⁴⁸ The VOC model follows a similar procedure to any other mediation,⁴⁹ but the distinguishing feature is that the mediator facilitates the discussion through a story-telling process. If and when an agreement is reached, it is submitted to the court with the mediator's report; the court then allows immediate withdrawal of the case. A short-term follow-up usually takes place under this initiative to ensure compliance with the agreement and to evaluate the satisfaction of the parties.

The **Canadian model** of VOM places greater emphasis on reparation and restitution to the survivor than reconciliation. The VOM of the **Mediation and Restorative Justice Centre (MRJC) in Edmonton, Alberta** provides a good practice example of effective implementation of this approach. The MRJC model, initiated in 1998, undertakes an approach of restorative justice based on "focus on harm, participant safety, offender accountability, opportunities for dialogue, and restoration."⁵⁰ The concern for survivor safety involves continuing dialogue and, based on her needs, referrals to appropriate services. The values that drive the MRJC VOM are survivor safety, survivor choice, offender accountability, and system accountability. The importance of self-training and community support for the VOM also forms a part of the scope of activities undertaken by MRJC.

4. Legislating the Provision of Funding

Violence Against Women Act, USA: In the United States, a combination of civil and criminal approaches to domestic violence has been developed. The landmark federal legislation in this regard is the Violence against Women Act, 1994 (VAWA), subsequently reauthorized in 2000 and 2005. The statute provides funding to states for criminal law enforcement against offenders, and for other assistance, taking into account the particular needs of women of colour and immigrant women.

VAWA not only expanded the penalties for crimes against women, improved law enforcement response, and created innovative remedies for women facing violence, but it also sought to aid the coordinated response providing statutory recognition to several federal grant programmes. The VAWA 2005 in its **Title 1** provides for reauthorization of funding for the following programs:

48 For details, see Dissel & Ngubeni; *Ibid*.

49 "Once the case was referred to the VOC site by the court or other referral agency, the mediators would meet separately with both victim and offender to establish willingness to participate and to prepare for the conference. They also met with any support people identified by the parties. If the case was accepted, the trial would be postponed to allow for mediation to occur." *Id*.

50 Alan Edwards and Jennifer Haslett; *Domestic Violence and Restorative Justice: Advancing the Dialogue*; <www.sfu.ca/cfrj/fulltext/haslett.pdf>.

- STOP grants (state grants to police, prosecutors and service providers),
- grants to encourage arrests and enforce protective orders,
- civil legal assistance, an innovative legal assistance programme,
- federal victim assistants,
- law enforcement training.

An interesting feature of the VAWA 2005 STOP programme is the grant eligibility requirement that states should incorporate, as part of their strategies, the forging of partnerships between the justice system and survivor advocacy organizations, and include non-profit, faith-based and community organizations as partners. It is important to note that a majority of the programmes that have emerged as good practices have been aided by the VAWA grant programme. For example, the state of Oregon has sought to implement this policy through the STOP VAWA Implementation Plan for Oregon. Under this plan, Joint Funding Advisory Bodies have been established that coordinate and align the non-competitive funding available to non-profit domestic violence and sexual assault service providers.⁵¹ Other states like Michigan and West Virginia have extended this requirement on the issue of housing rights of women facing domestic violence through collaborations between survivor service providers and state agencies.

Women's Safety Agenda 2005, Australia: Women's Safety Agenda was introduced by the Australian government in 2005 as the primary policy on the issue of violence against women. With a budget of \$75.7 million over a period of four years (ending in 2009), the policy addresses four themes:⁵²

- Prevention,
- Health,
- Justice,
- Services.

The ultimate goal of the Women's Safety Agenda is to progressively decrease the impact of domestic violence on the community by focusing on prevention, early intervention and providing support to women. It is with this understanding that initiatives like the "Australia Says No" campaign have been started. It is a multi-media campaign which also provides a 24-hour helpline for survivors of violence. A "Mensline" has also been initiated under this programme to target men. Another significant initiative undertaken has been the establishment of a Domestic and Family Violence Clearinghouse that provides information and links to appropriate services where a person can go for assistance. The Women's Safety Agenda as a policy also funds innovative preventive and responsive strategies by civil society organizations in Australia in addition to training health care workers and members of the criminal justice system. This umbrella policy, since its beginning in 2005, has also supported several pilot research initiatives on the issue of violence against women.

⁵¹ Sourced from: <http://www.doj.state.or.us/crimev/doc/vawa_advisory_board_minutes_jan_24_08.doc> (last visited on 27th March 2009).

⁵² Sourced from: <http://www.ofw.facsia.gov.au/womens_safety_agenda/index.htm>.

5. Monitoring and Evaluation of Implementation of Legislation or Policy

The effectiveness of domestic violence legislations and their implementation cannot be understood without periodic monitoring and evaluation to ensure the accountability of the service delivery system.

Monitoring and Evaluation of the Protection of Women from Domestic Violence

Act 2005, India: Significantly, the Indian domestic violence legislation itself mandates a periodic review of its implementation.⁵³ It must, however, be noted that although periodic monitoring of implementation of the law is recognized as a specific mandate of the State, in India, the initiative has been taken by civil society groups working on the issue of domestic violence. Lawyers Collective, which has been instrumental in the drafting of the law, approached the relevant departments and other stakeholders, bringing them to a common platform for discussion. The first National Conference with relevant stakeholders was organized on 26 October 2007, in commemoration of the first anniversary of the Protection of Women from Domestic Violence Act coming into effect. The objective of the initiative was to review the implementation of the law in various states of the country, with emphasis on whether the infrastructure envisaged under the Act has been established. Where the infrastructure had been established, the objective was to also evaluate the effectiveness in responding to women and delivering services,⁵⁴ and to examine the responsiveness of the judiciary to the issue of domestic violence. The issue of allocation of financial resources and the will of the State to implement the law emerged as a crucial factor in the process of information-gathering and review. A striking element of this initiative was the State-civil society collaboration undertaken, particularly for the purpose of data collection. On the basis of the information gathered, a Monitoring and Evaluation Report was published, which highlighted good practices in various states of the country. Since then templates of good practices are being sought for adoption in other states, which ensures that the initiative has become a forum for developing more effective approaches through sharing of experiences.

The initiative has entered its second phase, and the tremendous response in the form of information sharing as well as cooperation from state agencies makes it apparent that this practice of monitoring and evaluation can be successfully institutionalized. The Report from the monitoring exercise constitutes the most commonly referred and cited document on implementation of the domestic violence law in India. The success of the strategy lies in the fact that a widely publicized performance evaluation of the implementing agencies has encouraged these agencies to share information as well as created accountability to civil society.

6. Initiatives Focusing on Needs of Special Groups

Certain practices have evolved under broader strategies that provide specialized support to particularly vulnerable categories of women facing domestic violence. Two such good practices focusing on children and immigrant women are presented below.

⁵³ Section 11(c) refers to monitoring and review of implementation of the Act as a "Duty of the Government"; PWDVA, 2005.

⁵⁴ An important criterion was to examine whether women were aware of the existence of this infrastructure and whether as a general practice they were accessing these agencies and services.

Child protection and Canada: In 2004, the Ministry of Children and Family Development (MCFD) in British Columbia published *Best Practice Approaches: Child Protection and Violence Against Women*, to guide child protection workers on the protection of children who witness violence against their mothers. These guidelines form the basis of a collaborative approach between those working for the safety of the mother and those focused on the safety of the children. These guidelines are based on the fact that the safety of the child is closely related to that of the mother.⁵⁵

Immigrant women and the Violence Against Women Act: Domestic violence against immigrant women has been a major source of concern in the United States. Policy makers have acknowledged the need for protective measures to address the vulnerability faced by immigrant women and their children, in view of the fact that in most cases, immigrant women who depend on their husbands for their legal status in the United States do not report cases of domestic violence. It is in this context that the Violence against Women Act 1994 for the first time brought battered immigrant women within State protection. This was achieved through two different provisions:

- a. By allowing **self-petitions** by women for lawful permanent resident status. In order to avail of this provision, the woman is required to prove, in addition to the immigration status of her spouse that she has suffered extreme cruelty or abuse, and that among other things, she and her children will face extreme hardship if deported.
- b. By applying for *VAWA suspension of deportation*. This provision has the same requirements as the self-petitioning provision, except the additional requirement of three years of physical presence in the United States. This provision entitles women who were not covered under the first clause to get protection from being deported, like divorced women or women whose husbands have lost lawful immigrant status due to unlawful activities.

Children of abusive families are also protected under VAWA. Note that in addition to the federal legislation, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIA) also relaxed norms, particularly with regard to the 3-10 year ban on re-entry into the United States.

VAWA was reauthorized in 2000 and 2005, further expanding the scope of protection given to battered immigrant women, by extending immigration relief to a larger group of survivors of violence, including survivors of elder abuse and adolescent children. Another important measure was the authorization of the Legal Services Corporation funded programmes to use any source of funding to assist survivors of domestic violence.⁵⁶

⁵⁵ For details, see BC Association of Specialized Victim Assistance and Counselling Programs, BC/Yukon Society of Transition Houses, and BC Family Violence Institute; *Critical Elements of An Effective Response to Violence against Women: Briefing Document*; (April, 2007).

⁵⁶ Please note that in 1996, the US Congress passed a law that prohibited Legal Services Corporation (LSC)-funded programmes from providing legal assistance to undocumented immigrants and many lawfully present non-citizens. This was a serious barrier for battered immigrant women as most programmes providing free legal assistance to women were funded by the LSC. Although subsequently, this prohibition was relaxed mandating LSC funded programmes to use non-LSC funds to assist illegal immigrants facing domestic violence, it was with the reauthorization of VAWA that such programmes could completely support women.

CONCLUSION

The analysis undertaken in this paper points to one uniform phenomenon: that debate about the effectiveness of various approaches and practices is ongoing. While aggressive criminal justice reform including policies of mandatory arrest and no-drop prosecution have been challenged for not taking a woman's consent into account, a civil law response in the form of protection orders has been termed ineffective for lack of strong enforcement measures. Proponents of restorative and therapeutic justice have, on the other hand, argued for practices like Survivor-Offender Conferencing. While Batterer-intervention programmes like Duluth have emerged as good practices and have been replicated in various countries, the system of mandated batterer counselling has come under increasingly close scrutiny.

The Domestic Violence Response System seems to be coming full circle. The movement began with the battered women's movement in the West interlinking services like shelter and counselling and then initiating reform of the criminal justice system. Civil remedies were then added to the legal system's response. In many countries, laws on housing, possession of weapons, etc. formed part of this legal response. Gradually, the coordinated response model came to dominate public policy on domestic violence. However, in recent times, there seems to be re-emphasis on improving criminal justice response as the most effective means of addressing domestic violence. This does not mean that a coordinated response model is no longer accepted as effective. In fact, recent studies have considered better criminal and civil law policies as integral to the Domestic Violence Response System.

No single approach or practice can be said to be "most effective". In fact, the best strategy to address the issue of domestic violence is to combine two or more of these approaches based on the context and requirements of each country or system. Furthermore, any reform without sensitizing law enforcement authorities and enabling avenues of economic and social support for women cannot address domestic violence in an effective manner.

The Domestic Violence Response System must be understood from the perspective that a woman facing violence in an intimate relationship is in need not only of legal remedies but requires a multiplicity of services that form a comprehensive support system. The challenge, however, lies in making sure that in strengthening structures to create a more coordinated response, we do not lose sight of the effectiveness of the system in providing services to women facing violence. A clear focus on the woman and her safety must be the foundation of any good practice initiative. In advocating for a coordinated response system, periodic review and evaluation exercises also become crucial. Questions like whether the system is responding to the needs of women, how many women are using the system, and what are its actual and perceived benefits need to be asked.

The good practices discussed in this paper, though not exhaustive, certainly provide a template for implementation efforts in our own countries.